



London Breed
Mayor

Carol Isen
Human Resources Director

Date: September 15, 2023

To: The Honorable Civil Service Commission

Through: Carol Isen
Human Resources Director

From: Joan Lubamersky / Lynn Khaw, GSA
Joyce Kimotsuki, CON
Amy Nuque, MTA
Shawndrea Hale / Daniel Kwon, PUC
Peggy Zee, SHF
Jolie Gines, TIS
Cynthia Avakian, AIR
Vincent Lee, POL
Kelly Hiramoto, DPH
Amanda Wentworth, TTX

Subject: **Personal Services Contracts Approval Request**

This report contains nineteen (19) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources Fiscal Year 23/24 to date:

Total of this Report	YTD Expedited Approvals FY2023-2024	Total for FY2023-2024
\$69,736,000	\$321,632,540	\$2,558,009,508

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POSTING FOR

October 02, 2023

PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimate d Start Date	PSC Estimate d End Date	Type of Approval
41676 - 23/24	GENERAL SERVICES AGENCY - CITY ADMIN	\$800,000.00	Contractor will perform natural areas management on Yerba Buena Island to include invasive plant removal and habitat restoration activities using hand and small-tool techniques. This work is to support the Yerba Buena Island (YBI) Habitat Management Plan, following pre-established site priorities developed by the Treasure Island Development Authority (TIDA).	September 30, 2023	September 30, 2027	REGULAR
42481 - 23/24	GENERAL SERVICES AGENCY - CITY ADMIN	\$300,000.00	Vendor will perform as-needed specialized toxicological analyses. Tests will be performed for such substances such as synthetic cannabinoids, designer opiates, and bath salts. The Office of the Chief Medical Examiner (OCME) developed several leading analytical methods to detect, quantify and confirm over 450 common drugs of abuse, medications, poisons and novel psychoactive drugs. This is beyond national minimal standards and recommendations for decedents, impaired driving, and sexual assault casework. The capacity to perform these tests in-house has mitigated some of the additional work required during the City's fentanyl drug overdose epidemic. However, an outside accredited laboratory contract is necessary to perform specialized work that OCME cannot do.	December 1, 2023	December 31, 2028	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimate d Start Date	PSC Estimate d End Date	Type of Approval
			<p>The City seeks responses from Respondents to provide professional services for the following systems:</p> <p>PeopleSoft Financials and Supply Chain Management (FSCM);</p> <p>PeopleSoft Human Capital Management (HCM);</p> <p>PeopleSoft Enterprise Learning Management (ELM);</p> <p>Oracle Business Intelligence Applications (OBIA);</p> <p>Oracle Business Intelligence Enterprise Edition (OBIEE);</p>			
<u>45826 - 23/24</u>	CONTROLLER	\$7,000,000.00	<p>Potential replacement systems for the above listed products;</p> <p>Potential change in infrastructure used to support the above listed products; and</p> <p>City legacy and related systems.</p> <p>Respondents must be able to provide functional, technical, and project management services for these systems both remotely and on-site at the Office of the Controller's City Hall Office.</p> <p>These services will be used to assist the Controller's Office and other City Departments with system enhancements, modifications, and additional systems support.</p>	November 1, 2023	October 31, 2028	REGULAR
<u>32820 - 23/24</u>	MUNICIPAL TRANSPORTATION AGENCY	\$2,500,000.00	<p>The contractor will plan, coordinate, and conduct an in-person survey of the San Francisco Municipal Transportation Agency's (SFMTA) transit riders to collect data on their demographics and transportation practices. The consultant will collect statistically</p>	January 1, 2024	December 31, 2025	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimate d Start Date	PSC Estimate d End Date	Type of Approval
			significant data about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. Riders will be surveyed on all routes and modes of transit vehicles, on platforms, and by telephone as necessary. The consultant shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries.			
<u>35159 - 23/24</u>	MUNICIPAL TRANSPORTATION AGENCY	\$2,000,000.00	<p>The U.S. Department of Transportation (USDOT) awarded the San Francisco Municipal Transportation Agency (SFMTA) \$2 million from the SMART (Strengthening Mobility and Revolutionizing Transportation) grants program to support the SFMTA's Digital Curb project. The SMART grants program funds innovative approaches to using technology to solve transportation problems -- the Digital Curb project will create a first-of-its-kind citywide database and map of all curb locations and regulations, which will provide valuable information for the agency and public, and help achieve the agency's curb management goals.</p> <p>The SFMTA intends to issue an RFP for a Contractor to support the Digital Curb project in assembling curb data for the first time by leveraging existing data and collecting data on the street using innovative digital mapping tools; keeping data up to date via software tools as SFMTA plans legislate, and implements curb regulation changes; and disseminating data via maps, analytical tools, and an open data feed using the Curb Data Specification (CDS) industry standard.</p>	September 15, 2023	September 15, 2025	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimate d Start Date	PSC Estimate d End Date	Type of Approval
			As part of the Digital Curb project, SFMTA will also partner with the Open Mobility Foundation (OMF). OMF is a non-profit organization that develops digital tools for public agencies and manages the CDS standard. OMF will make changes to CDS as necessary to support the Digital Curb project, as well as work with SFMTA and other cities with similar projects to document costs, benefits, lessons learned, and best practices, which will help SFMTA meet its grant obligations to USDOT.			
44669 - 22/23	MUNICIPAL TRANSPORTATION AGENCY	\$250,000.00	To provide federally mandated urine analysis for Safety-Sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).	February 1, 2024	February 1, 2029	REGULAR
41458 - 23/24	PUBLIC UTILITIES COMMISSION	\$15,000,000.00	Perform highly specialized engineering tasks that include conducting geotechnical field explorations, investigations, and laboratory testing; hydraulic modeling, seismic vulnerabilities of water treatment facilities and chemical storage tanks, site surveying in remote locations, reliability and maintenance issues with chemical pumps, preparing reports for new and existing facilities; The SFPUC intends to award one (1) contract, not to exceed \$15,000,000.	February 1, 2024	January 31, 2035	REGULAR
45295 - 23/24	SHERIFF	\$140,000.00	The San Francisco Sheriff's Office proposes to enter into a contract for the garbage collection services for the San Francisco County Jail #3 located in San Bruno, CA, and to comply with the San Bruno Municipal Code 10.20.050, which the City of San Bruno issued an exclusive contract for the collection of garbage.	October 1, 2023	September 30, 2024	REGULAR

<u>PSC No</u>	Dept Designation	PSC Amount	Description of Work	PSC Estimate d Start Date	PSC Estimate d End Date	Type of Approval
<u>48964 - 23/24</u>	GENERAL SERVICES AGENCY - TECHNOLOGY	\$15,000,000.00	<p>Background: The City retired its physical mainframe equipment in 2022. While the City offers its own private City Cloud Platform, it must also offer Public Cloud Service options to those City departments who choose not to leverage the City's Cloud Services. In addition, the City needs Cloud Services from Public Web Services providers for the City to maintain redundancy and disaster recovery services.</p> <p>The Public Cloud Providers are expected to provide Cloud Technical Support and professional services to cover development and production issues for Cloud products and services, along with other key stack components:</p> <p>"How to" questions about Cloud services and features, Best practices to help successfully integrate, deploy, and manage applications in the cloud, Troubleshooting Application Programming Interface (API) and Software Development Kit (SDK) issues, Troubleshooting operational or systemic problems with Cloud resources, Issues with our Management Console or other Cloud tools, Problems detected by Cloud Providers health check tools, and f A number of third-party applications such as Operating System (OS), web servers, email, Virtual Private Network (VPN), databases, and storage configuration</p>	September 1, 2023	December 31, 2030	REGULAR

TOTAL AMOUNT \$42,990,000

POSTING FOR

October 02, 2023

PROPOSED PERSONAL SERVICES CONTRACTS –Modifications

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
48582 - 22/23 - MODIFICATIONS	GENERAL SERVICES AGENCY - CITY ADMIN -- ADM	\$8,000,000	\$14,000,000	The Office of Contract Administration (OCA) would like to establish contracts for departments to obtain short-term and intermittent security guard services for special events and locations without existing service. Uniformed security guard services will provide a visible presence to the public and City staff while monitoring the grounds/facilities; protecting the safety of persons on sites; protecting the property against fire, theft, damage, and trespass; and investigating and reporting unusual or suspicious activities. These services will be available to all City departments requiring a short turnaround and for short-term duration services. Services will not cover long-term or consistent/regular security guard services.	07/01/2023	08/30/2028	REGULAR
43319 - 21/22 - MODIFICATIONS	AIRPORT COMMISSION -- AIR	\$8,000,000	\$15,000,000	Professional support services for the Noise Insulation Program (NIP) particularly on the following as-needed tasks: review of County records and updated noise impact boundaries to identify properties that may qualify for noise insulation improvements, outreach efforts to invite potentially eligible homeowners to participate in the NIP, coordination of aircraft noise easement acquisitions and recording, coordination of noise insulation design and	12/31/2026	06/30/2028	REGULAR

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
				construction work, handling inquiries from property owners regarding eligibility for noise insulation improvements funded by the Federal Aviation Administration (FAA) and the San Francisco International Airport (Airport), and preparation of outlay reports.			
44356 - 19/20 - MODIFICATIONS	AIRPORT COMMISSION -- AIR	\$3,500,000	\$6,500,000	Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.	11/28/2025	12/31/2026	REGULAR
32594 - 15/16 - MODIFICATIONS	MUNICIPAL TRANSPORTATION AGENCY -- MTA	\$10,000	\$110,000	The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/ Federal Transit Administration (DOT/FTA), TITLE 49: TRANSPORTATION, Code of Federal Regulations, PART 40 – PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS (49 CFR Part 40).	07/01/2023	06/30/2025	REGULAR
39913 - 23/24 - MODIFICATIONS	POLICE -- POL	\$425,000	\$525,000	The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the	10/01/2023	10/31/2026	REGULAR

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
				criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references			
47706 - 16/17 - MODIFICATIONS	PUBLIC HEALTH -- DPH	\$5,000,000	\$7,590,000	The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such as Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.	10/01/2023	12/31/2028	REGULAR
47743 - 17/18 - MODIFICATIONS	PUBLIC HEALTH -- DPH	\$550,000	\$1,512,000	The contractor(s) will provide a behavioral workforce program to prepare students and residents for the behavioral health services workforce by teaching up-to-date, evidenced-based practices. This program will develop and implement a drug and alcohol studies certificate program (currently provided at City College of San Francisco) that will span 2-3 academic	01/01/2024	12/31/2024	REGULAR

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
43527 - 17/18 - MODIFICATIONS	PUBLIC UTILITIES COMMISSION -- PUC	\$200,000	\$1,400,000	<p>years for counselors employed through Department of Public Health (DPH) Behavioral Health Services (BHS)-funded programs, or those who plan to seek employment with San Francisco agencies. The program will reinforce segments of the DPH BHS's planned education and training "pipeline," with a focus on drawing candidates of varying ethnic and cultural heritages, language backgrounds, sexual orientations/gender identities, and experiences with behavioral health systems. The format will be weekly night classes accessible to working adults and those who may have interrupted academic histories due to family responsibilities and/or time needed for recovery. Enrollment will be aimed to reflect the populations currently served, prioritizing students from diverse communities (e.g., African Americans, Latino/as, Asians, Pacific Islanders, Native Americans and immigrant groups from the neighborhoods of Bayview-Hunters Point, Visitacion Valley, the Mission, Western Addition, Tenderloin and other disenfranchised areas of the city) and marginalized groups (e.g., Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex [LGBTQQI], formerly-incarcerated, homeless, etc.).</p> <p>The work under this agreement includes identifying underutilized and other SFPUC properties that are candidates for revenue enhancement; assessing land economics; assessing project and entitlement feasibility; making entitlement</p>	08/28/ 2023	04/01/ 2027	REGULAR

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
				applications; building and sustaining local government and community relationships to generate project support; securing necessary local government entitlement approvals outside of San Francisco; analyzing and resolving complex title issues and boundary issues; performing appraisals and providing pre-acquisition and pre-disposition services.			
37035 - 22/23 - MODIFICATIONS	SHERIFF -- SHF	\$61,000	\$161,000	Coordinate efforts among multiple city agencies to identify and reduce barriers to pre-release Medi-Cal enrollment for persons incarcerated in the San Francisco County jails. Interview stakeholders and map existing Medi-Cal enrollment processes that occur in custody, Identify barriers for enrollment efforts and operational gaps that need to be addressed to implement the pre-release enrollment and suspension processes, including but not limited to IT system modifications, Facilitate meetings and collaborative planning sessions between Sheriff's Office and County Health and Social Service agencies. Identify protocols and IT modifications to strengthen pre-release enrollment, Identify the technology systems and staff needed to more efficiently identify Medi-Cal status at booking, provide enrollment assistance to those in need, while also providing accurate booking and release information to the HSA. Work with partner agencies to develop a comprehensive application for implementation funding which is due to the State Department of Health Care Services	05/01/2023	04/20/2025	REGULAR

PSC Number	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
				by December 31, 2022. The initial deliverable of the implementation grant proposal is due no later than December 9, 2022.			
				Scope Change: Implementation Assistance, meetings, and Project Management.			
44886 - 19/20 - MODIFICATIONS	TREASURER/TAX COLLECTOR -- TTX	\$1,000,000	\$2,670,000	The Office of the Treasurer and Tax Collector, Office of Financial Empowerment (OFE) is seeking to expand its one-on-one financial coaching program, Smart Money Coaching (SMC), to reach more residents in low-income communities and in communities with inequitable economic opportunity. The financial coaching service provider would have opportunities to support coaching across the City at City department sites, community-based organizations (CBOs) and other locations identified by the financial coaching service provider in partnership with OFE.	09/01/2023	06/30/2026	REGULAR

TOTAL AMOUNT \$26,746,000

**Regular/Continuing/Annual
Personal Services Contracts**

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Intermittent technical, natural areas management

Funding Source: TIDA departmental budget

PSC Duration: 4 years 1 day

PSC Amount: \$800,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor will perform natural areas management on Yerba Buena Island to include invasive plant removal and habitat restoration activities using hand and small-tool techniques. This work is to support the Yerba Buena Island (YBI) Habitat Management Plan, following pre-established site priorities developed by the Treasure Island Development Authority (TIDA).

B. Explain why this service is necessary and the consequence of denial:

Service is critical to ensure appropriate repair, restoration and enhancement of critical natural areas lands owned by TIDA. Denial of services will result in accelerated degradation of YBI natural areas lands and overgrowth of non-native plant species. Degradation of YBI native habitat poses compounding threat to existing YBI and Bay Area wildlife communities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have not been provided in the past.

D. Will the contract(s) be renewed?

Unknown.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

Services are as needed and intermittent, approximately 2-3 hours per week.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Technical expertise in sensitive small-tool removals of invasive plants from native habitat communities, natural resources expertise in identifying and monitoring Bay Area native plant communities and ecosystems.

- B. Which, if any, civil service class(es) normally perform(s) this work? 3420, Natural Resource Specialist; 3421, ChfNatural Resource Specialist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Work is intermittent and not available from resources within the City.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The amount of work/need under this Scope of Services is intermittent, approximately 2-3 days per week.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. Civil service classes exist that provide some of these services, but services are intermittent, not warranting hiring TIDA staff to do the work.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

**7. Union Notification: On 09/08/2023, the Department notified the following employee organizations of this PSC/RFP request:
Laborers, Local 261**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362 San Francisco, CA 94012

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 41676 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Lubamersky, Joan (ADM)

From: Theresa Foglio-Ramirez <laborers261@gmail.com>
Sent: Thursday, August 24, 2023 9:46 AM
To: Lubamersky, Joan (ADM)
Cc: DHR-PSCCoordinator, DHR (HRD); Ramon Hernandez
Subject: Re: TIDA PSC 41676

Good morning Joan,
The Union does not object to this PSC moving forward.

On Thu, Aug 24, 2023 at 9:28 AM Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

Good morning Theresa.

Would you please let me know if L 261 has any objection to this PSC moving forward.

Thank you.

Joan

Sent from my iPhone

On Aug 24, 2023, at 9:18 AM, Theresa Foglio-Ramirez <laborers261@gmail.com> wrote:

Hi Joan,
Thank you so much for answering all our questions!

On Tue, Aug 22, 2023 at 3:19 PM Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

Hi Theresa

I have inquired about this TIDA PSC.

This work is not under the Treasure Island PLA which, as I understand, governs the construction and improvements of the Treasure Island Development Project.

I would note the following differences comparing our contract and the general parameters of a Covered Project under the Citywide PLA obligations:

- Not funded by bond

- the total contract amount (\$800,000) is less than the lowest Citywide PLA threshold of \$1,000,000
- A professional service Contract, not a construction contract. #7 in the [PLA FAQs](#) seems to indicate departments Professional Service Agreements are not under Citywide PLA obligation if not construction design-build?

Please let me know if this responds to your questions.

Thank you.

Best regards,

Joan

Joan Lubamersky - Pronouns: she/her

Office of the City Administrator

One Carlton B. Goodlett Place, Room 362

San Francisco, CA 94102

From: Theresa Foglio-Ramirez <laborers261@gmail.com>

Sent: Friday, August 18, 2023 1:06 PM

To: Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org>

Cc: DHR-PSCCoordinator, DHR (HRD) <dhr-pscordinator@sfgov.org>; Ramon Hernandez <ramonliuna261@gmail.com>

Subject: Re: TIDA PSC 41676

Hi Joan,

It stands for Project Labor Agreement.

On Fri, Aug 18, 2023 at 12:37 PM Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

He Theresa

Would you please tell me what a PLA is?

Thank you.

Joan

Sent from my iPhone

On Aug 18, 2023, at 12:23 PM, Theresa Foglio-Ramirez <laborers261@gmail.com> wrote:

Hi Joan,

Thank you for your patience! Our Business Manager, Ramon Hernandez, has an additional question: Is this PSC covered under the City-Wide PLA or Treasure Island PLA?

On Thu, Aug 10, 2023 at 4:26 PM Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

Hello Theresa

I am glad that we connected yesterday morning. On a separate matter, I have asked the DHR PSC staff to assist you in gaining access to the PSC systems. They said they would contact you today.

With regard to PSC 41676 for TIDA, I listed below the points about which you asked and our response.

1. **Federal funds: Is this work reimbursed by Federal funds, or are there any Federal requirements about employment involved? You said that some time ago, perhaps before the MOU, there were issues about Federal vs. local minimum wage.** No Federal reimbursement, no Federal funds, and no Federal requirements are involved. The contractor will be subject to City of San Francisco Minimum Compensation Ordinance (MCO) requirements. All wages rates per the contract shall be no less than the Department of Industrial Relations (DIR) predetermined rates, and increases, for Laborer Group 3 per the State of California Labor Code and the San Francisco Administrative Code.

2. **Is this Journey level work? Is this a workforce development project, such as when the City has pre-apprenticeship job training projects for young people and adults?** This PSC does not create a training program. The contractor, TIDA and the local First Hire org, One Treasure Island Job Broker/Construction Training program (TIHDI), will meet to establish natural areas lands management entry-level opportunities to perform scope of services and/or participation in discipline specific-training program that is supportive of One Treasure Island programs opportunities and jobs development mission. TIHDI was created through the development agreements to function like First Hire does for the rest of the City. TIDA will hire a vendor that will inform TIHDI of the work they will do, and TIHDI will send the vendor qualified candidates including for entry level jobs.

3. **Integrated pest management: Will the work involve use of herbicides? -**
No

Please let me know if this responds to your questions or if you have any other concerns.

Thank you.

Best regards,

Joan

Joan Lubamersky - Pronouns: she/her

Office of the City Administrator

One Carlton B. Goodlett Place, Room 362

San Francisco, CA 94102

From: Theresa Foglio <laborers261@gmail.com>

Sent: Tuesday, August 8, 2023 1:35 PM

To: Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org>

Cc: DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>; vcourtney <vcourtney@ncdcl.org>

Subject: Re: TIDA PSC 41676

Hello Joan,

8:30 am tomorrow is perfect.

Thank you for your fast response.

On Tue, Aug 8, 2023 at 8:37 AM Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

Hello Theresa

May I call you this afternoon at 3:30 pm or tomorrow at 8:30 am?

Joan Lubamersky

Sent from my iPhone

On Aug 8, 2023, at 7:32 AM, Theresa Foglio <laborers261@gmail.com> wrote:

Hi Joan,

Thank you so much for forwarding this to me! I'm still trying to get someone to fix our access to the PSC system but have not found that magical person to help us yet. The Union would like to meet and discuss PSC-41676.

Thanks again and have a great week!

On Mon, Aug 7, 2023 at 4:42 PM Lubamersky, Joan (ADM)
<joan.lubamersky@sfgov.org> wrote:

To Laborer's Local 261:

Attn: Theresa Foglio

I am writing to you to notify Laborers 261 of a Personal Services Contract involving classifications represented by Laborer's 261. I will copy this email and enter it on the PSC website for PSC 41676.

The DHR PSC system does not recognize classes 3420 and 3421 as valid classifications, so I am not able to do the posting. Since you can't be notified through the PSC system, I am emailing you. I have attached class specs for those positions.

I have attached a copy of PSC 41676 and a copy of the "No Valid Option" screen from the PSC system.

As is the case with PSCs, L261 has 30 days to comment on this PSC if you choose.

Please let me know if you have questions.

Best regards,

Joan

Joan Lubamersky - Pronouns: she/her

Office of the City Administrator

One Carlton B. Goodlett Place, Room 362

San Francisco, CA 94102

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Be Well and Stay Safe!

Theresa Foglio-Ramirez
Public Sector Business Agent
LiUNA!, Local 261
3271 18th Street
San Francisco, CA 94110

(415) 823-7566 cell
(415) 826-4550 office
(415) 826-1948 fax
<http://twitter.com/theresafoglio>

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Lubamersky, Joan (ADM)

From: Lubamersky, Joan (ADM)
Sent: Monday, August 7, 2023 4:42 PM
To: laborers261@gmail.com
Cc: 'DHR-PSCCoordinator, DHR (dhr-psccordinator@sfgov.org)'
Subject: TIDA PSC 41676
Attachments: TIDA PSC 41676 No Valid Option.docx; Natural Resource Specialist Class 3420 Spec.docx; Chief fNatural Resource Specialist Class 3421 Spec.docx; PSC 41676 TIDA.pdf

To Laborer's Local 261:

Attn: Theresa Foglio

I am writing to you to notify Laborers 261 of a Personal Services Contract involving classifications represented by Laborer's 261. I will copy this email and enter it on the PSC website for PSC 41676.

The DHR PSC system does not recognize classes 3420 and 3421 as valid classifications, so I am not able to do the posting. Since you can't be notified through the PSC system, I am emailing you. I have attached class specs for those positions.

I have attached a copy of PSC 41676 and a copy of the "No Valid Option" screen from the PSC system.

As is the case with PSCs, L261 has 30 days to comment on this PSC if you choose.

Please let me know if you have questions.

Best regards,

Joan

Joan Lubamersky - Pronouns: she/her
Office of the City Administrator
One Carlton B. Goodlett Place, Room 362
San Francisco, CA 94102

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-needed specialized specialized toxicological analyses

Funding Source: General Fund

PSC Duration: 5 years 4 weeks

PSC Amount: \$300,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Vendor will perform as-needed specialized toxicological analyses. Tests will be performed for such substances such as synthetic cannabinoids, designer opiates, and bath salts. The Office of the Chief Medical Examiner (OCME) developed several leading analytical methods to detect, quantify and confirm over 450 common drugs of abuse, medications, poisons and novel psychoactive drugs. This is beyond national minimal standards and recommendations for decedents, impaired driving, and sexual assault casework. The capacity to perform these tests in-house has mitigated some of the additional work required during the City's fentanyl drug overdose epidemic. However, an outside accredited laboratory contract is necessary to perform specialized work that OCME cannot do.

B. Explain why this service is necessary and the consequence of denial:

The consequences of denial are that specialized tests would not be performed for OCME cases. OCME cases would not include information made possible by testing for nefarious substances outside of the scope of the OCME's internal testing abilities. This includes obscure testing such as heavy metal analysis and the analysis of uncommon sample types such as liver and stomach contents. The OCME does not have the resources to develop a method for these situations, which occur in 1% or less of total casework. Further, to ensure fairness, anonymity, and mitigation of bias, the urine drug testing of new OCME employees is performed by an outside vendor. It is inappropriate for the OCME to test such samples.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

By contract.

D. Will the contract(s) be renewed?

The services will continue to be needed. It is likely contract will be renewed.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

For administrative convenience, the department would like the Personal Contract duration to exceed five years for a brief period of time.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

Specialized knowledge, skills and equipment are necessary to perform these as needed tests.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Ability to analyze toxicological specimens including specialized tests. Must be an American Board of Forensic Toxicology (AFBT) accredited laboratory.

B. Which, if any, civil service class(es) normally perform(s) this work? 2403, Forensic Laboratory Technician; 2456, Asst Forensic Toxicologist 1; 2457, Forensic Toxicologist Supervisor; 2458, Chief Forensic Toxicologist;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor has an accredited laboratory including instruments necessary to perform specialized tests.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

These services are not available through resources within the City.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Work is as needed. The City does not have the equipment necessary to perform specialized tests.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. City employees currently perform most of the testing performed for OCME cases. Specialized work is to be performed by a vendor as needed.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No. No training will be provided.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes.

7. **Union Notification:** On 08/07/2023, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place Room 362 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 42481 - 23/24

DHR Analysis/Recommendation:
Commission Approval Required
DHR Approved for 10/02/2023

Civil Service Commission Action:

Receipt of Union Notification(s)

Lubamersky, Joan (ADM)

From: dhr-psccordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org
Sent: Monday, August 7, 2023 1:14 PM
To: Lubamersky, Joan (ADM); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscview@ifpte21.org; Lubamersky, Joan (ADM); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 42481 - 23/24

RECEIPT for Union Notification for PSC 42481 - 23/24 more than \$100k

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a request for a Personal Services Contract (PSC) 42481 - 23/24 for \$300,000 for Initial Request services for the period 12/01/2023 – 12/31/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21204> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and
NMS Labs**

This Agreement is made this First day of June, 2020, in the City and County of San Francisco (“City”), State of California, by and between NMS Labs (“Contractor”) and City.

Recitals

WHEREAS, the Office of the Chief Medical Examiner (“Department”) wishes to acquire the services of NMS Labs to provide specialized toxicological analysis for the Forensic Laboratory Division on an as-needed basis; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal (“RFP”) issued on January 6, 2020, in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City’s Civil Service Commission approved Contract number [4123 16/17] on March 6, 2019];

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and Office of the Chief Medical Examiner.

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means NMS Labs, 200 Welsh Road, Horsham, PA 19044.

1.5 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.7 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.9 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on June 1, 2020 and expire on November 30, 2022, unless earlier terminated as otherwise provided herein.

The City has two options to renew the Agreement for a period of three years each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

Article 3 Financial Matters

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

3.2 Guaranteed Maximum Costs. The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.3 Compensation.

3.3.1 Payment. Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the Chief Medical Examiner, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed Three Hundred Thousand Dollars (\$300,000). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the Office of the Chief Medical Examiner approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Approval shall not be unreasonable withheld or delayed. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

3.3.3 Withhold Payments. If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6 or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 Reserved. (LBE Payment and Utilization Tracking System.)

3.3.6 Getting paid by the City for goods and/or services.

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated

Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit www.sfgov.org/ach.

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

3.4 Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 Submitting False Claims. The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

4.7 **Reserved. (Liquidated Damages.)**

Article 5 Insurance and Indemnity

5.1 Insurance.

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(a) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of the Agreement, and that insurance applies separately to each insured against whom claim is made of suit is brought.

5.1.3 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.4 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.5 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.6 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.7 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.8 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

5.2 **Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or

otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 Liability for Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 Contractor acknowledges that this Agreement may create a “possessory interest” for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor at least 30 days written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment		
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	13.1	Nondisclosure of Private, Proprietary or Confidential Information

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

Article 9 Rights In Deliverables

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/ .

10.2 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

10.3 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.4 **Reserved.**

10.5 **Nondiscrimination Requirements.**

10.5.1 **Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

10.5.2 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with

domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance. Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with the requirements of Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.

10.9 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.10 Limitations on Contributions. By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.11 Reserved. (Slavery Era Disclosure.)

10.12 **Reserved. (Working with Minors.)**

10.13 **Reserved. (Consideration of Criminal History in Hiring and Employment Decisions.)**

10.14 **Reserved. (Public Access to Nonprofit Records and Meetings.)**

10.15 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.16 **Reserved. (Distribution of Beverages and Water.)**

10.17 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.18 **Reserved. (Preservative Treated Wood Products.)**

Article 11 General Provisions

11.1 **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City: **Office of the Chief Medical Examiner
Kalima A. Collymore
1 Newhall Street
San Francisco, CA 94124
Email: Kalima.Collymore@sfgov.org**

To Contractor: **NMS Labs
Andrew Nolan
200 Welsh Road
Horsham, PA 19044
Email: Andrew.Nolan@nmslabs.com**

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3 **Reserved. (Incorporation of Recitals.)**

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such

records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5 Modification of this Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, “Notices to Parties,” regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

11.6.2 Government Code Claim Requirement. No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 Agreement Made in California; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

11.8 Construction. All paragraph captions are for reference only and shall not be considered in construing this Agreement.

11.9 Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, “Modification of this Agreement.”

11.10 Compliance with Laws. Contractor shall keep itself fully informed of the City’s Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and

federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

11.12 **Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

11.13 **Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of the Agreement, and the Description of Services listed in Appendix A. Should there be a conflict of terms or conditions, the Agreement and any implementing task orders shall control.

Article 12 Department Specific Terms

12.1 **Reserved.**

Article 13 Data and Security

13.1 **Nondisclosure of Private, Proprietary or Confidential Information.**

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 **Reserved. (Payment Card Industry ("PCI") Requirements.)**

13.3 **Reserved. (Business Associate Agreement.)**

Article 14 MacBride And Signature

14.1 **MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and

understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

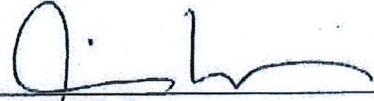
CONTRACTOR

Recommended by:

NMS Labs



Kenneth Bukowski
Deputy City Administrator
City and County of San Francisco



Eric F. Rieders
President & ~~CEO~~ COO
200 Welsh Rd.
Horsham, PA 19044

City Supplier Number: 33169

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 

David Ries
Deputy City Attorney

Approved:
Sailaja Kurella
Director of the Office of Contract Administration,
and Purchaser, Acting

By: _____
Sailaja Kurella

Appendices

- A: Scope of Services
- B: Calculation of Charges
- C: Insurance Waiver

Appendix A Scope of Services

1. Description of Services

Contractor agrees to perform the following Services per Sections I-II of the RFP:

In addition to ABFT accreditation, OCME also requires its contracting laboratory to be within the United States and to provide sufficient access to raw data of laboratory results to qualified OCME forensic toxicologists, allowing them to become “Reviewers” of such results. The contracted laboratory must grant OCME direct access to each OCME submitted specimen’s chain of custody history, batch posting summary of results, specimens processing history, and other background materials in addition to final analytical results typically provided to the analyst and reviewing staff members of the reference laboratory. This type of analytical-reviewer partnership services would also include access to relevant standard operating procedures, policies and other documentation as necessary in order for OCME forensic toxicologists to approve and sign the reference laboratory’s final report for each submitted case. Additional documentations may be required in order satisfy court requirements during judicial proceedings.

San Francisco OCME requires this partnership due to the 2009 US Supreme Court decision of *Melendez Diaz v Massachusetts* [129 US Supreme Court Reports 2527 (2009)] , where trial defendants have the right to challenge the reviewer of laboratory analytical results. In San Francisco courts, this precedent is routinely exercised, leading to frequent testimony by OCME forensic toxicologists. Because these forensic toxicologists are reviewers for both in-house and reference analytical results, they are able to provide timely and accurate testimony for all samples submitted by the OCME to the contracted laboratory.

All analytical testing must achieve scopes and limits of detection, quantitation and reporting of blood, urine or other biological specimen testing to meet industry recommendations for DUID and DFC casework, and both typically encountered and novel drug scope and concentrations for postmortem casework, with measurements of uncertainties for DUID casework, and completed results and final vendor’s toxicology report being available for review on, or before, ten (10) business days of receipt of specimens to the reference laboratory. Subsequently, specimens can be returned within 3 months of reporting, or at request.

Key functional requirements are:

- Current accreditation by the American Board of Forensic Toxicology (ABFT)
- Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data.
- Current ability to facilitate OCME forensic toxicologists to approve and sign the reference laboratory’s final report.

- Current ability to provide results that are available for review on, or before, ten (10) business days of receipt of specimens to the reference laboratory.
- Current ability to return all specimens within 3 months of reporting, or immediately at request.

Key detailed features are:

No	Feature Description
1.	Current accreditation by the American Board of Forensic Toxicology (ABFT).
2.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of submitted specimen chain of custody history.
3.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of batch posting summary of results.
4.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of specimen's internal chain of custody and processing history.
5.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of calibration and quality control information and ranges.
6.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of technical or analytical standards of operation.
7.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of quality manual or quality standards of operation.
8.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of physical or digital bench notes.
9.	Current ability to provide an online portal, or otherwise, with direct access of all OCME submitted casework, by OCME staff, to the raw data of any other relevant raw data.
10.	Current ability to save all above mentioned raw data in PDF format and stored on the OCME network.
11.	Current ability to facilitate OCME forensic toxicologists to approve and sign the reference laboratory's final report.

No	Feature Description
12.	<p>Current ability to meet, or exceed, detection of the following drugs and/or metabolites in whole blood specimens pertaining to DUID casework:</p> <p>6-MAM 1 ng/mL Morphine 5 ng/mL Codeine 5 ng/mL Hydrocodone 5 ng/mL Hydromorphone 1 ng/mL Dihydrocodeine 5 ng/mL Oxycodone 1 ng/mL Oxymorphone 1 ng/mL Methadone 20 ng/mL Fentanyl and metabolite(s) 0.1 ng/mL Buprenorphine and metabolite(s) 0.5 ng/mL Tramadol and metabolite(s) 10 ng/mL</p>
13.	<p>Current ability to meet, or exceed, detection of the following drugs and/or metabolites in whole blood specimens pertaining to DUID casework:</p> <p>THC 1 ng/mL 11-OH THC 1 ng/mL Carboxy THC 5 ng/mL</p>
14.	<p>Current ability to meet, or exceed, detection of the following drugs and/or metabolites in whole blood specimens pertaining to DUID casework:</p> <p>Cocaine and metabolite(s) 20 ng/mL Amphetamines 5 ng/mL Phencyclidine 5 ng/mL Carisoprodol 200 ng/mL MDMA 5 ng/mL Zolpidem 5.0 ng/mL</p>
15.	<p>Current ability to meet, or exceed, detection of the following drugs and/or metabolites in whole blood specimens pertaining to DUID casework:</p> <p>High dose benzodiazepines 20 ng/mL Low dose benzodiazepines 10 ng/mL Barbiturates 200 ng/mL</p>
16.	<p>Current ability to report measurement uncertainties for above-mentioned DUID casework in Feature Items 12 to 15, inclusive.</p>
17.	<p>Current ability to meet the referenced recommendations below of toxicology testing for DFC casework. Specifically, scope and Performance Limits (cutoffs) in urine, and</p>

No	Feature Description
	<p>appropriate scope and cutoffs of blood testing applicable for DFC casework.</p> <p>[SOFT DFC Committee, Drug-Facilitated Crimes Cutoffs, 07/2017, https://www.soft-tox.org/files/MinPerfLimits_DFC2017.pdf]</p>
18.	<p>Current ability to meet the above-mentioned cutoffs in Feature Item 17 by means of the combined use of Enzyme-Linked Immunosorbent Assay (ELISA), Gas Chromatography/Mass Spectrometry (GC/MS), Liquid Chromatography/Mass Spectrometry (LC/MS), and Liquid Chromatography/Time of Flight-Mass Spectrometry (LC/TOF-MS).</p>
19.	<p>Current ability to meet the recommendations of toxicology testing for Medicolegal Death Investigation (MDI) casework. Specifically, scope and cutoffs in blood, and appropriate scope and cutoffs of urine testing applicable for MDI casework.</p> <p>[ASB 119, Standard for the Analytical Scope and Sensitivity of Forensic Toxicology Testing for Medicolegal Death Investigations (OSAC draft, under review)]</p>
20.	<p>Current ability to analyze blood and urine for hundreds of common and novel/new drugs and poisons.</p>
21.	<p>Current ability to analyze for metals such as antimony, arsenic, bismuth, lead, mercury, selenium and thallium in blood and urine.</p>
22.	<p>Current ability to provide results that are available for review on, or before, ten (10) business days of receipt of specimens to the reference laboratory.</p>
23.	<p>Current ability to return specimens within 3 months of reporting, or immediately at request.</p>
24.	<p>Ability to reflex or auto-order on test positive results.</p>
25.	<p>Ability to re-order testing by STAT order.</p>
26.	<p>Alert of insufficient volume for specimen testing.</p>
27.	<p>Appropriate tracking of equipment certification, and to track and monitor calibration schedules for laboratory instruments, scales and balances, pipettes, and related equipment or supplies.</p>
28.	<p>Appropriate systems to track Standard Operating Procedures (SOPs).</p>
29.	<p>Ability to provide all analytical results from all submitted casework over a period of time in a useable excel format.</p>

No	Feature Description
30.	Client support for staff training on initial setup and throughout testing.
31.	Client support for analytical, technical and IT issues.

Additional detailed features are:

- Department employees will prepare biological specimens for shipment to NMS Labs with the prior approval of the Forensic Laboratory Director/Chief Forensic Toxicologist and/or Supervising Forensic Toxicologist.

- Department employees will complete, sign, and include in the shipped package a Requisition form provided by NMS Labs for each case they submit for testing which will describe at minimum the Department case number, specimen type, and specimen accessioning number as well as the analyses ordered.

- Department employees will arrange for NMS Labs' preferred courier service to collect packages from our Department location to take to NMS Labs using NMS Labs' courier account number.

- NMS Labs is to use their approved analytical methods to make the toxicological determinations requested on the Requisition form accompanying each case.

- Department employees will be issued a final report by NMS Labs Client Portal of the requested analyses within ten (10) business days of NMS Labs' receipt of the shipment.

- In cases where Department employees have requested on the Requisition form the return of specimens, NMS Labs will be required to return, at their expense listed in Appendix B, any unused specimens to the Department within four (4) calendar weeks of NMS Labs' receipt of the shipment.

- National Medical Services (NMS) is located in Horsham, Pennsylvania. Services will be provided at NMS Labs' facilities. NMS will be the only service provider. The services will be provided on an as-needed basis.

- The turnaround time of the final reports issued by NMS Labs will be monitored. Results will be evaluated for completeness and consistency.

2. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the Department will be Luke N. Rodda, Ph.D.

Appendix B Calculation of Charges

The discounted price list (i.e. attached RFP response TAB 5 – Cost to the Department for Solution Goods and Services) is effective from the initial contract term of three (3) years. Price increases may be implemented during the optional two (3) year extensions upon mutual consent.

For Goods and Services not listed in the abovementioned discounted price list, the regular 'LIST' price issued by the Contractor (i.e. attached "2020 fee schedule for NMS Labs") is effective from the initial contract term through December 31, 2020. Contractor will submit a new discounted price list on January 1, 2021

Appendix C
Insurance Waiver

Attached is the insurance waiver for NMS Labs.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM Dept. Code: ADM

Type of Request: [x] Initial [] Modification of an existing PSC (PSC # _____)

Type of Approval: [] Expedited [x] Regular ([] Omit Posting)

Type of Service: As needed specialized toxicological analyses

Funding Source: General Fund PSC Duration: 3 years
PSC Amount: \$500,000 PSC Est. Start Date: 06/01/2017 PSC Est. End Date: 05/31/2020

1. Description of Work

A. Scope of Work:

Specialized toxicological analyses performed by an accredited laboratory. Tests are performed for such substances such as synthetic cannabanoids, designer opiates, and bath salts.

B. Explain why this service is necessary and the consequence of denial:

The Office of the Chief Medical Examiner is required by law to accredit its Forensic Laboratory. At present, there are required toxicology tests which cannot be performed by the Forensic Lab. These tests must be sent to an accredited reference lab for analysis in order to maintain accreditation. The Medical Examiner has brought some tests in house that were earlier contracted out.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC. A personal services contract was previously approved (CSC 4123 11.12) for 2012-2017.

D. Will the contract(s) be renewed? Yes, if there continues to be a need for such services.

2. Union Notification: On 02/06/2017, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 4123 16/17

DHR Analysis/Recommendation:

04/17/2017

Commission Approval Required

Approved by Civil Service Commission

DHR Approved for 04/17/2017

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

Ability to analyze toxicological specimens. Must be an American Board of Forensic Toxicology (ABFT) accredited laboratory.

B. Which, if any, civil service class(es) normally perform(s) this work?

2403,2456,2457,2458,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes, the contractor has its own toxicology laboratory facility with specialized testing instruments.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

The civil service classes perform the most toxicology testing. The contractor will provide additional testing as needed for specialized tests.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No, work is as needed.

5. Additional Information (if "yes", attach explanation)

YES NO

- | | | |
|--|--------------------------|-------------------------------------|
| A. Will the contractor directly supervise City and County employee? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| B. Will the contractor train City and County employee?
Employees do not require additional training as work is only for as-needed | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| C. Are there legal mandates requiring the use of contractual services? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| D. Are there federal or state grant requirements regarding the use of contractual services? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| E. Has a board or commission determined that contracting is the most effective way to provide this service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD ON 03/13/2017 BY:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: 1 Carlton B. Goodlett Place #362 San Francisco, CA 94102

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CONTROLLER -- CON

Dept. Code: CON

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Enterprise Resource Planning Systems Support, Maintenance, and Enhancement Services

Funding Source: General & Non General Fund

PSC Amount: \$7,000,000

PSC Est. Start Date: 11/01/2023

PSC Est. End Date 10/31/2028

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The City seeks responses from Respondents to provide professional services for the following systems:

PeopleSoft Financials and Supply Chain Management (FSCM);

PeopleSoft Human Capital Management (HCM);

PeopleSoft Enterprise Learning Management (ELM);

Oracle Business Intelligence Applications (OBIA);

Oracle Business Intelligence Enterprise Edition (OBIEE);

Potential replacement systems for the above listed products;

Potential change in infrastructure used to support the above listed products; and

City legacy and related systems.

Respondents must be able to provide functional, technical, and project management services for these systems both remotely and on-site at the Office of the Controller's City Hall Office.

These services will be used to assist the Controller's Office and other City Departments with system enhancements, modifications, and additional systems support.

B. Explain why this service is necessary and the consequence of denial:

These services will ensure that the Citywide systems listed under Category A are available for over 35,000 City employees and the entire City supplier community. The services include critical upgrades, enhancements, and new functionality that support the effective operation of City departments. Denial would result in negative consequences for the City. This includes delayed projects, critical functionality not being provided to City Departments and other potential negative consequences for the City.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes PSC 43296-18.19

D. Will the contract(s) be renewed?

If needed, contracts resulting from this solicitation may be extended.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

The City seeks responses from Respondents demonstrating successful functional, technical, and/or project management experience with PeopleSoft Financials and Supply Chain Management (FSCM), PeopleSoft Human Capital Management (HCM), PeopleSoft Enterprise Learning Management (ELM), Oracle Business Intelligence Applications (OBIA), Oracle Business Intelligence Enterprise Edition (OBIEE), potential replacement systems for the above listed products, potential change in infrastructure used to support the above listed products, and City legacy and related systems. These services will be used to assist the Controller's Office and other City Departments with system enhancements, modifications, and additional systems support. Services require expert level knowledge of PeopleSoft and related systems. Services are highly specialized and short term in nature. Knowledge transfer at the end of services provided generally occur so that City staff are able to provide these services going forward.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Requires expert level functional, technical and project management skills for Oracle PeopleSoft systems, Oracle Business Intelligence, industry leading Human Capital Management, Financial Supply Management Systems, and related City legacy systems. Experience may also include training and knowledge transfer services related to the systems.

B. Which, if any, civil service class(es) normally perform(s) this work? 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1063, IS Programmer Analyst-Senior; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1657, Accountant IV; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 1825, Prnpl Admin Analyst II; 0931, Manager III; 0932, Manager IV; 0933, Manager V;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The Office of the Controller conducted an internal review of its staffing and found it did not have the resources to complete this work. The City contacted all the City’s CIO Managers. The Department of Technology confirmed it did not have resources to work on this project.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Services require expert level knowledge of complex technical systems which are highly specialized and primarily utilized on short-term projects. Knowledge transfer at the end of services provided generally occur so that City staff are able to provide these services going forward.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the work is short-term and highly specialized in nature.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Yes. Knowledge transfer and training will occur as a part of all contracts that result from the solicitation. Employees will generally be in the 1054, 1053 and 1064 job classes.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/31/2023, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21; Municipal Executive Association

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joyce Kimotsuki Phone: (415) 554-6562 Email: joyce.kimotsuki@sfgov.org

Address: 1 Carlton B. Goodlett Place, #382 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 45826 - 23/24

DHR Analysis/Recommendation:
Commission Approval Required

Civil Service Commission Action:

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: ahr-psccordinator@sfgov.org on behalf of joyce.kimotsuki@sfgov.org
To: [@Kimotsuki, Joyce \(CON\); andrea@sfmea.com; Laxamana, Junko \(DBI\); Criss@sfmea.com; christina@sfmea.com; staff@sfmea.com; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; Miller, Keith \(CON\); DHR-PSCCoordinator, DHR \(HRD\)](mailto:Kimotsuki, Joyce (CON); andrea@sfmea.com; Laxamana, Junko (DBI); Criss@sfmea.com; christina@sfmea.com; staff@sfmea.com; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; Miller, Keith (CON); DHR-PSCCoordinator, DHR (HRD))
Subject: Receipt of Notice for new PCS over \$100K PSC # 45826 - 23/24
Date: Monday, July 31, 2023 3:27:43 PM

RECEIPT for Union Notification for PSC 45826 - 23/24 more than \$100k

The CONTROLLER -- CON has submitted a request for a Personal Services Contract (PSC) 45826 - 23/24 for \$7,000,000 for Initial Request services for the period 11/01/2023 – 10/31/2028. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21189> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: CONTROLLER

Dept. Code: CON

Type of Request: Initial Modification of an existing PSC (PSC # 43296 - 18/19)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Enterprise Resource Planning Systems Implementation & Support Services

Funding Source: General & Non General Fund

PSC Original Approved Amount: \$7,000,000 PSC Original Approved Duration: 03/06/19 - 12/31/23 (4 years 43 weeks)

PSC Mod#1 Amount: \$3,499,000 PSC Mod#1 Duration: 04/21/21-03/31/26 (2 years 12 weeks)

PSC Cumulative Amount Proposed: \$10,499,000 PSC Cumulative Duration Proposed: 7 years 3 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The City seeks responses from Respondents demonstrating successful functional, technical, and/or project management experience with Oracle PeopleSoft (Financials and Supply Chain Management (FSCM), Human Capital Management (HCM), Enterprise Learning Management (ELM), Oracle Business Intelligence Applications (OBIA), Oracle Business Intelligence Enterprise Edition (OBIEE)), and City legacy and related systems. These services will be used to assist the Controller's Office and other City Departments with system enhancements, modifications and additional systems support.

B. Explain why this service is necessary and the consequence of denial:

These services are critical to ensuring that Citywide systems (SF Financials, SF Procurement, SF People & Pay, SF Learning, SF Reports and Analytics and SF Budget) are available for over 6,000 city users and the entire City supplier community. The services will also help provide critical upgrades, enhancements and new functionality, on PeopleSoft and legacy systems that will support the effective operation of City departments. Denial could result in critical functionality not being available to support City departments.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes PSC 41711-1.17

D. Will the contract(s) be renewed?

If needed, contracts resulting from this solicitation may be extended.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Controller's Office requests that the PSC cover about 6.25 years since many contracts have options to renew. With consultants, there is a significant learning curve for their understanding and documenting of City and County of San Francisco (City) systems and requirements. The options to renew the contract will also allow the City to address new security and system requirements.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The City seeks responses from Respondents demonstrating successful functional, technical, and/or project management experience with Oracle PeopleSoft (Financials and Supply Chain Management (FSCM), Human Capital Management (HCM), Enterprise Learning Management (ELM), Oracle Business Intelligence Applications (OBIA), Oracle Business Intelligence Enterprise Edition (OBIEE)), and City legacy and related systems. These services will be used to assist the Controller's Office and other City Departments with system enhancements, modifications and additional systems support. Services require expert level knowledge of PeopleSoft and related systems. Services are highly specialized and short term in nature. Knowledge transfer at the end of services provided generally occur so that City staff are able to provide these services going forward.

B. Reason for the request for modification:

Modification is needed to extend the PSC by 2.25 years to 3/31/2026 and to increase the PSC amount by \$3,499,000 for consultant services that are critical to ensuring Citywide systems (SF Financials, SF Procurement, SF People & Pay, SF Learning, SF Reports and Analytics and SF Budget) are up to date related to system requirements and security. The services are needed for critical upgrades, enhancements and new functionality. Cumulative time and amount increase is less than 50% of original PSC.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Requires expert level functional and technical knowledge of Oracle PeopleSoft systems, Oracle Business Intelligence, and related City legacy systems. Experience may also include training and knowledge transfer services related to the systems.

B. Which, if any, civil service class(es) normally perform(s) this work? 1052, IS Business Analyst; 1053, IS Business Analyst-Senior; 1054, IS Business Analyst-Principal; 1064, IS Prg Analyst-Principal; 1070, IS Project Director; 1657, Accountant IV; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 1825, Prnpl Admin Analyst II; 0931, Manager III; 0932, Manager IV; 0933, Manager V;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Services require expert level knowledge of PeopleSoft and related systems. They are highly specialized and short term in nature. Knowledge transfer at the end of services provided generally occur so that City staff are able to provide these services going forward.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, the work is short-term and highly specialized in nature.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

Knowledge transfer and training will occur as a part of all contracts that result from the solicitation. Employees will generally be in the 1054, 1053 and 1064 job classes.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Work done by existing contractor and possible new contractors

7. Union Notification: On 04/21/21, the Department notified the following employee organizations of this PSC/RFP request: Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joyce Kimotsuki Phone: (415) 554-6562 Email: joyce.kimotsuki@sfgov.org

Address: 1 Carlton B. Goodlett Place, #306, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43296 - 18/19

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 04/29/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Muni Onboard Customer Survey 2024

Funding Source: Operating Funds

PSC Duration: 2 years

PSC Amount: \$2,500,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will plan, coordinate, and conduct an in-person survey of the San Francisco Municipal Transportation Agency's (SFMTA) transit riders to collect data on their demographics and transportation practices. The consultant will collect statistically significant data about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. Riders will be surveyed on all routes and modes of transit vehicles, on platforms, and by telephone as necessary. The consultant shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries.

B. Explain why this service is necessary and the consequence of denial:

Federal regulations and guidance require the SFMTA evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on low-income/minority customers. We are mandated to conduct an onboard survey every five years at a minimum. The SFMTA is also required to monitor and compare the level and quality of services provided to predominantly minority and low-income areas in order to ensure equitable services system-wide. Denial could result in the SFMTA's inability to be in compliance with the federal regulation and result in a loss of federal funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service was provided in the past through PSC# 44238-15/16.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

The contractor will plan, coordinate, and conduct an in-person survey of the San Francisco Municipal Transportation Agency's (SFMTA) transit riders to collect data on their demographics and transportation practices by deploying a large number of specifically trained field workers on a short-term/temporary basis. The consultant will collect statistically significant data about customer travel patterns, income levels, ethnic background, language proficiency, and fare media usage both on a temporal and geographic basis. Riders will be surveyed on all routes and modes of transit vehicles, on platforms, and by telephone as necessary. The consultant shall produce a final report that includes a detailed analysis and discussion of the survey results and relevant high-level data summaries based on their expertise in this area. The SFMTA will perform this work in accordance with the Metropolitan Transportation Commission (MTC) Resolution no. 3866.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The consultant must have successfully completed a minimum of one comprehensive ridership demographic survey for a major public transportation agency within the last five years. Must possess technical expertise in data research and analysis that is specific to a major transit system in a similar urban area. Must have the ability to conduct quantitative research in detail; perform person-to-person survey work; provide multi-lingual survey work; tabulate raw data; provide various reports based on data collected; analyze data and present it in a comprehensive summary report; and deliver formal presentations.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1312, Public Information Officer; 1804, Statistician; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 5277, Planner 1; 5502, Project Manager 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: We anticipate consultants will be using tablets to collect on-board data.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

We have reached out to the teams that would normally be involved in these projects (Transit Planning and Comms) and they have confirmed they do not have capacity.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
This is work that will occur every 5 - 10 years and requires extensive staffing for a limited time period to conduct potentially over 30,000 on-board surveys of the SFMTA customers, many of whom may be limited-English proficient.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. This survey is a short-term project and the service is only required during the period of regulatory compliance.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. No training is provided as part of the scope of this project.
- C. Are there legal mandates requiring the use of contractual services?
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/03/2023, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21; Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 So. Van Ness Avenue, 6th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 32820 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Nuque, Amy

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Thursday, August 3, 2023 8:35 PM
To: Nuque, Amy; junko.laxamana@sfgov.org; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; L21PSCReview@ifpte21.org; Nuque, Amy; dhr-psccordinator@sfgov.org
Subject: Receipt of Notice for new PCS over \$100K PSC # 32820 - 23/24

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 32820 - 23/24 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 32820 - 23/24 for \$2,500,000 for Initial Request services for the period 01/01/2024 – 12/31/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrDrupal/node/21200> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Nuque, Amy

From: Nuque, Amy
Sent: Thursday, August 3, 2023 8:57 PM
To: junko.laxamana@sfgov.org; jharding@ifpte21.org; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; mweirick@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; L21PSCReview@ifpte21.org; dvickers@iam1414.org; Mjayne@iam1414.org; agonzalez@iam1414.org; speedy4864@aol.com; dhr-psccoordinator@sfgov.org
Subject: RE: Receipt of Notice for new PCS over \$100K PSC # 32820 - 23/24

Hi All: Kindly discard the notification below. Union selections were made in error and this request is for Local 21 only.

We apologize for the inconvenience this may have caused.

Thank you,
Amy Nuque
415-646-2802
SFMTA HR-ELR

-----Original Message-----

From: dhr-psccoordinator@sfgov.org <dhr-psccoordinator@sfgov.org> On Behalf Of amy.nuque@sfmta.com
Sent: Thursday, August 3, 2023 1:33 PM
To: Nuque, Amy <Amy.Nuque@sfmta.com>; junko.laxamana@sfgov.org; jharding@ifpte21.org; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; mweirick@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; L21PSCReview@ifpte21.org; dvickers@iam1414.org; Mjayne@iam1414.org; agonzalez@iam1414.org; speedy4864@aol.com; Nuque, Amy <Amy.Nuque@sfmta.com>; dhr-psccoordinator@sfgov.org
Subject: Receipt of Notice for new PCS over \$100K PSC # 32820 - 23/24

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 32820 - 23/24 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 32820 - 23/24 for \$2,500,000 for Initial

Request services for the period 01/01/2024 – 12/31/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21200> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # 44238 - 15/16)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Ridership Demographic/Travel Behavior Survey and Data Analysis

Funding Source: Operating Budget

PSC Original Approved Amount: \$450,000 PSC Original Approved Duration: 04/05/16 - 12/31/17 (1 year 38 weeks)

PSC Mod#1 Amount: \$224,000 PSC Mod#1 Duration: 04/05/16-06/30/18 (25 weeks 5 days)

PSC Mod#2 Amount: \$276,000 PSC Mod#2 Duration: no duration added

PSC Cumulative Amount Proposed: \$950,000 PSC Cumulative Duration Proposed: 2 years 12 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will plan, coordinate, and conduct an in-person survey of the San Francisco Municipal Transportation Agency's (SFMTA) transit riders to collect data on their demographics and transportation practices. The consultant will collect statistically-significant data about customer travel patterns, income levels, ethnic background, language proficiency and fare media usage both on a temporal and geographical basis. Riders will be surveyed on all routes and modes of transit vehicles, on platforms, and by telephone as necessary. The consultant shall produce a final report that includes a discussion of the survey results and relevant high-level data summaries. The SFMTA will perform this work in accordance with the Metropolitan Transportation Commission (MTC) Resolution No. 3866.

B. Explain why this service is necessary and the consequence of denial:

Federal regulations and guidance require that the SFMTA evaluate significant system-wide service and fare changes and proposed improvements at the planning and programming stages to determine whether those changes have a discriminatory impact on low-income/minority customers. The SFMTA is also required to monitor and compare the level and quality of services provided to predominantly minority and low-income areas in order to ensure equitable services system-wide. Denial could result in the SFMTA's inability to compliance with federal regulations and result in a loss of federal funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

This is work that will occur once every 3-5 years and requires extensive staffing for a limited time period to conduct potentially over 30,000 on-board surveys of the SFMTA customers. The consultant must have successfully completed a minimum of one comprehensive ridership demographic survey for a major public transportation

agency within the last five years. Must possess technical expertise in data research and analysis that is specific to a major transit system in a similar urban area. Must have the ability to conduct quantitative research in detail; perform person-to-person survey work; provide multi-lingual survey work; tabulate raw data; provide various reports based on data collected; analyze data and present it in a comprehensive summary report; and deliver formal presentations.

B. Reason for the request for modification:

Additional Cost in order to comply with the Federally-required survey and reporting requirements. There is no change in duration.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The consultant must have successfully completed a minimum of one comprehensive ridership demographic survey for a major public transportation agency within the last five years. Must possess technical expertise in data research and analysis that is specific to a major transit system in a similar urban area. Must have the ability to conduct quantitative research in detail; perform person-to-person survey work; provide multi-lingual survey work; tabulate raw data; provide various reports based on data collected; analyze data and present it in a comprehensive summary report; and deliver formal presentations.

B. Which, if any, civil service class(es) normally perform(s) this work? 1803, Performance Analyst I; 1804, Statistician; 1805, Performance Analyst II; 1806, Senior Statistician; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

This is work that will occur once every 3-5 years and requires extensive staffing for a limited time period to conduct potentially over 30,000 on-board surveys of the SFMTA customers, many of whom may be limited-English proficient

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. This survey is a short-term project and the service is only required during the period of regulatory compliance.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No training is provided with this service as it is only performed on demand every 3-5 years.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Continued work with Metropolitan Transportation Commission.

7. **Union Notification:** On 10/19/16, the Department notified the following employee organizations of this PSC/RFP request:
SEIU Local 1021; SEIU 1021 Miscellaneous; Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Hamada Phone: 415.701.5381 Email: cynthia.hamada@sfmta.com

Address: 1 South Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44238 - 15/16

DHR Analysis/Recommendation:

02/06/2017

Commission Approval Required

Approved by Civil Service Commission

02/06/2017 DHR Approved for 02/06/2017

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Professional services and software as a service

Funding Source: Grants: Federal (agreement in progress)

PSC Duration: 2 years 1 day

PSC Amount: \$2,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The U.S. Department of Transportation (USDOT) awarded the San Francisco Municipal Transportation Agency (SFMTA) \$2 million from the SMART (Strengthening Mobility and Revolutionizing Transportation) grants program to support the SFMTA's Digital Curb project. The SMART grants program funds innovative approaches to using technology to solve transportation problems -- the Digital Curb project will create a first-of-its-kind citywide database and map of all curb locations and regulations, which will provide valuable information for the agency and public, and help achieve the agency's curb management goals.

The SFMTA intends to issue an RFP for a Contractor to support the Digital Curb project in assembling curb data for the first time by leveraging existing data and collecting data on the street using innovative digital mapping tools; keeping data up to date via software tools as SFMTA plans legislate, and implements curb regulation changes; and disseminating data via maps, analytical tools, and an open data feed using the Curb Data Specification (CDS) industry standard.

As part of the Digital Curb project, SFMTA will also partner with the Open Mobility Foundation (OMF). OMF is a non-profit organization that develops digital tools for public agencies and manages the CDS standard. OMF will make changes to CDS as necessary to support the Digital Curb project, as well as work with SFMTA and other cities with similar projects to document costs, benefits, lessons learned, and best practices, which will help SFMTA meet its grant obligations to USDOT.

B. Explain why this service is necessary and the consequence of denial:

In 2020, SFMTA adopted a Curb Management Strategy, and creating a Digital Curb is a key piece in SFMTA's efforts to better manage the curb. When drivers cannot find available curb space, they circle for parking or double-park in a travel lane, slowing down transit and other traffic, creating safety hazards for people walking and biking, and making it difficult for people and goods deliveries to get to their destinations. While San Francisco wants to better manage their curbs, especially in the face of new technology-enabled transportation services, the City lacks detailed foundational data about what the curb regulations are. Creating a Digital Curb would allow City staff, the public, and transportation services such as transportation network companies, delivery services, and automated vehicles to know what the curb regulations are at any time. Additionally, SFMTA has 18 months to spend the USDOT SMART grant funds starting on 9/15/23. Without approval, SFMTA would be unable to bring on partners to support the project and would fail its commitment to USDOT. This would significantly set back SFMTA's Digital Curb project, and compromise the ability of the agency to secure additional federal grants in the future. Furthermore, CDS is the only

internationally-recognized open source standard for the management of urban curb space, and the OMF is the sole steward of CDS.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services have not been provided in the past – the Digital Curb is an innovative project using new technologies to create a first-of-its-kind citywide dataset on curb regulations.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. **Reason(s) for the Request**

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

SFMTA must expend all USDOT grant funds and deliver the project within 18 months. City staff do not have the resources to develop and maintain all of the hardware and software tools necessary to deliver the project, especially within the timeframe mandated by the grant.

3. **Description of Required Skills/Expertise**

A. Specify required skills and/or expertise: The Digital Curb project requires the following skills and experience: • Developing and supporting hardware and software tools to collect, manage, and analyze curb asset and regulation data as well as train users • Data analytics, system integration, and geographic information systems expertise • Standing up and maintaining application programming interfaces • Experience producing and ingesting data in the Curb Data Specification • Collecting recommended changes based on use cases from a variety of stakeholders to the Curb Data Specification and implementing the best technical solution to support cities' needs • Managing GitHub issues, pull requests and branches • Experience analyzing curb regulation and transportation data for curb management projects is also preferred

B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1044, IS Engineer-Principal; 1823, Senior Administrative Analyst; 1824, Pr Administrative Analyst; 5283, Planner 5; 5288, Transportation Planner II; 5289, Transportation Planner III; 5290, Transportation Planner IV;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:

Yes, the contractor will provide hardware and software tools necessary to collect, maintain, and disseminate curb data.

4. **If applicable, what efforts has the department made to obtain these services through available resources within the City?**

The Digital Curb project will leverage some software tools already developed and supported by City staff, including GIS and database system infrastructure, and asset management software that SFMTA staff are in the

process of implementing within the agency. However, City staff do not have the resources to develop and support the complex tools and software necessary to implement the entire project within the 18-month period mandated by the grant. Furthermore, CDS is the only internationally-recognized open source standard for the management of urban curb space, and the OMF is the sole steward of CDS.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Some civil service classifications are applicable; however, the City does not have the staff resources needed to develop and support the necessary tools, especially within the 18-month grant performance period. Furthermore, CDS is the only internationally-recognized open source standard for the management of urban curb space, and the OMF is the sole steward of CDS -- it is infeasible for the City to develop and maintain an industry-standard data specification.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, there are already applicable civil service classes that could perform some portions of this work. However, the City does not have the resources to support the development of such tools on its own.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. Yes, training will primarily be provided to Transportation Planners on the tools to maintain curb data and analyze curb data using mapping and visualization tools. Estimated 20 hours of one-time training and ongoing support as needed throughout the project duration.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/04/2023, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21; Management & Superv Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 So. Van Ness Avenue, 6th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 35159 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Nuque, Amy

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Friday, August 4, 2023 11:33 AM
To: Nuque, Amy; junko.laxamana@sfgov.org; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; L21PSCReview@ifpte21.org; Nuque, Amy; dhr-psccordinator@sfgov.org
Subject: Receipt of Notice for new PCS over \$100K PSC # 35159 - 23/24

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 35159 - 23/24 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 35159 - 23/24 for \$2,000,000 for Initial Request services for the period 09/15/2023 – 09/15/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21212> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Laboratory Drug Testing Services

Funding Source: Operating Funds

PSC Duration: 5 years 2 days

PSC Amount: \$250,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

To provide federally mandated urine analysis for Safety-Sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequence of denial:

This is a required service under the Department of Transportation (DOT)/Federal Transit Administration (FTA) Rules. Denial will jeopardize continued transit agency federal assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC #46107-17/18.

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for Laboratory Services as drug testing is expected to continue being a regulatory requirement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

Laboratory Services such as drug testing are expected to continue being a regulatory requirement.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

B. Explain the qualifying circumstances:

Federal Code 49 CFR Part 40 requires the use of a U.S. Department of Health and Human Services (DHHS) certified lab for all Department of Transportation mandated drug testing.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs.

B. Which, if any, civil service class(es) normally perform(s) this work? none

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor is a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have such laboratory services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable, the City does not have a U.S. Department of Health and Human Services (DHHS) certified laboratory.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS-certified labs or a job class to perform urine analysis.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No - Contract must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified lab and the number of urine analysis needed does not warrant the creation of a new job class.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. Urine analysis is a highly specialized task that city employees are not expected to participate in and must be done by federally regulated laboratory staff. Training City and County employees are not relevant to this contract.
- C. Are there legal mandates requiring the use of contractual services?
Yes. Yes, 49 CFR Part 40
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

**7. Union Notification: On 06/29/2023, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: San Francisco Municipal Transportation Agency San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44669 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Nuque, Amy

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Thursday, June 29, 2023 5:50 PM
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Subject: Receipt of Notice for new PCS over \$100K PSC # 44669 - 22/23

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RECEIPT for Union Notification for PSC 44669 - 22/23 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 44669 - 22/23 for \$250,000 for Initial Request services for the period 02/01/2024 – 02/01/2029. Notification of 30 days

(60
days for SEIU) is required.

After logging into the system please select link below, view the information
and
verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/20976> For union notification, please see
the TO: field of the email to verify receipt. If you do not see all the
unions
you intended to contact, the PSC Coordinator must change the state back to
NOT
READY, make sure the classes and unions you want to notify are selected and
SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the
document again , change the state back START UNION NOTIFICATION and SAVE. You
should receive the email with all unions to the TO: field as intended

Additional Attachment(s)



Displaying title 49, up to date as of 6/27/2023. Title 49 was last amended 6/22/2023.

Title 49 –Transportation

Subtitle A –Office of the Secretary of Transportation

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PART 40—PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS

Authority: 49 U.S.C. 102, 301, 322, 5331, 20140, 31306, and 54101 *et seq.*

Source: 65 FR 79526, Dec. 19, 2000, unless otherwise noted.

EDITORIAL NOTE

Editorial Note: Nomenclature changes to part 40 appear at 73 FR 33329, June 12, 2008.

Subpart A—Administrative Provisions

§ 40.1 Who does this regulation cover?

- (a) This part tells all parties who conduct drug and alcohol tests required by Department of Transportation (DOT) agency regulations how to conduct these tests and what procedures to use.
- (b) This part concerns the activities of transportation employers, safety-sensitive transportation employees (including self-employed individuals, contractors and volunteers as covered by DOT agency regulations), and service agents.
- (c) Nothing in this part is intended to supersede or conflict with the implementation of the Federal Railroad Administration's post-accident testing program (see 49 CFR 219.200).

§ 40.3 What do the terms used in this part mean?

In this part, the terms listed in this section have the following meanings:

Adulterated specimen. A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

Affiliate. Persons are affiliates of one another if, directly or indirectly, one controls or has the power to control the other, or a third party controls or has the power to control both. Indicators of control include, but are not limited to: interlocking management or ownership; shared interest among family members; shared facilities or equipment; or common use of employees. Following the issuance of a public interest exclusion, an organization having the same or similar management, ownership, or principal employees as the service agent concerning whom a public interest exclusion is in effect is regarded as an affiliate. This definition is used in connection with the public interest exclusion procedures of Subpart R of this part.

Air blank. In evidential breath testing devices (EBTs) using gas chromatography technology, a reading of the device's internal standard. In all other EBTs, a reading of ambient air containing no alcohol.

Alcohol. The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols, including methyl or isopropyl alcohol.

Alcohol concentration. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under this part.

Alcohol confirmation test. A subsequent test using an EBT, following a screening test with a result of 0.02 or greater, that provides quantitative data about the alcohol concentration.

Alcohol screening device (ASD). A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and appears on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" because it conforms to the model specifications from NHTSA.

Alcohol screening test. An analytic procedure to determine whether an employee may have a prohibited concentration of alcohol in a breath or saliva specimen.

Alcohol testing site. A place selected by the employer where employees present themselves for the purpose of providing breath or saliva for an alcohol test.

Alcohol use. The drinking or swallowing of any beverage, liquid mixture or preparation (including any medication), containing alcohol.

Aliquot. A fractional part of a specimen used for testing. It is taken as a sample representing the whole specimen.

Alternate specimen. An authorized specimen, other than the type of specimen previously collected or attempted to be collected.

Breath Alcohol Technician (BAT). A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

Cancelled test. A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

Chain of custody. The procedure used to document the handling of the urine specimen from the time the employee gives the specimen to the collector until the specimen is destroyed. This procedure uses the Federal Drug Testing Custody and Control Form (CCF) as approved by the Office of Management and Budget.

Collection container. A container used to collect a specimen.

Collection site. A place selected by the employer where employees present themselves for the purpose of providing a specimen for a drug test.

Collector. A person who instructs and assists employees at a collection site, who receives and makes an initial inspection of the specimen provided by those employees, and who initiates and completes the CCF.

Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse). A database, administered by the Federal Motor Carrier Safety Administration, containing records of commercial motor vehicle drivers' violations of controlled substances and alcohol testing program requirements, as set forth in part 382 of this title, as well as their return-to-duty status.

Confirmatory drug test. A second analytical procedure performed on a different aliquot of the original specimen to identify and quantify a specific drug or drug metabolite.

Confirmatory validity test. A second test performed on a different aliquot of the original urine specimen to further support a validity test result.

Confirmed drug test. A confirmation test result received by an MRO from a laboratory.

Consortium/Third-party administrator (C/TPA). A service agent that provides or coordinates the provision of a variety of drug and alcohol testing services to employers. C/TPAs typically perform administrative tasks concerning the operation of the employers' drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members. C/TPAs are not "employers" for purposes of this part.

Continuing education. Training for substance abuse professionals (SAPs) who have completed qualification training and are performing SAP functions, designed to keep SAPs current on changes and developments in the DOT drug and alcohol testing program.

Cutoff. The analytical value (e.g., drug or drug metabolite concentration) used as the decision point to determine a result (e.g., negative, positive, adulterated, invalid, or substituted) or the need for further testing.

Designated employer representative (DER). An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties, or cause employees to be removed from these covered duties, and to make required decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of this part. Service agents cannot act as DERs.

Dilute specimen. A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

DOT, The Department, DOT Agency. These terms encompass all DOT agencies, including, but not limited to, the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Transit Administration (FTA), the National Highway Traffic Safety Administration (NHTSA), the Pipeline and Hazardous Materials Safety Administration (PHMSA), and the Office of the Secretary (OST). For purposes of this part, the United States Coast Guard (USCG), in the Department of Homeland Security, is considered to be a DOT agency for drug testing purposes only since the USCG regulation does not incorporate Part 40 for its alcohol testing program. These terms include any designee of a DOT agency.

Drugs. The drugs for which tests are required under this part and DOT agency regulations are marijuana, cocaine, amphetamines, phencyclidine (PCP), and opioids.

Employee. Any person who is designated in a DOT agency regulation as subject to drug testing and/or alcohol testing. The term includes individuals currently performing safety-sensitive functions designated in DOT agency regulations and applicants for employment subject to pre-employment testing. For purposes of drug testing under this part, the term employee has the same meaning as the term “donor” as found on CCF and related guidance materials produced by the Department of Health and Human Services.

Employer. A person or entity employing one or more employees (including an individual who is self-employed) subject to DOT agency regulations requiring compliance with this part. The term includes an employer's officers, representatives, and management personnel. Service agents are not employers for the purposes of this part.

Error Correction Training. Training provided to BATs, collectors, and screening test technicians (STTs) following an error that resulted in the cancellation of a drug or alcohol test. Error correction training must be provided in person or by a means that provides real-time observation and interaction between the instructor and trainee.

Evidential Breath Testing Device (EBT). A device that is approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the .02 and .04 alcohol concentrations, and appears on ODAPC's Web page for “Approved Evidential Breath Measurement Devices” because it conforms with the model specifications available from NHTSA.

HHS. The Department of Health and Human Services or any designee of the Secretary, Department of Health and Human Services.

Initial drug test. The first test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

Initial specimen validity test. The first test used to determine if a specimen is adulterated, diluted, substituted, or invalid.

Invalid result. The result reported by an HHS-certified in accordance with the criteria established by HHS when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

Laboratory. Any U.S. laboratory certified by HHS under the National Laboratory Certification Program as meeting the minimum standards set by HHS; or, in the case of foreign laboratories, a laboratory approved for participation by DOT under this part.

Limit of Detection (LOD). The lowest concentration at which the analyte (e.g., drug or drug metabolite) can be identified.

Limit of Quantitation (LOQ). For quantitative assays, the lowest concentration at which the identity and concentration of the analyte (e.g., drug or drug metabolite) can be accurately established.

Medical Review Officer (MRO). A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

Negative result. The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

Non-negative specimen. A specimen that is reported as adulterated, substituted, positive (for drug(s) or drug metabolite(s)), or invalid.

Office of Drug and Alcohol Policy and Compliance (ODAPC). The office in the Office of the Secretary, DOT, that is responsible for coordinating drug and alcohol testing program matters within the Department and providing information concerning the implementation of this part.

Oral fluid specimen. A specimen that is collected from an employee's oral cavity and is a combination of physiological fluids produced primarily by the salivary glands. An oral fluid specimen is considered to be a direct observation collection for all purposes of this part.

Oxidizing adulterant. A substance that acts alone or in combination with other substances to oxidize drugs or drug metabolites to prevent the detection of the drug or drug metabolites, or affects the reagents in either the initial or confirmatory drug test.

Primary specimen. In drug testing, the specimen bottle that is opened and tested by a first laboratory to determine whether the employee has a drug or drug metabolite in his or her system; and for the purpose of specimen validity testing. The primary specimen is the portion of the donor's subdivided specimen designated as the primary ("A") specimen by the collector to distinguish it from the split ("B") specimen, as defined in this section.

Positive result. The result reported by an HHS-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations.

Qualification Training. The training required in order for a collector, BAT, MRO, SAP, or STT to be qualified to perform their functions in the DOT drug and alcohol testing program. Qualification training may be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Reconfirmed. The result reported for a split (Bottle B) specimen when the second HHS-certified laboratory corroborates the original result reported for the primary (Bottle A) specimen.

Refresher Training. The training required periodically for qualified collectors, BATs, and STTs to review basic requirements and provide instruction concerning changes in technology (e.g., new testing methods that may be authorized) and amendments, interpretations, guidance, and issues concerning this part and DOT agency drug and alcohol testing regulations. Refresher training can be provided by any appropriate means (e.g., classroom instruction, internet application, CD-ROM, video).

Rejected for testing. The result reported by an HHS-certified laboratory when no tests are performed for a specimen because of a fatal flaw or a correctable flaw that is not corrected.

Screening Test Technician (STT). A person who instructs and assists employees in the alcohol testing process and operates an ASD.

Secretary. The Secretary of Transportation or the Secretary's designee.

Service agent. Any person or entity, other than an employee of the employer, who provides services to employers and/or employees in connection with DOT drug and alcohol testing requirements. This includes, but is not limited to, collectors, BATs and STTs, laboratories, MROs, substance abuse professionals, and C/TPAs. To act as service agents, persons and organizations must meet DOT qualifications, if applicable. Service agents are not employers for purposes of this part.

Shipping container. A container that is used for transporting and protecting specimen bottles and associated documents from the collection site to the laboratory.

Specimen. Fluid, breath, or other material collected from an employee at the collection site for the purpose of a drug or alcohol test.

Specimen bottle. The bottle that, after being sealed and labeled according to the procedures in this part, is used to hold a primary ("A") or split ("B") specimen during transportation to the laboratory. In the context of oral fluid testing, it may be referred to as a "vial," "tube," or "bottle."

Split specimen. In drug testing, the specimen that is sent to a first laboratory and stored with its original seal intact, and which is transported to a second laboratory for retesting at the employee's request following MRO verification of the primary specimen as positive, adulterated or substituted.

Split specimen collection. A collection in which the single specimen collected is divided into two separate specimen bottles, the primary specimen (Bottle A) and the split specimen (Bottle B).

SSN or Employee ID No. This number serves as a unique identifier that must be used on the Federal Drug Testing Custody and Control Form (CCF) or Alcohol Testing Form (ATF) for a donor, on the MRO's reports, on SAP reports, or on other documents that are required under this part. For all purposes of this part, this term means: only the Commercial Driver's License (CDL) Number and State of issuance for drivers tested under the authority of the Federal Motor Carrier Safety Administration (FMCSA); and, for all drivers and other safety-sensitive employees tested under the authority of the other DOT agencies, this can be the individual's actual Social Security Number, a unique identifier issued by the employer, a State-issued identification card number, a State-issued driver's license number (including a CDL number) or any other State-issued or federally-issued identification number.

Stand-down. The practice of temporarily removing an employee from the performance of safety-sensitive functions based only on a report from a laboratory to the MRO of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test, before the MRO has completed verification of the test result.

Substance Abuse Professional (SAP). A person who evaluates employees who have violated a DOT drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing, and aftercare.

Substituted specimen. An employee's specimen not consistent with a normal human specimen, as determined by HHS (e.g., a urine specimen, with creatinine and specific gravity values that are so diminished, or so divergent that they are not consistent with normal human urine).

Undiluted (neat) oral fluid. An oral fluid specimen to which no other solid or liquid has been added. For example: A collection device that uses a diluent (or other component, process, or method that modifies the volume of the testable specimen) must collect at least 1 mL of undiluted (neat) oral fluid.

Urine specimen. Urine collected from an employee at the collection site for the purpose of a drug test.

Verified test. A drug test result or validity testing result from an HHS-certified laboratory that has undergone review and final determination by the MRO.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 73 FR 35969, June 25, 2008; 75 FR 49861, Aug. 16, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 81 FR 52365, Aug. 8, 2016; 82 FR 52243, Nov. 13, 2017; 88 FR 27636, May 2, 2023]

§ 40.5 Who issues authoritative interpretations of this regulation?

ODAPC and the DOT Office of General Counsel (OGC) provide written interpretations of the provisions of this part. These written DOT interpretations are the only official and authoritative interpretations concerning the provisions of this part. DOT agencies may incorporate ODAPC/OGC interpretations in written guidance they issue concerning drug and alcohol testing matters. Only Part 40 interpretations issued after August 1, 2001, are considered valid.

§ 40.7 How can you get an exemption from a requirement in this regulation?

- (a) If you want an exemption from any provision of this part, you must request it in writing from the Office of the Secretary of Transportation, under the provisions and standards of 49 CFR part 5. You must send requests for an exemption to the following address: Department of Transportation, Deputy Assistant General Counsel for Regulation and Enforcement, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- (b) Under the standards of 49 CFR part 5, we will grant the request only if the request documents special or exceptional circumstances, not likely to be generally applicable and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impracticable.
- (c) If we grant you an exemption, you must agree to take steps we specify to comply with the intent of the provision from which an exemption is granted.
- (d) We will issue written responses to all exemption requests.

Subpart B—Employer Responsibilities

§ 40.11 What are the general responsibilities of employers under this regulation?

- (a) As an employer, you are responsible for meeting all applicable requirements and procedures of this part.
- (b) You are responsible for all actions of your officials, representatives, and agents (including service agents) in carrying out the requirements of the DOT agency regulations.
- (c) All agreements and arrangements, written or unwritten, between and among employers and service agents concerning the implementation of DOT drug and alcohol testing requirements are deemed, as a matter of law, to require compliance with all applicable provisions of this part and DOT agency drug and alcohol testing regulations. Compliance with these provisions is a material term of all such agreements and arrangements.

§ 40.13 How do DOT drug and alcohol tests relate to non-DOT tests?

- (a) DOT tests must be completely separate from non-DOT tests in all respects.
- (b) DOT tests must take priority and must be conducted and completed before a non-DOT test is begun. When conducting a urine DOT drug test, you must discard any excess urine left over from a DOT test and collect a separate urine void for the subsequent non-DOT test.
- (c) Except as provided in paragraph (d) of this section, you must not perform any tests on DOT specimens other than those tests specifically authorized by this part or DOT agency regulations. For example, you must not test a DOT specimen for additional drugs. In addition, a laboratory is prohibited from making a DOT specimen available for a DNA test or other types of specimen identity testing.
- (d) When a DOT urine drug test collection is conducted as part of a physical examination required by DOT agency regulations, it is permissible to conduct medical tests related to this physical examination (e.g., for glucose) on any specimen remaining in the collection container after the DOT portion has been sealed into the specimen bottles.
- (e) A non-DOT drug or alcohol test administered, as part of a physical examination, is not a DOT drug or alcohol test for purposes of this part and/or related DOT agency drug and alcohol testing rules, if that test was performed to determine if an employee is medically qualified for a license or certificate. Consequently, the results of such a test do not have consequences under this part.
- (f) No one is permitted to change or disregard the results of DOT tests based on the results of non-DOT tests. For example, as an employer you must not disregard a verified positive DOT drug test result because the employee presents a negative test result from a blood or urine specimen collected by the employee's physician or a DNA test result purporting to question the identity of the DOT specimen.
- (g) As an employer, you must not use the CCF or the ATF in your non-DOT drug and alcohol testing programs. This prohibition includes the use of the DOT forms with references to DOT programs and agencies crossed out. You also must always use the CCF and ATF for all your DOT-mandated drug and alcohol tests.
- (h) No one is permitted to conduct a DOT drug or alcohol test on an individual who is not a DOT-regulated employee, as defined by the DOT agency regulations.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

§ 40.14 What collection information must employers provide to collectors?

As an employer, or an employer's service agent—for example a C/TPA, you must ensure the collector has the following information when conducting a urine specimen collection for you:

- (a) Full name of the employee being tested.
- (b) SSN or Employee ID No.
- (c) Laboratory name and address (can be pre-printed on the CCF).
- (d) Employer name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1–A).
- (e) DER information required at § 40.35 of this part.

- (f) MRO name, address, phone number, and fax number (can be pre-printed on the CCF at Step 1–B).
- (g) The DOT Agency which regulates the employee's safety-sensitive duties (the checkmark can pre-printed in the appropriate box on the CCF at Step 1–D).
- (h) Test reason, as appropriate: Pre-employment; Random; Reasonable Suspicion/Reasonable Cause; Post-Accident; Return-to-Duty; and Follow-up.
- (i) Whether the test is to be observed or not (see § 40.67 of this part).
- (j) (Optional) C/TPA name, address, phone, and fax number (can be pre-printed on the CCF).
- (k) Specimen type to be collected (i.e., oral fluid or urine).

[75 FR 59107, Sept. 27, 2010, as amended at 88 FR 27637, May 2, 2023]

§ 40.15 May an employer use a service agent to meet DOT drug and alcohol testing requirements?

- (a) As an employer, you may use a service agent to perform the tasks needed to comply with this part and DOT agency drug and alcohol testing regulations, consistent with the requirements of Subpart Q and other applicable provisions of this part.
- (b) As an employer, you are responsible for ensuring that the service agents you use meet the qualifications set forth in this part (e.g., § 40.121 for MROs). You may require service agents to show you documentation that they meet the requirements of this part (e.g., documentation of MRO qualifications required by § 40.121(e)).
- (c) You remain responsible for compliance with all applicable requirements of this part and other DOT drug and alcohol testing regulations, even when you use a service agent. If you violate this part or other DOT drug and alcohol testing regulations because a service agent has not provided services as our rules require, a DOT agency can subject you to sanctions. Your good faith use of a service agent is not a defense in an enforcement action initiated by a DOT agency in which your alleged noncompliance with this part or a DOT agency drug and alcohol regulation may have resulted from the service agent's conduct.
- (d) As an employer, you must not permit a service agent to act as your DER.

§ 40.17 Is an employer responsible for obtaining information from its service agents?

Yes, as an employer, you are responsible for obtaining information required by this part from your service agents. This is true whether or not you choose to use a C/TPA as an intermediary in transmitting information to you. For example, suppose an applicant for a safety-sensitive job takes a pre-employment drug test, but there is a significant delay in your receipt of the test result from an MRO or C/TPA. You must not assume that “no news is good news” and permit the applicant to perform safety-sensitive duties before receiving the result. This is a violation of the Department's regulations.

§ 40.19 [Reserved]

§ 40.21 May an employer stand down an employee before the MRO has completed the verification process?

- (a) As an employer, you are prohibited from standing employees down, except consistent with a waiver a DOT agency grants under this section.
- (b) You may make a request to the concerned DOT agency for a waiver from the prohibition of paragraph (a) of this section. Such a waiver, if granted, permits you to stand an employee down following the MRO's receipt of a laboratory report of a confirmed positive test for a drug or drug metabolite, an adulterated test, or a substituted test pertaining to the employee.
 - (1) For this purpose, the concerned DOT agency is the one whose drug and alcohol testing rules apply to the majority of the covered employees in your organization. The concerned DOT agency uses its applicable procedures for considering requests for waivers.

- (2) Before taking action on a waiver request, the concerned DOT agency coordinates with other DOT agencies that regulate the employer's other covered employees.
 - (3) The concerned DOT agency provides a written response to each employer that petitions for a waiver, setting forth the reasons for the agency's decision on the waiver request.
- (c) Your request for a waiver must include, as a minimum, the following elements:
- (1) Information about your organization:
 - (i) Your determination that standing employees down is necessary for safety in your organization and a statement of your basis for it, including any data on safety problems or incidents that could have been prevented if a stand-down procedure had been in place;
 - (ii) Data showing the number of confirmed laboratory positive, adulterated, and substituted test results for your employees over the two calendar years preceding your waiver request, and the number and percentage of those test results that were verified positive, adulterated, or substituted by the MRO;
 - (iii) Information about the work situation of the employees subject to stand-down, including a description of the size and organization of the unit(s) in which the employees work, the process through which employees will be informed of the stand-down, whether there is an in-house MRO, and whether your organization has a medical disqualification or stand-down policy for employees in situations other than drug and alcohol testing; and
 - (iv) A statement of which DOT agencies regulate your employees.
 - (2) Your proposed written company policy concerning stand-down, which must include the following elements:
 - (i) Your assurance that you will distribute copies of your written policy to all employees that it covers;
 - (ii) Your means of ensuring that no information about the confirmed positive, adulterated, or substituted test result or the reason for the employee's temporary removal from performance of safety-sensitive functions becomes available, directly or indirectly, to anyone in your organization (or subsequently to another employer) other than the employee, the MRO and the DER;
 - (iii) Your means of ensuring that all covered employees in a particular job category in your organization are treated the same way with respect to stand-down;
 - (iv) Your means of ensuring that a covered employee will be subject to stand-down only with respect to the actual performance of safety-sensitive duties;
 - (v) Your means of ensuring that you will not take any action adversely affecting the employee's pay and benefits pending the completion of the MRO's verification process. This includes continuing to pay the employee during the period of the stand-down in the same way you would have paid him or her had he or she not been stood down;
 - (vi) Your means of ensuring that the verification process will commence no later than the time an employee is temporarily removed from the performance of safety-sensitive functions and that the period of stand-down for any employee will not exceed five days, unless you are informed in writing by the MRO that a longer period is needed to complete the verification process; and
 - (vii) Your means of ensuring that, in the event that the MRO verifies the test negative or cancels it—
 - (A) You return the employee immediately to the performance of safety-sensitive duties;
 - (B) The employee suffers no adverse personnel or financial consequences as a result;
 - (C) For a verified negative result, the employee will not be required to submit an alternate specimen for the same testing action. For a cancelled result, the employee could be required to submit an alternate specimen on a re-collection; and
 - (D) You maintain no individually identifiable record that the employee had a confirmed laboratory positive, adulterated, or substituted test result (*i.e.*, you maintain a record of the test only as a negative or cancelled test).

- (d) The Administrator of the concerned DOT agency, or his or her designee, may grant a waiver request only if he or she determines that, in the context of your organization, there is a high probability that the procedures you propose will effectively enhance safety and protect the interests of employees in fairness and confidentiality.
 - (1) The Administrator, or his or her designee, may impose any conditions he or she deems appropriate on the grant of a waiver.
 - (2) The Administrator, or his or her designee, may immediately suspend or revoke the waiver if he or she determines that you have failed to protect effectively the interests of employees in fairness and confidentiality, that you have failed to comply with the requirements of this section, or that you have failed to comply with any other conditions the DOT agency has attached to the waiver.
- (e) You must not stand employees down in the absence of a waiver, or inconsistent with the terms of your waiver. If you do, you are in violation of this part and DOT agency drug testing regulations, and you are subject to enforcement action by the DOT agency just as you are for other violations of this part and DOT agency rules.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

§ 40.23 What actions do employers take after receiving verified test results?

- (a) As an employer who receives a verified positive drug test result, you must immediately remove the employee involved from performing safety-sensitive functions. You must take this action upon receiving the initial report of the verified positive test result. Do not wait to receive the written report or the result of a split specimen test.
- (b) As an employer who receives a verified adulterated or substituted drug test result, you must consider this a refusal to test and immediately remove the employee involved from performing safety-sensitive functions. You must take this action on receiving the initial report of the verified adulterated or substituted test result. Do not wait to receive the written report or the result of a split specimen test.
- (c) As an employer who receives an alcohol test result of 0.04 or higher, you must immediately remove the employee involved from performing safety-sensitive functions. If you receive an alcohol test result of 0.02–0.039, you must temporarily remove the employee involved from performing safety-sensitive functions, as provided in applicable DOT agency regulations. Do not wait to receive the written report of the result of the test.
- (d) As an employer, when an employee has a verified positive, adulterated, or substituted test result, or has otherwise violated a DOT agency drug and alcohol regulation, you must not return the employee to the performance of safety-sensitive functions until or unless the employee successfully completes the return-to-duty process of Subpart O of this part.
- (e) As an employer who receives a drug test result indicating that the employee's specimen was dilute, take action as provided in § 40.197.
- (f) As an employer who receives a drug test result indicating that the employee's test was cancelled because it was invalid and that a second collection must take place under direct observation—
 - (1) You must immediately direct the employee to provide a new specimen under direct observation (either an oral fluid specimen or a urine specimen under direct observation).
 - (2) You must not attach consequences to the finding that the test was invalid other than collecting a new specimen under direct observation.
 - (3) You must not give any advance notice of this test requirement to the employee.
 - (4) You must instruct the collector to note on the CCF the same reason (e.g., random test, post-accident test) and DOT Agency (e.g., check DOT and FMCSA) as for the original collection.
 - (5) You must ensure that the collector conducts the collection under direct observation (either an oral fluid specimen or a urine specimen under direct observation).
- (g) As an employer who receives a cancelled test result when a negative result is required (e.g., pre-employment, return-to-duty, or follow-up test), you must direct the employee to provide another specimen immediately.
- (h) As an employer, you may also be required to take additional actions required by DOT agency regulations (e.g., FAA rules require some positive drug tests to be reported to the Federal Air Surgeon).

- (i) As an employer, you must not alter a drug or alcohol test result transmitted to you by an MRO, BAT, or C/TPA.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 88 FR 27637, May 2, 2023]

§ 40.25 Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?

(a)

- (1) Yes, as an employer, you must, after obtaining an employee's written consent, request the information about the employee listed in paragraphs (b) through (j) of this section. This requirement applies only to employees seeking to begin performing safety-sensitive duties for you for the first time (*i.e.*, a new hire, an employee transferring into a safety-sensitive position). If the employee refuses to provide this written consent, you must not permit the employee to perform safety-sensitive functions.
- (2) If you are an employer regulated by FMCSA, you must comply with the requirements of this section by using the FMCSA's Drug and Alcohol Clearinghouse in accordance with 49 CFR 382.71(a). In addition, you must continue to comply with the requirements of this § 40.25 when checking an employee's testing history with employers regulated by a DOT operating administration other than FMCSA.
- (3) If you are an employer regulated by FMCSA, with a prospective employee subject to drug and alcohol testing with a DOT agency other than FMCSA, you must continue to request the information about the employee listed in paragraphs (b) through (j) of this section. For example, if you are an employer regulated by both FMCSA and PHMSA, and you are hiring an employee to perform functions regulated by both DOT agencies, then you must query FMCSA's Clearinghouse to satisfy FMCSA's requirements and you must request the information listed in paragraphs (b) through (j) of this section to satisfy PHMSA's requirements.

(b) You must request the information listed in this paragraph (b) from DOT-regulated employers who have employed the employee during any period during the two years before the date of the employee's application or transfer:

- (1) Alcohol tests with a result of 0.04 or higher alcohol concentration;
- (2) Verified positive drug tests;
- (3) Refusals to be tested (including verified adulterated or substituted drug test results);
- (4) Other violations of DOT agency drug and alcohol testing regulations; and
- (5) With respect to any employee who violated a DOT drug and alcohol regulation, documentation of the employee's successful completion of DOT return-to-duty requirements (including follow-up tests). If the previous employer does not have information about the return-to-duty process (*e.g.*, an employer who did not hire an employee who tested positive on a pre-employment test), you must seek to obtain this information from the employee.

(c) The information obtained from a previous employer includes any drug or alcohol test information obtained from previous employers under this section or other applicable DOT agency regulations.

(d) If feasible, you must obtain and review this information before the employee first performs safety-sensitive functions. If this is not feasible, you must obtain and review the information as soon as possible. However, you must not permit the employee to perform safety-sensitive functions after 30 days from the date on which the employee first performed safety-sensitive functions, unless you have obtained or made and documented a good faith effort to obtain this information.

(e) If you obtain information that the employee has violated a DOT agency drug and alcohol regulation, you must not use the employee to perform safety-sensitive functions unless you also obtain information that the employee has subsequently complied with the return-to-duty requirements of Subpart O of this part and DOT agency drug and alcohol regulations.

(f) You must provide to each of the employers from whom you request information under paragraph (b) of this section written consent for the release of the information cited in paragraph (a) of this section.

- (g) The release of information under this section must be in any written form (e.g., fax, e-mail, letter) that ensures confidentiality. As the previous employer, you must maintain a written record of the information released, including the date, the party to whom it was released, and a summary of the information provided.
- (h) If you are an employer from whom information is requested under paragraph (b) of this section, you must, after reviewing the employee's specific, written consent, immediately release the requested information to the employer making the inquiry.
- (i) As the employer requesting the information required under this section, you must maintain a written, confidential record of the information you obtain or of the good faith efforts you made to obtain the information. You must retain this information for three years from the date of the employee's first performance of safety-sensitive duties for you.
- (j) As the employer, you must also ask the employee whether he or she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the employee applied for, but did not obtain, safety-sensitive transportation work covered by DOT agency drug and alcohol testing rules during the past two years. If the employee admits that he or she had a positive test or a refusal to test, you must not use the employee to perform safety-sensitive functions for you, until and unless the employee documents successful completion of the return-to-duty process (see paragraphs (b)(5) and (e) of this section).

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

§ 40.26 What form must an employer use to report Management Information System (MIS) data to a DOT agency?

As an employer, when you are required to report MIS data to a DOT agency, you must use the U.S. Department of Transportation Drug and Alcohol Testing MIS Data Collection Form to report that data. You must use the form and instructions referenced at appendix J to part 40. You must submit the MIS report in accordance with rule requirements (e.g., dates for submission; selection of companies required to submit, and method of reporting) established by the DOT agency regulating your operation.

[84 FR 16773, Apr. 23, 2019, as amended at 88 FR 27638, May 2, 2023]

§ 40.27 May an employer require an employee to sign a consent or release in connection with the DOT drug and alcohol testing program?

No, as an employer, you must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO and SAP services).

[66 FR 41950, Aug. 9, 2001]

Subpart C—Urine Collection Personnel

§ 40.31 Who may collect specimens for DOT drug testing?

- (a) Collectors meeting the requirements of this subpart are the only persons authorized to collect urine specimens for DOT drug testing.
- (b) A urine collector must meet training requirements of § 40.33.
- (c) An oral fluid collector must meet the training requirements of § 40.35.
- (d) To avoid the appearance of a conflict of interest, if you are the immediate supervisor of the employee being tested, you must not act as the collector when that employee is tested, unless no other collector is available and you are permitted to do so under DOT agency drug and alcohol regulations.
- (e) You must not act as the collector for the employee being tested if you work for a HHS-certified laboratory (e.g., as a technician or accessioner) and could link the employee with a urine specimen, drug testing result, or laboratory report.
- (f) Employees are not permitted to be their own collector.

- (1) An employee who is a qualified collector is not permitted to be their own collector; another qualified collector must perform the collection in accordance with this part.
- (2) To avoid a potential conflict of interest, a collector must not be related to the employee being tested (e.g., spouse, ex-spouse, relative) or a close personal friend.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27637, May 2, 2023]

§ 40.33 What training requirements must a collector meet for urine collection?

To be permitted to act as a urine collector in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Basic information.** You must be knowledgeable about this part, the current “DOT Urine Specimen Collection Procedures Guidelines,” and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, the DOT Urine Specimen Collection Procedures Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590, 202–366–3784, or on the ODAPC Web site (<https://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph. Qualification training must provide instruction on the following subjects:
 - (1) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
 - (2) “Problem” collections (e.g., situations like “shy bladder” and attempts to tamper with a specimen);
 - (3) Fatal flaws, correctable flaws, and how to correct problems in collections; and
 - (4) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate;
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections.
 - (1) The five mock collections must include two uneventful collection scenarios, one insufficient quantity of urine scenario, one temperature out of range scenario, and one scenario in which the employee refuses to sign the CCF and initial the specimen bottle tamper-evident seal.
 - (2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—
 - (i) Regularly conducting DOT drug test collections for a period of at least a year;
 - (ii) Conducting collector training under this part for a year; or
 - (iii) Successfully completing a “train the trainer” course.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (i.e., a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining. Errors that cause cancellation but occur outside

the collection process (e.g., when a specimen is crushed or otherwise damaged during the transportation process, or is lost in transit), the cancellation would not be the result of an error by the collector during the collection process and does not require the collector to be retrained.

- (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.
 - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - (3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were "error-free."
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000; 66 FR 3885, Jan. 17, 2001, as amended at 66 FR 41950, Aug. 9, 2001; 82 FR 52244, Nov. 13, 2017; 88 FR 27638, May 2, 2023]

§ 40.35 What training requirements must a collector meet for oral fluid collection?

To be permitted to act as an oral fluid collector in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Basic information.** You must be knowledgeable about this part, the current "DOT Oral Fluid Specimen Collection Procedures Guidelines," and DOT agency regulations applicable to the employers for whom you perform collections. DOT agency regulations, guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington DC, 20590, 202-366-3784, or on the ODAPC website (<https://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at: <https://www.transportation.gov/odapc/get-odapc-email-updates>.
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b). Qualification training must provide instruction on the following subjects:
 - (1) Training on the testing procedures of this part;
 - (2) Training to proficiency in the operation of the particular oral fluid collection device(s) you will be using.
 - (3) All steps necessary to complete a collection correctly and the proper completion and transmission of the CCF;
 - (4) "Problem" collections (e.g., situations like "dry mouth" and attempts to tamper with a specimen);
 - (5) Fatal flaws, correctable flaws, and how to correct problems in collections; and
 - (6) The collector's responsibility for maintaining the integrity of the collection process, ensuring the privacy of employees being tested, ensuring the security of the specimen, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
- (c) **Initial proficiency demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in collections under this part by completing five consecutive error-free mock collections for each device you will use.
 - (1) The five mock collections for each device must include one uneventful collection scenario, one insufficient specimen quantity scenario; one scenario in which the employee has something in their mouth that might interfere with the collection; one scenario in which the employee attempts to tamper with the specimen; and one scenario in which the employee refuses to sign the CCF. For each of the five mock collections, the collector must check the expiration date of the device, show it to the employee, and record the date on the CCF used. The collector must ensure, when applying the labels, they do not cover the expiration dates.

- (2) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between you and the qualified collector, who must attest in writing that the mock collections are “error-free.” This person must be a qualified collector who has demonstrated necessary knowledge, skills, and abilities by—
 - (i) Regularly conducting DOT drug test collections for a period of at least one year;
 - (ii) Conducting collector training under this part for at least one year; or
 - (iii) Successfully completing a “train the trainer” course.
- (d) **Schedule for qualification training and initial proficiency demonstration.** You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform collector functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c).
- (f) **Error correction training.** If you make a mistake in the collection process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.
 - (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (c)(2) of this section.
 - (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
 - (3) As part of the error correction training, you must demonstrate your proficiency in the collection procedures of this part by completing three consecutive error-free mock collections. The mock collections must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock collections were “error-free.”
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[88 FR 27638, May 2, 2023]

§ 40.36 What information about the DER must employers provide to collectors?

As an employer, you must provide to collectors the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

Subpart D—Collection Sites, Forms, Equipment and Supplies Used in DOT Urine and Oral Fluid Collections

§ 40.40 What form is used to document a DOT collection?

- (a) The Federal Drug Testing Custody and Control Form (CCF) must be used to document every collection required by the DOT drug testing program. You may view this form on the Department’s website (<https://www.transportation.gov/odapc>) or the HHS website (<https://www.workplace.samhsa.gov>).
- (b) You must not use a non-Federal form or an expired CCF to conduct a DOT collection. As a laboratory, C/TPA or other party that provides CCFs to employers, collection sites, or other customers, you must not provide copies of an expired CCF to these participants. You must also affirmatively notify these participants that they must not use an expired CCF.
- (c) As a participant in the DOT drug testing program, you are not permitted to modify or revise the CCF except as follows:
 - (1) You may include, in the area outside the border of the form, other information needed for billing or other purposes necessary to the collection process.

- (2) The CCF must include the names, addresses, telephone numbers and any other appropriate contact information (e.g., an email address of the employer and the MRO), including the DER's name and contact information. All of this information must be preprinted, typed, or handwritten. Fax numbers may be included but are not required. The MRO information must include the physician's name and address, as opposed to only a generic clinic, health care organization, company name, or post office box. This information is required, and an employer, collector, service agent or any other party is prohibited from omitting it. In addition, a C/TPA's name, address, telephone and fax numbers, and any other appropriate contact information should be included, but is not required. The employer may use a C/TPA's address in place of its own, but must continue to include its name, telephone and fax numbers, and any other appropriate contact information.
- (3) As an employer you may preprint the box in Step 1–D of the CCF for the DOT agency under whose authority the test will occur.
- (4) As a collector, you may use a CCF with your name, address, telephone number, and fax number preprinted, but under no circumstances may you sign the form before the collection event. If a collection takes place at a clinic, the actual address of the clinic should be used, not a corporate address of the collection company. If the collection takes place onsite at the employer, the employer's address must be noted as the collection site address. If the collection takes place in a "mobile unit" or at an accident site, the collector must enter the actual location address of the collection or as near an approximation as possible. The collector must ensure that the required collector telephone number is the number that the laboratory, MRO, or employer may use to directly contact the individual collector and/or the collector's supervisor during the collection site's business hours. The collector must not provide a number for a call center.
- (5) When using an electronic CCF, you must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic form.
- (d) Under no circumstances may the CCF transmit personal identifying information about an employee (other than a SSN or Employee ID No.) to a laboratory.
- (e) As an employer, you may use an equivalent foreign-language version of the CCF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and collector understand and can use the form in that language.
- (f) An employer who uses an electronic CCF must ensure that the collection site, the primary and split laboratories, and MRO have compatible systems, and that the employee and any other program participants in the testing process will receive a legible copy of the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 75 FR 59107, Sept. 27, 2010; 76 FR 59577, Sept. 27, 2011; 80 FR 19553, Apr. 13, 2015; 82 FR 52244, Nov. 13, 2017. Redesignated and amended at 88 FR 27639, May 2, 2023]

§ 40.41 May employers use the CCF for non-Federal collections or non-Federal forms for DOT collections?

- (a) No, as an employer, you are prohibited from using the CCF for non-Federal collections. You are also prohibited from using non-Federal forms for DOT collections. Doing either subjects you to enforcement action under DOT agency regulations.
- (b)
 - (1) In the rare case where the collector, either by mistake or as the only means to conduct a test under difficult circumstances (e.g., post-accident or reasonable suspicion test with insufficient time to obtain the CCF), uses a non-Federal form for a DOT collection, the use of a non-Federal form does not present a reason for the laboratory to reject the specimen for testing or for an MRO to cancel the result.
 - (2) The use of the non-Federal form is a "correctable flaw." As an MRO, to correct the problem you must follow the procedures of § 40.205(b)(2).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001. Redesignated and amended at 88 FR 27639, June 1, 2023]

§ 40.42 Where does a urine collection for a DOT drug test take place?

- (a) A urine collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating a collection site, you must ensure that it meets the security requirements of § 40.43.
- (c) If you are operating a collection site, you must have all necessary personnel, materials, equipment, facilities and supervision to provide for the collection, temporary storage, and shipping of urine specimens to a laboratory, and a suitable clean surface for writing.
- (d) Your collection site must include a facility for urination described in either paragraph (e) or paragraph (f) of this section.
- (e) The first, and preferred, type of facility for urination that a collection site may include is a single-toilet room, having a full-length privacy door, within which urination can occur.
 - (1) No one but the employee may be present in the room during the collection, except for the observer in the event of a directly observed collection.
 - (2) You must have a source of water for washing hands, that, if practicable, should be external to the closed room where urination occurs. If an external source is not available, you may meet this requirement by securing all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and providing moist towelettes outside the closed room.
- (f) The second type of facility for urination that a collection site may include is a multistall restroom.
 - (1) Such a site must provide substantial visual privacy (e.g., a toilet stall with a partial-length door) and meet all other applicable requirements of this section.
 - (2) If you use a multi-stall restroom, you must either—
 - (i) Secure all sources of water and other substances that could be used for adulteration and substitution (e.g., water faucets, soap dispensers) and place bluing agent in all toilets or secure the toilets to prevent access; or
 - (ii) Conduct all collections in the facility as monitored collections (see § 40.69 for procedures). This is the only circumstance in which you may conduct a monitored collection.
 - (3) No one but the employee may be present in the multistall restroom during the collection, except for the monitor in the event of a monitored collection or the observer in the event of a directly observed collection.
- (g) A collection site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

§ 40.43 What steps must operators of collection sites and collectors take to protect the security and integrity of urine collections?

- (a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- (b) As a collector, you must do the following before each collection to deter tampering with specimens:
 - (1) Secure any water sources or otherwise make them unavailable to employees (e.g., turn off water inlet, tape handles to prevent opening faucets);
 - (2) Ensure that the water in the toilet is blue;
 - (3) Ensure that no soap, disinfectants, cleaning agents, or other possible adulterants are present;
 - (4) Inspect the site to ensure that no foreign or unauthorized substances are present;
 - (5) Tape or otherwise secure shut any movable toilet tank top, or put bluing in the tank;
 - (6) Ensure that undetected access (e.g., through a door not in your view) is not possible;

- (7) Secure areas and items (e.g., ledges, trash receptacles, paper towel holders, under-sink areas) that appear suitable for concealing contaminants; and
- (8) Recheck items in paragraphs (b)(1) through (7) of this section following each collection to ensure the site's continued integrity.
- (c) If the collection site uses a facility normally used for other purposes, like a public rest room or hospital examining room, you must, as a collector, also ensure before the collection that:
 - (1) Access to collection materials and specimens is effectively restricted; and
 - (2) The facility is secured against access during the procedure to ensure privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (d) As a collector, you must take the following additional steps to ensure security during the collection process:
 - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "shy bladder" situation (see § 40.193(b)), you may conduct a collection for another employee.
 - (2) To the greatest extent you can, keep an employee's collection container within view of both you and the employee between the time the employee has urinated and the specimen is sealed.
 - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is poured into the bottles and sealed with tamper-evident seals.
 - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
 - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (e) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which urine specimens are collected or stored.
 - (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (e).
 - (2) Except for the observer in a directly observed collection or the monitor in the case of a monitored collection, you must not permit anyone to enter the urination facility in which employees provide specimens.
 - (3) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
 - (4) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (f) If you are operating a collection site, you must minimize the number of persons handling specimens.

§ 40.44 What materials are used to collect urine specimens?

For each DOT drug test, you must use a collection kit meeting the requirements of Appendix A of this part.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

§ 40.45 What materials are used to send urine specimens to the laboratory?

- (a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory.
- (b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27639, May 2, 2023]

§ 40.47 Where does an oral fluid collection for a DOT drug test take place?

- (a) An oral fluid collection for a DOT drug test must take place in a collection site meeting the requirements of this section.
- (b) If you are operating an oral fluid collection site:
 - (1) You must ensure that it meets the security requirements of § 40.48;
 - (2) The site may be a permanent or temporary facility located either at the work site or at a remote site;
 - (3) The site may be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section; and
 - (4) You must have all necessary personnel, materials, equipment, and facilities that include privacy and supervision to provide for the collection, temporary storage, and shipping of specimens to a laboratory, and a suitable clean surface for writing.
- (c) If a collection site is not accessible and there is an immediate requirement to collect an oral fluid specimen (e.g., an accident investigation), another site may be used for the collection, if the collection is performed by a collector who has been trained to collect oral fluid specimens in accordance with this part and the manufacturer's procedures for the collection device.

[88 FR 27640, May 2, 2023]

§ 40.48 What steps must operators of collection sites and collectors take to protect the security and integrity of oral fluid collections?

- (a) Collectors and operators of collection sites must take the steps listed in this section to prevent unauthorized access that could compromise the integrity of collections.
- (b) As a collector, you must do the following before each collection to deter tampering with specimens:
 - (1) Ensure that access to collection materials and specimens is effectively restricted;
 - (2) Ensure that undetected access (e.g., through a door not in your view) is not possible; and
 - (3) Ensure the security of the facility during the collection process to maintain privacy to the employee and prevent distraction of the collector. Limited-access signs must be posted.
- (c) As a collector, you must take the following additional steps to ensure security during the collection process:
 - (1) To avoid distraction that could compromise security, you are limited to conducting a collection for only one employee at a time. However, during the time one employee is in the period for drinking fluids in a "dry mouth" situation (see § 40.72(b)(1)), you may conduct a collection for another employee as long as the employee with "dry mouth" remains supervised.
 - (2) To the greatest extent practicable, keep an employee's collection container within view of both you and the employee between the time the employee has provided the oral fluid specimen and the specimen is sealed.
 - (3) Ensure you are the only person in addition to the employee who handles the specimen before it is sealed with tamper-evident seals.
 - (4) In the time between when the employee gives you the specimen and when you seal the specimen, remain within the collection site.
 - (5) Maintain personal control over each specimen and CCF throughout the collection process.
- (d) If you are operating a collection site, you must implement a policy and procedures to prevent unauthorized personnel from entering any part of the site in which oral fluid specimens are collected or stored.
 - (1) Only employees being tested, collectors and other collection site workers, DERs, employee and employer representatives authorized by the employer (e.g., employer policy, collective bargaining agreement), and DOT agency representatives are authorized persons for purposes of this paragraph (d).

- (2) You must ensure that all authorized persons are under the supervision of a collector at all times when permitted into the site.
- (3) You or the collector may remove any person who obstructs, interferes with, or causes a delay in the collection process.
- (e) If you are operating a collection site, you must minimize the number of persons handling specimens.

[88 FR 27640, May 2, 2023]

§ 40.49 What materials are used to collect oral fluid specimens?

For each DOT drug test, you must use a collection device meeting the requirements of appendix B of this part.

[88 FR 27640, May 2, 2023]

§ 40.51 What materials are used to send oral fluid specimens to the laboratory?

- (a) Except as provided in paragraph (b) of this section, you must use a shipping container that adequately protects the specimen bottles from damage in the transport of specimens from the collection site to the laboratory.
- (b) You are not required to use a shipping container if a laboratory courier hand-delivers the specimens from the collection site to the laboratory.

[88 FR 27640, May 2, 2023]

Subpart E—Specimen Collections

§ 40.61 What are the preliminary steps in the drug testing collection process?

As the collector, you must take the following steps before actually beginning a collection:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's work site, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing, the DER must determine whether the employee has refused to test (see §§ 40.191(a)(1) and 40.355(i)). In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing (other than for a pre-employment test) and the employee does not appear, the C/TPA must determine whether the employee has refused to test (see §§ 40.191(a)(1) and 40.355(j)).
- (b) Ensure that, when the employee enters the collection site, you begin the testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or is unable to urinate or because an authorized employer or employee representative is delayed in arriving.
 - (1) If the employee is also going to take a DOT alcohol test, you must ensure, to the greatest extent practicable, that the alcohol test is completed before the drug testing collection process begins.

Example to paragraph (b)(1): An employee enters the test site for both a drug and an alcohol test. Normally, the collector would wait until the BAT had completed the alcohol test process before beginning the drug test process. However, there are some situations in which an exception to this normal practice would be reasonable. One such situation might be if several people were waiting for the BAT to conduct alcohol tests, but a drug testing collector in the same facility were free. Someone waiting might be able to complete a drug test without unduly delaying his or her alcohol test. Collectors and BATs should work together, however, to ensure that post-accident and reasonable suspicion alcohol tests happen as soon as possible (e.g., by moving the employee to the head of the line for alcohol tests).

- (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to collect a specimen.

- (3) You must not collect a specimen from an unconscious employee to conduct a drug test under this part.
- (4) You must not catheterize a conscious employee for purposes of a urine test. However, you must inform an employee who normally voids through self-catheterization that the employee is required to provide a specimen in that manner. If an employee normally voids through self-catheterization, but declines to do so for the urine test, the collector should notify the DER of the circumstances, so that the actual employer can determine whether the situation constitutes a refusal to test by the employee.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employed individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name, but does not have to include your picture, address, or telephone number.
- (e) Explain the basic collection procedure to the employee, and notify the employee that instructions for completing the CCF can be found at the HHS (<https://www.samhsa.gov/workplace>) and DOT (<https://www.transportation.gov/odapc>) websites.
- (f) Direct the employee to remove outer clothing (e.g., coveralls, jacket, coat, hat) that could be used to conceal items or substances that could be used to tamper with a specimen. You must also direct the employee to leave these garments and any briefcase, purse, or other personal belongings with you or in a mutually agreeable location. You must advise the employee that failure to comply with your directions constitutes a refusal to test.
 - (1) If the employee asks for a receipt for any belongings left with you, you must provide one.
 - (2) You must allow the employee to keep his or her wallet.
 - (3) You must not ask the employee to remove other clothing (e.g., shirts, pants, dresses, underwear), to remove all clothing, or to change into a hospital or examination gown (unless the urine collection is being accomplished simultaneously with a DOT agency-authorized medical examination).
 - (4) You must direct the employee to empty his or her pockets and display the items in them to ensure that no items are present which could be used to adulterate the specimen. If nothing is there that can be used to adulterate a specimen, the employee can place the items back into his or her pockets. As the employee, you must allow the collector to make this observation.
 - (5) If, in your duties under paragraph (f)(4) of this section, you find any material that could be used to tamper with a specimen, you must:
 - (i) Determine if the material appears to be brought to the collection site with the intent to alter the specimen, and, if it is, either conduct a directly observed urine collection using direct observation procedures (see § 40.67) or an oral fluid specimen collection, make a note on the CCF and continue with collection process; or
 - (ii) Determine if the material appears to be inadvertently brought to the collection site (e.g., eye drops), secure and maintain it until the collection process is completed and conduct a normal (i.e., unobserved) collection.
- (g) You must instruct the employee not to list medications that he or she is currently taking on the CCF. (The employee may make notes of medications on the back of the employee copy of the form for his or her own convenience, but these notes must not be transmitted to anyone else.)

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27640, May 2, 2023]

§ 40.63 What steps does the collector take in the collection process before the employee provides a urine specimen?

As the collector, you must take the following steps before the employee provides the urine specimen:

- (a) Ensure all items under Step 1 of the CCF are complete and accurate (e.g., if Step 1.D is not checked, put a check mark for the "Specify DOT Agency" under the authority of which the test will take place; if the address where the collection is actually taking place is not in Step 1.G, update that.)
- (b) Instruct the employee to wash and dry his or her hands at this time. You must tell the employee not to wash his or her hands again until after delivering the specimen to you. You must not give the employee any further access to water or other materials that could be used to adulterate or dilute a specimen.
- (c) Select, or allow the employee to select, an individually wrapped or sealed collection container from collection kit materials. Either you or the employee, with both of you present, must unwrap or break the seal of the collection container. You must not unwrap or break the seal on any specimen bottle at this time. You must not allow the employee to take anything from the collection kit into the room used for urination except the collection container.
- (d) Direct the employee to go into the room used for urination, provide a specimen of at least 45 mL, not flush the toilet, and return to you with the specimen as soon as the employee has completed the void.
 - (1) Except in the case of an observed or a monitored collection (see §§ 40.67 and 40.69), neither you nor anyone else may go into the room with the employee.
 - (2) As the collector, you may set a reasonable time limit for voiding.
- (e) You must pay careful attention to the employee during the entire collection process to note any conduct that clearly indicates an attempt to tamper with a specimen (e.g., substitute urine in plain view or an attempt to bring into the collection site an adulterant or urine substitute). If you detect such conduct, you must require that a collection take place immediately under direct observation (see § 40.67) and complete Step 2 by noting the conduct in the "Remarks" line of the CCF and the fact that the collection was observed by checking the "Observed" box. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 59107, Sept. 27, 2010; 88 FR 27641, May 2, 2023]

§ 40.65 What does the collector check for when the employee presents a urine specimen?

As a collector, you must check the following when the employee gives the collection container to you:

- (a) **Sufficiency of specimen.** You must check to ensure that the specimen contains at least 45 mL of urine.
 - (1) If it does not, you must follow "shy bladder" procedures (see § 40.193(b)).
 - (2) When you follow "shy bladder" procedures, you must discard the original specimen, unless another problem (i.e., temperature out of range, signs of tampering) also exists.
 - (3) You are never permitted to combine urine collected from separate voids to create a specimen.
 - (4) You must discard any excess urine.
- (b) **Temperature.** You must check the temperature of the specimen no later than four minutes after the employee has given you the specimen.
 - (1) The acceptable temperature range is 32–38 °C/90–100 °F.
 - (2) You must determine the temperature of the specimen by reading the temperature strip attached to the collection container.
 - (3) If the specimen temperature is within the acceptable range, you must mark the "Yes" box on the CCF (Step 2).
 - (4) If the specimen temperature is outside the acceptable range, you must mark the "No" box and enter in the "Remarks" line (Step 2) your findings about the temperature.
 - (5) If the specimen temperature is outside the acceptable range, you must immediately conduct a new urine collection using direct observation procedures (see § 40.67) or an oral fluid collection.
 - (6) In a case where a specimen is collected under direct observation because of the temperature being out of range, you must process both the original specimen and the specimen collected using direct observation (including oral fluid) and send the two sets of specimens to their respective laboratories. This is true even in a

case in which the original specimen has insufficient volume and the temperature is out of range. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(7) In a case where the employee refuses to provide another specimen (see § 40.191(a)(3)) or refuses to provide another specimen under direct observation (see § 40.191(a)(4)), you must notify the DER. As soon as you have notified the DER, you must discard any specimen the employee has provided previously during the collection procedure.

(c) **Signs of tampering.** You must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering (e.g., if you notice any unusual odor).

(1) If it is apparent from this inspection that the employee has tampered with the specimen (e.g., blue dye in the specimen, excessive foaming when shaken, or smell of bleach), you must immediately conduct a new urine collection using direct observation procedures (see § 40.67) or an oral fluid collection.

(2) In a case where a specimen is collected under direct observation because of showing signs of tampering, you must process both the original specimen and the specimen collected using direct observation and send the two sets of specimens to the laboratory. This is true even in a case in which the original specimen has insufficient volume but it shows signs of tampering. You must also, as soon as possible, inform the DER and collection site supervisor that a collection took place under direct observation and the reason for doing so.

(3) In a case where the employee refuses to provide a specimen under direct observation (see § 40.191(a)(4)), you must discard any specimen the employee provided previously during the collection procedure. Then you must notify the DER as soon as practicable.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 88 FR 27641, May 2, 2023]

§ 40.67 When and how is a directly observed urine collection conducted?

(a) As an employer, you must direct an immediate collection under direct observation with no advance notice to the employee, if:

(1) The laboratory reported to the MRO that a specimen is invalid, and the MRO reported to you that there was not an adequate medical explanation for the result;

(2) The MRO reported to you that the original positive, adulterated, or substituted result had to be cancelled because the test of the split specimen could not be performed; or

(3) The laboratory reported to the MRO that the specimen was negative-dilute with a creatinine concentration greater than or equal to 2 mg/dL but less than or equal to 5 mg/dL, and the MRO reported the specimen to you as negative-dilute and that a second collection must take place under direct observation (see § 40.197(b)(1)).

(4) You realize a collection under direct observation was required but was not conducted or the service agent informs you that a direct observation should have been collected but was not (see paragraph (n) of this section).

(b) As an employer, you must direct a collection under direct observation of an employee if the drug test is a return-to-duty test or a follow-up test.

(c) As a collector, you must immediately conduct a collection under direct observation if:

(1) You are directed by the DER to do so (see paragraph (a) of this section); or

(2) You observed materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen (see §§ 40.61(f)(5)(i) and 40.63(e)); or

(3) The temperature on the original specimen was out of range (see § 40.65(b)(5));

(4) The original specimen appeared to have been tampered with (see § 40.65(c)(1)); or

(5) The test reason is return-to-duty or follow-up.

(d)

- (1) As the employer, you must explain to the employee the reason for a directly observed collection under paragraph (a) or (b) of this section.
- (2) As the collector, you must explain to the employee the reason, if known, under this part for a directly observed collection.
- (e) As the collector, you must complete a new CCF for the directly observed collection.
 - (1) You must mark the "reason for test" block (Step 1) the same as for the first collection.
 - (2) You must check the "Observed, (Enter Remark)" box and enter the reason (see paragraphs (c)(2) through (4) of this section) in the "Remarks" line (Step 2).
- (f) In a case where two sets of specimens are being sent to the laboratory because of suspected tampering with the specimen at the collection site, enter on the "Remarks" line of the CCF (Step 2) for each specimen a notation to this effect (e.g., collection 1 of 2, or 2 of 2) and the specimen ID number of the other specimen.
- (g) As the collector, you must ensure that the observer is the same gender as the employee.
 - (1) You must never permit an opposite gender person to act as the observer.
 - (2) The observer can be a different person from the collector and need not be a qualified collector.
 - (3) If a same gender collector cannot be found or in circumstances of nonbinary or transgender employees:
 - (i) If the employer has a standing order to allow oral fluid testing in such situations, the collector will follow that order;
 - (ii) If there is no standing order from the employer, the collector must contact the DER and either conduct an oral fluid test if the collection site is able to do so, or send the employee to a collection site acceptable to the employer for the oral fluid test.
- (h) As the collector, if someone else is to observe the collection (e.g., in order to ensure a same gender observer), you must verbally instruct that person to follow procedures at paragraphs (i) and (j) of this section. If you, the collector, are the observer, you too must follow these procedures.
- (i) As the observer, you must request the employee to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show you, by turning around, that they do not have a prosthetic device. After you have determined that the employee does not have such a device, you may permit the employee to return clothing to its proper position for observed urination.
- (j) As the observer, you must watch the employee urinate into the collection container. Specifically, you are to watch the urine go from the employee's body into the collection container.
- (k) As the observer but not the collector, you must not take the collection container from the employee, but you must observe the specimen as the employee takes it to the collector.
- (l) As the collector, when someone else has acted as the observer, you must include the observer's name in the "Remarks" line of the CCF (Step 2).
- (m) As the employee, if you decline to allow a directly observed collection required or permitted under this section to occur, this is a refusal to test.
- (n) As a service agent, when you learn that a directly observed collection should have been collected but was not, you must inform the employer that it must direct the employee to have an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41950, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35970, June 25, 2008; 73 FR 50223, Aug. 26, 2008; 73 FR 62910, Oct. 22, 2008; 73 FR 70284, Nov. 20, 2008; 74 FR 37952, July 30, 2009; 82 FR 52244, Nov. 13, 2017; 88 FR 27641, May 2, 2023]

§ 40.69 How is a monitored urine collection conducted?

- (a) As stated in § 40.42(f)(2), if you are conducting a urine collection in a multi-stall restroom and you cannot secure all sources of water and other substances that could be used for adulteration and substitution, you must conduct a monitored collection. This is the only circumstance in which you must conduct a monitored collection.

- (b) As the collector, you must secure the room being used for the monitored collection so that no one except the employee and the monitor can enter it until after the collection has been completed.
- (c) As the collector, you must ensure that the monitor is the same gender as the employee, unless the monitor is a medical professional (e.g., nurse, doctor, physician's assistant, technologist, or technician licensed or certified to practice in the jurisdiction in which the collection takes place). The monitor can be a different person from the collector and need not be a qualified collector.
- (d) As the collector, if someone else is to monitor the collection (e.g., in order to ensure a same-gender monitor), you must verbally instruct that person to follow the procedures of paragraphs (d) and (e) of this section. If you, the collector, are the monitor, you must follow these procedures.
- (e) As the monitor, you must not watch the employee urinate into the collection container. If you hear sounds or make other observations indicating an attempt to tamper with a specimen, there must be an additional collection under direct observation. See §§ 40.63(e), 40.65(c), and 40.67(c)(2)(3)).
- (f) As the monitor, you must ensure that the employee takes the collection container directly to the collector as soon as the employee has exited the enclosure.
- (g) As the collector, when someone else has acted as the monitor, you must note that person's name in the "Remarks" line of the CCF (Step 2).
- (h) As the employee being tested, if you decline to permit a collection authorized under this section to be monitored, it is a refusal to test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27641, May 2, 2023]

§ 40.71 How does the collector prepare the urine specimen?

- (a) All collections under DOT agency drug testing regulations must be split specimen collections.
- (b) As the collector, you must take the following steps, in order, after the employee brings the urine specimen to you. You must take these steps in the presence of the employee.
 - (1) After the collection, check the box on the CCF (Step 2) indicating that this was a "Urine" and "Split" specimen collection.
 - (2) You, not the employee, must first pour at least 30 mL of urine from the collection container into one specimen bottle, to be used for the primary specimen.
 - (3) You, not the employee, must then pour at least 15 mL of urine from the collection container into the second specimen bottle to be used for the split specimen.
 - (4) You, not the employee, must place and secure (*i.e.*, tighten or snap) the lids/caps on the bottles.
 - (5) You, not the employee, must seal the bottles by placing the tamper-evident bottle seals over the bottle caps/lids and down the sides of the bottles.
 - (6) You, not the employee, must then write the date on the tamper-evident bottle seals.
 - (7) You must then ensure that the employee initials the tamper-evident bottle seals for the purpose of certifying that the bottles contain the specimens he or she provided. If the employee fails or refuses to do so, you must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.
 - (8) You must discard any urine left over in the collection container after both specimen bottles have been appropriately filled and sealed. There is one exception to this requirement: you may use excess urine to conduct clinical tests (e.g., protein, glucose) if the collection was conducted in conjunction with a physical examination required by a DOT agency regulation. Neither you nor anyone else may conduct further testing (such as adulteration testing) on this excess urine and the employee has no legal right to demand that the excess urine be turned over to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27641, May 2, 2023]

§ 40.72 What steps does the collector take in the collection process before the employee provides an oral fluid specimen?

- (a) The collector requests that the employee open the employee's mouth, and the collector inspects the oral cavity to ensure that it is free of any items that could impede or interfere with the collection of an oral fluid specimen (e.g., candy, gum, food, or tobacco) or could be used to adulterate, substitute, or alter the specimen.
 - (1) If the collector finds indication(s) of anything identified above, the collector will ask the employee to lift their tongue and/or separate their cheek from their gum to permit full inspection. If this occurs, the employee may cleanse his or her hands, but must not decline the collector's request for further inspection.
 - (2) If the employee claims that he or she has a medical condition that prevents opening his or her mouth for inspection, the collector follows the procedure described in § 40.193(a).
 - (3) If the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to adulterate, substitute, or alter the specimen, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the circumstances to the DER, so that the employer can decide whether to deem the situation a refusal in accordance with § 40.191(a).
- (b) If an item is present that might impede or interfere with the collection of an oral fluid specimen, the collector must request the employee remove the item.
 - (1) If the employee removes any item that could impede or interfere with the collection of an oral fluid specimen, the employee has abnormally colored saliva, or the employee claims to have "dry mouth," then the collector must give the employee water, up to 8 ounces, to rinse their mouth. The employee may drink the water. The collector must then wait 10 minutes before beginning the specimen collection.
 - (2) If the employee refuses to remove the item or rinse, the collector must terminate the collection, note the circumstances in the Remarks section of the CCF, and report the information to the DER to test as described in § 40.191(a)(8) (failure to cooperate), so that the employer can decide whether to deem the situation a refusal.
- (c) If there is nothing of concern in the oral cavity and no "dry mouth" condition, the collector starts a 10-minute wait period and proceeds with the steps below before beginning the specimen collection as described in § 40.73.
- (d) During the 10-minute wait period:
 - (1) Review with the employee the procedures required for a successful oral fluid specimen collection as stated in the manufacturer's instructions for the specimen collection device.
 - (2) Complete all items under Step 1 of the CCF, and for clarification:
 - (i) In Step 1.D of the CCF, the collector must put a check mark for the "Specify DOT Agency" under whose authority the test will take place.
 - (ii) In Step 1.G of the CCF for the "Collection Site Address", the collector must provide the address where the collection took place.
 - (3) The collector will provide, or the employee may select, a specimen collection device that is clean, unused, and wrapped/sealed in original packaging.
 - (i) The collector will check the expiration date on the device or the package containing the device and show it to the employee.
 - (ii) The collector must not use the device after its expiration date.
 - (iii) The collector must open the specimen collection device in view of the employee.
 - (4) The collector will complete Step 2 of the CCF.
 - (i) Check "Oral Fluid",
 - (ii) For "Oral Fluid: Split Type" check "Subdivided", and
 - (iii) Check "Each Device Within Expiration Date?" after ensuring the device is within its expiration date.

- (5) The collector will enter the Split Specimen Device Expiration Date in Step 4 of the CCF. Since the collector will use one oral fluid device that will collect a single specimen, which is then subdivided in the presence of the donor, only one entry in Step 4 is to be made for the device expiration date.
- (6) The collector must instruct the employee to use hand sanitizer or wash and dry his or her hands.
- (e) To the greatest extent practicable, the collector must keep the employee's unwrapped collection device within view of both the collector and the employee, between the time the employee has provided a specimen and the specimen is sealed.

[88 FR 27642, May 2, 2023]

§ 40.73 How is an oral fluid specimen collected?

- (a) The collector must be present and maintain visual contact with the employee during the procedures outlined in this section.
- (b) The collector must note any unusual behavior or appearance of the employee on the CCF. If the collector detects any conduct that clearly indicates an attempt to tamper with a specimen (e.g., an attempt to bring into the collection site an adulterant or oral fluid substitute), the collector must terminate the collection and report the information to the DER so that the employer can decide whether to deem the situation a refusal.
- (c) The employee and collector must complete the specimen collection in accordance with the manufacturer's instructions for the collection device.
 - (1) Under the observation of the collector, the employee is responsible for positioning the specimen collection device for collection.
 - (2) The collector must ensure the collection is performed correctly (i.e., using the oral fluid device in the manner described by its manufacturer), that the collection device is working properly, and that a sufficient specimen volume is collected.
 - (3) If the employee states that he or she is unable to provide an oral fluid specimen or provides an insufficient specimen during the collection process, the collector must continue to make one attempt to collect, after an insufficient specimen, the collector follows the procedure in § 40.193.
 - (4) The collector must inspect the specimen for unusual color, presence of foreign objects or material, or other signs of tampering. If it is apparent from this inspection that the employee has tampered with the specimen, the collector must conduct a new collection.
 - (i) Document any unusual characteristics referenced above in the Remarks section of the CCF.
 - (ii) Proceed with obtaining the new oral fluid specimen from the donor. Note on the new CCF that this is another collection for the same testing event (i.e., Document in the remarks section that this is Specimen 2 of 2 and include the Specimen ID number of the other specimen). Make the same notation on the CCF of the suspect specimen.

[88 FR 27642, May 2, 2023]

§ 40.74 How does the collector prepare the oral fluid specimens?

- (a) The collector follows the manufacturer's instructions to package the split specimen collections.
- (b) A volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle A", and a volume of at least 1 mL of undiluted (neat) oral fluid is collected for the specimen designated as "Bottle B", or an otherwise sufficient amount of oral fluid is collected to permit an HHS-certified laboratory to analyze the specimen(s).
- (c) In the presence of the employee, the collector places a tamper-evident seal from the CCF over the cap of each specimen container, taking care not to obstruct the expiration date on the collection containers. The collector must record the date of the collection on the tamper-evident seals, after they are affixed to the specimen containers.

- (d) The collector instructs the employee to initial the tamper-evident seals on each specimen container. If the employee declines to do so, the collector must note this in the "Remarks" line of the CCF (Step 2) and complete the collection process.

[88 FR 27642, May 2, 2023]

§§ 40.75-40.78 [Reserved]

§ 40.79 How is the collection process completed?

- (a) As the collector, when using the paper CCF, you must do the following things to complete the collection process. You must complete the steps called for in paragraphs (a)(1) through (7) of this section in the employee's presence.
 - (1) Direct the employee to read and sign the certification statement on Copy 2 of the CCF and provide all information required in Step 5. If the employee declines to sign the CCF or to provide any of the required information, you must note this in the "Remarks" line (Step 2) of the CCF and complete the collection. If the employee declines to fill out any information, you must, as a minimum, print the employee's name in the appropriate place.
 - (2) Complete the chain of custody on the CCF (Step 4) by printing your name (note: you may pre-print your name), recording the time and date of the collection, signing the statement, and entering the name of the delivery service transferring the specimen to the laboratory,
 - (3) Ensure that all copies of the CCF are legible and complete.
 - (4) Remove Copy 5 of the CCF and give it to the employee.
 - (5) Place the specimen bottles and Copy 1 of the CCF in the appropriate pouches of the plastic bag.
 - (6) Secure both pouches of the plastic bag.
 - (7) Advise the employee that he or she may leave the collection site.
 - (8) To prepare the sealed plastic bag containing the specimens and CCF for shipment you must:
 - (i) Place the sealed plastic bag in a shipping container (e.g., standard courier box) designed to minimize the possibility of damage during shipment. (More than one sealed plastic bag can be placed into a single shipping container if you are doing multiple collections.)
 - (ii) Seal the container as appropriate.
 - (iii) If a laboratory courier hand-delivers the specimens from the collection site to the laboratory, prepare the sealed plastic bag for shipment as directed by the courier service.
 - (9) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must fax or otherwise transmit these copies to the MRO and DER within 24 hours or during the next business day. Keep Copy 3 for at least 30 days, unless otherwise specified by applicable DOT agency regulations.
- (b) As a collector, when using other forms of the CCF as approved by the Office of Management and Budget, you must follow the procedures approved for that form.
- (c) As a collector or collection site, you must ensure that each specimen you collect is shipped to a laboratory as quickly as possible, but in any case, within 24 hours or during the next business day.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 80 FR 19553, Apr. 13, 2015. Redesignated and amended at 88 FR 27641, 27643, May 2, 2023]

Subpart F—Drug Testing Laboratories

§ 40.81 What laboratories may be used for DOT drug testing?

- (a) As a drug testing laboratory located in the U.S., you are permitted to participate in DOT drug testing only if you are certified by HHS under the National Laboratory Certification Program (NLCP) for each specimen testing methodology performed required under this part.

- (b) As a drug testing laboratory located in Canada or Mexico which is not certified by HHS under the NLCP, you are permitted to participate in DOT drug testing only if:
 - (1) The DOT, based on a written recommendation from HHS, has approved your laboratory as meeting HHS laboratory certification standards or deemed your laboratory fully equivalent to a laboratory meeting HHS laboratory certification standards for all testing required under this part; or
 - (2) The DOT, based on a written recommendation from HHS, has recognized a Canadian or Mexican certifying organization as having equivalent laboratory certification standards and procedures to those of HHS, and the Canadian or Mexican certifying organization has certified your laboratory under those equivalent standards and procedures.
- (c) As a laboratory participating in the DOT drug testing program, you must comply with the requirements of this part. You must also comply with all applicable requirements of HHS in testing DOT specimens, whether or not the HHS requirements are explicitly stated in this part.
- (d) If DOT determines that you are in noncompliance with this part, you could be subject to PIE proceedings under Subpart R of this part. If the Department issues a PIE with respect to you, you are ineligible to participate in the DOT drug testing program even if you continue to meet the requirements of paragraph (a) or (b) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27643, May 2, 2023]

§ 40.82 What drugs do laboratories test for?

As a laboratory, you must test for the following five drugs or classes of drugs in a DOT drug test. You must not test "DOT specimens" for any other drugs.

- (a) Marijuana metabolites.
- (b) Cocaine metabolites.
- (c) Amphetamines.
- (d) Opioids.
- (e) Phencyclidine (PCP).

[82 FR 52244, Nov. 13, 2017. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.83 How do laboratories process incoming specimens?

As the laboratory, you must do the following when you receive a DOT specimen:

- (a) You are authorized to receive only Copy 1 of the CCF. You are not authorized to receive other copies of the CCF or any copies of the alcohol testing form.
- (b) You must comply with applicable provisions of the HHS Guidelines concerning accessioning and processing drug specimens.
- (c) You must inspect each specimen and CCF for the following "fatal flaws":
 - (1) There is no CCF;
 - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;
 - (3) There is no printed collector's name and no collector's signature;
 - (4) Two separate collections are performed using one CCF;
 - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;
 - (6) The specimen bottle seal is broken or shows evidence of tampering, unless a split specimen can be redesignated (see paragraph (h) of this section);

- (7) There is an insufficient amount of specimen in the primary bottle for analysis, unless the specimens can be redesignated (see paragraph (h) of this section).
- (8) For an oral fluid collection, the collector used an expired device at the time of collection.
- (9) For an oral fluid collection, if the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory is unable to determine the expiration date by inspecting Bottles A and B.
- (d) When you find a specimen meeting the criteria of paragraph (c) of this section, you must document your findings and stop the testing process. Report the result in accordance with § 40.97(a)(3) .
- (e) You must inspect each CCF for the presence of the collector's signature on the certification statement in Step 4 of the CCF. Upon finding that the signature is omitted, document the flaw and continue the testing process.
 - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the flaw.
 - (2) You must then attempt to correct the flaw by following the procedures of § 40.205(b)(1).
 - (3) If the flaw is not corrected, report the result as rejected for testing in accordance with § 40.97(a)(3).
- (f) If you determine that the urine specimen temperature was not checked and the "Remarks" line did not contain an entry regarding the temperature being outside of range, you must then attempt to correct the problem by following the procedures of § 40.208.
 - (1) In such a case, you must continue your efforts to correct the problem for five business days, before you report the result.
 - (2) When you have obtained the correction, or five business days have elapsed, report the result in accordance with § 40.97(a).
- (g) If you determine that a CCF that fails to meet the requirements of § 40.40(a) (e.g., a non-Federal form or an expired Federal form was used for the collection), you must attempt to correct the use of the improper form by following the procedures of § 40.205(b)(2).
 - (1) In such a case, you must retain the specimen for a minimum of 5 business days from the date on which you initiated action to correct the problem.
 - (2) If the problem(s) is not corrected, you must reject the test and report the result in accordance with § 40.97(a)(3).
- (h) If the CCF is marked indicating that a split specimen collection was collected and if the split specimen does not accompany the primary, has leaked, or is otherwise unavailable for testing, you must still test the primary specimen and follow appropriate procedures outlined in § 40.175(b) regarding the unavailability of the split specimen for testing.
 - (1) The primary specimen and the split specimen can be redesignated (*i.e.*, Bottle B is redesignated as Bottle A, and vice-versa) if:
 - (i) The primary specimen appears to have leaked out of its sealed bottle and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing; or
 - (ii) The primary specimen is labeled as Bottle B, and the split specimen as Bottle A; or
 - (iii) The laboratory opens the split specimen instead of the primary specimen, the primary specimen remains sealed, and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing; or
 - (iv) The primary specimen seal is broken but the split specimen remains sealed and the laboratory believes a sufficient amount of specimen exists in the split specimen to conduct all appropriate primary laboratory testing.
 - (2) In situations outlined in paragraph (h)(1) of this section, the laboratory shall mark through the "A" and write "B," then initial and date the change. A corresponding change shall be made to the other bottle by marking through the "B" and writing "A," and initialing and dating the change.

- (i) A notation shall be made on Copy 1 of the CCF (Step 5a) and on any laboratory internal chain of custody documents, as appropriate, for any fatal or correctable flaw.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 73 FR 35970, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 82 FR 52244, Nov 13, 2017; 88 FR 27643, May 2, 2023]

§ 40.84 How long does the laboratory retain specimens after testing?

- (a) As a laboratory testing the primary specimen, you must retain a specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.
- (b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.
- (c) Within the one-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain a specimen for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the specimen at the end of the year.
- (d) If you have not sent the split specimen to another laboratory for testing, you must retain the split specimen for an employee's test for the same period of time that you retain the primary specimen and under the same storage conditions.
- (e) As the laboratory testing the split specimen, you must meet the requirements of paragraphs (a) through (d) of this section with respect to the split specimen.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.85 What are the cutoff concentrations for urine drug tests?

- (a) As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites (THCA) ²	50 ng/mL ³	THCA	15 ng/mL.
Cocaine metabolite (Benzoylecgonine)	150 ng/mL ³	Benzoylecgonine	100 ng/mL.
Codeine/ Morphine	2000 ng/mL	Codeine Morphine	2000 ng/mL. 2000 ng/mL.
Hydrocodone/ Hydromorphone	300 ng/mL	Hydrocodone Hydromorphone	100 ng/mL. 100 ng/mL.
Oxycodone/ Oxymorphone	100 ng/mL	Oxycodone Oxymorphone	100 ng/mL. 100 ng/mL.
6-Acetylmorphine	10 ng/mL	6-Acetylmorphine	10 ng/mL.
Phencyclidine	25 ng/mL	Phencyclidine	25 ng/mL.
Amphetamine/ Methamphetamine	500 ng/mL	Amphetamine Methamphetamine	250 ng/mL. 250 ng/mL.

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
MDMA ⁴ /MDA ⁵	500 ng/mL	MDMA MDA	250 ng/mL. 250 ng/mL.

¹ For grouped analytes (i.e., two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross-reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (i.e., equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with a target analyte.

³ *Alternate technology (THCA and Benzoylcegonine):* When using an alternate technology initial test for the specific target analytes of THCA and Benzoylcegonine, the laboratory must use the same cutoff for the initial and confirmatory tests (i.e., 15 ng/mL for THCA and 100ng/mL for Benzoylcegonine).

⁴ Methylenedioxyamphetamine (MDMA).

⁵ Methylenedioxyamphetamine (MDA).

- (b) On an initial drug test, you must report a result below the cutoff concentration as negative. If the result is at or above the cutoff concentration, you must conduct a confirmation test.
- (c) On a confirmation drug test, you must report a result below the cutoff concentration as negative and a result at or above the cutoff concentration as confirmed positive.
- (d) You must report quantitative values for morphine or codeine at 15,000 ng/mL or above.

[65 FR 79526, Dec. 19, 2000, as amended at 75 FR 49862, Aug. 16, 2010; 77 FR 26473, May 4, 2012; 82 FR 52244, Nov. 13, 2017. Redesignated and amended at 88 FR 27643, May 2, 2023]

§ 40.86 What is urine validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.
- (b) As a laboratory, you must conduct validity testing.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.87 What validity tests must laboratories conduct on primary urine specimens?

As a laboratory, when you conduct validity testing under § 40.86, you must conduct it in accordance with the requirements of this section.

- (a) You must determine the creatinine concentration on each primary specimen. You must also determine its specific gravity if you find the creatinine concentration to be less than 20 mg/dL.
- (b) You must determine the pH of each primary specimen.

- (c) You must perform one or more validity tests for oxidizing adulterants on each primary specimen.
- (d) You must perform additional validity tests on the primary specimen when the following conditions are observed:
 - (1) Abnormal physical characteristics;
 - (2) Reactions or responses characteristic of an adulterant obtained during initial or confirmatory drug tests (e.g., non-recovery of internal standards, unusual response); or
 - (3) Possible unidentified interfering substance or adulterant.
- (e) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS certified laboratory would be useful in being able to report a positive or adulterated test result.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 64867, Nov. 9, 2004. Redesignated and amended at 88 FR 27643, May 2, 2023]

§ 40.88 What criteria do laboratories use to establish that a urine specimen is dilute or substituted?

- (a) As a laboratory, you must consider the primary specimen to be dilute when:
 - (1) The creatinine concentration is greater than or equal to 2 mg/dL but less than 20 mg/dL, and
 - (2) The specific gravity is greater than 1.0010 but less than 1.0030 on a single aliquot.
- (b) As a laboratory, you must consider the primary specimen to be substituted when the creatinine concentration is less than 2 mg/dL and the specific gravity is less than or equal to 1.0010 or greater than or equal to 1.0200 on both the initial and confirmatory creatinine tests and on both the initial and confirmatory specific gravity tests on two separate aliquots.

[69 FR 64867, Nov. 9, 2004. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.89 What are the adulterant cutoff concentrations for initial and confirmation urine tests?

- (a) As a laboratory, you must use the cutoff concentrations for the initial and confirmation adulterant testing as required by the HHS Mandatory Guidelines and you must use two separate aliquots—one for the initial test and another for the confirmation test.
- (b) As a laboratory, you must report results at or above the cutoffs (or for pH, at or above or below the values, as appropriate) as adulterated and provide the numerical value that supports the adulterated result.

[73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.90 What criteria do laboratories use to establish that a urine specimen is invalid?

- (a) As a laboratory, you must use the invalid test result criteria for the initial and confirmation testing as required by the HHS Mandatory Guidelines, and you must use two separate aliquots—one for the initial test and another for the confirmation test.
- (b) As a laboratory, for a specimen having an invalid result for one of the reasons outlined in the HHS Mandatory Guidelines, you must contact the MRO to discuss whether sending the specimen to another HHS certified laboratory for testing would be useful in being able to report a positive or adulterated result.
- (c) As a laboratory, you must report invalid results in accordance with the invalid test result criteria as required by the HHS Guidelines and provide the numerical value that supports the invalid result, where appropriate, such as pH.
- (d) As a laboratory, you must report the reason a test result is invalid.

[73 FR 35970, June 25, 2008. Redesignated at 88 FR 27643, May 2, 2023]

§ 40.91 What are the cutoff concentrations for oral fluid drug tests?

As a laboratory, you must use the cutoff concentrations displayed in the following table for initial and confirmatory drug tests for oral fluid specimens. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL). The table follows:

Table 1 to § 40.91—Oral Fluid Testing Cutoff Concentrations

Initial test analyte	Initial test cutoff ¹	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana (THC) ²	4 ng/mL ³	THC	2 ng/mL.
Cocaine/Benzoyllecgonine	15 ng/mL	Cocaine Benzoyllecgonine	8 ng/mL. 8 ng/mL.
Codeine/Morphine	30 ng/mL	Codeine Morphine	15 ng/mL. 15 ng/mL.
Hydrocodone/Hydromorphone	30 ng/mL	Hydrocodone Hydromorphone	15 ng/mL. 15 ng/mL.
Oxycodone/Oxymorphone	30 ng/mL	Oxycodone Oxymorphone	15 ng/mL. 15 ng/mL.
6-Acetylmorphine	4 ng/mL ³	6-Acetylmorphine	2 ng/mL.
Phencyclidine	10 ng/mL	Phencyclidine	10 ng/mL.
Amphetamine/Methamphetamine	50 ng/mL	Amphetamine Methamphetamine	25 ng/mL. 25 ng/mL.
MDMA ⁴ /MDA ⁵	50 ng/mL	MDMA MDA	25 ng/mL. 25 ng/mL.

¹ For grouped analytes (*i.e.*, two or more analytes that are in the same drug class and have the same initial test cutoff):

Immunoassay: The test must be calibrated with one analyte from the group identified as the target analyte. The cross reactivity of the immunoassay to the other analyte(s) within the group must be 80 percent or greater; if not, separate immunoassays must be used for the analytes within the group.

Alternate technology: Either one analyte or all analytes from the group must be used for calibration, depending on the technology. At least one analyte within the group must have a concentration equal to or greater than the initial test cutoff or, alternatively, the sum of the analytes present (*i.e.*, with concentrations equal to or greater than the laboratory's validated limit of quantification) must be equal to or greater than the initial test cutoff.

² An immunoassay must be calibrated with the target analyte.

³ *Alternate technology (THC and 6-AM):* The confirmatory test cutoff must be used for an alternate technology initial test that is specific for the target analyte (*i.e.*, 2 ng/mL for THC, 2 ng/mL for 6-AM).

⁴ Methylenedioxyamphetamine (MDMA).

⁵ Methylenedioxyamphetamine (MDA).

§ 40.92 What is oral fluid validity testing, and are laboratories required to conduct it?

- (a) Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human oral fluid. The purpose of validity testing is to determine whether certain adulterants or foreign substances were added to the oral fluid, if the oral fluid was altered.
- (b) If a specimen exhibits abnormal characteristics (e.g., unusual odor or color), causes reactions or responses characteristic of an adulterant during initial or confirmatory drug tests (e.g., non-recovery of internal standard, unusual response), or contains an unidentified substance that interferes with the confirmatory analysis, then you may conduct validity testing.
- (c) If you determine that the specimen is invalid and HHS guidelines direct you to contact the MRO, you must contact the MRO and together decide if testing the primary specimen by another HHS-certified laboratory would be useful in being able to report a positive or adulterated test result.

[88 FR 27643, May 2, 2023]

§ 40.93 What validity tests must laboratories conduct on primary oral fluid specimens?

As a laboratory, if you conduct validity testing under § 40.92, you must conduct it in accordance with the requirements of this section.

- (a) You may test for a biomarker such as albumin or immunoglobulin G (IgG) or a test for a specific adulterant.
- (b) You must follow the applicable HHS requirements for any additional validity testing.

[88 FR 27643, May 2, 2023]

§ 40.97 What do laboratories report and how do they report it?

- (a) As a laboratory, when reporting a result of any kind, you must report the specimen type.
- (b) You must also report the results for each primary specimen, which will fall into one of the following three categories. As a laboratory, you must report the actual results (and not the categories):
 - (1) **Category 1: Negative results.** As a laboratory, when you find a specimen to be negative, you must report the test result as being one of the following, as applicable:
 - (i) Negative, or
 - (ii) For urine only, negative-dilute, with numerical values for creatinine and specific gravity.
 - (2) **Category 2: Non-negative results.** As a laboratory, when you find a specimen to be non-negative, you must report the test result as being one or more of the following, as applicable:
 - (i) Positive, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s).
 - (ii) Adulterated, with adulterant(s) noted, with confirmatory test values (when applicable), and with remark(s);
 - (iii) For urine only, positive-dilute, with drug(s)/metabolite(s) noted, with numerical values for the drug(s) or drug metabolite(s) and with numerical values for creatinine and specific gravity;
 - (iv) For urine only, substituted, with confirmatory test values for creatinine and specific gravity; or
 - (v) For urine only, invalid result, with remark(s). Laboratories will report actual values for pH results.
 - (vi) For oral fluid only, invalid result, with remark(s). Laboratories must report numerical values of the specimen validity test results that support a specimen reported as invalid.

- (3) **Category 3: Rejected for testing.** As a laboratory, when you reject a specimen for testing, you must report the result as being Rejected for Testing, with remark(s).
- (c) As a laboratory, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or a service agent (e.g., a C/TPA).
- (1) Negative results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF which has been signed by the certifying scientist, or you may provide the laboratory results report electronically (i.e., computer data file).
- (i) If you elect to provide the laboratory results report, you must include the following elements, as a minimum, in the report format:
- (A) Laboratory name and address;
 - (B) Employer's name (you may include I.D. or account number);
 - (C) Medical review officer's name;
 - (D) Specimen I.D. number;
 - (E) SSN or Employee ID from Step 1C of the CCF, if provided;
 - (F) Reason for test, if provided;
 - (G) Collector's name and telephone number;
 - (H) Date of the collection;
 - (I) For oral fluid only, collection device expiration date;
 - (J) Date received at the laboratory;
 - (K) Date certifying scientist released the results;
 - (L) Certifying scientist's name;
 - (M) Results (e.g., positive, adulterated) as listed in paragraph (a) of this section; and
 - (N) Remarks section, with an explanation of any situation in which a correctable flaw has been corrected.
- (ii) You may release the laboratory results report only after review and approval by the certifying scientist. It must reflect the same test result information as contained on the CCF signed by the certifying scientist. The information contained in the laboratory results report must not contain information that does not appear on the CCF.
- (iii) The results report may be transmitted through any means that ensures accuracy and confidentiality. You, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage (e.g., see § 40.351).
- (2) Non-negative and Rejected for Testing results: You must fax, courier, mail, or electronically transmit a legible image or copy of the fully completed Copy 1 of the CCF that has been signed by the certifying scientist. In addition, you may provide the electronic laboratory results report following the format and procedures set forth in paragraphs (b)(1)(i) and (ii) of this section.
- (d) In transmitting laboratory results to the MRO, you, as the laboratory, together with the MRO, must ensure that the information is adequately protected from unauthorized access or release, both during transmission and in storage. If the results are provided by fax or other electronic means, the electronic communication must be accessible only to authorized individuals.
- (e) You must transmit test results to the MRO in a timely manner, preferably the same day that review by the certifying scientist is completed.
- (f)
- (1) You must provide quantitative values for confirmed positive drug test results to the MRO.

- (2) You must provide numerical values that support the adulterated (when applicable) or substituted result, without a request from the MRO.
- (3) You must also provide the MRO numerical values for creatinine and specific gravity for the negative-dilute urine test result, without a request from the MRO.
- (g) You must provide quantitative values for confirmed positive morphine and/or codeine urine results at or below 15,000 ng/mL, and for confirmed positive morphine or codeine oral fluid results at or below 150 ng/mL.

[88 FR 27644, May 2, 2023]

§ 40.101 What relationship may a laboratory have with an MRO?

- (a) As a laboratory, you may not enter into any relationship with an MRO that creates a conflict of interest or the appearance of a conflict of interest with the MRO's responsibilities for the employer. You may not derive any financial benefit by having an employer use a specific MRO.
- (b) The following are examples of relationships between laboratories and MROs that the Department regards as creating conflicts of interest, or the appearance of such conflicts. This following list of examples is not intended to be exclusive or exhaustive:
 - (1) The laboratory employs an MRO who reviews test results produced by the laboratory;
 - (2) The laboratory has a contract or retainer with the MRO for the review of test results produced by the laboratory;
 - (3) The laboratory designates which MRO the employer is to use, gives the employer a slate of MROs from which to choose, or recommends certain MROs;
 - (4) The laboratory gives the employer a discount or other incentive to use a particular MRO;
 - (5) The laboratory has its place of business co-located with that of an MRO or MRO staff who review test results produced by the laboratory; or
 - (6) The laboratory permits an MRO, or an MRO's organization, to have a financial interest in the laboratory.

§ 40.107 Who may inspect laboratories?

As a laboratory, you must permit an inspection, with or without prior notice, by ODAPC, a DOT agency, or a DOT-regulated employer that contracts with the laboratory for drug testing under the DOT drug testing program, or the designee of such an employer.

§ 40.109 What documentation must the laboratory keep, and for how long?

- (a) As a laboratory, you must retain all records pertaining to each employee urine specimen for a minimum of two years.
- (b) As a laboratory, you must also keep for two years employer-specific data required in § 40.111.
- (c) Within the two-year period, the MRO, the employee, the employer, or a DOT agency may request in writing that you retain the records for an additional period of time (e.g., for the purpose of preserving evidence for litigation or a safety investigation). If you receive such a request, you must comply with it. If you do not receive such a request, you may discard the records at the end of the two-year period.

§ 40.111 When and how must a laboratory disclose statistical summaries and other information it maintains?

- (a) As a laboratory, you must transmit an aggregate statistical summary, by employer, of the data listed in appendix D of this part with respect to each specimen type for which you conduct tests to the employer on a semi-annual basis.
 - (1) The summary must not reveal the identity of any employee.
 - (2) In order to avoid sending data from which it is likely that information about an employee's test result can be readily inferred, you must not send a summary if the employer has fewer than five aggregate tests results.

- (3) The summary must be sent by January 20 of each year for July 1 through December 31 of the prior year.
- (4) The summary must also be sent by July 20 of each year for January 1 through June 30 of the current year.
- (b) When the employer requests a summary in response to an inspection, audit, or review by a DOT agency, you must provide it unless the employer had fewer than five aggregate test results. In that case, you must send the employer a report indicating that not enough testing was conducted to warrant a summary. You may transmit the summary or report by hard copy, fax, or other electronic means.
- (c) You must also release information to appropriate parties as provided in §§ 40.329 and 40.331.
- (d) As a laboratory, you must transmit an aggregate statistical summary listed in appendix E of this part for each specimen type for which you conduct testing to DOT on a semi-annual basis. The summary must be sent by January 31 of each year for July 1 through December 31 of the prior year. It must be sent by July 31 of each year for January 1 through June 30 of the current year. If you withdraw or are removed from NLCP's laboratory certification during a reporting period, you must provide the aggregate statistical summary to the DOT-regulated employers and to ODAPC for the last reporting period in which you conducted DOT-regulated testing.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008; 88 FR 27645, May 2, 2023]

§ 40.113 Where is other information concerning laboratories found in this regulation?

You can find more information concerning laboratories in several sections of this part:

- § 40.3—Definition.
- § 40.13—Prohibition on making specimens available for other purposes.
- § 40.31—Conflicts of interest concerning collectors.
- § 40.47—Laboratory rejections of test for improper form.
- § 40.125—Conflicts of interest concerning MROs.
- § 40.175—Role of first laboratory in split specimen tests.
- § 40.177—Role of second laboratory in split specimen tests (drugs).
- § 40.179—Role of second laboratory in split specimen tests (adulterants).
- § 40.181—Role of second laboratory in split specimen tests (substitution).
- §§ 40.183–40.185—Transmission of split specimen test results to MRO.
- §§ 40.201–40.205—Role in correcting errors.
- § 40.329—Release of information to employees.
- § 40.331—Limits on release of information.
- § 40.355—Role with respect to other service agents.

Subpart G—Medical Review Officers and the Verification Process

§ 40.121 Who is qualified to act as an MRO?

To be qualified to act as an MRO in the DOT drug testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must be a licensed physician (Doctor of Medicine or Osteopathy). If you are a licensed physician in any U.S., Canadian, or Mexican jurisdiction and meet the other requirements of this section, you are authorized to perform MRO services with respect to all covered employees, wherever they are located. For example, if you are licensed as an M.D. in one state or province in the U.S., Canada, or Mexico, you are not limited to performing MRO functions in that state or province, and you may perform MRO functions for employees in other states or provinces without becoming licensed to practice medicine in the other jurisdictions.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
 - (1) You must be knowledgeable about and have clinical experience in controlled substances abuse disorders, including detailed knowledge of alternative medical explanations for laboratory confirmed drug test results.
 - (2) You must be knowledgeable about issues relating to adulterated and substituted specimens as well as the possible medical causes of specimens having an invalid result.

- (3) You must be knowledgeable about this part, the DOT MRO Guidelines, and the DOT agency regulations applicable to the employers for whom you evaluate drug test results, and you must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT MRO Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, 202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
- (1) Qualification training must provide instruction on the following subjects:
- (i) Collection procedures for specimens;
 - (ii) Chain of custody, reporting, and recordkeeping;
 - (iii) Interpretation of drug and validity tests results;
 - (iv) The role and responsibilities of the MRO in the DOT drug testing program;
 - (v) The interaction with other participants in the program (e.g., DERs, SAPs); and
 - (vi) Provisions of this part and DOT agency rules applying to employers for whom you review test results, including changes and updates to this part and DOT agency rules, guidance, interpretations, and policies affecting the performance of MRO functions, as well as issues that MROs confront in carrying out their duties under this part and DOT agency rules.
- (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform MRO functions.
- (d) **Requalification training.** During each five-year period from the date on which you satisfactorily completed the examination under paragraph (c)(2) of this section, you must complete requalification training.
- (1) This requalification training must meet the requirements of the qualification training under paragraph (c)(1) of this section.
- (2) Following your completion of requalification training, you must satisfactorily complete an examination administered by a nationally-recognized MRO certification board or subspecialty board for medical practitioners in the field of medical review of DOT-mandated drug tests. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or negotiating to use your services.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 75 FR 49862, Aug. 16, 2010; 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

§ 40.123 What are the MRO's responsibilities in the DOT drug testing program?

As an MRO, you have the following basic responsibilities:

- (a) Acting as an independent and impartial "gatekeeper" and advocate for the accuracy and integrity of the drug testing process.
- (b) Providing a quality assurance review of the drug testing process for the specimens under your purview. This includes, but is not limited to:

- (1) Ensuring the review of the CCF on all specimen collections for the purposes of determining whether there is a problem that may cause a test to be cancelled (see §§ 40.199–40.203). As an MRO, you are not required to review laboratory internal chain of custody documentation. No one is permitted to cancel a test because you have not reviewed this documentation;
- (2) Providing feedback to employers, collection sites and laboratories regarding performance issues where necessary; and
- (3) Reporting to and consulting with the ODAPC or a relevant DOT agency when you wish DOT assistance in resolving any program issue. As an employer or service agent, you are prohibited from limiting or attempting to limit the MRO's access to DOT for this purpose and from retaliating in any way against an MRO for discussing drug testing issues with DOT.
- (c) You must determine whether there is a legitimate medical explanation for confirmed positive, adulterated, substituted, and invalid results from the laboratory.
- (d) While you provide medical review of employees' test results, this part does not deem that you have established a doctor-patient relationship with the employees whose tests you review.
- (e) You must act to investigate and correct problems where possible and notify appropriate parties (e.g., HHS, DOT, employers, service agents) where assistance is needed, (e.g., cancelled or problematic tests, incorrect results).
- (f) You must ensure the timely flow of test results and other information to employers.
- (g) You must protect the confidentiality of the drug testing information.
- (h) You must perform all your functions in compliance with this part and other DOT agency regulations.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

§ 40.125 What relationship may an MRO have with a laboratory?

As an MRO, you may not enter into any relationship with an employer's laboratory that creates a conflict of interest or the appearance of a conflict of interest with your responsibilities to that employer. You may not derive any financial benefit by having an employer use a specific laboratory. For examples of relationships between laboratories and MROs that the Department views as creating a conflict of interest or the appearance of such a conflict, see § 40.101(b).

§ 40.127 What are the MRO's functions in reviewing negative test results?

As the MRO, you must do the following with respect to negative drug test results you receive from a laboratory, prior to verifying the result and releasing it to the DER:

- (a) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to initiate corrective action or to cancel the test (see §§ 40.199 and 40.203).
- (b) Review the negative laboratory test result and ensure that it is consistent with the information contained on the CCF.
- (c) Before you report a negative test result, you must have in your possession the following documents:
 - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF or the electronic laboratory results report that conveys the negative laboratory test result.
- (d) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
- (e) On Copy 2 of the CCF, place a check mark in the "Negative" box (Step 6), provide your name, and sign, initial, or stamp and date the verification statement.
- (f) Report the result in a confidential manner (see §§ 40.163–40.167).
- (g) Staff under your direct, personal supervision may perform the administrative functions of this section for you, but only you can cancel a test. If you cancel a laboratory-confirmed negative result, check the "Test Cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, provide your name, and sign,

initial or stamp and date the verification statement.

- (1) On specimen results that are reviewed by your staff, you are responsible for assuring the quality of their work.
- (2) You are required to personally review at least 5 percent of all CCFs reviewed by your staff on a quarterly basis, including all results that required a corrective action. However, you need not review more than 500 negative results in any quarter of all specimen types combined.
- (3) Your review must, as a minimum, include the CCF, negative laboratory test result, any accompanying corrective documents, and the report sent to the employer. You must correct any errors that you discover. You must take action as necessary to ensure compliance by your staff with this part and document your corrective action. You must attest to the quality assurance review by initialing the CCFs that you review.
- (4) You must make these CCFs easily identifiable and retrievable by you for review by DOT agencies.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41951, Aug. 9, 2001; 88 FR 27645, May 2, 2023]

§ 40.129 What are the MRO's functions in reviewing laboratory confirmed non-negative drug test results?

- (a) As the MRO, you must do the following with respect to confirmed positive, adulterated, substituted, or invalid results you receive from a laboratory, before you verify the result and release it to the DER:
 - (1) Review Copy 2 of the CCF to determine if there are any fatal or correctable errors that may require you to cancel the test (see §§ 40.199 and 40.203). Staff under your direct, personal supervision may conduct this administrative review for you, but only you may verify or cancel a test.
 - (2) Review Copy 1 of the CCF and ensure that it is consistent with the information contained on Copy 2, that the test result is legible, and that the certifying scientist signed the form. You are not required to review any other documentation generated by the laboratory during their analysis or handling of the specimen (e.g., the laboratory internal chain of custody).
 - (3) If the copy of the documentation provided to you by the collector or laboratory appears unclear, you must request that the collector or laboratory send you a legible copy.
 - (4) Except in the circumstances spelled out in § 40.133, conduct a verification interview. This interview must include direct contact in person or by telephone between you and the employee. You may initiate the verification process based on the laboratory results report.
 - (5) Verify the test result, consistent with the requirements of §§ 40.135 through 40.145, 40.159, and 40.160, as:
 - (i) Negative; or
 - (ii) Cancelled; or
 - (iii) Positive, and/or refusal to test because of adulteration or substitution.
- (b) Before you report a verified negative, positive, refusal to test because of adulteration or substitution, you must have in your possession the following documents:
 - (1) Copy 2 of the CCF, a legible copy of it, or any other CCF copy containing the employee's signature; and
 - (2) A legible copy (fax, photocopy, image) of Copy 1 of the CCF, containing the certifying scientist's signature.
- (c) With respect to verified positive test results, place a checkmark in the "Positive" box in Step 6 on Copy 2 of the CCF, indicate the drug(s)/metabolite(s) verified positive, and sign and date the verification statement.
- (d) If you cancel a laboratory confirmed positive, adulterated, substituted, or invalid result, check the "test cancelled" box (Step 6) on Copy 2 of the CCF, make appropriate annotation in the "Remarks" line, sign, provide your name, and date the verification statement.
- (e) Report the result in a confidential manner (see §§ 40.163–40.167).
- (f) With respect to adulteration or substitution test results, check the "refusal to test because:" box (Step 6) on Copy 2 of the CCF, check the "Adulterated" or "Substituted" box, as appropriate, make appropriate annotation in the "Remarks" line, sign and date the verification statement.

- (g) As the MRO, your actions concerning reporting confirmed positive, adulterated, or substituted results to the employer before you have completed the verification process are also governed by the stand-down provisions of § 40.21 .
 - (1) If an employer has a stand-down policy that meets the requirements of § 40.21 , you may report to the DER that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result, consistent with the terms of the waiver the employer received. You must not provide any further details about the test result (e.g., the name of the drug involved).
 - (2) If the employer does not have a stand-down policy that meets the requirements of § 40.21, you must not inform the employer that you have received an employee's laboratory confirmed positive, adulterated, or substituted test result until you verify the test result. For example, as an MRO employed directly by a company, you must not tell anyone on the company's staff or management that you have received an employee's laboratory confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008; 75 FR 59107, Sept. 27, 2010; 88 FR 27645, May 2, 2023]

§ 40.131 How does the MRO or DER notify an employee of the verification process after receiving laboratory confirmed non-negative drug test results?

- (a) When, as the MRO, you receive a confirmed positive, adulterated, substituted, or invalid test result from the laboratory, you must contact the employee directly (*i.e.*, actually talk to the employee), on a confidential basis, to determine whether the employee wants to discuss the test result. In making this contact, you must explain to the employee that, if he or she declines to discuss the result, you will verify the test as positive or as a refusal to test because of adulteration or substitution, as applicable.
- (b) As the MRO, staff under your personal supervision may conduct this initial contact for you.
 - (1) This staff contact must be limited to scheduling the discussion between you and the employee and explaining the consequences of the employee's declining to speak with you (*i.e.*, that the MRO will verify the test without input from the employee). If the employee declines to speak with you, the staff person must document the employee's decision, including the date and time.
 - (2) A staff person must not gather any medical information or information concerning possible explanations for the test result.
 - (3) A staff person may advise an employee to have medical information (e.g., prescriptions, information forming the basis of a legitimate medical explanation for a confirmed positive test result) ready to present at the interview with the MRO.
 - (4) Since you are required to speak personally with the employee, face-to-face or on the phone, your staff must not inquire if the employee wishes to speak with you.
- (c) As the MRO, you or your staff must make reasonable efforts to reach the employee at the day and evening telephone numbers listed on the CCF. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF. If you or your staff cannot reach the employee directly after making these efforts, you or your staff must take the following steps:
 - (1) Document the efforts you made to contact the employee, including dates and times. If both phone numbers are incorrect (e.g., disconnected, wrong number), you may take the actions listed in paragraph (c)(2) of this section without waiting the full 24-hour period.
 - (2) Contact the DER, instructing the DER to contact the employee.
 - (i) You must simply direct the DER to inform the employee to contact you.
 - (ii) You must not inform the DER that the employee has a confirmed positive, adulterated, substituted, or invalid test result.
 - (iii) You must document the dates and times of your attempts to contact the DER, and you must document the name of the DER you contacted and the date and time of the contact.

- (d) As the DER, you must attempt to contact the employee immediately, using procedures that protect, as much as possible, the confidentiality of the MRO's request that the employee contact the MRO. If you successfully contact the employee (i.e., actually talk to the employee), you must document the date and time of the contact, and inform the MRO. You must inform the employee that he or she should contact the MRO immediately. You must also inform the employee of the consequences of failing to contact the MRO within the next 72 hours (see § 40.133(a)(2)).
 - (1) As the DER, you must not inform anyone else working for the employer that you are seeking to contact the employee on behalf of the MRO.
 - (2) If, as the DER, you have made all reasonable efforts to contact the employee but failed to do so, you may place the employee on temporary medically unqualified status or medical leave. Reasonable efforts include, as a minimum, three attempts, spaced reasonably over a 24-hour period, to reach the employee at the day and evening telephone numbers listed on the CCF.
 - (i) As the DER, you must document the dates and times of these efforts.
 - (ii) If, as the DER, you are unable to contact the employee within this 24-hour period, you must leave a message for the employee by any practicable means (e.g., voice mail, e-mail, letter) to contact the MRO and inform the MRO of the date and time of this attempted contact.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004]

§ 40.133 Without interviewing the employee, under what circumstances may the MRO verify a test result as positive, or as a refusal to test because of adulteration or substitution, or as cancelled because the test was invalid?

- (a) As the MRO, you normally may verify a confirmed positive test (for any drug or drug metabolite, including opiates), or as a refusal to test because of adulteration or substitution, only after interviewing the employee as provided in §§ 40.135–40.145 . However, there are three circumstances in which you may verify such a result without an interview:
 - (1) You may verify a test result as a positive or refusal to test, as applicable, if the employee expressly declines the opportunity to discuss the test with you. You must maintain complete documentation of this occurrence, including notation of informing, or attempting to inform, the employee of the consequences of not exercising the option to speak with the you.
 - (2) You may verify a test result as a positive or refusal to test, as applicable, if the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee.
 - (3) You may verify a test result as a positive or refusal to test, as applicable, if neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which the MRO receives the confirmed test result from the laboratory.
- (b) As the MRO, you may verify an invalid test result as cancelled (with instructions to recollect immediately under direct observation) without interviewing the employee, as provided at § 40.159:
 - (1) If the employee expressly declines the opportunity to discuss the test with you;
 - (2) If the DER has successfully made and documented a contact with the employee and instructed the employee to contact you and more than 72 hours have passed since the time the DER contacted the employee; or
 - (3) If neither you nor the DER, after making and documenting all reasonable efforts, has been able to contact the employee within ten days of the date on which you received the confirmed invalid test result from the laboratory.
- (c) As the MRO, after you verify a test result as a positive or as a refusal to test under this section, you must document the date and time and reason, following the instructions in § 40.163. For a cancelled test due to an invalid result under this section, you must follow the instructions in § 40.159(a)(5).
- (d) As the MRO, after you have verified a test result under this section and reported the result to the DER, you must allow the employee to present information to you within 60 days of the verification to document that serious illness, injury, or other circumstances unavoidably precluded contact with the MRO and/or DER in the times provided. On the basis

of such information, you may reopen the verification, allowing the employee to present information concerning whether there is a legitimate medical explanation of the confirmed test result.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35971, June 25, 2008]

§ 40.135 What does the MRO tell the employee at the beginning of the verification interview?

- (a) As the MRO, you must tell the employee that the laboratory has determined that the employee's test result was positive, adulterated, substituted, or invalid, as applicable. You must also tell the employee of the drugs for which his or her specimen tested positive, or the basis for the finding of adulteration or substitution.
- (b) You must explain the verification interview process to the employee and inform the employee that your decision will be based on information the employee provides in the interview.
- (c) You must explain that, if further medical evaluation is needed for the verification process, the employee must comply with your request for this evaluation and that failure to do so is equivalent of expressly declining to discuss the test result.
- (d) As the MRO, you must warn an employee who has a confirmed positive, adulterated, substituted or invalid result that you are required to provide to third parties drug test result information and medical information affecting the performance of safety-sensitive duties that the employee gives you in the verification process without the employee's consent (see § 40.327).
 - (1) You must give this warning to the employee before obtaining any medical information as part of the verification process.
 - (2) For purposes of this paragraph (d), medical information includes information on medications or other substances affecting the performance of safety-sensitive duties that the employee reports using or medical conditions the employee reports having.
 - (3) For purposes of this paragraph (d), the persons to whom this information may be provided include the employer, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), DOT, another Federal safety agency (e.g., the NTSB), or any state safety agency as required by state law.
- (e) You must also advise the employee that, before informing any third party about any medication the employee is using pursuant to a legally valid prescription consistent with the Controlled Substances Act, you will allow 5 business days from the date you report the verified negative result for the employee to have the prescribing physician contact you to determine if the medication can be changed to one that does not make the employee medically unqualified or does not pose a significant safety risk. If, in your reasonable medical judgment, a medical qualification issue or a significant safety risk remains after you communicate with the employee's prescribing physician or after 5 business days, whichever is shorter, you must follow § 40.327. If, as the MRO, you receive information that eliminates the medical qualification issue or significant safety risk, you must transmit this information to any third party to whom you previously provided information under § 40.327.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

§ 40.137 On what basis does the MRO verify test results involving marijuana, cocaine, amphetamines, semi-synthetic opioids, or PCP?

- (a) As the MRO, you must verify a confirmed positive test result for marijuana, cocaine, amphetamines, semi-synthetic opioids (*i.e.*, hydrocodone, hydromorphone, oxycodone, and oxymorphone), and/or PCP unless the employee presents a legitimate medical explanation for the presence of the drug(s)/metabolite(s) in his or her system. In determining whether an employee's legally valid prescription consistent with the Controlled Substances Act for a substance in these categories constitutes a legitimate medical explanation, you must not question whether the prescribing physician should have prescribed the substance.
- (b) You must offer the employee an opportunity to present a legitimate medical explanation in all cases.
- (c) The employee has the burden of proof that a legitimate medical explanation exists. The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the test result, if you

determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence concerning a legitimate medical explanation within that time.

- (d) If you determine that there is a legitimate medical explanation, you must verify the test result as negative. Otherwise, you must verify the test result as positive.
- (e) In determining whether a legitimate medical explanation exists, you may consider the employee's use of a medication from a foreign country. You must exercise your professional judgment consistently with the following principles:
 - (1) There can be a legitimate medical explanation only with respect to a substance that is obtained legally in a foreign country.
 - (2) There can be a legitimate medical explanation only with respect to a substance that has a legitimate medical use. Use of a drug of abuse (e.g., heroin, PCP, marijuana) or any other substance (see § 40.151(f) and (g)) that cannot be viewed as having a legitimate medical use can never be the basis for a legitimate medical explanation, even if the substance is obtained legally in a foreign country.
 - (3) Use of the substance can form the basis of a legitimate medical explanation only if it is used consistently with its proper and intended medical purpose.
 - (4) Even if you find that there is a legitimate medical explanation under this paragraph (e) and verify a test negative, you may have a responsibility to raise fitness-for-duty considerations with the employer (see § 40.327).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

§ 40.139 On what basis does the MRO verify test results involving 6-acetylmorphine, codeine, and morphine?

As the MRO, you must proceed as follows when you receive a laboratory confirmed positive opiate result:

- (a) If the laboratory confirms the presence of 6-acetylmorphine (6-AM) in the specimen, you must verify the test result positive.
- (b) In the absence of 6-AM, if the laboratory confirms the presence of either morphine or codeine equal to or above 15,000 ng/mL (in urine) or equal to or above 150 ng/mL (in oral fluid), you must verify the test result as positive, unless the employee presents a legitimate medical explanation for the presence of the drug or drug metabolite in his or her system, as in the case of other drugs (see § 40.137). Consumption of food products (e.g., poppy seeds) must not be considered a legitimate medical explanation for the employee having morphine or codeine at these concentrations.
- (c) For all other codeine and morphine positive results, you must verify a confirmed positive test result only if you determine that there is clinical evidence, in addition to the test, of unauthorized use of any opium, opiate, or opium derivative (i.e., morphine, codeine, or heroin).
 - (1) As an MRO, it is your responsibility to use your best professional and ethical judgement and discretion to determine whether there is clinical evidence of unauthorized use of opiates. Examples of information that you may consider in making this judgement include, but are not limited to, the following:
 - (i) Recent needle tracks;
 - (ii) Behavioral and psychological signs of acute opiate intoxication or withdrawal;
 - (iii) Clinical history of unauthorized use recent enough to have produced the laboratory test result;
 - (iv) Use of a medication from a foreign country. See § 40.137(e) for guidance on how to make this determination.
 - (2) In order to establish the clinical evidence referenced in paragraphs (c)(1)(i) and (ii) of this section, personal observation of the employee is essential.
 - (i) Therefore, you, as the MRO, must conduct, or cause another physician to conduct, a face-to-face examination of the employee.

- (ii) No face-to-face examination is needed in establishing the clinical evidence referenced in paragraph (c)(1) (iii) or (iv) of this section.
- (3) To be the basis of a verified positive result for codeine or morphine, the clinical evidence you find must concern a drug that the laboratory found in the specimen. (For example, if the test confirmed the presence of codeine, and the employee admits to unauthorized use of hydrocodone, you must not verify the test positive for codeine. The admission must be for the substance that was found through the actual drug test.)
- (4) As the MRO, you have the burden of establishing that there is clinical evidence of unauthorized use of opiates referenced in this paragraph (c). If you cannot make this determination (e.g., there is not sufficient clinical evidence or history), you must verify the test as negative. The employee does not need to show you that a legitimate medical explanation exists if no clinical evidence is established.

[77 FR 26473, May 4, 2012, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

§ 40.141 How does the MRO obtain information for the verification decision?

As the MRO, you must do the following as you make the determinations needed for a verification decision:

- (a) You must conduct a medical interview. You must review the employee's medical history and any other relevant biomedical factors presented to you by the employee. You may direct the employee to undergo further medical evaluation by you or another physician.
- (b) If the employee asserts that the presence of a drug or drug metabolite in his or her specimen results from taking prescription medication (i.e., a legally valid prescription consistent with the Controlled Substances Act), you must review and take all reasonable and necessary steps to verify the authenticity of all medical records the employee provides.
 - (1) You may contact the employee's physician or other relevant medical personnel for further information.
 - (i) If you decide to contact the employee's pharmacy to authenticate whether the prescription offered by the employee was filled by the pharmacy, you or staff under your operational control can contact the pharmacy.
 - (ii) If you utilize staff to perform the inquiry in paragraph (b)(1)(i) of this section, you must ensure operational control over the hiring, firing, evaluation of the staff and you must oversee the performance of the function of contacting a pharmacy to authenticate specific prescription(s) (e.g., outline or script what the staff will ask the pharmacy; occasionally monitor calls to assure quality control; or other methods to ensure the staff are properly conducting the calls with the pharmacies).
 - (2) You may request an HHS-certified laboratory with validated protocols (see § 40.81(c)) to conduct testing for D,L stereoisomers of amphetamine and methamphetamine or testing for tetrahydrocannabinol (THC-V) when verifying lab results, as you determine necessary.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27645, May 2, 2023]

§ 40.143 [Reserved]

§ 40.145 On what basis does the MRO verify test results involving adulteration or substitution?

- (a) As an MRO, when you receive a laboratory report that a specimen is adulterated or substituted, you must treat that report in the same way you treat the laboratory's report of a confirmed positive for a drug or drug metabolite.
- (b) You must follow the same procedures used for verification of a confirmed positive test for a drug or drug metabolite (see §§ 40.129–40.135, 40.141, 40.151), except as otherwise provided in this section.
- (c) In the verification interview, you must explain the laboratory findings to the employee and address technical questions or issues the employee may raise.
- (d) You must offer the employee the opportunity to present a legitimate medical explanation for the laboratory findings with respect to presence of the adulterant in, or the creatinine and specific gravity findings for, the specimen.

- (e) The employee has the burden of proof that there is a legitimate medical explanation.
 - (1) To meet this burden in the case of an adulterated specimen, the employee must demonstrate that the adulterant found by the laboratory entered the specimen through physiological means.
 - (2) To meet this burden in the case of a substituted specimen, the employee must demonstrate that he or she did produce or could have produced urine through physiological means, meeting the creatinine concentration criterion of less than 2 mg/dL and the specific gravity criteria of less than or equal to 1.0010 or greater than or equal to 1.0200 (see § 40.93(b)).
 - (3) The employee must present information meeting this burden at the time of the verification interview. As the MRO, you have discretion to extend the time available to the employee for this purpose for up to five days before verifying the specimen, if you determine that there is a reasonable basis to believe that the employee will be able to produce relevant evidence supporting a legitimate medical explanation within that time.
- (f) As the MRO or the employer, you are not responsible for arranging, conducting, or paying for any studies, examinations or analyses to determine whether a legitimate medical explanation exists.
- (g) As the MRO, you must exercise your best professional judgment in deciding whether the employee has established a legitimate medical explanation.
 - (1) If you determine that the employee's explanation does not present a reasonable basis for concluding that there may be a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution, as applicable.
 - (2) If you believe that the employee's explanation may present a reasonable basis for concluding that there is a legitimate medical explanation, you must direct the employee to obtain, within the five-day period set forth in paragraph (e)(3) of this section, a further medical evaluation. This evaluation must be performed by a licensed physician (the "referral physician"), acceptable to you, with expertise in the medical issues raised by the employee's explanation. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
 - (i) As the MRO or employer, you are not responsible for finding or paying a referral physician. However, on request of the employee, you must provide reasonable assistance to the employee's efforts to find such a physician. The final choice of the referral physician is the employee's, as long as the physician is acceptable to you.
 - (ii) As the MRO, you must consult with the referral physician, providing guidance to him or her concerning his or her responsibilities under this section. As part of this consultation, you must provide the following information to the referral physician:
 - (A) That the employee was required to take a DOT drug test, but the laboratory reported that the specimen was adulterated or substituted, which is treated as a refusal to test;
 - (B) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (C) That the referral physician must agree to follow the requirements of paragraphs (g)(3) through (g)(4) of this section; and
 - (D) That the referral physician must provide you with a signed statement of his or her recommendations.
 - (3) As the referral physician, you must evaluate the employee and consider any evidence the employee presents concerning the employee's medical explanation. You may conduct additional tests to determine whether there is a legitimate medical explanation. Any additional drug tests must be performed in an HHS-certified laboratory.
 - (4) As the referral physician, you must then make a written recommendation to the MRO about whether the MRO should determine that there is a legitimate medical explanation. As the MRO, you must seriously consider and assess the referral physician's recommendation in deciding whether there is a legitimate medical explanation.
 - (5) As the MRO, if you determine that there is a legitimate medical explanation, you must cancel the test and inform ODAPC in writing of the determination and the basis for it (e.g., referral physician's findings, evidence produced by the employee).

- (6) As the MRO, if you determine that there is not a legitimate medical explanation, you must report the test to the DER as a verified refusal to test because of adulteration or substitution.
- (h) The following are examples of types of evidence an employee could present to support an assertion of a legitimate medical explanation for a substituted urine result.
 - (1) Medically valid evidence demonstrating that the employee is capable of physiologically producing urine meeting the creatinine and specific gravity criteria of § 40.93(b).
 - (i) To be regarded as medically valid, the evidence must have been gathered using appropriate methodology and controls to ensure its accuracy and reliability.
 - (ii) Assertion by the employee that his or her personal characteristics (e.g., with respect to race, gender, weight, diet, working conditions) are responsible for the substituted result does not, in itself, constitute a legitimate medical explanation. To make a case that there is a legitimate medical explanation, the employee must present evidence showing that the cited personal characteristics actually result in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.93(b).
 - (2) Information from a medical evaluation under paragraph (g) of this section that the individual has a medical condition that has been demonstrated to cause the employee to physiologically produce urine meeting the creatinine and specific gravity criteria of § 40.93(b).
 - (i) A finding or diagnosis by the physician that an employee has a medical condition, in itself, does not constitute a legitimate medical explanation.
 - (ii) To establish there is a legitimate medical explanation, the employee must demonstrate that the cited medical condition actually results in the physiological production of urine meeting the creatinine and specific gravity criteria of § 40.93(b).

[65 FR 79526, Dec. 19, 2000, as amended at 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 88 FR 27646, May 2, 2023]

§ 40.147 [Reserved]

§ 40.149 May the MRO change a verified drug test result?

- (a) As the MRO, you may change a verified test result only in the following situations:
 - (1) When you have reopened a verification that was done without an interview with an employee (see § 40.133(d)).
 - (2) If you receive information, not available to you at the time of the original verification, demonstrating that the laboratory made an error in identifying (e.g., a paperwork mistake) or testing (e.g., a false positive or negative) the employee's primary or split specimen. For example, suppose the laboratory originally reported a positive test result for Employee X and a negative result for Employee Y. You verified the test results as reported to you. Then the laboratory notifies you that it mixed up the two test results, and X was really negative and Y was really positive. You would change X's test result from positive to negative and contact Y to conduct a verification interview.
 - (3) If, within 60 days of the original verification decision—
 - (i) You receive information that could not reasonably have been provided to you at the time of the decision demonstrating that there is a legitimate medical explanation for the presence of drug(s)/metabolite(s) in the employee's specimen; or
 - (ii) You receive credible new or additional evidence that a legitimate medical explanation for an adulterated or substituted result exists.

Example to paragraph (a)(3): If the employee's physician provides you a valid prescription that he or she failed to find at the time of the original verification, you may change the test result from positive to negative if you conclude that the prescription provides a legitimate medical explanation for the drug(s)/metabolite(s) in the employee's specimen.

- (4) If you receive the information in paragraph (a)(3) of this section after the 60-day period, you must consult with ODAPC prior to changing the result.
- (5) When you have made an administrative error and reported an incorrect result.
- (b) If you change the result, you must immediately notify the DER in writing, as provided in §§ 40.163–40.165.
- (c) You are the only person permitted to change a verified test result, such as a verified positive test result or a determination that an individual has refused to test because of adulteration or substitution. This is because, as the MRO, you have the sole authority under this part to make medical determinations leading to a verified test (e.g., a determination that there was or was not a legitimate medical explanation for a laboratory test result). For example, an arbitrator is not permitted to overturn the medical judgment of the MRO that the employee failed to present a legitimate medical explanation for a positive, adulterated, or substituted test result of his or her specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 73 FR 35971, June 25, 2008]

§ 40.151 What are MROs prohibited from doing as part of the verification process?

As an MRO, you are prohibited from doing the following as part of the verification process:

- (a) You must not consider any evidence (verbal or written information) from any drug tests that are not collected or tested in accordance with this part. For example, if an employee tells you he went to his own physician, provided a urine specimen, sent it to a laboratory, and received a negative test result, you are required to ignore this test result.
- (b) It is not your function to make decisions about factual disputes between the employee and the collector concerning matters occurring at the collection site that are not reflected on the CCF (e.g., concerning allegations that the collector left the area or left open collection containers where other people could access them.)
- (c) It is not your function to determine whether the employer should have directed that a test occur. For example, if an employee tells you that the employer misidentified her as the subject of a random test, or directed her to take a reasonable suspicion or post-accident test without proper grounds under a DOT agency drug or alcohol regulation, you must inform the employee that you cannot play a role in deciding these issues.
- (d) It is not your function to consider explanations of confirmed positive, adulterated, or substituted test results that would not, even if true, constitute a legitimate medical explanation. For example, an employee may tell you that someone slipped amphetamines into her drink at a party, that she unknowingly ingested a marijuana brownie, or that she traveled in a closed car with several people smoking crack. MROs are unlikely to be able to verify the facts of such passive or unknowing ingestion stories. Even if true, such stories do not present a legitimate medical explanation. Consequently, you must not declare a test as negative based on an explanation of this kind.
- (e) You must not verify a test negative based on information that a physician recommended that the employee use a drug listed in Schedule I of the Controlled Substances Act. (e.g., under a state law that purports to authorize such recommendations, such as the “medical marijuana” laws that some states have adopted).
- (f) You must not accept an assertion of consumption or other use of a hemp or other non-prescription marijuana-related product as a basis for verifying a marijuana test negative. You also must not accept such an explanation related to consumption of coca teas as a basis for verifying a cocaine test result as negative. Consuming or using such a product is not a legitimate medical explanation.
- (g) You must not accept an assertion that there is a legitimate medical explanation for the presence of PCP, 6-AM, MDMA, or MDA in a specimen.
- (h) You must not accept, as a legitimate medical explanation for an adulterated specimen, an assertion that soap, bleach, or glutaraldehyde entered a specimen through physiological means. There are no physiological means through which these substances can enter a specimen.
- (i) You must not accept, as a legitimate medical explanation for a substituted specimen, an assertion that an employee can produce a urine specimen for which the creatinine level is below the laboratory's limit of detection. There are no physiological means through which a person can produce a urine specimen having this characteristic.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 75 FR 49863, Aug. 16, 2010; 88 FR 27646, May 2, 2023]

§ 40.153 How does the MRO notify employees of their right to a test of the split specimen?

- (a) As the MRO, when you have verified a drug test as positive for a drug or drug metabolite, or as a refusal to test because of adulteration or substitution, you must notify the employee of his or her right to have the split specimen tested. You must also notify the employee of the procedures for requesting a test of the split specimen.
- (b) You must inform the employee that he or she has 72 hours from the time you provide this notification to him or her to request a test of the split specimen.
- (c) You must tell the employee how to contact you to make this request. You must provide telephone numbers or other information that will allow the employee to make this request. As the MRO, you must have the ability to receive the employee's calls at all times during the 72 hour period (e.g., by use of an answering machine with a "time stamp" feature when there is no one in your office to answer the phone).
- (d) You must tell the employee that if he or she makes this request within 72 hours, the employer must ensure that the test takes place, and that the employee is not required to pay for the test from his or her own funds before the test takes place. You must also tell the employee that the employer may seek reimbursement for the cost of the test (see § 40.173).
- (e) You must tell the employee that additional tests of the specimen e.g., DNA tests) are not authorized.

§ 40.155 What does the MRO do when a negative or positive test result is also dilute?

- (a) When the laboratory reports that a specimen is dilute, you must, as the MRO, report to the DER that the specimen, in addition to being negative or positive, is dilute.
- (b) You must check the "dilute" box (Step 6) on Copy 2 of the CCF.
- (c) When you report a dilute specimen to the DER, you must explain to the DER the employer's obligations and choices under § 40.197, to include the requirement for an immediate recollection under direct observation if the creatinine concentration of a negative-dilute specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/dL.
- (d) If the employee's recollection under direct observation, in paragraph (c) of this section, results in another negative-dilute, as the MRO, you must:
 - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
 - (2) If the CCF documentation shows that the recollection was directly observed as required, report this result to the DER as a negative-dilute result.
 - (3) If CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41952, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 69 FR 64867, Nov. 9, 2004; 73 FR 35971, June 25, 2008]

§ 40.157 [Reserved]

§ 40.159 What does the MRO do when a drug test result is invalid?

- (a) As the MRO, when the laboratory reports that the test result is an invalid result, you must do the following:
 - (1) Discuss the laboratory results with a certifying scientist to determine if the primary specimen should be tested at another HHS-certified laboratory. If the laboratory did not contact you as required by §§ 40.91(e) and 40.96(b), you must contact the laboratory.
 - (2) If you and the laboratory have determined that no further testing is necessary, contact the employee and inform the employee that the specimen was invalid. In contacting the employee, use the procedures set forth in § 40.131.
 - (3) After explaining the limits of disclosure (see §§ 40.135(d) and 40.327), you must determine if the employee has a medical explanation for the invalid result. You must inquire about the medications the employee may have taken.
 - (4) If the employee gives an explanation that is acceptable, you must:

- (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection not required" on the "Remarks" line.
 - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that no further action is required unless a negative test result is required (*i.e.*, pre-employment, return-to-duty, or follow-up tests).
 - (iii) If a negative test result is required and the medical explanation concerns a situation in which the employee has a permanent or long-term medical condition that precludes him or her from providing a valid specimen, as the MRO, you must follow the procedures outlined at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.
- (5) If the employee is unable to provide an explanation and/or a valid prescription for a medication that interfered with the immunoassay test but denies having adulterated the specimen, you must:
- (i) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 of the CCF and enter "Invalid Result" and "direct observation collection required" on the "Remarks" line.
 - (ii) Report to the DER that the test is cancelled, the reason for cancellation, and that a second collection must take place immediately under direct observation. Recommend to the employer that an alternate specimen should be collected if practicable (*e.g.*, oral fluid, if the specimen was urine).
 - (iii) Instruct the employer to ensure that the employee has the minimum possible advance notice that he or she must go to the collection site.
- (6) When the test result is invalid because pH is greater than or equal to 9.0 but less than or equal to 9.5 and the employee has no other medical explanation for the pH, you should consider whether there is evidence of elapsed time and increased temperature that could account for the pH value.
- (i) You are authorized to consider the temperature conditions that were likely to have existed between the time of collection and transportation of the specimen to the laboratory, and the length of time between the specimen collection and arrival at the laboratory.
 - (ii) You may talk with the collection site and laboratory to discuss time and temperature issues, including any pertinent information regarding specimen storage.
 - (iii) If you determine that time and temperature account for the pH value, you must cancel the test and take no further action, as provided at paragraph (a)(4) of this section.
 - (iv) If you determine that time and temperature fail to account for the pH value, you must cancel the test and direct another collection under direct observation, as provided at paragraph (a)(5) of this section.
- (b) You may only report an invalid test result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature.
- (c) If the employee admits to having adulterated or substituted the specimen, you must, on the same day, write and sign your own statement of what the employee told you. You must then report a refusal to test in accordance with § 40.163 .
- (d) If the employee admits to using a drug, you must, on the same day, write and sign your own statement of what the employee told you. You must then report that admission to the DER for appropriate action under DOT Agency regulations. This test will be reported as cancelled with the reason noted.
- (e) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for the same reason as reported for the first specimen, as the MRO, you must:
- (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
 - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for the same reason.
 - (3) Follow the recording and reporting procedures at (a)(4)(i) and (ii) of this section.
 - (4) If a negative result is required (*i.e.*, pre-employment, return-to-duty, or follow-up tests), follow the procedures at § 40.160 for determining if there is clinical evidence that the individual is an illicit drug user.

- (5) If the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (f) If the employee's recollection (required at paragraph (a)(5) of this section) results in another invalid result for a different reason than that reported for the first specimen, as the MRO, you must:
 - (1) Review the CCF to ensure that there is documentation that the recollection was directly observed.
 - (2) If the CCF review indicates that the recollection was directly observed as required, document that the employee had another specimen with an invalid result for a different reason.
 - (3) As the MRO, you should not contact the employee to discuss the result, but rather direct the DER to conduct an immediate recollection under direct observation without prior notification to the employee.
 - (4) If the CCF documentation indicates that the recollection was not directly observed as required, do not report a result but again explain to the DER that there must be an immediate recollection under direct observation.
- (g) If, as the MRO, you receive a laboratory invalid result in conjunction with a positive, adulterated, and/or substituted result and you verify any of those results as being a positive and/or refusal to test, you do not report the invalid result unless the split specimen fails to reconfirm the result(s) of the primary specimen.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008; 75 FR 49863, Aug. 16, 2010; 88 FR 27646, May 2, 2023]

§ 40.160 What does the MRO do when a valid test result cannot be produced and a negative result is required?

- (a) If a valid test result cannot be produced and a negative result is required, (under § 40.159 (a)(5)(iii) and (e)(4)), as the MRO, you must determine if there is clinical evidence that the individual is currently an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation. In addition, if appropriate, you may also consult with the employee's physician to gather information you need to reach this determination.
- (b) If you do not personally conduct the medical evaluation, as the MRO, you must ensure that one is conducted by a licensed physician acceptable to you.
- (c) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (d) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report this to the employer as a negative test result with written notations regarding the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and for the determination that no signs and symptoms of drug use exist.
 - (1) Check "Negative" (Step 6) on the CCF.
 - (2) Sign and date the CCF.
- (e) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding the results of the medical examination. The report must also state why the medical examination was required (i.e., either the basis for the determination that a permanent or long-term medical condition exists or because the recollection under direct observation resulted in another invalid result for the same reason, as appropriate) and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purpose of an actual negative test result (i.e., the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test result is needed for that purpose).

[73 FR 35972, June 25, 2008]

§ 40.161 What does the MRO do when a drug test specimen is rejected for testing?

As the MRO, when the laboratory reports that the specimen is rejected for testing (e.g., because of a fatal or uncorrected flaw), you must do the following:

- (a) Place a check mark in the "Test Cancelled" box (Step 6) on Copy 2 (or a legible copy of Copy 3–5) of the CCF and enter the reason on the "Remarks" line. If you do not have Copy 2 (or a legible copy of Copy 3–5), then enter "Test Cancelled" and the reason for the cancellation on a report in the format required under § 40.163(c).
- (b) Report to the DER that the test is cancelled and the reason for cancellation, and that no further action is required unless a negative test is required (e.g., in the case of a pre-employment, return-to-duty, or follow-up test).
- (c) You may only report a test cancelled because of a "rejected for testing" laboratory result when you are in possession of a legible copy of Copy 1 of the CCF. In addition, you must have Copy 2 of the CCF, a legible copy of it, or any other copy of the CCF containing the employee's signature. If you do not have Copy 2 (or a legible copy of Copy 3–5), then enter "Test Cancelled" and the reason for the cancellation on a report in the format required under § 40.163(c).

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27646, May 2, 2023]

§ 40.162 What must MROs do with multiple verified results for the same testing event?

- (a) If the testing event is one in which there was one specimen collection with multiple verified non-negative results, as the MRO, you must report them all to the DER. For example, if you verified the specimen as being positive for marijuana and cocaine and as being a refusal to test because the specimen was also adulterated, as the MRO, you should report the positives and the refusal to the DER.
- (b) If the testing event was one in which two separate specimen collections (e.g., a specimen out of temperature range and the subsequent observed collection) were sent to the laboratory, as the MRO, you must:
 - (1) If both specimens were verified negative, report the result as negative.
 - (2) If either of the specimens was verified negative and the other was verified as one or more non-negative(s), report the non-negative result(s) only. For example, if you verified one specimen as negative and the other as a refusal to test because the second specimen was substituted, as the MRO you should report only the refusal to the DER.
 - (i) If the first specimen is reported as negative, but the result of the second specimen has not been reported by the laboratory, as the MRO, you should hold—not report—the result of the first specimen until the result of the second specimen is received.
 - (ii) If the first specimen is reported as non-negative, as the MRO, you should report the result immediately and not wait to receive the result of the second specimen.
 - (3) If both specimens were verified non-negative, report all of the non-negative results. For example, if you verified one specimen as positive and the other as a refusal to test because the specimen was adulterated, as the MRO, you should report the positive and the refusal results to the DER.
- (c) As an exception to paragraphs (a) and (b) of this section, as the MRO, you must follow procedures at § 40.159(g) when any verified non-negative result is also invalid.

[73 FR 35972, June 25, 2008, as amended at 82 FR 52245, Nov. 13, 2017]

§ 40.163 How does the MRO report drug test results?

- (a) As the MRO, it is your responsibility to report all drug test results to the employer.
- (b) You may use a signed or stamped and dated legible photocopy of Copy 2 of the CCF to report test results.
- (c) If you do not report test results using Copy 2 of the CCF for this purpose, you must provide a written report (e.g., a letter) for each test result. This report must, as a minimum, include the following information:
 - (1) Full name, as indicated on the CCF, of the employee tested;
 - (2) Specimen ID number from the CCF and the SSN or employee ID No.;
 - (3) Reason for the test, if indicated on the CCF (e.g., random, post-accident);
 - (4) Date of the collection;

- (5) Date you received Copy 2 of the CCF;
 - (6) Result of the test (i.e., positive, negative, dilute, refusal to test, test cancelled) and the date the result was verified by the MRO;
 - (7) For verified positive tests, the drug(s)/metabolite(s) for which the test was positive;
 - (8) For cancelled tests, the reason for cancellation; and
 - (9) For refusals to test, the reason for the refusal determination (e.g., in the case of an adulterated test result, the name of the adulterant).
- (d) As an exception to the reporting requirements of paragraph (b) and (c) of this section, the MRO may report negative results using an electronic data file.
- (1) If you report negatives using an electronic data file, the report must contain, as a minimum, the information specified in paragraph (c) of this section, as applicable for negative test results.
 - (2) In addition, the report must contain your name, address, and phone number, the name of any person other than you reporting the results, and the date the electronic results report is released.
- (e) If you use a written report as provided in paragraph (c) of this section to report results, you must retain a copy of the written report. If you use the electronic data file to report negatives, as provided in paragraph (d) of this section, you must retain a retrievable copy of that report in a format suitable for inspection and audit by a DOT representative. In either case, you must keep the completed Copy 2 of the CCF. When completing Copy 2, either the MRO must sign and date it (for both negatives and non-negatives) or MRO staff must stamp and date it (for negatives only).
- (f) You must not use Copy 1 of the CCF to report drug test results.
- (g) You must not provide quantitative values to the DER or C/TPA for drug or validity test results. However, you must provide the test information in your possession to a SAP who consults with you (see § 40.293(g)).
- (h) You must maintain reports and records related to negatives and cancelled results for one year; you must maintain reports and records related to positives and refusals for five years, unless otherwise specified by applicable DOT agency regulations.

[66 FR 41952, Aug. 9, 2001, as amended at 75 FR 49863, Aug. 16, 2010; 75 FR 59107, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 88 FR 27646, May 2, 2023]

§ 40.165 To whom does the MRO transmit reports of drug test results?

- (a) As the MRO, you must report all drug test results to the DER, except in the circumstances provided for in § 40.345 .
- (b) If the employer elects to receive reports of results through a C/TPA, acting as an intermediary as provided in § 40.345 , you must report the results through the designated C/TPA.

§ 40.167 How are MRO reports of drug results transmitted to the employer?

As the MRO or C/TPA who transmits drug test results to the employer, you must comply with the following requirements:

- (a) You must report the results in a confidential manner.
- (b) You must transmit to the DER on the same day the MRO verifies the result or the next business day all verified positive test results, results requiring an immediate collection under direct observation, adulterated or substituted specimen results, and other refusals to test.
 - (1) Direct telephone contact with the DER is the preferred method of immediate reporting. Follow up your phone call with appropriate documentation (see § 40.163).
 - (2) You are responsible for identifying yourself to the DER, and the DER must have a means to confirm your identification.
 - (3) The MRO's report that you transmit to the employer must contain all of the information required by § 40.163 .

- (c) You must transmit the MRO's report(s) of verified tests to the DER so that the DER receives it within two days of verification by the MRO.
 - (1) You must fax, courier, mail, or electronically transmit a legible image or copy of either the signed or stamped and dated Copy 2 or the written report (see § 40.163(b) and (c)).
 - (2) Negative results reported electronically (i.e., computer data file) do not require an image of Copy 2 or the written report.
- (d) In transmitting test results, you or the C/TPA and the employer must ensure the security of the transmission and limit access to any transmission, storage, or retrieval systems.
- (e) MRO reports are not subject to modification or change by anyone other than the MRO, as provided in § 40.149(c).

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

§ 40.169 Where is other information concerning the role of MROs and the verification process found in this regulation?

You can find more information concerning the role of MROs in several sections of this part:

- § 40.3—Definition.
- §§ 40.47–40.49—Correction of form and kit errors.
- § 40.67—Role in direct observation and other atypical test situations.
- § 40.83—Laboratory handling of fatal and correctable flaws.
- § 40.97—Laboratory handling of test results and quantitative values.
- § 40.99—Authorization of longer laboratory retention of specimens.
- § 40.101—Relationship with laboratories; avoidance of conflicts of interest.
- § 40.171—Request for test of split specimen.
- § 40.187—Action concerning split specimen test results.
- § 40.193—Role in “shy bladder” situations.
- § 40.195—Role in cancelling tests.
- §§ 40.199–40.203—Documenting errors in tests.
- § 40.327—Confidentiality and release of information.
- § 40.347—Transfer of records.
- § 40.353—Relationships with service agents.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

Subpart H—Split Specimen Tests

§ 40.171 How does an employee request a test of a split specimen?

- (a) As an employee, when the MRO has notified you that you have a verified positive drug test and/or refusal to test because of adulteration or substitution, you have 72 hours from the time of notification to request a test of the split specimen. The request may be verbal or in writing. If you make this request to the MRO within 72 hours, you trigger the requirements of this section for a test of the split specimen. There is no split specimen testing for an invalid result.
- (b)
 - (1) If, as an employee, you have not requested a test of the split specimen within 72 hours, you may present to the MRO information documenting that serious injury, illness, lack of actual notice of the verified test result, inability to contact the MRO (e.g., there was no one in the MRO's office and the answering machine was not working), or other circumstances unavoidably prevented you from making a timely request.
 - (2) As the MRO, if you conclude from the employee's information that there was a legitimate reason for the employee's failure to contact you within 72 hours, you must direct that the test of the split specimen take place, just as you would when there is a timely request.

- (c) When the employee makes a timely request for a test of the split specimen under paragraphs (a) and (b) of this section, you must, as the MRO, immediately provide written notice to the laboratory that tested the primary specimen, directing the laboratory to forward the split specimen to a second HHS-certified laboratory. You must also document the date and time of the employee's request.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

§ 40.173 Who is responsible for paying for the test of a split specimen?

- (a) As the employer, you are responsible for making sure (e.g., by establishing appropriate accounts with laboratories for testing split specimens) that the MRO, first laboratory, and second laboratory perform the functions noted in §§ 40.175–40.185 in a timely manner, once the employee has made a timely request for a test of the split specimen.
- (b) As the employer, you must not condition your compliance with these requirements on the employee's direct payment to the MRO or laboratory or the employee's agreement to reimburse you for the costs of testing. For example, if you ask the employee to pay for some or all of the cost of testing the split specimen, and the employee is unwilling or unable to do so, you must ensure that the test takes place in a timely manner, even though this means that you pay for it.
- (c) As the employer, you may seek payment or reimbursement of all or part of the cost of the split specimen from the employee (e.g., through your written company policy or a collective bargaining agreement). This part takes no position on who ultimately pays the cost of the test, so long as the employer ensures that the testing is conducted as required and the results released appropriately.

§ 40.175 What steps does the first laboratory take with a split specimen?

- (a) As the laboratory at which the primary and split specimen first arrive, you must check to see whether the split specimen is available for testing.
- (b) If the split specimen is unavailable or appears insufficient, you must then do the following:
 - (1) Continue the testing process for the primary specimen as you would normally. Report the results for the primary specimen without providing the MRO information regarding the unavailable split specimen.
 - (2) Upon receiving a letter from the MRO instructing you to forward the split specimen to another laboratory for testing, report to the MRO that the split specimen is unavailable for testing. Provide as much information as you can about the cause of the unavailability.
- (c) As the laboratory that tested the primary specimen, you are not authorized to open the split specimen under any circumstances (except when the split specimen is redesignated as provided in § 40.83).
- (d) When you receive written notice from the MRO instructing you to send the split specimen to another HHS-certified laboratory, you must forward the following items to the second laboratory:
 - (1) The split specimen in its original specimen bottle, with the seal intact;
 - (2) A copy of the MRO's written request; and
 - (3) A copy of Copy 1 of the CCF, which identifies the drug(s)/metabolite(s) or the validity criteria to be tested for.
- (e) You must not send to the second laboratory any information about the identity of the employee. Inadvertent disclosure does not, however, cause a fatal flaw.
- (f) This subpart does not prescribe who gets to decide which HHS-certified laboratory is used to test the split specimen. That decision is left to the parties involved.

§ 40.177 What does the second laboratory do with the split specimen when it is tested to reconfirm the presence of a drug or drug metabolite?

- (a) As the laboratory testing the split specimen, you must test the split specimen for the drug(s)/drug metabolite(s) confirmed in the primary specimen.
- (b) You must conduct this test without regard to the cutoff concentrations of § 40.85 or § 40.91, as applicable.

- (c) If the test fails to reconfirm the presence of the drug(s)/drug metabolite(s) that were reported in the primary specimen, you must conduct validity tests in an attempt to determine the reason for being unable to reconfirm the presence of the drug(s)/metabolite(s). You should conduct the same validity tests as you would conduct on a primary specimen set forth in § 40.87 or § 40.93, as applicable.
- (d) In addition, if the test fails to reconfirm the presence of the drug(s)/ drug metabolite(s) reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008; 88 FR 27646, May 2, 2023]

§ 40.179 What does the second laboratory do with the split specimen when it is tested to reconfirm an adulterated test result?

- (a) As the laboratory testing the split specimen, you must test the split specimen for the adulterant detected in the primary specimen, using the confirmatory test for the adulterant and using criteria in § 40.89 or § 40.93, as applicable and confirmatory cutoff levels required by the HHS Mandatory Guidelines.
- (b) In addition, if the test fails to reconfirm the adulterant result reported in the primary specimen, you may send the specimen or an aliquot of it for testing at another HHS-certified laboratory that has the capability to conduct another reconfirmation test.

[73 FR 35973, June 25, 2008, as amended at 88 FR 27646, May 2, 2023]

§ 40.181 What does the second laboratory do with the split specimen when it is tested to reconfirm a substituted test result?

As the laboratory testing a urine split specimen, you must test the split specimen using the confirmatory tests for creatinine and specific gravity, using the criteria set forth in § 40.88.

[88 FR 27646, May 2, 2023]

§ 40.183 What information do laboratories report to MROs regarding split specimen results?

- (a) As the laboratory responsible for testing the split specimen, you must report split specimen test results by checking the "Reconfirmed" box and/or the "Failed to Reconfirm" box (Step 5(b)) on Copy 1 of the CCF, as appropriate, and by providing clarifying remarks using current HHS Mandatory Guidelines requirements.
- (b) As the laboratory certifying scientist, enter (your name, sign, and date the CCF.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35972, June 25, 2008]

§ 40.185 Through what methods and to whom must a laboratory report split specimen results?

- (a) As the laboratory testing the split specimen, you must report laboratory results directly, and only, to the MRO at his or her place of business. You must not report results to or through the DER or another service agent (e.g., a C/TPA).
- (b) You must fax, courier, mail, or electronically transmit a legible image or copy of the fully-completed Copy 1 of the CCF, which has been signed by the certifying scientist.
- (c) You must transmit the laboratory result to the MRO immediately, preferably on the same day or next business day as the result is signed and released.

§ 40.187 What does the MRO do with split specimen laboratory results?

As the MRO, the split specimen laboratory results you receive will fall into five categories. You must take the following action, as appropriate, when a laboratory reports split specimen results to you.

- (a) **Category 1:** The laboratory reconfirmed one or more of the primary specimen results. As the MRO, you must report to the DER and the employee the result(s) that was/were reconfirmed.
- (1) In the case of a reconfirmed positive test(s) for drug(s) or drug metabolite(s), the positive is the final result.
 - (2) In the case of a reconfirmed adulterated or substituted result, the refusal to test is the final result.
 - (3) In the case of a combination positive and refusal to test results, the final result is both positive and refusal to test.
- (b) **Category 2:** The laboratory failed to reconfirm all of the primary specimen results because, as appropriate, drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. As the MRO, you must report to the DER and the employee that the test must be cancelled.
- (1) As the MRO, you must inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
 - (2) In a case where the split failed to reconfirm because the substitution criteria were not met and the split specimen creatinine concentration was equal to or greater than 2mg/dL but less than or equal to 5mg/dL, as the MRO, you must, in addition to step (b)(1) of this paragraph, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
 - (3) In a case where the split failed to reconfirm and the primary specimen's result was also invalid, direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
- (c) **Category 3:** The laboratory failed to reconfirm all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted.
- (1) In the case where the laboratory failed to reconfirm all of the primary specimen results and the split was reported as invalid, as the MRO, you must:
 - (i) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation.
 - (ii) Direct the DER to ensure the immediate collection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection.
 - (iii) Inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
 - (2) In the case where the laboratory failed to reconfirm any of the primary specimen results, and the split was reported as adulterated and/or substituted, as the MRO, you must:
 - (i) Contact the employee and inform the employee that the laboratory has determined that his or her split specimen is adulterated and/or substituted, as appropriate.
 - (ii) Follow the procedures of § 40.145 to determine if there is a legitimate medical explanation for the laboratory finding of adulteration and/or substitution, as appropriate.
 - (iii) If you determine that there is a legitimate medical explanation for the adulterated and/or substituted test result, report to the DER and the employee that the test must be cancelled; and inform ODAPC of the failure to reconfirm using the format in appendix F to this part.
 - (iv) If you determine that there is not a legitimate medical explanation for the adulterated and/or substituted test result, you must take the following steps:
 - (A) Report the test to the DER and the employee as a verified refusal to test. Inform the employee that he or she has 72 hours to request a test of the primary specimen to determine if the adulterant found in the split specimen is also present in the primary specimen and/or to determine if the primary specimen meets appropriate substitution criteria.
 - (B) Except when the request is for a test of the primary specimen and is being made to the laboratory that tested the primary specimen, follow the procedures of §§ 40.153, 40.171, 40.173, 40.179, 40.181, and 40.185, as appropriate.

- (C) As the laboratory that tests the primary specimen to reconfirm the presence of the adulterant found in the split specimen and/or to determine that the primary specimen meets appropriate substitution criteria, report your result to the MRO on a photocopy (faxed, mailed, scanned, couriered) of Copy 1 of the CCF.
 - (D) If the test of the primary specimen reconfirms the adulteration and/or substitution finding of the split specimen, as the MRO you must report the result as a refusal to test as provided in paragraph (a)(2) of this section.
 - (E) If the test of the primary specimen fails to reconfirm the adulteration and/or substitution finding of the split specimen, as the MRO you must cancel the test, following procedures in paragraph (b) of this section.
- (d) **Category 4:** The laboratory failed to reconfirm one or more but not all of the primary specimen results, and also reported that the split specimen was invalid, adulterated, and/or substituted. As the MRO, in the case where the laboratory reconfirmed one or more of the primary specimen result(s), you must follow procedures in paragraph (a) of this section and:
- (1) Report that the split was also reported as being invalid, adulterated, and/or substituted (as appropriate).
 - (2) Inform the DER to take action only on the reconfirmed result(s).
- (e) **Category 5:** The split specimen was not available for testing or there was no split laboratory available to test the specimen. As the MRO, you must:
- (1) Report to the DER and the employee that the test must be cancelled and the reason for the cancellation;
 - (2) Direct the DER to ensure the immediate recollection of another specimen from the employee under direct observation, with no notice given to the employee of this collection requirement until immediately before the collection; and
 - (3) Notify ODAPC of the failure to reconfirm using the format in appendix F to this part.
- (f) For all split specimen results, as the MRO you must in Step 7 of Copy 2 of the CCF:
- (1) Report split specimen test results by checking the "Reconfirmed" box and/or the "Failed to Reconfirm" box, or the "Test Cancelled" box, as appropriate.
 - (2) , Enter your name, sign, and date.
 - (3) Send a legible copy of Copy 2 of the CCF (or a signed and dated letter, see § 40.163) to the employer and keep a copy for your records. Transmit the document as provided in § 40.167.

[73 FR 35973, June 25, 2008, as amended at 75 FR 59108, Sept. 27, 2010; 88 FR 27646, May 2, 2023]

§ 40.189 Where is other information concerning split specimens found in this regulation?

You can find more information concerning split specimens in several sections of this part:

- § 40.3—Definition.
- § 40.65—Quantity of split specimen.
- § 40.67—Directly observed test when split specimen is unavailable.
- §§ 40.71–40.73—Collection process for split specimens.
- § 40.83—Laboratory accessioning of split specimens.
- § 40.99—Laboratory retention of split specimens.
- § 40.153—MRO notice to employees on tests of split specimen.
- §§ 40.193 and 40.201—MRO actions on insufficient or unavailable split specimens.
- Appendix D to Part 40—Report format for split specimen failure to reconfirm.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017]

Subpart I—Problems in Drug Tests

§ 40.191 What is a refusal to take a DOT drug test, and what are the consequences?

- (a) As an employee, you have refused to take a drug test if you:
- (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.61(a));
 - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (see § 40.63(c) or § 40.72(e), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (3) Fail to provide a specimen for any drug test required by this part or DOT agency regulations. Provided that an employee who does not provide a specimen because he or she has left the testing site before the testing process commences (see § 40.63(c) or § 40.72(e), as applicable) for a pre-employment test is not deemed to have refused to test. The collector is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (4) In the case of a directly observed or monitored urine collection in a drug test, fail to permit the observation or monitoring of an employee's provision of a specimen (see §§ 40.67(m) and 40.69(g));
 - (5) Fail to provide a sufficient amount of specimen when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.193(d)(2));
 - (6) Fail or decline to take an additional drug test the employer or collector has directed you to take (see, for instance, § 40.197(b) as applicable);
 - (7) Fail to undergo a medical examination or evaluation, as directed by the MRO as part of the verification process, or as directed by the DER under § 40.193(c). In the case of a pre-employment drug test, the employee is deemed to have refused to test on this basis only if the pre-employment test is conducted following a contingent offer of employment. If there was no contingent offer of employment, the MRO will cancel the test;
 - (8) Fail to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector, fail to remove objects from mouth, fail to permit inspection of the oral cavity, or fail to complete a rinse when requested);
 - (9) For an observed urine collection, fail to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process;
 - (10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process; or
 - (11) Admit to the collector or MRO that you adulterated or substituted the specimen.
- (b) As an employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.
- (c) As an employee, if you refuse to take a drug test, you incur the consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.
- (d) As a collector or an MRO, when an employee refuses to participate in the part of the testing process in which you are involved, you must terminate the portion of the testing process in which you are involved, document the refusal on the CCF (including, in the case of the collector, printing the employee's name on Copy 2 of the CCF), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures that the refusal notification is immediately received. As a referral physician (e.g., physician evaluating a "shy bladder" condition or a claim of a legitimate medical explanation in a validity testing situation), you must notify the MRO, who in turn will notify the DER.

- (1) As the collector, you must note the actions that may constitute a refusal in the "Remarks" line (Step 2), and sign and date the CCF. The collector does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.
- (2) As the MRO, you must note the refusal by checking the "Refusal to Test" box in Step 6 on Copy 2 of the CCF, checking whether the specimen was adulterated or substituted and, if adulterated, noting the adulterant/reason. If there was another reason for the refusal, check "Other" in Step 6 on Copy 2 of the CCF, and note the reason next to the "Other" box and on the "Remarks" lines, as needed. You must then sign and date the CCF.
- (e) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for refusing to take a non-DOT test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001; 68 FR 31626, May 28, 2003; 71 FR 49384, Aug. 23, 2006; 73 FR 35974, June 25, 2008; 75 FR 59108, Sept. 27, 2010; 88 FR 27647, May 2, 2023]

§ 40.193 What happens when an employee does not provide a sufficient amount of specimen for a drug test?

- (a) If an employee does not provide a sufficient amount of specimen to permit a drug test (*i.e.*, 45 mL of urine in a single void, or 2mL oral fluid in a single sampling, as applicable) you, as the collector, must provide another opportunity to the employee to do so. In accordance with the employer's instructions, this can be done using the same specimen type as the original collection or this can be done by a collector qualified to use an alternate specimen collection for this purpose.
 - (1) If you change to an alternate specimen collection at this point (*i.e.*, from urine to oral fluid; or from oral fluid to urine), the next collection begins under § 40.61(e) for urine or § 40.72 for oral fluid collection.
 - (i) If you proceed with an alternate specimen collection, discard the insufficient specimen and proceed with the next specimen collection.
 - (ii) If you proceed with an alternate specimen collection, discard the CCF for the insufficient specimen and begin a new CCF for the next specimen collection with a notation in the remarks section of the new CCF.
- (b)
 - (1) As the collector, you must do the following when continuing with a urine specimen collection under this section:
 - (i) Discard the insufficient specimen, except where the insufficient specimen was out of temperature range or showed evidence of adulteration or tampering (see § 40.65(b) and (c)).
 - (ii) Urge the employee to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. It is not a refusal to test if the employee declines to drink. Document on the Remarks line of the CCF (Step 2), and inform the employee of the time at which the three-hour period begins and ends.
 - (iii) If the employee refuses to make the attempt to provide a new urine specimen or leaves the collection site before the collection process is complete, you must discontinue the collection, note that fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER of the conduct as provided in § 40.191(e)(1); the employer decides whether the situation is deemed to be a refusal.
 - (iv) If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER. You must also discard any specimen the employee previously provided, including any specimen that is "out of temperature range" or shows signs of tampering. In the remarks section of the CCF that you will distribute to the MRO and DER, note the fact that the employee provided an "out of temperature range specimen" or "specimen that shows signs of tampering" and that it was discarded because the employee did not provide a second sufficient specimen.

- (2) As the collector, you must do the following when continuing with an oral fluid specimen collection under this section:
- (i) If the employee demonstrates an inability to provide a specimen after 15 minutes of using the collection device, and if the donor states that he or she could provide a specimen after drinking some fluids, urge the employee to drink (up to 8 ounces) and wait an additional 10 minutes before beginning the next specimen collection (a period of up to one hour must be provided, or until the donor has provided a sufficient oral fluid specimen, whichever occurs first). If the employee simply needs more time before attempting to provide an oral fluid specimen, the employee is not required to drink any fluids during the one-hour wait time. It is not a refusal to test if the employee declines to drink. The employee must remain at the collection site, in a monitored area designated by the collector, during the wait period.
 - (ii) If the employee has not provided a sufficient specimen within one hour of the first unsuccessful attempt to provide the specimen, you must discontinue the collection, note the fact on the "Remarks" line of the CCF (Step 2), and immediately notify the DER.
- (3) Send Copy 2 of the CCF to the MRO and Copy 4 to the DER. You must send or fax these copies to the MRO and DER within 24 hours or the next business day.
- (c) As the DER, if the collector informs you that the employee has not provided a sufficient amount of specimen (see paragraph (b) of this section), you must, after consulting with the MRO, direct the employee to obtain, within five days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a urine (see paragraph (b)(1) of this section) or oral fluid (see paragraph (b)(2) of this section) sufficient specimen, but not both. The evaluation and MRO determination required by this section only applies to the oral fluid or the urine insufficient specimen that was the final methodology at the collection site. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
- (1) As the MRO, if another physician will perform the evaluation, you must provide the other physician with the following information and instructions:
- (i) That the employee was required to take a DOT drug test, but was unable to provide a sufficient amount of specimen to complete the test;
 - (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required drug test;
 - (iii) That the referral physician must agree to follow the requirements of paragraphs (d) through (g) of this section.
- (2) [Reserved]
- (d) As the referral physician conducting this evaluation, you must recommend that the MRO make one of the following determinations:
- (1) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:
 - (i) Check "Test Cancelled" (Step 6) on the CCF; and
 - (ii) Sign and date the CCF.
 - (2) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. As the MRO, if you accept this recommendation, you must:
 - (i) Check the "Refusal to Test" box and "Other" box in Step 6 on Copy 2 of the CCF and note the reason next to the "Other" box and on the "Remarks" lines, as needed.
 - (ii) Sign and date the CCF.
- (e) For purposes of this paragraph, a medical condition includes an ascertainable physiological condition (e.g., a urinary system dysfunction in the case of a urine test or autoimmune disorder in the case of an oral fluid test), or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or dehydration.

- (f) As the referral physician making the evaluation, after completing your evaluation, you must provide a written statement of your recommendations and the basis for them to the MRO. You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (g) If, as the referral physician making this evaluation in the case of a pre-employment, return-to-duty, or follow-up test, you determine that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of specimen for a very long or indefinite period of time, you must set forth your determination and the reasons for it in your written statement to the MRO. As the MRO, upon receiving such a report, you must follow the requirements of § 40.195, where applicable.
- (h) As the MRO, you must seriously consider and assess the referral physician's recommendations in making your determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of specimen. You must report your determination to the DER in writing as soon as you make it.
- (i) As the employer, when you receive a report from the MRO indicating that a test is cancelled as provided in paragraph (d)(1) of this section, you take no further action with respect to the employee. If the test reason was 'random', the employee remains in the random testing pool.

[88 FR 27647, May 2, 2023]

§ 40.195 What happens when an individual is unable to provide a sufficient amount of specimen for a pre-employment, follow-up, or return-to-duty test because of a permanent or long-term medical condition?

- (a) This section concerns a situation in which an employee has a medical condition that precludes him or her from providing a sufficient specimen for a pre-employment follow-up or return-to-duty test and the condition involves a permanent or long-term disability. As the MRO in this situation, you must do the following:
 - (1) You must determine if there is clinical evidence that the individual is an illicit drug user. You must make this determination by personally conducting, or causing to be conducted, a medical evaluation and through consultation with the employee's physician and/or the physician who conducted the evaluation under § 40.193(d).
 - (2) If you do not personally conduct the medical evaluation, you must ensure that one is conducted by a licensed physician acceptable to you.
 - (3) For purposes of this section, the MRO or the physician conducting the evaluation may conduct an alternative test (e.g., blood) as part of the medically appropriate procedures in determining clinical evidence of drug use.
- (b) If the medical evaluation reveals no clinical evidence of drug use, as the MRO, you must report the result to the employer as a negative test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state the basis for the determination that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and for the determination that no signs and symptoms of drug use exist.
 - (1) Check "Negative" (Step 6) on the CCF.
 - (2) Sign and date the CCF.
- (c) If the medical evaluation reveals clinical evidence of drug use, as the MRO, you must report the result to the employer as a cancelled test with written notations regarding results of both the evaluation conducted under § 40.193(d) and any further medical examination. This report must state that a permanent or long-term medical condition exists, making provision of a sufficient urine specimen impossible, and state the reason for the determination that signs and symptoms of drug use exist. Because this is a cancelled test, it does not serve the purposes of a negative test (*i.e.*, the employer is not authorized to allow the employee to begin or resume performing safety-sensitive functions, because a negative test is needed for that purpose).
- (d) For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever.

- (1) Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters.
- (2) Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as the permanent or long-term conditions discussed in paragraph (d)(1) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41953, Aug. 9, 2001]

§ 40.197 What happens when an employer receives a report of a dilute urine specimen?

- (a) As the employer, if the MRO informs you that a positive drug test was dilute, you simply treat the test as a verified positive test. You must not direct the employee to take another test based on the fact that the specimen was dilute.
- (b) As an employer, if the MRO informs you that a negative test was dilute, take the following action:
 - (1) If the MRO directs you to conduct a recollection under direct observation (*i.e.*, because the creatinine concentration of the specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL (see § 40.155(c)), you must do so immediately.
 - (2) Otherwise (*i.e.*, if the creatinine concentration of the dilute specimen is greater than 5 mg/dL), you may, but are not required to, direct the employee to take another test immediately.
 - (i) Such recollections must not be collected under direct observation, unless there is another basis for use of direct observation (see § 40.67 (b) and (c)).
 - (ii) You must treat all employees the same for this purpose. For example, you must not retest some employees and not others. You may, however, establish different policies for different types of tests (*e.g.*, conduct retests in pre-employment situations, but not in random test situations). You must inform your employees in advance of your decisions on these matters.
- (c) The following provisions apply to all tests you direct an employee to take under paragraph (b) of this section:
 - (1) You must ensure that the employee is given the minimum possible advance notice that he or she must go to the collection site;
 - (2) You must treat the result of the test you directed the employee to take under paragraph (b) of this section—and not a prior test—as the test result of record, on which you rely for purposes of this part;
 - (3) If the result of the test you directed the employee to take under paragraph (b)(1) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute.
 - (4) If the result of the test you directed the employee to take under paragraph (b)(2) of this section is also negative and dilute, you are not permitted to make the employee take an additional test because the result was dilute. Provided, however, that if the MRO directs you to conduct a recollection under direct observation under paragraph (b)(1) of this section, you must immediately do so.
 - (5) If the employee declines to take a test you directed him or her to take under paragraph (b) of this section, the employee has refused the test for purposes of this part and DOT agency regulations.

[68 FR 31626, May 28, 2003, as amended at 69 FR 64867, Nov. 9, 2004; 73 FR 35974, June 25, 2008]

§ 40.199 What problems always cause a drug test to be cancelled?

- (a) As the MRO, when the laboratory discovers a “fatal flaw” during its processing of incoming specimens (see § 40.83), the laboratory will report to you that the specimen has been “Rejected for Testing” (with the reason stated). You must always cancel such a test.
- (b) The following are “fatal flaws”:
 - (1) There is no CCF;
 - (2) In cases where a specimen has been collected, there is no specimen submitted with the CCF;

- (3) There is no printed collector's name and no collector's signature;
 - (4) Two separate collections are performed using one CCF;
 - (5) The specimen ID numbers on the specimen bottle and the CCF do not match;
 - (6) The specimen bottle seal is broken or shows evidence of tampering (and a split specimen cannot be re-designated, see § 40.83(h)); or
 - (7) Because of leakage or other causes, there is an insufficient amount of specimen in the primary specimen bottle for analysis and the specimens cannot be re-designated (see § 40.83(h)).
 - (8) For an oral fluid collection, the collector used an expired device at the time of collection.
 - (9) For an oral fluid collection, the collector failed to enter the expiration date in Step 4 of the CCF and the laboratory confirmed that the device was expired.
- (c) You must report the result as provided in § 40.161.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52245, Nov. 13, 2017; 88 FR 27648, May 2, 2023]

§ 40.201 What problems always cause a drug test to be cancelled and may result in a requirement for another collection?

As the MRO, you must cancel a drug test when a laboratory reports that any of the following problems have occurred. You must inform the DER that the test was cancelled. You must also direct the DER to ensure that an additional collection occurs immediately, if required by the applicable procedures specified in paragraphs (a) through (e) of this section.

- (a) The laboratory reports an "Invalid Result." You must follow applicable procedures in § 40.159 (recollection under direct observation may be required).
- (b) The laboratory reports the result as "Rejected for Testing." You must follow applicable procedures in § 40.161 (a recollection may be required).
- (c) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the drug(s)/drug metabolite(s) were not detected; adulteration criteria were not met; and/or substitution criteria were not met. You must follow the applicable procedures in § 40.187(b)—no recollection is required in this case, unless the split specimen creatinine concentration for a substituted primary specimen was greater than or equal to 2mg/dL but less than or equal to 5mg/ dL, or the primary specimen had an invalid result which was not reported to the DER. Both these cases require recollection under direct observation.
- (d) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results, and that the split specimen was invalid. You must follow the procedures in § 40.187(c)(1)—recollection under direct observation is required in this case.
- (e) The laboratory reports that the split specimen failed to reconfirm all of the primary specimen results because the split specimen was not available for testing or there was no split laboratory available to test the specimen. You must follow the applicable procedures in § 40.187(e)—recollection under direct observation is required in this case.
- (f) The examining physician has determined that there is an acceptable medical explanation of the employee's failure to provide a sufficient amount of specimen. You must follow applicable procedures in § 40.193(d)(1) (no recollection is required in this case).

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35974, June 25, 2008; 88 FR 27648, May 2, 2023]

§ 40.203 What problems cause a drug test to be cancelled unless they are corrected?

- (a) As the MRO, when a laboratory discovers a "correctable flaw" during its processing of incoming specimens (see § 40.83), the laboratory will attempt to correct it. If the laboratory is unsuccessful in this attempt, it will report to you that the specimen has been "Rejected for Testing" (with the reason stated).
- (b) The following is a "correctable flaw" that laboratories must attempt to correct: The collector's signature is omitted on the certification statement on the CCF.

- (c) As the MRO, when you discover a “correctable flaw” during your review of the CCF, you must cancel the test unless the flaw is corrected.
- (d) The following are correctable flaws that you must attempt to correct:
 - (1) The employee's signature is omitted from the certification statement, unless the employee's failure or refusal to sign is noted on the “Remarks” line of the CCF.
 - (2) The certifying scientist's signature is omitted on Copy 1 of the CCF for a positive, adulterated, substituted, or invalid test result.
 - (3) The collector uses a non-Federal form or an expired CCF for the test. This flaw may be corrected through the procedure set forth in § 40.205(b)(2), provided that the collection testing process has been conducted in accordance with the procedures in this part in an HHS-certified laboratory.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 76 FR 59578, Sept. 27, 2011; 82 FR 52246, Nov. 13, 2017]

§ 40.205 How are drug test problems corrected?

- (a) As a collector, you have the responsibility of trying to successfully complete a collection procedure for each employee.
 - (1) If, during or shortly after the collection process, you become aware of any event that prevents the completion of a valid test or collection (e.g., a procedural or paperwork error), you must try to correct the problem promptly, if doing so is practicable. You may conduct another collection as part of this effort.
 - (2) If another collection is necessary, you must begin the new collection procedure as soon as possible, using a new CCF and a new collection kit.
- (b) If, as a collector, laboratory, MRO, employer, or other person implementing these drug testing regulations, you become aware of a problem that can be corrected (see § 40.203), but which has not already been corrected under paragraph (a) of this section, you must take all practicable action to correct the problem so that the test is not cancelled.
 - (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a statement that it is true and accurate. For example, suppose you are a collector, and you forgot to make a notation on the “Remarks” line of the CCF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification and that your statement is true and accurate. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
 - (2) If the problem is the use of a non-Federal form or an expired Federal form, you must provide a signed statement (i.e., a memorandum for the record). It must state that the incorrect form contains all the information needed for a valid DOT drug test, and that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control. The statement must also list the steps you have taken to prevent future use of non-Federal forms or expired Federal forms for DOT tests. For this flaw to be corrected, the test of the specimen must have occurred at a HHS-certified laboratory where it was tested consistent with the requirements of this part. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
 - (3) You must maintain the written documentation of a correction with the CCF.
 - (4) You must mark the CCF in such a way (e.g., stamp noting correction) as to make it obvious on the face of the CCF that you corrected the flaw.
- (c) If the correction does not take place, as the MRO you must cancel the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.207 What is the effect of a cancelled drug test?

- (a) A cancelled drug test is neither positive nor negative.
 - (1) As an employer, you must not attach to a cancelled test the consequences of a positive test or other violation of a DOT drug testing regulation (e.g., removal from a safety-sensitive position).
 - (2) As an employer, you must not use a cancelled test for the purposes of a negative test to authorize the employee to perform safety-sensitive functions (i.e., in the case of a pre-employment, return-to-duty, or follow-up test).
 - (3) However, as an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part that require another test to be conducted (e.g., §§ 40.159(a)(5) and 40.187(b)(2), (c)(1), and (e)).
- (b) A cancelled test does not count toward compliance with DOT requirements (e.g., being applied toward the number of tests needed to meet the employer's minimum random testing rate).
- (c) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).
- (d) If a test is cancelled for a correctible flaw (i.e., § 40.203 or § 40.205), only the MRO who cancelled the test can reverse the cancellation and must do so within 60 days of the cancellation. After 60 days, the MRO who cancelled the test cannot reverse the cancellation without the permission of ODAPC. For example, if an MRO cancels a test because the MRO did not receive a copy of the CCF, but later receives a copy of the CCF, the MRO may reverse the decision to cancel the test within 60 days. After 60 days, the MRO must contact ODAPC for permission to reverse the cancellation. An MRO must not reverse the cancellation of a test that the laboratory has reported as rejected for testing, as described in § 40.83(g). A laboratory is not authorized to reverse a cancellation due to a fatal flaw, as described in § 40.199.

[65 FR 79526, Dec. 19, 2000, as amended at 73 FR 35975, June 25, 2008; 88 FR 27648, May 2, 2023]

§ 40.208 What problems require corrective action but do not result in the cancellation of a test?

- (a) If, as a laboratory, collector, employer, or other person implementing the DOT drug testing program, you become aware that any of the following omissions listed in paragraphs (a)(1) through (3) of this section occurred, you must take corrective action, including securing a memorandum for the record explaining the problem and taking appropriate action to ensure the problem does not recur:
 - (1) For a urine collection, the specimen temperature on the CCF was not checked and the "Remarks" line did not contain an entry regarding the temperature being out of range; or
 - (2) For an oral fluid collection, the collector failed to check the box in Step 2 of the CCF that indicates "Each Device was Within Expiration Date" but the collector entered the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
 - (3) For an oral fluid collection, the collector erred by entering the expiration date as the "Primary/Single Specimen Device Expiration Date" instead of entering the date as the "Split Specimen Device Expiration Date" in Step 4 of the CCF.
- (b) The errors listed in paragraph (a) of this section do not result in the cancellation of the test.
- (c) As an employer or service agent, the errors listed in paragraph (a) of this section, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or subpart R of this part.

[88 FR 27649, May 2, 2023]

§ 40.209 What procedural problems do not result in the cancellation of a test and do not require correction?

- (a) As a collector, laboratory, MRO, employer or other person administering the drug testing process, you must document any errors in the testing process of which you become aware, even if they are not considered problems that will cause a test to be cancelled as listed in this subpart. Decisions about the ultimate impact of these errors

will be determined by other administrative or legal proceedings, subject to the limitations of paragraph (b) of this section.

- (b) No person concerned with the testing process may declare a test cancelled based on an error that does not have a significant adverse effect on the right of the employee to have a fair and accurate test. Matters that do not result in the cancellation of a test include, but are not limited to, the following:
- (1) A minor administrative mistake (e.g., the omission of the employee's middle initial, a transposition of numbers in the employee's SSN or Employee ID No., the omission of the DOT Agency in Step 1–D of the CCF.)
 - (2) An error that does not affect employee protections under this part (e.g., the collector's failure to add bluing agent to the toilet bowl, which adversely affects only the ability of the collector to detect tampering with the specimen by the employee);
 - (3) The collection of a specimen by a collector who is required to have been trained (see § 40.33 or 40.35), but who has not met this requirement;
 - (4) A delay in the collection process (see § 40.61(a));
 - (5) Verification of a test result by an MRO who has the basic credentials to be qualified as an MRO (see § 40.121(a) through (b)) but who has not met training and/or documentation requirements (see § 40.121(c) through (e));
 - (6) The failure to directly observe or monitor a collection that the rule requires or permits to be directly observed or monitored, or the unauthorized use of direct observation or monitoring for a collection;
 - (7) The fact that a test was conducted in a facility that does not meet the requirements of § 40.42;
 - (8) If the specific name of the courier on the CCF is omitted or erroneous;
 - (9) Personal identifying information is inadvertently contained on the CCF (e.g., the employee signs his or her name on Copy 1); or
 - (10) Claims that the employee was improperly selected for testing.
 - (11) The failure to use a new CCF for a second collection after an insufficient specimen was conducted under a different methodology (e.g., failing to use a new CCF for an oral fluid test after an insufficient quantity of urine was produced on a urine test.)
- (c) As an employer or service agent, these types of errors, even though not sufficient to cancel a drug test result, may subject you to enforcement action under DOT agency regulations or action under Subpart R of this part.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 59108, Sept. 27, 2010; 88 FR 27649, May 2, 2023]

§ 40.210 What kinds of drug tests are permitted under the regulations?

Both urine and oral fluid specimens are authorized for collection and testing under this part. An employer can use one or the other, but not both at the beginning of the testing event. For example, if an employee is sent for a test, either a urine or oral fluid specimen can be collected, but not both simultaneously. However, if there is a problem in the collection that necessitates a second collection (e.g., insufficient quantity of urine, temperature out of range, or insufficient saliva), then a different specimen type could be chosen by the employer (i.e., through a standing order or a discussion with the collector) or its service agent (i.e., if there is no standing order and the service agent cannot contact the DER) to complete the collection process for the testing event. Only urine and oral fluid specimens screened and confirmed at HHS-certified laboratories (see § 40.81) are allowed for drug testing under this part. Point-of-collection (POC) urine, POC oral fluid drug testing, hair testing, or instant tests are not authorized.

[88 FR 27649, May 2, 2023]

Subpart J—Alcohol Testing Personnel

§ 40.211 Who conducts DOT alcohol tests?

- (a) Screening test technicians (STTs) and breath alcohol technicians (BATs) meeting their respective requirements of this subpart are the only people authorized to conduct DOT alcohol tests.

- (b) An STT can conduct only alcohol screening tests, but a BAT can conduct alcohol screening and confirmation tests.
- (c) As a BAT- or STT-qualified immediate supervisor of a particular employee, you may not act as the STT or BAT when that employee is tested, unless no other STT or BAT is available and DOT agency regulations do not prohibit you from doing so.

§ 40.213 What training requirements must STTs and BATs meet?

To be permitted to act as a BAT or STT in the DOT alcohol testing program, you must meet each of the requirements of this section:

- (a) You must be knowledgeable about the alcohol testing procedures in this part and the current DOT guidance. Procedures and guidance are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, 202-366-3784, or on the ODAPC Web site, <http://www.transportation.gov/odapc>). You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at (<https://www.transportation.gov/odapc/get-odapc-email-updates>).
- (b) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (b).
 - (1) Qualification training must be in accordance with the DOT Model BAT or STT Course, as applicable. The DOT Model Courses are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue, SE., Washington DC, 20590, 202-366-3784, or on the ODAPC web site, <http://www.dot.gov/ost/dapc>). The training can also be provided using a course of instruction equivalent to the DOT Model Courses. On request, ODAPC will review BAT and STT instruction courses for equivalency.
 - (2) Qualification training must include training to proficiency in using the alcohol testing procedures of this part and in the operation of the particular alcohol testing device(s) (*i.e.*, the ASD(s) or EBT(s)) you will be using.
 - (3) The training must emphasize that you are responsible for maintaining the integrity of the testing process, ensuring the privacy of employees being tested, and avoiding conduct or statements that could be viewed as offensive or inappropriate.
 - (4) The instructor must be an individual who has demonstrated necessary knowledge, skills, and abilities by regularly conducting DOT alcohol tests as an STT or BAT, as applicable, for a period of at least a year, who has conducted STT or BAT training, as applicable, under this part for a year, or who has successfully completed a "train the trainer" course.
- (c) **Initial Proficiency Demonstration.** Following your completion of qualification training under paragraph (b) of this section, you must demonstrate proficiency in alcohol testing under this part by completing seven consecutive error-free mock tests (BATs) or five consecutive error-free tests (STTs).
 - (1) Another person must monitor and evaluate your performance, in person or by a means that provides real-time observation and interaction between the instructor and trainee, and attest in writing that the mock collections are "error-free." This person must be an individual who meets the requirements of paragraph (b)(4) of this section.
 - (2) These tests must use the alcohol testing devices (*e.g.*, EBT(s) or ASD(s)) that you will use as a BAT or STT.
 - (3) If you are an STT who will be using an ASD that indicates readings by changes, contrasts, or other readings in color, you must demonstrate as part of the mock test that you are able to discern changes, contrasts, or readings correctly.
- (d) You must meet the requirements of paragraphs (b) and (c) of this section before you begin to perform STT or BAT functions.
- (e) **Refresher training.** No less frequently than every five years from the date on which you satisfactorily complete the requirements of paragraphs (b) and (c) of this section, you must complete refresher training that meets all the requirements of paragraphs (b) and (c) of this section.
- (f) **Error Correction Training.** If you make a mistake in the alcohol testing process that causes a test to be cancelled (*i.e.*, a fatal or uncorrected flaw), you must undergo error correction training. This training must occur within 30 days of the date you are notified of the error that led to the need for retraining.

- (1) Error correction training must be provided and your proficiency documented in writing by a person who meets the requirements of paragraph (b)(4) of this section.
- (2) Error correction training is required to cover only the subject matter area(s) in which the error that caused the test to be cancelled occurred.
- (3) As part of the error correction training, you must demonstrate your proficiency in the alcohol testing procedures of this part by completing three consecutive error-free mock tests. The mock tests must include one uneventful scenario and two scenarios related to the area(s) in which your error(s) occurred. The person providing the training must monitor and evaluate your performance and attest in writing that the mock tests were error-free.
- (g) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are negotiating to use your services.
- (h) **Other persons who may serve as BATs or STTs.**
 - (1) Anyone meeting the requirements of this section to be a BAT may act as an STT, provided that the individual has demonstrated initial proficiency in the operation of the ASD that he or she is using, as provided in paragraph (c) of this section.
 - (2) Law enforcement officers who have been certified by state or local governments to conduct breath alcohol testing are deemed to be qualified as BATs. They are not required to also complete the training requirements of this section in order to act as BATs. In order for a test conducted by such an officer to be accepted under DOT alcohol testing requirements, the officer must have been certified by a state or local government to use the EBT or ASD that was used for the test.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 5244, Feb. 2, 2010; 82 FR 52246, Nov. 13, 2017]

§ 40.215 What information about the DER do employers have to provide to BATs and STTs?

As an employer, you must provide to the STTs and BATs the name and telephone number of the appropriate DER (and C/TPA, where applicable) to contact about any problems or issues that may arise during the testing process.

§ 40.217 Where is other information on the role of STTs and BATs found in this regulation?

You can find other information on the role and functions of STTs and BATs in the following sections of this part:

- § 40.3—Definitions.
- § 40.223—Responsibility for supervising employees being tested.
- §§ 40.225–40.227—Use of the alcohol testing form.
- §§ 40.241–40.245—Screening test procedures with ASDs and EBTs.
- §§ 40.251–40.255—Confirmation test procedures.
- § 40.261—Refusals to test.
- §§ 40.263–40.265—Insufficient saliva or breath.
- § 40.267—Problems requiring cancellation of tests.
- §§ 40.269–40.271—Correcting problems in tests.

Subpart K—Testing Sites, Forms, Equipment and Supplies Used in Alcohol Testing

§ 40.221 Where does an alcohol test take place?

- (a) A DOT alcohol test must take place at an alcohol testing site meeting the requirements of this section.
- (b) If you are operating an alcohol testing site, you must ensure that it meets the security requirements of § 40.223.
- (c) If you are operating an alcohol testing site, you must ensure that it provides visual and aural privacy to the employee being tested, sufficient to prevent unauthorized persons from seeing or hearing test results.
- (d) If you are operating an alcohol testing site, you must ensure that it has all needed personnel, materials, equipment, and facilities to provide for the collection and analysis of breath and/or saliva samples, and a suitable clean surface for writing.

- (e) If an alcohol testing site fully meeting all the visual and aural privacy requirements of paragraph (c) is not readily available, this part allows a reasonable suspicion or post-accident test to be conducted at a site that partially meets these requirements. In this case, the site must afford visual and aural privacy to the employee to the greatest extent practicable.
- (f) An alcohol testing site can be in a medical facility, a mobile facility (e.g., a van), a dedicated collection facility, or any other location meeting the requirements of this section.

§ 40.223 What steps must be taken to protect the security of alcohol testing sites?

- (a) If you are a BAT, STT, or other person operating an alcohol testing site, you must prevent unauthorized personnel from entering the testing site.
 - (1) The only people you are to treat as authorized persons are employees being tested, BATs, STTs, and other alcohol testing site workers, DERs, employee representatives authorized by the employer (e.g., on the basis of employer policy or labor-management agreement), and DOT agency representatives.
 - (2) You must ensure that all persons are under the supervision of a BAT or STT at all times when permitted into the site.
 - (3) You may remove any person who obstructs, interferes with, or causes unnecessary delay in the testing process.
- (b) As the BAT or STT, you must not allow any person other than you, the employee, or a DOT agency representative to actually witness the testing process (see §§ 40.241–40.255).
- (c) If you are operating an alcohol testing site, you must ensure that when an EBT or ASD is not being used for testing, you store it in a secure place.
- (d) If you are operating an alcohol testing site, you must ensure that no one other than BATs or other employees of the site have access to the site when an EBT is unsecured.
- (e) As a BAT or STT, to avoid distraction that could compromise security, you are limited to conducting an alcohol test for only one employee at a time.
 - (1) When an EBT screening test on an employee indicates an alcohol concentration of 0.02 or higher, and the same EBT will be used for the confirmation test, you are not allowed to use the EBT for a test on another employee before completing the confirmation test on the first employee.
 - (2) As a BAT who will conduct both the screening and the confirmation test, you are to complete the entire screening and confirmation process on one employee before starting the screening process on another employee.
 - (3) You are not allowed to leave the alcohol testing site while the testing process for a given employee is in progress, except to notify a supervisor or contact a DER for assistance in the case an employee or other person who obstructs, interferes with, or unnecessarily delays the testing process.

§ 40.225 What form is used for an alcohol test?

- (a) The DOT Alcohol Testing Form (ATF) must be used for every DOT alcohol test. The ATF must be a three-part carbonless manifold form. The ATF is found in appendix I to this part. You may view this form on the ODAPC web site (<http://www.transportation.gov/odapc>).
- (b) As an employer in the DOT alcohol testing program, you are not permitted to modify or revise the ATF except as follows:
 - (1) You may include other information needed for billing purposes, outside the boundaries of the form.
 - (2) You may use a ATF directly generated by an EBT which omits the space for affixing a separate printed result to the ATF, provided the EBT prints the result directly on the ATF.
 - (3) You may use an ATF that has the employer's name, address, and telephone number preprinted. In addition, a C/TPA's name, address, and telephone number may be included, to assist with negative results.

- (4) You may use an ATF in which all pages are printed on white paper. You may modify the ATF by using colored paper, or have clearly discernable borders or designation statements on Copy 2 and Copy 3. When colors are used, they must be green for Copy 2 and blue for Copy 3.
- (5) As a BAT or STT, you may add, on the "Remarks" line of the ATF, the name of the DOT agency under whose authority the test occurred.
- (6) As a BAT or STT, you may use a ATF that has your name, address, and telephone number preprinted, but under no circumstances can your signature be preprinted.
- (c) As an employer, you may use an equivalent foreign-language version of the ATF approved by ODAPC. You may use such a non-English language form only in a situation where both the employee and BAT/STT understand and can use the form in that language.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 75 FR 8529, Feb. 25, 2010; 75 FR 13009, Mar. 18, 2010; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

§ 40.227 May employers use the ATF for non-DOT tests, or non-DOT forms for DOT tests?

- (a) No, as an employer, BAT, or STT, you are prohibited from using the ATF for non-DOT alcohol tests. You are also prohibited from using non-DOT forms for DOT alcohol tests. Doing either subjects you to enforcement action under DOT agency regulations.
- (b) If the STT or BAT, either by mistake, or as the only means to conduct a test under difficult circumstances (e.g., post-accident test with insufficient time to obtain the ATF), uses a non-DOT form for a DOT test, the use of a non-DOT form does not, in and of itself, require the employer or service agent to cancel the test. However, in order for the test to be considered valid, a signed statement must be obtained from the STT or BAT in accordance with § 40.271(b) .

§ 40.229 What devices are used to conduct alcohol screening tests?

ASDs listed on ODAPC's Web page for "Approved Screening Devices to Measure Alcohol in Bodily Fluids" and EBTs listed on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" are the only devices you are allowed to use to conduct alcohol screening tests under this part. You may use an ASD for DOT alcohol tests only if there are instructions for its use in this part. An ASD can be used only for screening tests for alcohol, and must not be used for confirmation tests.

[82 FR 52246, Nov. 13, 2017]

§ 40.231 What devices are used to conduct alcohol confirmation tests?

- (a) EBTs on ODAPC's Web page for "Approved Evidential Breath Measurement Devices" that meet the requirements of paragraph (b) of this section are the only devices you may use to conduct alcohol confirmation tests under this part.
- (b) To conduct a confirmation test, you must use an EBT that has the following capabilities:
 - (1) Provides a printed triplicate result (or three consecutive identical copies of a result) of each breath test;
 - (2) Assigns a unique number to each completed test, which the BAT and employee can read before each test and which is printed on each copy of the result;
 - (3) Prints, on each copy of the result, the manufacturer's name for the device, its serial number, and the time of the test;
 - (4) Distinguishes alcohol from acetone at the 0.02 alcohol concentration level;
 - (5) Tests an air blank; and
 - (6) Performs an external calibration check.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

§ 40.233 What are the requirements for proper use and care of EBTs?

- (a) As an EBT manufacturer, you must submit, for NHTSA approval, a quality assurance plan (QAP) for your EBT before ODAPC places the EBT on its Web page for “Approved Evidential Breath Measurement Devices.”
 - (1) Your QAP must specify the methods used to perform external calibration checks on the EBT, the tolerances within which the EBT is regarded as being in proper calibration, and the intervals at which these checks must be performed. In designating these intervals, your QAP must take into account factors like frequency of use, environmental conditions (e.g., temperature, humidity, altitude) and type of operation (e.g., stationary or mobile).
 - (2) Your QAP must also specify the inspection, maintenance, and calibration requirements and intervals for the EBT.
- (b) As the manufacturer, you must include, with each EBT, instructions for its use and care consistent with the QAP.
- (c) As the user of the EBT (e.g., employer, service agent), you must do the following:
 - (1) You must follow the manufacturer’s instructions (see paragraph (b) of this section), including performance of external calibration checks at the intervals the instructions specify.
 - (2) In conducting external calibration checks, you must use only calibration devices appearing on NHTSA’s CPL for “Calibrating Units for Breath Alcohol Tests.”
 - (3) If an EBT fails an external check of calibration, you must take the EBT out of service. You may not use the EBT again for DOT alcohol testing until it is repaired and passes an external calibration check.
 - (4) You must maintain records of the inspection, maintenance, and calibration of EBTs as provided in § 40.333(a)(3).
 - (5) You must ensure that inspection, maintenance, and calibration of the EBT are performed by its manufacturer or a maintenance representative certified either by the manufacturer or by a state health agency or other appropriate state agency.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

§ 40.235 What are the requirements for proper use and care of ASDs?

- (a) As an ASD manufacturer, you must submit, for NHTSA approval, a QAP for your ASD before NHTSA approves it and ODAPC places the device on its Web page for “Approved Screening Devices to Measure Alcohol in Bodily Fluids”. Your QAP must specify the methods used for quality control checks, temperatures at which the ASD must be stored and used, the shelf life of the device, and environmental conditions (e.g., temperature, altitude, humidity) that may affect the ASD’s performance.
- (b) As a manufacturer, you must include with each ASD instructions for its use and care consistent with the QAP. The instructions must include directions on the proper use of the ASD, and, where applicable the time within which the device must be read, and the manner in which the reading is made.
- (c) As the user of the ADS (e.g., employer, STT), you must follow the QAP instructions.
- (d) You are not permitted to use an ASD that does not pass the specified quality control checks or that has passed its expiration date.
- (e) As an employer, with respect to breath ASDs, you must also follow the device use and care requirements of § 40.233

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52246, Nov. 13, 2017]

Subpart L—Alcohol Screening Tests

§ 40.241 What are the first steps in any alcohol screening test?

As the BAT or STT you will take the following steps to begin all alcohol screening tests, regardless of the type of testing device you are using:

- (a) When a specific time for an employee's test has been scheduled, or the collection site is at the employee's worksite, and the employee does not appear at the collection site at the scheduled time, contact the DER to determine the appropriate interval within which the DER has determined the employee is authorized to arrive. If the employee's arrival is delayed beyond that time, you must notify the DER that the employee has not reported for testing. In a situation where a C/TPA has notified an owner/operator or other individual employee to report for testing and the employee does not appear, the C/TPA must notify the employee that he or she has refused to test.
- (b) Ensure that, when the employee enters the alcohol testing site, you begin the alcohol testing process without undue delay. For example, you must not wait because the employee says he or she is not ready or because an authorized employer or employee representative is delayed in arriving.
 - (1) If the employee is also going to take a DOT drug test, you must, to the greatest extent practicable, ensure that the alcohol test is completed before the urine collection process begins.
 - (2) If the employee needs medical attention (e.g., an injured employee in an emergency medical facility who is required to have a post-accident test), do not delay this treatment to conduct a test.
- (c) Require the employee to provide positive identification. You must see a photo ID issued by the employer (other than in the case of an owner-operator or other self-employer individual) or a Federal, state, or local government (e.g., a driver's license). You may not accept faxes or photocopies of identification. Positive identification by an employer representative (not a co-worker or another employee being tested) is also acceptable. If the employee cannot produce positive identification, you must contact a DER to verify the identity of the employee.
- (d) If the employee asks, provide your identification to the employee. Your identification must include your name and your employer's name but is not required to include your picture, address, or telephone number.
- (e) Explain the testing procedure to the employee, including showing the employee the instructions on the back of the ATF.
- (f) Complete Step 1 of the ATF.
- (g) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.

§ 40.243 What is the procedure for an alcohol screening test using an EBT or non-evidential breath ASD?

As the BAT or STT, you must take the following steps:

- (a) Select, or allow the employee to select, an individually wrapped or sealed mouthpiece from the testing materials.
- (b) Open the individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) Instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (d) Show the employee the displayed test result.
- (e) If the device is one that prints the test number, testing device name and serial number, time, and result directly onto the ATF, you must check to ensure that the information has been printed correctly onto the ATF.
- (f) If the device is one that prints the test number, testing device name and serial number, time and result, but on a separate printout rather than directly onto the ATF, you must affix the printout of the information to the designated space on the ATF with tamper-evident tape or use a self-adhesive label that is tamper-evident.
- (g) If the device is one that does not print the test number, testing device name and serial number, time, and result, or it is a device not being used with a printer, you must record this information in Step 3 of the ATF.

§ 40.245 What is the procedure for an alcohol screening test using a saliva ASD or a breath tube ASD?

- (a) As the STT or BAT, you must take the following steps when using the saliva ASD:

- (1) Check the expiration date on the device or on the package containing the device and show it to the employee. You may not use the device after its expiration date.
- (2) Open an individually wrapped or sealed package containing the device in the presence of the employee.
- (3) Offer the employee the opportunity to use the device. If the employee uses it, you must instruct the employee to insert it into his or her mouth and use it in a manner described by the device's manufacturer.
- (4) If the employee chooses not to use the device, or in all cases in which a new test is necessary because the device did not activate (see paragraph (a)(7) of this section), you must insert the device into the employee's mouth and gather saliva in the manner described by the device's manufacturer. You must wear single-use examination or similar gloves while doing so and change them following each test.
- (5) When the device is removed from the employee's mouth, you must follow the manufacturer's instructions regarding necessary next steps in ensuring that the device has activated.
- (6)
 - (i) If you were unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section (e.g., the device breaks, you drop the device on the floor), you must discard the device and conduct a new test using a new device.
 - (ii) The new device you use must be one that has been under your control or that of the employee before the test.
 - (iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)
 - (iv) You must offer the employee the choice of using the device or having you use it unless the employee, in the opinion of the STT or BAT, was responsible (e.g., the employee dropped the device) for the new test needing to be conducted.
 - (v) If you are unable to successfully follow the procedures of paragraphs (a)(3) through (a)(5) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
 - (vi) You must then direct the employee to take a new test immediately, using an EBT for the screening test.
- (7) If you are able to successfully follow the procedures of paragraphs (a)(3)–(a)(5) of this section, but the device does not activate, you must discard the device and conduct a new test, in the same manner as provided in paragraph (a)(6) of this section. In this case, you must place the device into the employee's mouth to collect saliva for the new test.
- (8) You must read the result displayed on the device no sooner than the device's manufacturer instructs. In all cases the result displayed must be read within 15 minutes of the test. You must then show the device and its reading to the employee and enter the result on the ATF.
- (9) You must never re-use devices, swabs, gloves or other materials used in saliva testing.
- (10) You must note the fact that you used a saliva ASD in Step 3 of the ATF.
- (b) As the STT or BAT, you must take the following steps when using the breath tube ASD:
 - (1) Check the expiration date on the detector device and the electronic analyzer or on the package containing the device and the analyzer and show it to the employee. You must not use the device or the analyzer after their expiration date. You must not use an analyzer which is not specifically pre-calibrated for the device being used in the collection.
 - (2) Remove the device from the package and secure an inflation bag onto the appropriate end of the device, as directed by the manufacturer on the device's instructions.
 - (3) Break the tube's ampoule in the presence of the employee.
 - (4) Offer the employee the opportunity to use the device. If the employee chooses to use (e.g. hold) the device, instruct the employee to blow forcefully and steadily into the blowing end of device until the inflation bag fills with air (approximately 12 seconds).

- (5) If the employee chooses not to hold the device, you must hold it and provide the use instructions in paragraph (b)(4) of this section.
- (6) When the employee completes the breath process, take the device from the employee (or if you were holding it, remove it from the employee's mouth), remove the inflation bag, and prepare the device to be read by the analyzer in accordance with the manufacturer's directions.
- (7)
 - (i) If you were unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section (e.g., the device breaks apart, the employee did not fill the inflation bag), you must discard the device and conduct a new test using a new one.
 - (ii) The new device you use must be one that has been under your control or that of the employer before the test.
 - (iii) You must note on the "Remarks" line of the ATF the reason for the new test. (Note: You may continue using the same ATF with which you began the test.)
 - (iv) You must offer the employee the choice of holding the device or having you hold it unless the employee, in your opinion, was responsible (e.g., the employee failed to fill the inflation bag) for the new test needing to be conducted.
 - (v) If you are unable to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section on the new test, you must end the collection and put an explanation on the "Remarks" line of the ATF.
 - (vi) You must then direct the employee to take a new test immediately, using another type of ASD (e.g., saliva device) or an EBT.
- (8) If you were able to successfully follow the procedures of paragraphs (b)(4) through (b)(6) of this section and after having waited the required amount of time directed by the manufacturer for the detector device to incubate, you must place the device in the analyzer in accordance with the manufacturer's directions. The result must be read from the analyzer no earlier than the required incubation time of the device. In all cases, the result must be read within 15 minutes of the test.
- (9) You must follow the manufacturer's instructions for determining the result of the test. You must show the analyzer result to the employee and record the result on Step 3 of the ATF.
- (10) You must never re-use detector devices or any gloves used in breath tube testing. The inflation bag must be voided of air following removal from a device. Inflation bags and electronic analyzers may be re-used but only in accordance with the manufacturer's directions.
- (11) You must note the fact that you used a breath tube device in Step 3 of the ATF.

[67 FR 61522, Oct. 1, 2002, as amended at 72 FR 1299, Jan. 11, 2007]

§ 40.247 What procedures does the BAT or STT follow after a screening test result?

- (a) If the test result is an alcohol concentration of less than 0.02, as the BAT or STT, you must do the following:
 - (1) Sign and date Step 3 of the ATF; and
 - (2) Transmit the result to the DER in a confidential manner, as provided in § 40.255 .
- (b) If the test result is an alcohol concentration of 0.02 or higher, as the BAT or STT, you must direct the employee to take a confirmation test.
 - (1) If you are the BAT who will conduct the confirmation test, you must then conduct the test using the procedures beginning at § 40.251 .
 - (2) If you are not the BAT who will conduct the confirmation test, direct the employee to take a confirmation test, sign and date Step 3 of the ATF, and give the employee Copy 2 of the ATF.
 - (3) If the confirmation test will be performed at a different site from the screening test, you must take the following additional steps:

- (i) Advise the employee not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
 - (ii) Tell the employee the reason for the waiting period required by § 40.251(a) (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (iii) Explain that following your instructions concerning the waiting period is to the employee's benefit;
 - (iv) Explain that the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed;
 - (v) Note on the "Remarks" line of the ATF that the waiting period instructions were provided;
 - (vi) Instruct the person accompanying the employee to carry a copy of the ATF to the BAT who will perform the confirmation test; and
 - (vii) Ensure that you or another BAT, STT, or employer representative observe the employee as he or she is transported to the confirmation testing site. You must direct the employee not to attempt to drive a motor vehicle to the confirmation testing site.
- (c) If the screening test is invalid, you must, as the BAT or STT, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, repeat the testing process (see § 40.271).

Subpart M—Alcohol Confirmation Tests

§ 40.251 What are the first steps in an alcohol confirmation test?

As the BAT for an alcohol confirmation test, you must follow these steps to begin the confirmation test process:

- (a) You must carry out a requirement for a waiting period before the confirmation test, by taking the following steps:
 - (1) You must ensure that the waiting period lasts at least 15 minutes, starting with the completion of the screening test. After the waiting period has elapsed, you should begin the confirmation test as soon as possible, but not more than 30 minutes after the completion of the screening test.
 - (i) If the confirmation test is taking place at a different location from the screening test (see § 40.247(b)(3)) the time of transit between sites counts toward the waiting period if the STT or BAT who conducted the screening test provided the waiting period instructions.
 - (ii) If you cannot verify, through review of the ATF, that waiting period instructions were provided, then you must carry out the waiting period requirement.
 - (iii) You or another BAT or STT, or an employer representative, must observe the employee during the waiting period.
 - (2) Concerning the waiting period, you must tell the employee:
 - (i) Not to eat, drink, put anything (e.g., cigarette, chewing gum) into his or her mouth, or belch;
 - (ii) The reason for the waiting period (i.e., to prevent an accumulation of mouth alcohol from leading to an artificially high reading);
 - (iii) That following your instructions concerning the waiting period is to the employee's benefit; and
 - (iv) That the confirmation test will be conducted at the end of the waiting period, even if the instructions have not been followed.
 - (3) If you become aware that the employee has not followed the instructions, you must note this on the "Remarks" line of the ATF.
- (b) If you did not conduct the screening test for the employee, you must require positive identification of the employee, explain the confirmation procedures, and use a new ATF. You must note on the "Remarks" line of the ATF that a different BAT or STT conducted the screening test.
- (c) Complete Step 1 of the ATF.

- (d) Direct the employee to complete Step 2 on the ATF and sign the certification. If the employee refuses to sign this certification, you must document this refusal on the "Remarks" line of the ATF and immediately notify the DER. This is a refusal to test.
- (e) Even if more than 30 minutes have passed since the screening test result was obtained, you must begin the confirmation test procedures in § 40.253, not another screening test.
- (f) You must note on the "Remarks" line of the ATF the time that elapsed between the two events, and if the confirmation test could not begin within 30 minutes of the screening test, the reason why.
- (g) Beginning the confirmation test procedures after the 30 minutes have elapsed does not invalidate the screening or confirmation tests, but it may constitute a regulatory violation subject to DOT agency sanction.

§ 40.253 What are the procedures for conducting an alcohol confirmation test?

As the BAT conducting an alcohol confirmation test, you must follow these steps in order to complete the confirmation test process:

- (a) In the presence of the employee, you must conduct an air blank on the EBT you are using before beginning the confirmation test and show the reading to the employee.
 - (1) If the reading is 0.00, the test may proceed. If the reading is greater than 0.00, you must conduct another air blank.
 - (2) If the reading on the second air blank is 0.00, the test may proceed. If the reading is greater than 0.00, you must take the EBT out of service.
 - (3) If you take an EBT out of service for this reason, no one may use it for testing until the EBT is found to be within tolerance limits on an external check of calibration.
 - (4) You must proceed with the test of the employee using another EBT, if one is available.
- (b) You must open a new individually wrapped or sealed mouthpiece in view of the employee and insert it into the device in accordance with the manufacturer's instructions.
- (c) You must ensure that you and the employee read the unique test number displayed on the EBT.
- (d) You must instruct the employee to blow steadily and forcefully into the mouthpiece for at least six seconds or until the device indicates that an adequate amount of breath has been obtained.
- (e) You must show the employee the result displayed on the EBT.
- (f) You must show the employee the result and unique test number that the EBT prints out either directly onto the ATF or onto a separate printout.
- (g) If the EBT provides a separate printout of the result, you must attach the printout to the designated space on the ATF with tamper-evident tape, or use a self-adhesive label that is tamper-evident.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.255 What happens next after the alcohol confirmation test result?

- (a) After the EBT has printed the result of an alcohol confirmation test, you must, as the BAT, take the following additional steps:
 - (1) Sign and date Step 3 of the ATF.
 - (2) If the alcohol confirmation test result is lower than 0.02, nothing further is required of the employee. As the BAT, you must sign and date Step 3 of the ATF.
 - (3) If the alcohol confirmation test result is 0.02 or higher, direct the employee to sign and date Step 4 of the ATF. If the employee does not do so, you must note this on the "Remarks" line of the ATF. However, this is not considered a refusal to test.

- (4) If the test is invalid, tell the employee the test is cancelled and note the problem on the "Remarks" line of the ATF. If practicable, conduct a re-test. (see § 40.271).
- (5) Immediately transmit the result directly to the DER in a confidential manner.
 - (i) You may transmit the results using Copy 1 of the ATF, in person, by telephone, or by electronic means. In any case, you must immediately notify the DER of any result of 0.02 or greater by any means (e.g., telephone or secure fax machine) that ensures the result is immediately received by the DER. You must not transmit these results through C/TPAs or other service agents.
 - (ii) If you do not make the initial transmission in writing, you must follow up the initial transmission with Copy 1 of the ATF.
- (b) As an employer, you must take the following steps with respect to the receipt and storage of alcohol test result information:
 - (1) If you receive any test results that are not in writing (e.g., by telephone or electronic means), you must establish a mechanism to establish the identity of the BAT sending you the results.
 - (2) You must store all test result information in a way that protects confidentiality.

Subpart N—Problems in Alcohol Testing

§ 40.261 What is a refusal to take an alcohol test, and what are the consequences?

- (a) As an employee, you are considered to have refused to take an alcohol test if you:
 - (1) Fail to appear for any test (except a pre-employment test) within a reasonable time, as determined by the employer, consistent with applicable DOT agency regulations, after being directed to do so by the employer. This includes the failure of an employee (including an owner-operator) to appear for a test when called by a C/TPA (see § 40.241(a));
 - (2) Fail to remain at the testing site until the testing process is complete. Provided that an employee who leaves the collection site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (3) Fail to provide an adequate amount of saliva or breath for any alcohol test required by this part or DOT agency regulations; *Provided* that an employee who does not provide an adequate amount of breath or saliva because he or she has left the testing site before the testing process commences (see § 40.243(a)) for a pre-employment test is not deemed to have refused to test. The BAT or STT is not required to inform an employee that the failure to remain at the collection site is a refusal. If an employee leaves prior to the completion of the testing process, per § 40.355(i) the employer must decide whether the employee's actions constitute a refusal;
 - (4) Fail to provide a sufficient breath specimen, and the physician has determined, through a required medical evaluation, that there was no adequate medical explanation for the failure (see § 40.265(c));
 - (5) Fail to undergo a medical examination or evaluation, as directed by the employer as part of the insufficient breath procedures outlined at § 40.265(c);
 - (6) Fail to sign the certification at Step 2 of the ATF (see §§ 40.241(g) and 40.251(d)); or
 - (7) Fail to cooperate with any part of the testing process.
- (b) As an employee, if you refuse to take an alcohol test, you incur the same consequences specified under DOT agency regulations for a violation of those DOT agency regulations. The consequences specified under DOT agency regulations for a refusal cannot be overturned or set aside by an arbitration, grievance, State court or other non-Federal forum that adjudicates the personnel decisions the employer has taken against the employee.
- (c)
 - (1) As a BAT or an STT, or as the physician evaluating a "shy lung" situation, when an employee refuses to test as provided in paragraph (a) of this section, you must terminate the portion of the testing process in which you are involved, document the refusal on the ATF (or in a separate document which you cause to be attached to

the form), immediately notify the DER by any means (e.g., telephone or secure fax machine) that ensures the refusal notification is immediately received. You must make this notification directly to the DER (not using a C/TPA as an intermediary).

- (2) As the BAT or STT, you must note the actions that may constitute a refusal in the "Remarks" line (Step 3), and sign and date the ATF. The BAT or STT does not make the final decision about whether the employee's conduct constitutes a refusal to test; the employer has the sole responsibility to decide whether a refusal occurred, as stated in § 40.355(i), the employer has a non-delegable duty to make the decision about whether the employee has refused to test.
- (d) As an employee, when you refuse to take a non-DOT test or to sign a non-DOT form, you have not refused to take a DOT test. There are no consequences under DOT agency regulations for such a refusal.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001; 88 FR 27649, May 2, 2023]

§ 40.263 What happens when an employee is unable to provide a sufficient amount of saliva for an alcohol screening test?

- (a) As the STT, you must take the following steps if an employee is unable to provide sufficient saliva to complete a test on a saliva screening device (e.g., the employee does not provide sufficient saliva to activate the device).
 - (1) You must conduct a new screening test using a new screening device.
 - (2) If the employee refuses to make the attempt to complete the new test, you must discontinue testing, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - (3) If the employee has not provided a sufficient amount of saliva to complete the new test, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
- (b) As the DER, when the STT informs you that the employee has not provided a sufficient amount of saliva (see paragraph (a)(3) of this section), you must immediately arrange to administer an alcohol test to the employee using an EBT or other breath testing device.

§ 40.265 What happens when an employee is unable to provide a sufficient amount of breath for an alcohol test?

- (a) If an employee does not provide a sufficient amount of breath to permit a valid breath test, you must take the steps listed in this section.
- (b) As the BAT or STT, you must instruct the employee to attempt again to provide a sufficient amount of breath and about the proper way to do so.
 - (1) If the employee refuses to make the attempt, you must discontinue the test, note the fact on the "Remarks" line of the ATF, and immediately notify the DER. This is a refusal to test.
 - (2) If the employee again attempts and fails to provide a sufficient amount of breath, you may provide another opportunity to the employee to do so if you believe that there is a strong likelihood that it could result in providing a sufficient amount of breath.
 - (3) When the employee's attempts under paragraph (b)(2) of this section have failed to produce a sufficient amount of breath, you must note the fact on the "Remarks" line of the ATF and immediately notify the DER.
 - (4) If you are using an EBT that has the capability of operating manually, you may attempt to conduct the test in manual mode.
 - (5) If you are qualified to use a saliva ASD and you are in the screening test stage, you may change to a saliva ASD only to complete the screening test.
- (c) As the employer, when the BAT or STT informs you that the employee has not provided a sufficient amount of breath, you must direct the employee to obtain, within five days, an evaluation from a licensed physician who is acceptable to you and who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen.
 - (1) You are required to provide the physician who will conduct the evaluation with the following information and instructions:

- (i) That the employee was required to take a DOT breath alcohol test, but was unable to provide a sufficient amount of breath to complete the test;
- (ii) The consequences of the appropriate DOT agency regulation for refusing to take the required alcohol test;
- (iii) That the physician must provide you with a signed statement of his or her conclusions; and
- (iv) That the physician, in his or her reasonable medical judgment, must base those conclusions on one of the following determinations:
 - (A) A medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. The physician must not include in the signed statement detailed information on the employee's medical condition. In this case, the test is cancelled.
 - (B) There is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of breath. This constitutes a refusal to test.
 - (C) For purposes of paragraphs (c)(1)(iv)(A) and (B) of this section, a medical condition includes an ascertainable physiological condition (e.g., a respiratory system dysfunction) or a medically documented pre-existing psychological disorder, but does not include unsupported assertions of "situational anxiety" or hyperventilation.
- (2) As the physician making the evaluation, after making your determination, you must provide a written statement of your conclusions and the basis for them to the DER directly (and not through a C/TPA acting as an intermediary). You must not include in this statement detailed information on the employee's medical condition beyond what is necessary to explain your conclusion.
- (3) Upon receipt of the report from the examining physician, as the DER you must immediately inform the employee and take appropriate action based upon your DOT agency regulations.

§ 40.267 What problems always cause an alcohol test to be cancelled?

As an employer, a BAT, or an STT, you must cancel an alcohol test if any of the following problems occur. These are "fatal flaws." You must inform the DER that the test was cancelled and must be treated as if the test never occurred. These problems are:

- (a) In the case of a screening test conducted on a saliva ASD or a breath tube ASD:
 - (1) The STT or BAT reads the result either sooner than or later than the time allotted by the manufacturer and this Part (see § 40.245(a)(8) for the saliva ASD and § 40.245(b)(8) for the breath tube ASD).
 - (2) The saliva ASD does not activate (see § 40.245(a)(7)); or
 - (3) The device is used for a test after the expiration date printed on the device or on its package (see § 40.245(a)(1) for the saliva ASD and § 40.245(b)(1) for the breath tube ASD).
 - (4) The breath tube ASD is tested with an analyzer which has not been pre-calibrated for that device's specific lot (see § 40.245(b)(1)).
- (b) In the case of a screening or confirmation test conducted on an EBT, the sequential test number or alcohol concentration displayed on the EBT is not the same as the sequential test number or alcohol concentration on the printed result (see § 40.253(c), (e) and (f)).
- (c) In the case of a confirmation test:
 - (1) The BAT conducts the confirmation test before the end of the minimum 15-minute waiting period (see § 40.251(a)(1));
 - (2) The BAT does not conduct an air blank before the confirmation test (see § 40.253(a));
 - (3) There is not a 0.00 result on the air blank conducted before the confirmation test (see § 40.253(a)(1) and (2));
 - (4) The EBT does not print the result (see § 40.253(f)); or

- (5) The next external calibration check of the EBT produces a result that differs by more than the tolerance stated in the QAP from the known value of the test standard. In this case, every result of 0.02 or above obtained on the EBT since the last valid external calibration check is cancelled (see § 40.233(a)(1) and (c)(3)).

[65 FR 79526, Dec. 19, 2000, as amended at 67 FR 61522, Oct. 1, 2002; 71 FR 49384, Aug. 23, 2006; 72 FR 1299, Jan. 11, 2007]

§ 40.269 What problems cause an alcohol test to be cancelled unless they are corrected?

As a BAT or STT, or employer, you must cancel an alcohol test if any of the following problems occur, unless they are corrected. These are "correctable flaws." These problems are:

- (a) The BAT or STT does not sign the ATF (see §§ 40.247(a)(1) and 40.255(a)(1)).
- (b) The BAT or STT fails to note on the "Remarks" line of the ATF that the employee has not signed the ATF after the result is obtained (see § 40.255(a)(3)).
- (c) The BAT or STT uses a non-DOT form for the test (see § 40.225(a)).

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006]

§ 40.271 How are alcohol testing problems corrected?

- (a) As a BAT or STT, you have the responsibility of trying to complete successfully an alcohol test for each employee.
- (1) If, during or shortly after the testing process, you become aware of any event that will cause the test to be cancelled (see § 40.267), you must try to correct the problem promptly, if practicable. You may repeat the testing process as part of this effort.
- (2) If repeating the testing process is necessary, you must begin a new test as soon as possible. You must use a new ATF, a new sequential test number, and, if needed, a new ASD and/or a new EBT. It is permissible to use additional technical capabilities of the EBT (e.g., manual operation) if you have been trained to do so in accordance with § 40.213(c).
- (3) If repeating the testing process is necessary, you are not limited in the number of attempts to complete the test, provided that the employee is making a good faith effort to comply with the testing process.
- (4) If another testing device is not available for the new test at the testing site, you must immediately notify the DER and advise the DER that the test could not be completed. As the DER who receives this information, you must make all reasonable efforts to ensure that the test is conducted at another testing site as soon as possible.
- (b) If, as an STT, BAT, employer or other service agent administering the testing process, you become aware of a "correctable flaw" (see § 40.269) that has not already been corrected, you must take all practicable action to correct the problem so that the test is not cancelled.
- (1) If the problem resulted from the omission of required information, you must, as the person responsible for providing that information, supply in writing the missing information and a signed statement that it is true and accurate. For example, suppose you are a BAT and you forgot to make a notation on the "Remarks" line of the ATF that the employee did not sign the certification. You would, when the problem is called to your attention, supply a signed statement that the employee failed or refused to sign the certification after the result was obtained, and that your signed statement is true and accurate.
- (2) If the problem is the use of a non-DOT form, you must, as the person responsible for the use of the incorrect form, certify in writing that the incorrect form contains all the information needed for a valid DOT alcohol test. You must also provide a signed statement that the incorrect form was used inadvertently or as the only means of conducting a test, in circumstances beyond your control, and the steps you have taken to prevent future use of non-DOT forms for DOT tests. You must supply this information on the same business day on which you are notified of the problem, transmitting it by fax or courier.
- (c) If you cannot correct the problem, you must cancel the test.

§ 40.273 What is the effect of a cancelled alcohol test?

- (a) A cancelled alcohol test is neither positive nor negative.
 - (1) As an employer, you must not attach to a cancelled test the consequences of a test result that is 0.02 or greater (e.g., removal from a safety-sensitive position).
 - (2) As an employer, you must not use a cancelled test in a situation where an employee needs a test result that is below 0.02 (e.g., in the case of a return-to-duty or follow-up test to authorize the employee to perform safety-sensitive functions).
 - (3) As an employer, you must not direct a recollection for an employee because a test has been cancelled, except in the situations cited in paragraph (a)(2) of this section or other provisions of this part.
- (b) A cancelled test does not count toward compliance with DOT requirements, such as a minimum random testing rate.
- (c) When a test must be cancelled, if you are the BAT, STT, or other person who determines that the cancellation is necessary, you must inform the affected DER within 48 hours of the cancellation.
- (d) A cancelled DOT test does not provide a valid basis for an employer to conduct a non-DOT test (i.e., a test under company authority).

§ 40.275 What is the effect of procedural problems that are not sufficient to cancel an alcohol test?

- (a) As an STT, BAT, employer, or a service agent administering the testing process, you must document any errors in the testing process of which you become aware, even if they are not “fatal flaws” or “correctable flaws” listed in this subpart. Decisions about the ultimate impact of these errors will be determined by administrative or legal proceedings, subject to the limitation of paragraph (b) of this section.
- (b) No person concerned with the testing process may declare a test cancelled based on a mistake in the process that does not have a significant adverse effect on the right of the employee to a fair and accurate test. For example, it is inconsistent with this part to cancel a test based on a minor administrative mistake (e.g., the omission of the employee's middle initial) or an error that does not affect employee protections under this part. Nor does the failure of an employee to sign in Step 4 of the ATF result in the cancellation of the test. Nor is a test to be cancelled on the basis of a claim by an employee that he or she was improperly selected for testing.
- (c) As an employer, these errors, even though not sufficient to cancel an alcohol test result, may subject you to enforcement action under DOT agency regulations.

§ 40.277 Are alcohol tests other than saliva or breath permitted under these regulations?

No, other types of alcohol tests (e.g., blood and urine) are not authorized for testing done under this part. Only saliva or breath for screening tests and breath for confirmation tests using approved devices are permitted.

Subpart O—Substance Abuse Professionals and the Return-to-Duty Process

§ 40.281 Who is qualified to act as a SAP?

To be permitted to act as a SAP in the DOT drug and alcohol testing program, you must meet each of the requirements of this section:

- (a) **Credentials.** You must have one of the following credentials:
 - (1) You are a licensed physician (Doctor of Medicine or Osteopathy);
 - (2) You are a licensed or certified social worker;
 - (3) You are a licensed or certified psychologist;
 - (4) You are a licensed or certified employee assistance professional;
 - (5) You are a state-licensed or certified marriage and family therapist; or

- (6) You are a drug and alcohol counselor certified by an organization listed at <https://www.transportation.gov/odapc/sap>.
- (b) **Basic knowledge.** You must be knowledgeable in the following areas:
- (1) You must be knowledgeable about and have clinical experience in the diagnosis and treatment of alcohol and controlled substances-related disorders.
 - (2) You must be knowledgeable about the SAP function as it relates to employer interests in safety-sensitive duties.
 - (3) You must be knowledgeable about this part, the DOT agency regulations applicable to the employers for whom you evaluate employees, and the DOT SAP Guidelines. You must keep current on any changes to these materials. You must subscribe to the ODAPC list-serve at <https://www.transportation.gov/odapc/get-odapc-email-updates>. DOT agency regulations, DOT SAP Guidelines, and other materials are available from ODAPC (Department of Transportation, 1200 New Jersey Avenue SE., Washington DC, 20590 (202-366-3784), or on the ODAPC Web site (<http://www.transportation.gov/odapc>).
- (c) **Qualification training.** You must receive qualification training meeting the requirements of this paragraph (c).
- (1) Qualification training must provide instruction on the following subjects:
 - (i) Background, rationale, and coverage of the Department's drug and alcohol testing program;
 - (ii) 49 CFR Part 40 and DOT agency drug and alcohol testing rules;
 - (iii) Key DOT drug testing requirements, including collections, laboratory testing, MRO review, and problems in drug testing;
 - (iv) Key DOT alcohol testing requirements, including the testing process, the role of BATs and STTs, and problems in alcohol tests;
 - (v) SAP qualifications and prohibitions;
 - (vi) The role of the SAP in the return-to-duty process, including the initial employee evaluation, referrals for education and/or treatment, the follow-up evaluation, continuing treatment recommendations, and the follow-up testing plan;
 - (vii) SAP consultation and communication with employers, MROs, and treatment providers;
 - (viii) Reporting and recordkeeping requirements;
 - (ix) Issues that SAPs confront in carrying out their duties under the program.
 - (2) Following your completion of qualification training under paragraph (c)(1) of this section, you must satisfactorily complete an examination administered by a nationally-recognized professional or training organization. The examination must comprehensively cover all the elements of qualification training listed in paragraph (c)(1) of this section.
 - (3) You must meet the requirements of paragraphs (a), (b), and (c) of this section before you begin to perform SAP functions.
- (d) **Continuing education.** During each three-year period from the date on which you satisfactorily complete the examination under paragraph (c)(2) of this section, you must complete continuing education consisting of at least 12 professional development hours (e.g., CEUs) relevant to performing SAP functions.
- (1) This continuing education must include material concerning new technologies, interpretations, recent guidance, rule changes, and other information about developments in SAP practice, pertaining to the DOT program, since the time you met the qualification training requirements of this section.
 - (2) Your continuing education activities must include documentable assessment tools to assist you in determining whether you have adequately learned the material.
- (e) **Documentation.** You must maintain documentation showing that you currently meet all requirements of this section. You must provide this documentation on request to DOT agency representatives and to employers and C/TPAs who are using or contemplating using your services.

- (f) **Limitation.** If you are an otherwise qualified SAP under this part, you must abide by the geographic limitations applicable to your credential when performing remote evaluations. You must not conduct an evaluation that exceeds your geographic limitations.

[65 FR 79526, Dec. 19, 2000, as amended at 69 FR 3022, Jan. 22, 2004; 71 FR 49384; Aug. 23, 2006; 71 FR 55347, Sept. 22, 2006; 82 FR 52246, Nov. 13, 2017; 88 FR 27649, May 2, 2023]

§ 40.283 How does a certification organization obtain recognition for its members as SAPs?

- (a) If you represent a certification organization that wants DOT to authorize its certified drug and alcohol counselors to be added to § 40.281(a)(6), you may submit a written petition to DOT requesting a review of your petition for inclusion.
- (b) You must obtain the National Commission for Certifying Agencies (NCCA) accreditation before DOT will act on your petition.
- (c) You must also meet the minimum requirements of appendix G to this part before DOT will act on your petition.

[65 FR 79526, Dec. 19, 2000, as amended at 71 FR 49384, Aug. 23, 2006; 88 FR 27650, May 2, 2023]

§ 40.285 When is a SAP evaluation required?

- (a) As an employee, when you have violated DOT drug and alcohol regulations, you cannot again perform any DOT safety-sensitive duties for any employer until and unless you complete the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations. The first step in this process is a SAP evaluation.
- (b) For purposes of this subpart, a verified positive DOT drug test result, a DOT alcohol test with a result indicating an alcohol concentration of 0.04 or greater, a refusal to test (including by adulterating or substituting a specimen) or any other violation of the prohibition on the use of alcohol or drugs under a DOT agency regulation constitutes a DOT drug and alcohol regulation violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.287 What information is an employer required to provide concerning SAP services to an employee who has a DOT drug and alcohol regulation violation?

As an employer, you must provide to each employee (including an applicant or new employee) who violates a DOT drug and alcohol regulation a listing of SAPs readily available to the employee and acceptable to you, with names, addresses, and telephone numbers. You cannot charge the employee any fee for compiling or providing this list. You may provide this list yourself or through a C/TPA or other service agent.

§ 40.289 Are employers required to provide SAP and treatment services to employees?

- (a) As an employer, you are not required to provide a SAP evaluation or any subsequent recommended education or treatment for an employee who has violated a DOT drug and alcohol regulation.
- (b) However, if you offer that employee an opportunity to return to a DOT safety-sensitive duty following a violation, you must, before the employee again performs that duty, ensure that the employee receives an evaluation by a SAP meeting the requirements of § 40.281 and that the employee successfully complies with the SAP's evaluation recommendations.
- (c) Payment for SAP evaluations and services is left for employers and employees to decide and may be governed by existing management-labor agreements and health care benefits.

§ 40.291 What is the role of the SAP in the evaluation, referral, and treatment process of an employee who has violated DOT agency drug and alcohol testing regulations?

- (a) As a SAP, you are charged with:

- (1) Making a clinical assessment and evaluation to determine what assistance is needed by the employee to resolve problems associated with alcohol and/or drug use. At the SAP's discretion, this assessment or evaluation may be performed face-to-face in-person or remotely. If a SAP is not prohibited from using technology within the parameters of the SAP's State-issued license or other credential(s), a remote evaluation must be must be conducted in accordance with the following criteria:
 - (i) The technology must permit real-time audio and visual interaction between the SAP and the employee; and
 - (ii) The quality of the technology (e.g., speed of the internet connection and clarity of the video display) must be sufficient to allow the SAP to gather all the visual and audible information the SAP would otherwise gather in an in-person face-to-face interaction, while providing security to protect the confidentiality of the communications at the level expected by industry standards for remote substance abuse evaluations.
 - (2) Referring the employee to an appropriate education and/or treatment program;
 - (3) Conducting a follow-up evaluation to determine if the employee has actively participated in the education and/or treatment program and has demonstrated successful compliance with the initial assessment and evaluation recommendations. This assessment or evaluation may be performed face-to-face in-person or remotely. A face-to-face remote evaluation must meet the criteria in paragraphs (a)(1)(i) and (ii) of this section.
 - (4) Providing the DER with a follow-up drug and/or alcohol testing plan for the employee; and
 - (5) Providing the employee and employer with recommendations for continuing education and/or treatment.
- (b) As a SAP, you are not an advocate for the employer or employee. Your function is to protect the public interest in safety by professionally evaluating the employee and recommending appropriate education/treatment, follow-up tests, and aftercare.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.293 What is the SAP's function in conducting the initial evaluation of an employee?

As a SAP, for every employee who comes to you following a DOT drug and alcohol regulation violation, you must accomplish the following:

- (a) Provide a comprehensive assessment and clinical evaluation meeting the requirements of § 40.291(a)(1).
- (b) Recommend a course of education and/or treatment with which the employee must demonstrate successful compliance prior to returning to DOT safety-sensitive duty.
 - (1) You must make such a recommendation for every individual who has violated a DOT drug and alcohol regulation.
 - (2) You must make a recommendation for education and/or treatment that will, to the greatest extent possible, protect public safety in the event that the employee returns to the performance of safety-sensitive functions.
- (c) Appropriate education may include, but is not limited to, self-help groups (e.g., Alcoholics Anonymous) and community lectures, where attendance can be independently verified, and bona fide drug and alcohol education courses.
- (d) Appropriate treatment may include, but is not limited to, in-patient hospitalization, partial in-patient treatment, out-patient counseling programs, and aftercare.
- (e) You must assess and clinically evaluate each employee on an individual basis and use your professional judgment to determine education and/or treatment, as well as a follow-up testing plan unique to the needs of the individual employee. For example, do not require the same and/or substantially similar education, treatment, and/or follow-up testing plan for most of the employees you assess.
- (f) You must provide a written report directly to the DER highlighting your specific recommendations for assistance (see § 40.311(c)).
- (g) For purposes of your role in the evaluation process, you must assume that a verified positive test result has conclusively established that the employee committed a DOT drug and alcohol regulation violation. You must not take into consideration in any way, as a factor in determining what your recommendation will be, any of the

following:

- (1) A claim by the employee that the test was unjustified or inaccurate;
 - (2) Statements by the employee that attempt to mitigate the seriousness of a violation of a DOT drug or alcohol regulation (e.g., related to assertions of use of hemp oil, "medical marijuana" use, "contact positives," poppy seed ingestion, job stress); or
 - (3) Personal opinions you may have about the justification or rationale for drug and alcohol testing.
- (h) In the course of gathering information for purposes of your evaluation in the case of a drug-related violation, you may consult with the MRO. As the MRO, you are required to cooperate with the SAP and provide available information the SAP requests. It is not necessary to obtain the consent of the employee to provide this information.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.295 May employees or employers seek a second SAP evaluation if they disagree with the first SAP's recommendations?

- (a) As an employee with a DOT drug and alcohol regulation violation, when you have been evaluated by a SAP, you must not seek a second SAP's evaluation in order to obtain another recommendation.
- (b) As an employer, you must not seek a second SAP's evaluation if the employee has already been evaluated by a qualified SAP. If the employee, contrary to paragraph (a) of this section, has obtained a second SAP evaluation, as an employer you may not rely on it for any purpose under this part.

§ 40.297 Does anyone have the authority to change a SAP's initial evaluation?

- (a) Except as provided in paragraph (b) of this section, no one (e.g., an employer, employee, a managed-care provider, any service agent) may change in any way the SAP's evaluation or recommendations for assistance. For example, a third party is not permitted to make more or less stringent a SAP's recommendation by changing the SAP's evaluation or seeking another SAP's evaluation.
- (b) The SAP who made the initial evaluation may modify his or her initial evaluation and recommendations based on new or additional information (e.g., from an education or treatment program).
- (c) The SAP, who is otherwise fully qualified under this subpart, must not perform evaluations outside the geographic jurisdiction for their credential(s). If the SAP who made the evaluation exceeds their geographic jurisdiction, the employee will not be required to seek the evaluation of a second SAP.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.299 What is the SAP's role and what are the limits on a SAP's discretion in referring employees for education and treatment?

- (a) As a SAP, upon your determination of the best recommendation for assistance, you will serve as a referral source to assist the employee's entry into an education and/or treatment program.
- (b) To prevent the appearance of a conflict of interest, you must not refer an employee requiring assistance to your private practice or to a person or organization from which you receive payment or to a person or organization in which you have a financial interest. You are precluded from making referrals to entities with which you are financially associated.
- (c) There are four exceptions to the prohibitions contained in paragraph (b) of this section. You may refer an employee to any of the following providers of assistance, regardless of your relationship with them:
 - (1) A public agency (e.g., treatment facility) operated by a state, county, or municipality;
 - (2) The employer or a person or organization under contract to the employer to provide alcohol or drug treatment and/or education services (e.g., the employer's contracted treatment provider);

- (3) The sole source of therapeutically appropriate treatment under the employee's health insurance program (e.g., the single substance abuse in-patient treatment program made available by the employee's insurance coverage plan); or
- (4) The sole source of therapeutically appropriate treatment reasonably available to the employee (e.g., the only treatment facility or education program reasonably located within the general commuting area).

§ 40.301 What is the SAP's function in the follow-up evaluation of an employee?

- (a) As a SAP, after you have prescribed assistance under § 40.293, you must re-evaluate the employee to determine if the employee has successfully carried out your education and/or treatment recommendations.
 - (1) This is your way to gauge for the employer the employee's ability to demonstrate successful compliance with the education and/or treatment plan.
 - (2) Your evaluation may serve as one of the reasons the employer decides to return the employee to safety-sensitive duty.
- (b) As the SAP making the follow-up evaluation determination, you must:
 - (1) Confer with or obtain appropriate documentation from the appropriate education and/or treatment program professionals where the employee was referred; and
 - (2) Conduct a clinical interview meeting the requirements of § 40.291(a)(1) with the employee to determine if the employee demonstrates successful compliance with your initial evaluation recommendations.
- (c)
 - (1) If the employee has demonstrated successful compliance, you must provide a written report directly to the DER highlighting your clinical determination that the employee has done so with your initial evaluation recommendation (see § 40.311(d)).
 - (2) You may determine that an employee has successfully demonstrated compliance even though the employee has not yet completed the full regimen of education and/or treatment you recommended or needs additional assistance. For example, if the employee has successfully completed the 30-day in-patient program you prescribed, you may make a "successful compliance" determination even though you conclude that the employee has not yet completed the out-patient counseling you recommended or should continue in an aftercare program.
- (d)
 - (1) As the SAP, if you believe, as a result of the follow-up evaluation, that the employee has not demonstrated successful compliance with your recommendations, you must provide written notice directly to the DER (see § 40.311(e)).
 - (2) As an employer who receives the SAP's written notice that the employee has not successfully complied with the SAP's recommendations, you must not return the employee to the performance of safety-sensitive duties.
 - (3) As the SAP, you may conduct additional follow-up evaluation(s) if the employer determines that doing so is consistent with the employee's progress as you have reported it and with the employer's policy and/or labor-management agreements.
 - (4) As the employer, following a SAP report that the employee has not demonstrated successful compliance, you may take personnel action consistent with your policy and/or labor-management agreements.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.303 What happens if the SAP believes the employee needs additional treatment, aftercare, or support group services even after the employee returns to safety-sensitive duties?

- (a) As a SAP, if you believe that ongoing services (in addition to follow-up tests) are needed to assist an employee to maintain sobriety or abstinence from drug use after the employee resumes the performance of safety-sensitive duties, you must provide recommendations for these services in your follow-up evaluation report (see § 40.311(d))

(10)).

- (b) As an employer receiving a recommendation for these services from a SAP, you may, as part of a return-to-duty agreement with the employee, require the employee to participate in the recommended services. You may monitor and document the employee's participation in the recommended services. You may also make use of SAP and employee assistance program (EAP) services in assisting and monitoring employees' compliance with SAP recommendations. Nothing in this section permits an employer to fail to carry out its obligations with respect to follow-up testing (see § 40.309).
- (c) As an employee, you are obligated to comply with the SAP's recommendations for these services. If you fail or refuse to do so, you may be subject to disciplinary action by your employer.

§ 40.305 How does the return-to-duty process conclude?

- (a) As the employer, if you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you must ensure that the employee takes a return-to-duty test. This test cannot occur until after the SAP has determined that the employee has successfully complied with prescribed education and/or treatment. The employee must have a negative drug test result and/or an alcohol test with an alcohol concentration of less than 0.02 before resuming performance of safety-sensitive duties.
- (b) As an employer, you must not return an employee to safety-sensitive duties until the employee meets the conditions of paragraph (a) of this section. However, you are not required to return an employee to safety-sensitive duties because the employee has met these conditions. That is a personnel decision that you have the discretion to make, subject to collective bargaining agreements or other legal requirements.
- (c) As a SAP or MRO, you must not make a "fitness for duty" determination as part of this re-evaluation unless required to do so under an applicable DOT agency regulation. It is the employer, rather than you, who must decide whether to put the employee back to work in a safety-sensitive position.
- (d) As the employer, if a SAP who is otherwise fully qualified under this subpart performed a remote evaluation of the employee outside the geographic jurisdiction for their credential(s), the employee who they evaluated will not be required to seek the evaluation of a second SAP. If you decide that you want to permit the employee to return to the performance of safety-sensitive functions, you will proceed with the requirements of paragraph (a) of this section.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.307 What is the SAP's function in prescribing the employee's follow-up tests?

- (a) As a SAP, for each employee who has committed a DOT drug or alcohol regulation violation, and who seeks to resume the performance of safety-sensitive functions, you must establish a written follow-up testing plan. You do not establish this plan until after you determine that the employee has successfully complied with your recommendations for education and/or treatment.
- (b) You must present a copy of this plan directly to the DER (see § 40.311(d)(9)).
- (c) You are the sole determiner of the number and frequency of follow-up tests and whether these tests will be for drugs, alcohol, or both, unless otherwise directed by the appropriate DOT agency regulation. For example, if the employee had a positive drug test, but your evaluation or the treatment program professionals determined that the employee had an alcohol problem as well, you should require that the employee have follow-up tests for both drugs and alcohol.
- (d) However, you must, at a minimum, direct that the employee be subject to six unannounced follow-up tests in the first 12 months of safety-sensitive duty following the employee's return to safety-sensitive functions.
 - (1) You may require a greater number of follow-up tests during the first 12-month period of safety-sensitive duty (e.g., you may require one test a month during the 12-month period; you may require two tests per month during the first 6-month period and one test per month during the final 6-month period).
 - (2) You may also require follow-up tests during the 48 months of safety-sensitive duty following this first 12-month period.
 - (3) You are not to establish the actual dates for the follow-up tests you prescribe. The decision on specific dates to test is the employer's.

- (4) As the employer, you must not impose additional testing requirements (e.g., under company authority) on the employee that go beyond the SAP's follow-up testing plan.
- (e) The requirements of the SAP's follow-up testing plan "follow the employee" to subsequent employers or through breaks in service.

Example 1 to paragraph (e): The employee returns to duty with Employer A. Two months afterward, after completing the first two of six follow-up tests required by the SAP's plan, the employee quits his job with Employer A and begins to work in a similar position for Employer B. The employee remains obligated to complete the four additional tests during the next 10 months of safety-sensitive duty, and Employer B is responsible for ensuring that the employee does so. Employer B learns of this obligation through the inquiry it makes under § 40.25.

Example 2 to paragraph (e): The employee returns to duty with Employer A. Three months later, after the employee completes the first two of six follow-up tests required by the SAP's plan, Employer A lays the employee off for economic or seasonal employment reasons. Four months later, Employer A recalls the employee. Employer A must ensure that the employee completes the remaining four follow-up tests during the next nine months.

- (f) As the SAP, you may modify the determinations you have made concerning follow-up tests. For example, even if you recommended follow-up testing beyond the first 12-months, you can terminate the testing requirement at any time after the first year of testing. You must not, however, modify the requirement that the employee take at least six follow-up tests within the first 12 months after returning to the performance of safety-sensitive functions.
- (g) As the employer, SAP, or other service agent, you must not provide to the employee a copy of their drug and/or alcohol follow-up testing schedule prescribed by the SAP. No employer, SAP, or other service agent will indicate to the employee what the frequency or duration of the employee's follow-up testing schedule will be. The SAP can require follow-up testing for either or both drugs and alcohol for a drug-related or an alcohol-related violation.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.309 What are the employer's responsibilities with respect to the SAP's directions for follow-up tests?

- (a) As the employer, you must carry out the SAP's follow-up testing requirements. You may not allow the employee to continue to perform safety-sensitive functions unless follow-up testing is conducted as directed by the SAP.
- (b) You should schedule follow-up tests on dates of your own choosing, but you must ensure that the tests are unannounced with no discernable pattern as to their timing, and that the employee is given no advance notice.
- (c) You cannot substitute any other tests (e.g., those carried out under the random testing program) conducted on the employee for this follow-up testing requirement.
- (d) You cannot count a follow-up test that has been cancelled as a completed test. A cancelled follow-up test must be recollected.

§ 40.311 What are the requirements concerning SAP reports?

- (a) As the SAP conducting the required evaluations, you must send the written reports required by this section in writing directly to the DER and not to a third party or entity for forwarding to the DER (except as provided in § 40.355(e)). You may, however, forward the document simultaneously to the DER and to a C/TPA.
- (b) As an employer, you must ensure that you receive SAP written reports directly from the SAP performing the evaluation and that no third party or entity changed the SAP's report in any way.
- (c) The SAP's written report, following an initial evaluation that determines what level of assistance is needed to address the employee's drug and/or alcohol problems, must be on the SAP's own letterhead (and not the letterhead of another service agent) signed and dated by the SAP, and must contain the following delineated items:
 - (1) Employee's name and SSN or employee ID No.;

- (2) Employer's name and address;
 - (3) Reason for the assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the assessment;
 - (5) SAP's education and/or treatment recommendation; and
 - (6) SAP's telephone number.
- (d) The SAP's written report concerning a follow-up evaluation that determines the employee has demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
- (1) Employee's name and SSN or employee ID No.;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific violation of DOT regulations and violation date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of the initial assessment and synopsis of the treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) SAP's clinical determination as to whether the employee has demonstrated successful compliance;
 - (9) Follow-up testing plan;
 - (10) Employee's continuing care needs with specific treatment, aftercare, and/or support group services recommendations; and
 - (11) SAP's telephone number.
- (e) The SAP's written report concerning a follow-up evaluation that determines the employee has not demonstrated successful compliance must be on the SAP's own letterhead (and not the letterhead of another service agent), signed by the SAP and dated, and must contain the following items:
- (1) Employee's name and SSN or employee ID No.;
 - (2) Employer's name and address;
 - (3) Reason for the initial assessment (specific DOT violation and date);
 - (4) Date(s) and format (*i.e.*, face-to-face or remote) of initial assessment and synopsis of treatment plan;
 - (5) Name of practice(s) or service(s) providing the recommended education and/or treatment;
 - (6) Inclusive dates of employee's program participation;
 - (7) Clinical characterization of employee's program participation;
 - (8) Date(s) of the first follow-up evaluation;
 - (9) Date(s) of any further follow-up evaluation the SAP has scheduled;
 - (10) SAP's clinical reasons for determining that the employee has not demonstrated successful compliance; and
 - (11) SAP's telephone number.
- (f) As a SAP, you must also provide these written reports directly to the employee if the employee has no current employer and to the gaining DOT regulated employer in the event the employee obtains another transportation industry safety-sensitive position.
- (g) As a SAP, you are to maintain copies of your reports to employers for 5 years, and your employee clinical records in accordance with Federal, state, and local laws regarding record maintenance, confidentiality, and release of information. You must make these records available, on request, to DOT agency representatives (*e.g.*, inspectors

conducting an audit or safety investigation) and representatives of the NTSB in an accident investigation.

- (h) As an employer, you must maintain your reports from SAPs for 5 years from the date you received them.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.313 Where is other information on SAP functions and the return-to-duty process found in this regulation?

You can find other information on the role and functions of SAPs in the following sections of this part:

- § 40.3—Definition.
- § 40.347—Service agent assistance with SAP-required follow-up testing.
- § 40.355—Transmission of SAP reports.
- § 40.329(c)—Making SAP reports available to employees on request.
- Appendix E to Part 40—SAP Equivalency Requirements for Certification Organizations.

Subpart P—Confidentiality and Release of Information

§ 40.321 What is the general confidentiality rule for drug and alcohol test information?

Except as otherwise provided in this subpart, as a service agent or employer participating in the DOT drug or alcohol testing process, you are prohibited from releasing individual test results or medical information about an employee to third parties without the employee's specific written consent.

- (a) A "third party" is any person or organization to whom other subparts of this regulation do not explicitly authorize or require the transmission of information in the course of the drug or alcohol testing process.
- (b) "Specific written consent" means a statement signed by the employee that he or she agrees to the release of a particular piece of information to a particular, explicitly identified, person or organization at a particular time. "Blanket releases," in which an employee agrees to a release of a category of information (e.g., all test results) or to release information to a category of parties (e.g., other employers who are members of a C/TPA, companies to which the employee may apply for employment), are prohibited under this part.

§ 40.323 May program participants release drug or alcohol test information in connection with legal proceedings?

- (a) As an employer, you may release information pertaining to an employee's drug or alcohol test without the employee's consent in certain legal proceedings.
 - (1) These proceedings include a lawsuit (e.g., a wrongful discharge action), grievance (e.g., an arbitration concerning disciplinary action taken by the employer), or administrative proceeding (e.g., an unemployment compensation hearing) brought by, or on behalf of, an employee and resulting from a positive DOT drug or alcohol test or a refusal to test (including, but not limited to, adulterated or substituted test results).
 - (2) These proceedings also include a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information sought is relevant to the case and issues an order directing the employer to produce the information. For example, in personal injury litigation following a truck or bus collision, the court could determine that a post-accident drug test result of an employee is relevant to determining whether the driver or the driver's employer was negligent. The employer is authorized to respond to the court's order to produce the records.
- (b) In such a proceeding, you may release the information to the decisionmaker in the proceeding (e.g., the court in a lawsuit). You may release the information only with a binding stipulation that the decisionmaker to whom it is released will make it available only to parties to the proceeding.
- (c) If you are a service agent, and the employer requests its employee's drug or alcohol testing information from you to use in a legal proceeding as authorized in paragraph (a) of this section (e.g., the laboratory's data package), you must provide the requested information to the employer.
- (d) As an employer or service agent, you must immediately notify the employee in writing of any information you release under this section.

§ 40.325 [Reserved]

§ 40.327 When must the MRO report medical information gathered in the verification process?

- (a) As the MRO, you must, except as provided in paragraph (d) of this section, report drug test results and medical information you learned as part of the verification process to third parties without the employee's consent if you determine, in your reasonable medical judgment, that:
 - (1) The information is likely to result in the employee being determined to be medically unqualified under an applicable DOT agency regulation; or
 - (2) The information indicates that continued performance by the employee of his or her safety-sensitive function is likely to pose a significant safety risk.
- (b) The third parties to whom you are authorized to provide information by this section include the employer, a physician or other health care provider responsible for determining the medical qualifications of the employee under an applicable DOT agency safety regulation, a SAP evaluating the employee as part of the return to duty process (see § 40.293(g)), a DOT agency, or the National Transportation Safety Board in the course of an accident investigation.
- (c) The MRO must not report such medical information using the CCF. Instead, the MRO must provide the information in a separate written communication (e.g., letter, secure email). The information must state the specific nature of the MRO's safety concern (e.g., the effects of a medication the employee is taking, the employee's underlying medical condition that the employee disclosed to the MRO).
- (d) If the law of a foreign country (e.g., Canada) prohibits you from providing medical information to the employer, you may comply with that prohibition.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.329 What information must laboratories, MROs, and other service agents release to employees?

- (a) As an MRO or service agent you must provide, within 10 business days of receiving a written request from an employee, copies of any records pertaining to the employee's use of alcohol and/or drugs, including records of the employee's DOT-mandated drug and/or alcohol tests. You may charge no more than the cost of preparation and reproduction for copies of these records.
- (b) As a laboratory, you must provide, within 10 business days of receiving a written request from an employee, and made through the MRO, the records relating to the results of the employee's drug test (i.e., laboratory report and data package). You may charge no more than the cost of preparation and reproduction for copies of these records.
- (c) As a SAP, you must make available to an employee, on request, a copy of all SAP reports (see § 40.311). However, you must redact follow-up testing information from the report before providing it to the employee.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41954, Aug. 9, 2001]

§ 40.331 To what additional parties must employers and service agents release information?

As an employer or service agent you must release information under the following circumstances:

- (a) If you receive a specific, written consent from an employee authorizing the release of information about that employee's drug or alcohol tests to an identified person, you must provide the information to the identified person. For example, as an employer, when you receive a written request from a former employee to provide information to a subsequent employer, you must do so. In providing the information, you must comply with the terms of the employee's consent.
- (b) If you are an employer, you must, upon request of DOT agency representatives, provide the following:
 - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this

information at your principal place of business in the time required by the DOT agency.

- (3) All items in paragraph (b)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (c) If you are a service agent, you must, upon request of DOT agency representatives, provide the following:
 - (1) Access to your facilities used for this part and DOT agency drug and alcohol program functions.
 - (2) All written, printed, and computer-based drug and alcohol program records and reports (including copies of name-specific records or reports), files, materials, data, documents/documentation, agreements, contracts, policies, and statements that are required by this part and DOT agency regulations. You must provide this information at your principal place of business in the time required by the DOT agency.
 - (3) All items in paragraph (c)(2) of this section must be easily accessible, legible, and provided in an organized manner. If electronic records do not meet these standards, they must be converted to printed documentation that meets these standards.
- (d) If requested by the National Transportation Safety Board as part of an accident investigation, you must provide information concerning post-accident tests administered after the accident.
- (e) If requested by a Federal, state or local safety agency with regulatory authority over you or the employee, you must provide drug and alcohol test records concerning the employee.
- (f) Except as otherwise provided in this part, as a laboratory you must not release or provide a specimen or a part of a specimen to a requesting party, without first obtaining written consent from ODAPC. DNA testing and other types of identity testing are not authorized and ODAPC will not give permission for such testing. If a party seeks a court order directing you to release a specimen or part of a specimen contrary to any provision of this part, you must take necessary legal steps to contest the issuance of the order (e.g., seek to quash a subpoena, citing the requirements of § 40.13). This part does not require you to disobey a court order, however.
- (g) Notwithstanding any other provision of this Part, as an employer of Commercial Motor Vehicle (CMV) drivers holding commercial driving licenses (CDLs) or as a third party administrator for owner-operator CMV drivers with CDLs, you are authorized to comply with State laws requiring you to provide to State CDL licensing authorities information about all violations of DOT drug and alcohol testing rules (including positive tests and refusals) by any CMV driver holding a CDL.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 33737, June 13, 2008; 82 FR 52247, Nov. 13, 2017]

§ 40.333 What records must employers keep?

- (a) As an employer, you must keep the following records for the following periods of time:
 - (1) You must keep the following records for five years:
 - (i) Records of alcohol test results indicating an alcohol concentration of 0.02 or greater;
 - (ii) Records of verified positive drug test results;
 - (iii) Documentation of refusals to take required alcohol and/or drug tests (including substituted or adulterated drug test results);
 - (iv) SAP reports; and
 - (v) All follow-up tests and schedules for follow-up tests.
 - (2) You must keep records for three years of information obtained from previous employers under § 40.25 concerning drug and alcohol test results of employees.
 - (3) You must keep records of the inspection, maintenance, and calibration of EBTs, for two years.
 - (4) You must keep records of negative and cancelled drug test results and alcohol test results with a concentration of less than 0.02 for one year.

- (b) You do not have to keep records related to a program requirement that does not apply to you (e.g., a maritime employer who does not have a DOT-mandated random alcohol testing program need not maintain random alcohol testing records).
- (c) You must maintain the records in a location with controlled access.
- (d) A service agent may maintain these records for you. However, you must ensure that you can produce these records at your principal place of business in the time required by the DOT agency. For example, as a motor carrier, when an FMCSA inspector requests your records, you must ensure that you can provide them within two business days.
- (e) If you store records electronically, where permitted by this part, you must ensure that the records are easily accessible, legible, and formatted and stored in an organized manner. If electronic records do not meet these criteria, you must convert them to printed documentation in a rapid and readily auditable manner, at the request of DOT agency personnel.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

Subpart Q—Roles and Responsibilities of Service Agents

§ 40.341 Must service agents comply with DOT drug and alcohol testing requirements?

- (a) As a service agent, the services you provide to transportation employers must meet the requirements of this part and the DOT agency drug and alcohol testing regulations.
- (b) If you do not comply, DOT may take action under the Public Interest Exclusions procedures of this part (see Subpart R of this part) or applicable provisions of other DOT agency regulations.

§ 40.343 What tasks may a service agent perform for an employer?

As a service agent, you may perform for employers the tasks needed to comply with DOT agency drug and alcohol testing regulations, subject to the requirements and limitations of this part.

§ 40.345 In what circumstances may a C/TPA act as an intermediary in the transmission of drug and alcohol testing information to employers?

- (a) As a C/TPA or other service agent, you may act as an intermediary in the transmission of drug and alcohol testing information in the circumstances specified in this section only if the employer chooses to have you do so. Each employer makes the decision about whether to receive some or all of this information from you, acting as an intermediary, rather than directly from the service agent who originates the information (e.g., an MRO or BAT).
- (b) The specific provisions of this part concerning which you may act as an intermediary are listed in appendix H to this part. These are the only situations in which you may act as an intermediary. You are prohibited from doing so in all other situations.
- (c) In every case, you must ensure that, in transmitting information to employers, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the service agent originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit drug testing results from MROs to DERs, you must transmit each drug test result to the DER in compliance with the MRO requirements set forth in § 40.167.

[65 FR 79526, Dec. 19, 2000, as amended at 88 FR 27650, May 2, 2023]

§ 40.347 What functions may C/TPAs perform with respect to administering testing?

As a C/TPA, except as otherwise specified in this part, you may perform the following functions for employers concerning random selection and other selections for testing.

- (a) You may operate random testing programs for employers and may assist (i.e., through contracting with laboratories or collection sites, conducting collections) employers with other types of testing (e.g., pre-employment, post-accident, reasonable suspicion, return-to-duty, and follow-up).

- (b) You may combine employees from more than one employer or one transportation industry in a random pool if permitted by all the DOT agency drug and alcohol testing regulations involved.
 - (1) If you combine employees from more than one transportation industry, you must ensure that the random testing rate is at least equal to the highest rate required by each DOT agency.
 - (2) Employees not covered by DOT agency regulations may not be part of the same random pool with DOT covered employees.
- (c) You may assist employers in ensuring that follow-up testing is conducted in accordance with the plan established by the SAP. However, neither you nor the employer are permitted to randomly select employees from a "follow-up pool" for follow-up testing.

§ 40.349 What records may a service agent receive and maintain?

- (a) Except where otherwise specified in this part, as a service agent you may receive and maintain all records concerning DOT drug and alcohol testing programs, including positive, negative, and refusal to test individual test results. You do not need the employee's consent to receive and maintain these records.
- (b) You may maintain all information needed for operating a drug/alcohol program (e.g., CCFs, ATFs, names of employees in random pools, random selection lists, copies of notices to employers of selected employees) on behalf of an employer.
- (c) If a service agent originating drug or alcohol testing information, such as an MRO or BAT, sends the information directly to the DER, he or she may also provide the information simultaneously to you, as a C/TPA or other service agent who maintains this information for the employer.
- (d) If you are serving as an intermediary in transmitting information that is required to be provided to the employer, you must ensure that it reaches the employer in the same time periods required elsewhere in this part.
- (e) You must ensure that you can make available to the employer within two business days any information the employer is asked to produce by a DOT agency representative.
- (f) On request of an employer, you must, at any time on the request of an employer, transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.
- (g) If you are planning to go out of business or your organization will be bought by or merged with another organization, you must immediately notify all employers and offer to transfer all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it. You are not required to obtain employee consent for this transfer. You must not charge more than your reasonable administrative costs for conducting this transfer. You may not charge a fee for the release of these records.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

§ 40.351 What confidentiality requirements apply to service agents?

Except where otherwise specified in this part, as a service agent the following confidentiality requirements apply to you:

- (a) When you receive or maintain confidential information about employees (e.g., individual test results), you must follow the same confidentiality regulations as the employer with respect to the use and release of this information.
- (b) You must follow all confidentiality and records retention requirements applicable to employers.
- (c) You may not provide individual test results or other confidential information to another employer without a specific, written consent from the employee. For example, suppose you are a C/TPA that has employers X and Y as clients. Employee Jones works for X, and you maintain Jones' drug and alcohol test for X. Jones wants to change jobs and work for Y. You may not inform Y of the result of a test conducted for X without having a specific, written consent from Jones. Likewise, you may not provide this information to employer Z, who is not a C/TPA member, without this consent.

- (d) You must not use blanket consent forms authorizing the release of employee testing information.
- (e) You must establish adequate confidentiality and security measures to ensure that confidential employee records are not available to unauthorized persons. This includes protecting the physical security of records, access controls, and computer security measures to safeguard confidential data in electronic data bases.

§ 40.353 What principles govern the interaction between MROs and other service agents?

As a service agent other than an MRO (e.g., a C/TPA), the following principles govern your interaction with MROs:

- (a) You may provide MRO services to employers, directly or through contract, if you meet all applicable provisions of this part.
- (b) If you employ or contract for an MRO, the MRO must perform duties independently and confidentially. When you have a relationship with an MRO, you must structure the relationship to ensure that this independence and confidentiality are not compromised. Specific means (including both physical and operational measures, as appropriate) to separate MRO functions and other service agent functions are essential.
- (c) Only your staff who are actually under the day-to-day supervision and control of an MRO with respect to MRO functions may perform these functions. This does not mean that those staff may not perform other functions at other times. However, the designation of your staff to perform MRO functions under MRO supervision must be limited and not used as a subterfuge to circumvent confidentiality and other requirements of this part and DOT agency regulations. You must ensure that MRO staff operate under controls sufficient to ensure that the independence and confidentiality of the MRO process are not compromised.
- (d) Like other MROs, an MRO you employ or contract with must personally conduct verification interviews with employees and must personally make all verification decisions. Consequently, your staff cannot perform these functions.

§ 40.355 What limitations apply to the activities of service agents?

As a service agent, you are subject to the following limitations concerning your activities in the DOT drug and alcohol testing program.

- (a) You must not require an employee to sign a consent, release, waiver of liability, or indemnification agreement with respect to any part of the drug or alcohol testing process covered by this part (including, but not limited to, collections, laboratory testing, MRO, and SAP services). No one may do so on behalf of a service agent.
- (b) You must not act as an intermediary in the transmission of drug test results from the laboratory to the MRO. That is, the laboratory may not send results to you, with you in turn sending them to the MRO for verification. For example, a practice in which the laboratory transmits results to your computer system, and you then assign the results to a particular MRO, is not permitted.
- (c) You must not transmit drug test results directly from the laboratory to the employer (by electronic or other means) or to a service agent who forwards them to the employer. All confirmed laboratory results must be processed by the MRO before they are released to any other party.
- (d) You must not act as an intermediary in the transmission of alcohol test results of 0.02 or higher from the STT or BAT to the DER.
- (e) Except as provided in paragraph (f) of this section, you must not act as an intermediary in the transmission of individual SAP reports to the actual employer. That is, the SAP may not send such reports to you, with you in turn sending them to the actual employer. However, you may maintain individual SAP summary reports and follow-up testing plans after they are sent to the DER, and the SAP may transmit such reports to you simultaneously with sending them to the DER.
- (f) As an exception to paragraph (e) of this section, you may act as an intermediary in the transmission of SAP report from the SAP to an owner-operator or other self-employed individual.
- (g) Except as provided in paragraph (h) of this section, you must not make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria. These are duties the actual employer cannot delegate to a C/TPA. You may, however, provide advice and information to employers regarding

these testing issues and how the employer should schedule required testing.

- (h) As an exception to paragraph (g) of this section, you may make decisions to test an employee based upon reasonable suspicion, post-accident, return-to-duty, and follow-up determination criteria with respect to an owner-operator or other self-employed individual.
- (i) Except as provided in paragraph (j) of this section, you must not make a determination that an employee has refused a drug or alcohol test. This is a non-delegable duty of the actual employer. You may, however, provide advice and information to employers regarding refusal-to-test issues.
- (j) As an exception to paragraph (i) of this section, you may make a determination that an employee has refused a drug or alcohol test, if:
 - (1) You schedule a required test for an owner-operator or other self-employed individual, and the individual fails to appear for the test without a legitimate reason; or
 - (2) As an MRO, you determine that an individual has refused to test on the basis of adulteration or substitution.
- (k) You must not act as a DER. For example, while you may be responsible for transmitting information to the employer about test results, you must not act on behalf of the employer in actions to remove employees from safety-sensitive duties.
- (l) In transmitting documents to laboratories, you must ensure that you send to the laboratory that conducts testing only Copy 1 of the CCF. You must not transmit other copies of the CCF or any ATFs to the laboratory.
- (m) You must not impose conditions or requirements on employers that DOT regulations do not authorize. For example, as a C/TPA serving employers in the pipeline or motor carrier industry, you must not require employers to have provisions in their DOT plans that PHMSA or FMCSA regulations do not require.
- (n) You must not intentionally delay the transmission of drug or alcohol testing-related documents concerning actions you have performed, because of a payment dispute or other reasons.

Example 1 to paragraph (n): A laboratory that has tested a specimen must not delay transmitting the documentation of the test result to an MRO because of a billing or payment dispute with the MRO or a C/TPA.

Example 2 to paragraph (n): An MRO or SAP who has interviewed an employee must not delay sending a verified test result or SAP report to the employer because of such a dispute with the employer or employee.

Example 3 to paragraph (n): A collector who has performed a specimen collection must not delay sending the drug specimen and CCF to the laboratory because of a payment or other dispute with the laboratory or a C/TPA.

Example 4 to paragraph (n): A BAT who has conducted an alcohol test must not delay sending test result information to an employer or C/TPA because of a payment or other dispute with the employer or C/TPA.

- (o) While you must follow the DOT agency regulations, the actual employer remains accountable to DOT for compliance, and your failure to implement any aspect of the program as required in this part and other applicable DOT agency regulations makes the employer subject to enforcement action by the Department.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 71 FR 49384, Aug. 23, 2006; 75 FR 59108, Sept. 27, 2010; 88 FR 27650, May 2, 2023]

Subpart R—Public Interest Exclusions

§ 40.361 What is the purpose of a public interest exclusion (PIE)?

- (a) To protect the public interest, including protecting transportation employers and employees from serious noncompliance with DOT drug and alcohol testing rules, the Department's policy is to ensure that employers conduct business only with responsible service agents.

- (b) The Department therefore uses PIEs to exclude from participation in DOT's drug and alcohol testing program any service agent who, by serious noncompliance with this part or other DOT agency drug and alcohol testing regulations, has shown that it is not currently acting in a responsible manner.
- (c) A PIE is a serious action that the Department takes only to protect the public interest. We intend to use PIEs only to remedy situations of serious noncompliance. PIEs are not used for the purpose of punishment.
- (d) Nothing in this subpart precludes a DOT agency or the Inspector General from taking other action authorized by its regulations with respect to service agents or employers that violate its regulations.

§ 40.363 On what basis may the Department issue a PIE?

- (a) If you are a service agent, the Department may issue a PIE concerning you if we determine that you have failed or refused to provide drug or alcohol testing services consistent with the requirements of this part or a DOT agency drug and alcohol regulation.
- (b) The Department also may issue a PIE if you have failed to cooperate with DOT agency representatives concerning inspections, complaint investigations, compliance and enforcement reviews, or requests for documents and other information about compliance with this part or DOT agency drug and alcohol regulations.

§ 40.365 What is the Department's policy concerning starting a PIE proceeding?

- (a) It is the Department's policy to start a PIE proceeding only in cases of serious, uncorrected noncompliance with the provisions of this part, affecting such matters as safety, the outcomes of test results, privacy and confidentiality, due process and fairness for employees, the honesty and integrity of the testing program, and cooperation with or provision of information to DOT agency representatives.
- (b) The following are examples of the kinds of serious noncompliance that, as a matter of policy, the Department views as appropriate grounds for starting a PIE proceeding. These examples are not intended to be an exhaustive or exclusive list of the grounds for starting a PIE proceeding. We intend them to illustrate the level of seriousness that the Department believes supports starting a PIE proceeding. The examples follow:
 - (1) For an MRO, verifying tests positive without interviewing the employees as required by this part or providing MRO services without meeting the qualifications for an MRO required by this part;
 - (2) For a laboratory, refusing to provide information to the Department, an employer, or an employee as required by this part; failing or refusing to conduct a validity testing program when required by this part; or a pattern or practice of testing errors that result in the cancellation of tests. (As a general matter of policy, the Department does not intend to initiate a PIE proceeding concerning a laboratory with respect to matters on which HHS initiates certification actions under its laboratory guidelines.);
 - (3) For a collector, a pattern or practice of directly observing collections when doing so is unauthorized, or failing or refusing to directly observe collections when doing so is mandatory;
 - (4) For collectors, BATs, or STTs, a pattern or practice of using forms, testing equipment, or collection kits that do not meet the standards in this part;
 - (5) For a collector, BAT, or STT, a pattern or practice of "fatal flaws" or other significant uncorrected errors in the collection process;
 - (6) For a laboratory, MRO or C/TPA, failing or refusing to report tests results as required by this part or DOT agency regulations;
 - (7) For a laboratory, falsifying, concealing, or destroying documentation concerning any part of the drug testing process, including, but not limited to, documents in a "litigation package";
 - (8) For SAPs, providing SAP services while not meeting SAP qualifications required by this part or performing evaluations without interviews meeting the requirements of § 40.291(a)(1);
 - (9) For any service agent, maintaining a relationship with another party that constitutes a conflict of interest under this part (e.g., a laboratory that derives a financial benefit from having an employer use a specific MRO);

- (10) For any service agent, falsely representing that the service agent or its activities is approved or certified by the Department or a DOT agency (such representation includes, but is not limited to, the use of a Department or DOT agency logo, title, or emblem).
- (11) For any service agent, disclosing an employee's test result information to any party this part or a DOT agency regulation does not authorize, including by obtaining a "blanket" consent from employees or by creating a data base from which employers or others can retrieve an employee's DOT test results without the specific consent of the employee;
- (12) For any service agent, interfering or attempting to interfere with the ability of an MRO to communicate with the Department, or retaliating against an MRO for communicating with the Department;
- (13) For any service agent, directing or recommending that an employer fail or refuse to implement any provision of this part; or
- (14) With respect to noncompliance with a DOT agency regulation, conduct that affects important provisions of Department-wide concern (e.g., failure to properly conduct the selection process for random testing).

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017; 88 FR 27650, May 2, 2023]

§ 40.367 Who initiates a PIE proceeding?

The following DOT officials may initiate a PIE proceeding:

- (a) The drug and alcohol program manager of a DOT agency;
- (b) An official of ODAPC, other than the Director; or
- (c) The designee of any of these officials.

§ 40.369 What is the discretion of an initiating official in starting a PIE proceeding?

- (a) Initiating officials have broad discretion in deciding whether to start a PIE proceeding.
- (b) In exercising this discretion, the initiating official must consider the Department's policy regarding the seriousness of the service agent's conduct (see § 40.365) and all information he or she has obtained to this point concerning the facts of the case. The initiating official may also consider the availability of the resources needed to pursue a PIE proceeding.
- (c) A decision not to initiate a PIE proceeding does not necessarily mean that the Department regards a service agent as being in compliance or that the Department may not use other applicable remedies in a situation of noncompliance.

§ 40.371 On what information does an initiating official rely in deciding whether to start a PIE proceeding?

- (a) An initiating official may rely on credible information from any source as the basis for starting a PIE proceeding.
- (b) Before sending a correction notice (see § 40.373), the initiating official informally contacts the service agent to determine if there is any information that may affect the initiating official's determination about whether it is necessary to send a correction notice. The initiating official may take any information resulting from this contact into account in determining whether to proceed under this subpart.

§ 40.373 Before starting a PIE proceeding, does the initiating official give the service agent an opportunity to correct problems?

- (a) If you are a service agent, the initiating official must send you a correction notice before starting a PIE proceeding.
- (b) The correction notice identifies the specific areas in which you must come into compliance in order to avoid being subject to a PIE proceeding.

- (c) If you make and document changes needed to come into compliance in the areas listed in the correction notice to the satisfaction of the initiating official within 60 days of the date you receive the notice, the initiating official does not start a PIE proceeding. The initiating official may conduct appropriate fact finding to verify that you have made and maintained satisfactory corrections. When he or she is satisfied that you are in compliance, the initiating official sends you a notice that the matter is concluded.

§ 40.375 How does the initiating official start a PIE proceeding?

- (a) As a service agent, if your compliance matter is not correctable (see § 40.373(a)), or if have not resolved compliance matters as provided in § 40.373(c), the initiating official starts a PIE proceeding by sending you a notice of proposed exclusion (NOPE). The NOPE contains the initiating official's recommendations concerning the issuance of a PIE, but it is not a decision by the Department to issue a PIE.
- (b) The NOPE includes the following information:
 - (1) A statement that the initiating official is recommending that the Department issue a PIE concerning you;
 - (2) The factual basis for the initiating official's belief that you are not providing drug and/or alcohol testing services to DOT-regulated employers consistent with the requirements of this part or are in serious noncompliance with a DOT agency drug and alcohol regulation;
 - (3) The factual basis for the initiating official's belief that your noncompliance has not been or cannot be corrected;
 - (4) The initiating official's recommendation for the scope of the PIE;
 - (5) The initiating official's recommendation for the duration of the PIE; and
 - (6) A statement that you may contest the issuance of the proposed PIE, as provided in § 40.379.
- (c) The initiating official sends a copy of the NOPE to the ODAPC Director at the same time he or she sends the NOPE to you.

§ 40.377 Who decides whether to issue a PIE?

- (a) The ODAPC Director, or his or her designee, decides whether to issue a PIE. If a designee is acting as the decisionmaker, all references in this subpart to the Director refer to the designee.
- (b) To ensure his or her impartiality, the Director plays no role in the initiating official's determination about whether to start a PIE proceeding.
- (c) There is a "firewall" between the initiating official and the Director. This means that the initiating official and the Director are prohibited from having any discussion, contact, or exchange of information with one another about the matter, except for documents and discussions that are part of the record of the proceeding.

§ 40.379 How do you contest the issuance of a PIE?

- (a) If you receive a NOPE, you may contest the issuance of the PIE.
- (b) If you want to contest the proposed PIE, you must provide the Director information and argument in opposition to the proposed PIE in writing, in person, and/or through a representative. To contest the proposed PIE, you must take one or more of the steps listed in this paragraph (b) within 30 days after you receive the NOPE.
 - (1) You may request that the Director dismiss the proposed PIE without further proceedings, on the basis that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
 - (2) You may present written information and arguments, consistent with the provisions of § 40.381, contesting the proposed PIE.
 - (3) You may arrange with the Director for an informal meeting to present your information and arguments.

- (c) If you do not take any of the actions listed in paragraph (b) of this section within 30 days after you receive the NOPE, the matter proceeds as an uncontested case. In this event, the Director makes his or her decision based on the record provided by the initiating official (*i.e.*, the NOPE and any supporting information or testimony) and any additional information the Director obtains.

§ 40.381 What information do you present to contest the proposed issuance of a PIE?

- (a) As a service agent who wants to contest a proposed PIE, you must present at least the following information to the Director:
 - (1) Specific facts that contradict the statements contained in the NOPE (see § 40.375(b)(2) and (3)). A general denial is insufficient to raise a genuine dispute over facts material to the issuance of a PIE;
 - (2) Identification of any existing, proposed or prior PIE; and
 - (3) Identification of your affiliates, if any.
- (b) You may provide any information and arguments you wish concerning the proposed issuance, scope and duration of the PIE (see § 40.375(b)(4) and (5)).
- (c) You may provide any additional relevant information or arguments concerning any of the issues in the matter.

§ 40.383 What procedures apply if you contest the issuance of a PIE?

- (a) DOT conducts PIE proceedings in a fair and informal manner. The Director may use flexible procedures to allow you to present matters in opposition. The Director is not required to follow formal rules of evidence or procedure in creating the record of the proceeding.
- (b) The Director will consider any information or argument he or she determines to be relevant to the decision on the matter.
- (c) You may submit any documentary evidence you want the Director to consider. In addition, if you have arranged an informal meeting with the Director, you may present witnesses and confront any person the initiating official presents as a witness against you.
- (d) In cases where there are material factual issues in dispute, the Director or his or her designee may conduct additional fact-finding.
- (e) If you have arranged a meeting with the Director, the Director will make a transcribed record of the meeting available to you on your request. You must pay the cost of transcribing and copying the meeting record.

§ 40.385 Who bears the burden of proof in a PIE proceeding?

- (a) As the proponent of issuing a PIE, the initiating official bears the burden of proof.
- (b) This burden is to demonstrate, by a preponderance of the evidence, that the service agent was in serious noncompliance with the requirements of this part for drug and/or alcohol testing-related services or with the requirements of another DOT agency drug and alcohol testing regulation.

§ 40.387 What matters does the Director decide concerning a proposed PIE?

- (a) Following the service agent's response (see § 40.379(b)) or, if no response is received, after 30 days have passed from the date on which the service agent received the NOPE, the Director may take one of the following steps:
 - (1) In response to a request from the service agent (see § 40.379(b)(1)) or on his or her own motion, the Director may dismiss a PIE proceeding if he or she determines that it does not concern serious noncompliance with this part or DOT agency regulations, consistent with the Department's policy as stated in § 40.365.
 - (i) If the Director dismisses a proposed PIE under this paragraph (a), the action is closed with respect to the noncompliance alleged in the NOPE.

- (ii) The Department may initiate a new PIE proceeding against you on the basis of different or subsequent conduct that is in noncompliance with this part or other DOT drug and alcohol testing rules.
- (2) If the Director determines that the initiating official's submission does not have complete information needed for a decision, the Director may remand the matter to the initiating official. The initiating official may resubmit the matter to the Director when the needed information is complete. If the basis for the proposed PIE has changed, the initiating official must send an amended NOPE to the service agent.
- (b) The Director makes determinations concerning the following matters in any PIE proceeding that he or she decides on the merits:
 - (1) Any material facts that are in dispute;
 - (2) Whether the facts support issuing a PIE;
 - (3) The scope of any PIE that is issued; and
 - (4) The duration of any PIE that is issued.

§ 40.389 What factors may the Director consider?

This section lists examples of the kind of mitigating and aggravating factors that the Director may consider in determining whether to issue a PIE concerning you, as well as the scope and duration of a PIE. This list is not exhaustive or exclusive. The Director may consider other factors if appropriate in the circumstances of a particular case. The list of examples follows:

- (a) The actual or potential harm that results or may result from your noncompliance;
- (b) The frequency of incidents and/or duration of the noncompliance;
- (c) Whether there is a pattern or prior history of noncompliance;
- (d) Whether the noncompliance was pervasive within your organization, including such factors as the following:
 - (1) Whether and to what extent your organization planned, initiated, or carried out the noncompliance;
 - (2) The positions held by individuals involved in the noncompliance, and whether your principals tolerated their noncompliance; and
 - (3) Whether you had effective standards of conduct and control systems (both with respect to your own organization and any contractors or affiliates) at the time the noncompliance occurred;
- (e) Whether you have demonstrated an appropriate compliance disposition, including such factors as the following:
 - (1) Whether you have accepted responsibility for the noncompliance and recognize the seriousness of the conduct that led to the cause for issuance of the PIE;
 - (2) Whether you have cooperated fully with the Department during the investigation. The Director may consider when the cooperation began and whether you disclosed all pertinent information known to you;
 - (3) Whether you have fully investigated the circumstances of the noncompliance forming the basis for the PIE and, if so, have made the result of the investigation available to the Director;
 - (4) Whether you have taken appropriate disciplinary action against the individuals responsible for the activity that constitutes the grounds for issuance of the PIE; and
 - (5) Whether your organization has taken appropriate corrective actions or remedial measures, including implementing actions to prevent recurrence;
- (f) With respect to noncompliance with a DOT agency regulation, the degree to which the noncompliance affects matters common to the DOT drug and alcohol testing program;
- (g) Other factors appropriate to the circumstances of the case.

§ 40.391 What is the scope of a PIE?

- (a) The scope of a PIE is the Department's determination about the divisions, organizational elements, types of services, affiliates, and/or individuals (including direct employees of a service agent and its contractors) to which a PIE applies.
- (b) If, as a service agent, the Department issues a PIE concerning you, the PIE applies to all your divisions, organizational elements, and types of services that are involved with or affected by the noncompliance that forms the factual basis for issuing the PIE.
- (c) In the NOPE (see § 40.375(b)(4)), the initiating official sets forth his or her recommendation for the scope of the PIE. The proposed scope of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(3)).
- (d) In recommending and deciding the scope of the PIE, the initiating official and Director, respectively, must take into account the provisions of paragraphs (e) through (j) of this section.
- (e) The pervasiveness of the noncompliance within a service agent's organization (see § 40.389(d)) is an important consideration in determining the scope of a PIE. The appropriate scope of a PIE grows broader as the pervasiveness of the noncompliance increases.
- (f) The application of a PIE is not limited to the specific location or employer at which the conduct that forms the factual basis for issuing the PIE was discovered.
- (g) A PIE applies to your affiliates, if the affiliate is involved with or affected by the conduct that forms the factual basis for issuing the PIE.
- (h) A PIE applies to individuals who are officers, employees, directors, shareholders, partners, or other individuals associated with your organization in the following circumstances:
 - (1) Conduct forming any part of the factual basis of the PIE occurred in connection with the individual's performance of duties by or on behalf of your organization; or
 - (2) The individual knew of, had reason to know of, approved, or acquiesced in such conduct. The individual's acceptance of benefits derived from such conduct is evidence of such knowledge, acquiescence, or approval.
- (i) If a contractor to your organization is solely responsible for the conduct that forms the factual basis for a PIE, the PIE does not apply to the service agent itself unless the service agent knew or should have known about the conduct and did not take action to correct it.
- (j) PIEs do not apply to drug and alcohol testing that DOT does not regulate.
- (k) The following examples illustrate how the Department intends the provisions of this section to work:

Example 1 to § 40.391. Service Agent P provides a variety of drug testing services. P's SAP services are involved in a serious violation of this Part 40. However, P's other services fully comply with this part, and P's overall management did not plan or concur in the noncompliance, which in fact was contrary to P's articulated standards. Because the noncompliance was isolated in one area of the organization's activities, and did not pervade the entire organization, the scope of the PIE could be limited to SAP services.

Example 2 to § 40.391. Service Agent Q provides a similar variety of services. The conduct forming the factual basis for a PIE concerns collections for a transit authority. As in Example 1, the noncompliance is not pervasive throughout Q's organization. The PIE would apply to collections at all locations served by Q, not just the particular transit authority or not just in the state in which the transit authority is located.

Example 3 to § 40.391. Service Agent R provides a similar array of services. One or more of the following problems exists: R's activities in several areas—collections, MROs, SAPs, protecting the confidentiality of information—are involved in serious noncompliance; DOT determines that R's management knew or should have known about serious noncompliance in one or more areas, but management did not take timely corrective action; or, in response to an inquiry from DOT personnel, R's management refuses to provide information about its operations. In each of these three cases, the scope of the PIE would include all aspects of R's services.

Example 4 to § 40.391. Service Agent W provides only one kind of service (e.g., laboratory or MRO services). The Department issues a PIE concerning these services. Because W only provides this one kind of service, the PIE necessarily applies to all its operations.

Example 5 to § 40.391. Service Agent X, by exercising reasonably prudent oversight of its collection contractor, should have known that the contractor was making numerous “fatal flaws” in tests. Alternatively, X received a correction notice pointing out these problems in its contractor’s collections. In neither case did X take action to correct the problem. X, as well as the contractor, would be subject to a PIE with respect to collections.

Example 6 to § 40.391. Service Agent Y could not reasonably have known that one of its MROs was regularly failing to interview employees before verifying tests positive. When it received a correction notice, Y immediately dismissed the erring MRO. In this case, the MRO would be subject to a PIE but Y would not.

Example 7 to § 40.391. The Department issues a PIE with respect to Service Agent Z. Z provides services for DOT-regulated transportation employers, a Federal agency under the HHS-regulated Federal employee testing program, and various private businesses and public agencies that DOT does not regulate. The PIE applies only to the DOT-regulated transportation employers with respect to their DOT-mandated testing, not to the Federal agency or the other public agencies and private businesses. The PIE does not prevent the non-DOT regulated entities from continuing to use Z’s services.

§ 40.393 How long does a PIE stay in effect?

- (a) In the NOPE (see § 40.375(b)(5)), the initiating official proposes the duration of the PIE. The duration of the PIE is one of the elements of the proceeding that the service agent may contest (see § 40.381(b)) and about which the Director makes a decision (see § 40.387(b)(4)).
- (b) In deciding upon the duration of the PIE, the Director considers the seriousness of the conduct on which the PIE is based and the continued need to protect employers and employees from the service agent’s noncompliance. The Director considers factors such as those listed in § 40.389 in making this decision.
- (c) The duration of a PIE will be between one and five years, unless the Director reduces its duration under § 40.407.

§ 40.395 Can you settle a PIE proceeding?

At any time before the Director’s decision, you and the initiating official can, with the Director’s concurrence, settle a PIE proceeding.

§ 40.397 When does the Director make a PIE decision?

The Director makes his or her decision within 60 days of the date when the record of a PIE proceeding is complete (including any meeting with the Director and any additional fact-finding that is necessary). The Director may extend this period for good cause for additional periods of up to 30 days.

§ 40.399 How does the Department notify service agents of its decision?

If you are a service agent involved in a PIE proceeding, the Director provides you written notice as soon as he or she makes a PIE decision. The notice includes the following elements:

- (a) If the decision is not to issue a PIE, a statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute.
- (b) If the decision is to issue a PIE—
 - (1) A reference to the NOPE;
 - (2) A statement of the reasons for the decision, including findings of fact with respect to any material factual issues that were in dispute;

(3) A statement of the scope of the PIE; and

(4) A statement of the duration of the PIE.

§ 40.401 How does the Department notify employers and the public about a PIE?

- (a) The Department maintains a document called the "List of Excluded Drug and Alcohol Service Agents." This document may be found on the Department's web site (<http://www.transportation.gov/odapc>) . You may also request a copy of the document from ODAPC.
- (b) When the Director issues a PIE, he or she adds to the List the name and address of the service agent, and any other persons or organizations, to whom the PIE applies and information about the scope and duration of the PIE.
- (c) When a service agent ceases to be subject to a PIE, the Director removes this information from the List.
- (d) The Department also publishes a FEDERAL REGISTER notice to inform the public on any occasion on which a service agent is added to or taken off the List.

[65 FR 79526, Dec. 19, 2000, as amended at 82 FR 52247, Nov. 13, 2017]

§ 40.403 Must a service agent notify its clients when the Department issues a PIE?

- (a) As a service agent, if the Department issues a PIE concerning you, you must notify each of your DOT-regulated employer clients, in writing, about the issuance, scope, duration, and effect of the PIE. You may meet this requirement by sending a copy of the Director's PIE decision or by a separate notice. You must send this notice to each client within three business days of receiving from the Department the notice provided for in § 40.399(b).
- (b) As part of the notice you send under paragraph (a) of this section, you must offer to transfer immediately all records pertaining to the employer and its employees to the employer or to any other service agent the employer designates. You must carry out this transfer as soon as the employer requests it.

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001]

§ 40.405 May the Federal courts review PIE decisions?

The Director's decision is a final administrative action of the Department. Like all final administrative actions of Federal agencies, the Director's decision is subject to judicial review under the Administrative Procedure Act (5 U.S.C. 551 *et. seq.*).

§ 40.407 May a service agent ask to have a PIE reduced or terminated?

- (a) Yes, as a service agent concerning whom the Department has issued a PIE, you may request that the Director terminate a PIE or reduce its duration and/or scope. This process is limited to the issues of duration and scope. It is not an appeal or reconsideration of the decision to issue the PIE.
- (b) Your request must be in writing and supported with documentation.
- (c) You must wait at least nine months from the date on which the Director issued the PIE to make this request.
- (d) The initiating official who was the proponent of the PIE may provide information and arguments concerning your request to the Director.
- (e) If the Director verifies that the sources of your noncompliance have been eliminated and that all drug or alcohol testing-related services you would provide to DOT-regulated employers will be consistent with the requirements of this part, the Director may issue a notice terminating or reducing the PIE.

§ 40.409 What does the issuance of a PIE mean to transportation employers?

- (a) As an employer, you are deemed to have notice of the issuance of a PIE when it appears on the List mentioned in § 40.401(a) or the notice of the PIE appears in the FEDERAL REGISTER as provided in § 40.401(d). You should check this List to ensure that any service agents you are using or planning to use are not subject to a PIE.

- (b) As an employer who is using a service agent concerning whom a PIE is issued, you must stop using the services of the service agent no later than 90 days after the Department has published the decision in the FEDERAL REGISTER or posted it on its web site. You may apply to the ODAPC Director for an extension of 30 days if you demonstrate that you cannot find a substitute service agent within 90 days.
- (c) Except during the period provided in paragraph (b) of this section, you must not, as an employer, use the services of a service agent that are covered by a PIE that the Director has issued under this subpart. If you do so, you are in violation of the Department's regulations and subject to applicable DOT agency sanctions (e.g., civil penalties, withholding of Federal financial assistance).
- (d) You also must not obtain drug or alcohol testing services through a contractor or affiliate of the service agent to whom the PIE applies.

Example to paragraph (d): Service Agent R was subject to a PIE with respect to SAP services. As an employer, not only must you not use R's own SAP services, but you also must not use SAP services you arrange through R, such as services provided by a subcontractor or affiliate of R or a person or organization that receives financial gain from its relationship with R.

- (e) This section's prohibition on using the services of a service agent concerning which the Director has issued a PIE applies to employers in all industries subject to DOT drug and alcohol testing regulations.

Example to paragraph (e): The initiating official for a PIE was the FAA drug and alcohol program manager, and the conduct forming the basis of the PIE pertained to the aviation industry. As a motor carrier, transit authority, pipeline, railroad, or maritime employer, you are also prohibited from using the services of the service agent involved in connection with the DOT drug and alcohol testing program.

- (f) The issuance of a PIE does not result in the cancellation of drug or alcohol tests conducted using the service agent involved before the issuance of the Director's decision or up to 90 days following its publication in the FEDERAL REGISTER or posting on the Department's web site, unless otherwise specified in the Director's PIE decision or the Director grants an extension as provided in paragraph (b) of this section.

Example to paragraph (f): The Department issues a PIE concerning Service Agent N on September 1. All tests conducted using N's services before September 1, and through November 30, are valid for all purposes under DOT drug and alcohol testing regulations, assuming they meet all other regulatory requirements.

§ 40.411 What is the role of the DOT Inspector General's office?

- (a) Any person may bring concerns about waste, fraud, or abuse on the part of a service agent to the attention of the DOT Office of Inspector General.
- (b) In appropriate cases, the Office of Inspector General may pursue criminal or civil remedies against a service agent.
- (c) The Office of Inspector General may provide factual information to other DOT officials for use in a PIE proceeding.

§ 40.413 How are notices sent to service agents?

- (a) If you are a service agent, DOT sends notices to you, including correction notices, notices of proposed exclusion, decision notices, and other notices, in any of the ways mentioned in paragraph (b) or (c) of this section.
- (b) DOT may send a notice to you, your identified counsel, your agent for service of process, or any of your partners, officers, directors, owners, or joint venturers to the last known street address, fax number, or e-mail address. DOT deems the notice to have been received by you if sent to any of these persons.
- (c) DOT considers notices to be received by you—
 - (1) When delivered, if DOT mails the notice to the last known street address, or five days after we send it if the letter is undeliverable;
 - (2) When sent, if DOT sends the notice by fax or five days after we send it if the fax is undeliverable; or

- (3) When delivered, if DOT sends the notice by e-mail or five days after DOT sends it if the e-mail is undeliverable.

Appendix A to Part 40—DOT Standards for Urine Collection Kits

The Collection Kit Contents

1. *Collection Container*

- a. Single-use container, made of plastic, large enough to easily catch and hold at least 55 mL of urine voided from the body.
- b. Must have graduated volume markings clearly noting levels of 45 mL and above.
- c. Must have a temperature strip providing graduated temperature readings 32–38 °C/90–100 °F, that is affixed or can be affixed at a proper level on the outside of the collection container. Other methodologies (e.g., temperature device built into the wall of the container) are acceptable provided the temperature measurement is accurate and such that there is no potential for contamination of the specimen.
- d. Must be individually wrapped in a sealed plastic bag or shrink wrapping; or must have a peelable, sealed lid or other easily visible tamper-evident system.
- e. May be made available separately at collection sites to address shy bladder situations when several voids may be required to complete the testing process.

2. *Plastic Specimen Bottles*

- a. Each bottle must be large enough to hold at least 35 mL; or alternatively, they may be two distinct sizes of specimen bottles provided that the bottle designed to hold the primary specimen holds at least 35 mL of urine and the bottle designed to hold the split specimen holds at least 20 mL.
- b. Must have screw-on or snap-on caps that prevent seepage of the urine from the bottles during shipment.
- c. Must have markings clearly indicating the appropriate levels (30 mL for the primary specimen and 15 mL for the split) of urine that must be poured into the bottles.
- d. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit with no damage to the seal when the employee initials it nor with the chance that the seal overlap would conceal printed information.
- e. Must be wrapped (with caps) together in a sealed plastic bag or shrink wrapping separate from the collection container; or must be wrapped (with cap) individually in sealed plastic bags or shrink wrapping; or must have peelable, sealed lid or other easily visible tamper-evident system.
- f. Plastic material must be leach resistant.

3. *Leak-Resistant Plastic Bag*

- a. Must have two sealable compartments or pouches which are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. *Absorbent material*

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. *Shipping Container*

- a. Must be designed to adequately protect the specimen bottles from shipment damage in the transport of specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual kit sent to collection sites.

- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the plastic leak-proof bags from the collection site to the laboratory.

Appendix B to Part 40—Oral Fluid Collection Kit Contents

1. Oral Fluid Collection Device

- a. A single device, which can be subdivided in the employee's presence into an "A" specimen and a "B" split specimen bottle sufficient for laboratory testing, that is either of the following:
 - (1) An oral fluid collection device made to collect a sufficient amount of oral fluid to permit an HHS-certified laboratory to analyze the specimen(s). For example, a device that directs the oral fluid into two separate collection bottles.
 - (2) A device that uses buffering solution that collects a specimen using a single pad or dual pads joined for insertion together into the same region of the mouth, which can be subdivided into two separate collection bottles. Such a buffered device may use a diluent (or other component, process, or method that modifies the volume of the testable specimen). The volume specifications for the device must be consistent with those set by HHS.
- b. Must have unit markings or other indicators that demonstrate the adequacy of the volume of oral fluid specimen collected.
- c. Must be sufficiently transparent to permit a visual assessment of the contents without opening the specimen bottle.
- d. Must be individually packaged in an easily visible tamper-evident system.
- e. Must have the device's expiration date on the specimen bottles sent to the laboratory (*i.e.*, the shortest expiration date of any component).
- f. Must not have components that substantially affect the composition of drugs and/or drug metabolites in the oral fluid specimen and/or interfere with an accurate analysis of the specimen.
- g. Must maintain the integrity of the specimen during storage and transport so the specimen can be tested in an HHS-certified laboratory.
- h. Must be designed so that the required tamper-evident bottle seals made available on the CCF fit without concealing the expiration date on the bottles, without damage to the seal when the collector dates and the employee initials it.
- i. Must be approved by HHS for use by the specific HHS-certified laboratory that will test the specimen gathered by this device.

2. Instructions

Must include the manufacturer's instructions within the device's packaging. The instructions must provide sufficient detail to allow for an error-free collection when the instructions are followed.

3. Leak-Resistant Plastic Bag

- a. Must have two sealable compartments or pouches that are leak-resistant; one large enough to hold two specimen bottles and the other large enough to hold the CCF paperwork, as applicable.
- b. The sealing methodology must be such that once the compartments are sealed, any tampering or attempts to open either compartment will be evident.

4. Absorbent Material

Each kit must contain enough absorbent material to absorb the entire contents of both specimen bottles. Absorbent material must be designed to fit inside the leak-resistant plastic bag pouch into which the specimen bottles are placed.

5. Shipping Container

- a. Must be designed to adequately protect the specimen bottles from damage during shipment of the specimens from the collection site to the laboratory (e.g., standard courier box, small cardboard box, plastic container).
- b. May be made available separately at collection sites rather than being part of an actual collection device sent to collection sites.
- c. A shipping container is not necessary if a laboratory courier hand-delivers the specimen bottles in the leak-resistant plastic bags from the collection site to the laboratory.

[88 FR 27651, May 2, 2023]

Appendix C to Part 40 [Reserved]

Appendix D to Part 40—DOT Drug Testing Semi-Annual Laboratory Report to Employers

The following items are required on each laboratory report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

Employer Identification: (name; may include Billing Code or ID code)

C/TPA Identification: (where applicable; name and address)

A. Urine Specimens

1. Urine Specimen Results Reported (Total Number) By Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

2. Urine Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

3. Urine Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

4. Urine Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana Metabolite (number)
- (b) Cocaine Metabolite (number)
- (c) Opioids (number)
 - (1) Codeine (number)
 - (2) Morphine (number)
 - (3) 6-AM (number)

- (4) Hydrocodone (number)
- (5) Hydromorphone (number)
- (6) Oxycodone (number)
- (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
 - (1) Amphetamine (number)
 - (2) Methamphetamine (number)
 - (3) MDMA (number)
 - (4) MDA (number)

5. Urine Adulterated (Number)

6. Urine Substituted (Number)

7. Urine Invalid Result (Number)

B. Oral Fluid Specimens

1. Oral Fluid Specimen Results Reported (Total Number) by Test Reason

- (a) Pre-employment (number)
- (b) Post-Accident (number)
- (c) Random (number)
- (d) Reasonable Suspicion/Cause (number)
- (e) Return-to-Duty (number)
- (f) Follow-up (number)
- (g) Type of Test Not Noted on CCF (number)

2. Oral Fluid Specimens Reported

- (a) Negative (number)
- (b) Negative and Dilute (number)

3. Oral Fluid Specimens Reported as Rejected for Testing (Total Number) by Reason

- (a) Fatal flaw (number)
- (b) Uncorrected Flaw (number)

4. Oral Fluid Specimens Reported as Positive (Total Number) by Drug

- (a) Marijuana (number)
- (b) Cocaine and/or Cocaine Metabolite (number)
- (c) Opioids (number)
 - (1) Codeine (number)
 - (2) Morphine (number)
 - (3) 6-AM (number)
 - (4) Hydrocodone (number)

- (5) Hydromorphone (number)
- (6) Oxycodone (number)
- (7) Oxymorphone (number)
- (d) Phencyclidine (number)
- (e) Amphetamines (number)
 - (1) Amphetamine (number)
 - (2) Methamphetamine (number)
 - (3) MDMA (number)
 - (4) MDA (number)

5. Oral Fluid Adulterated (Number)

6. Oral Fluid Substituted (Number)

7. Oral Fluid Invalid Result (Number)

[88 FR 27651, May 2, 2023]

Appendix E to Part 40—Drug Testing Semi-Annual Laboratory Report to DOT

Mail, fax or email to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366–3897.

Email: ODAPCWebMail@dot.gov.

The following items are required on each report:

Reporting Period: (inclusive dates)

Laboratory Identification: (name and address)

1. Specimen Type:

–oral fluid or urine

2. DOT agency

–FMCSA, FAA, FRA, FTA, PHMSA, or USCG

3. Test Reason

–Pre-Employment, Random, Reasonable Suspicion/Cause, Post-Accident, Return-to-Duty, Other, and Follow-up

A. DOT Specimen Results Reported (total number)

B. Negative Results Reported (total number)

1. Negative (number)

2. Negative-Dilute (number)

C. Rejected for Testing Results Reported (total number) By Reason

1. Fatal flaw (number)

- 2. Uncorrected Flaw (number)
- D. Positive Results Reported (total number) By Drug
 - 1. Marijuana or Marijuana Metabolite (number)
 - 2. Cocaine and/or Cocaine Metabolite (number)
 - 3. Opioids (number)
 - a. Codeine (number)
 - b. Morphine (number)
 - c. 6-AM (number)
 - d. Hydrocodone (number)
 - e. Hydromorphone (number)
 - f. Oxycodone (number)
 - g. Oxymorphone (number)
 - 4. Phencyclidine (number)
 - 5. Amphetamines (number)
 - a. Amphetamine (number)
 - b. Methamphetamine (number)
 - c. MDMA (number)
 - d. MDA (number)
- E. Adulterated Results Reported (total number) By Reason (number)
- F. Substituted Results Reported (total number)
- G. Invalid Results Reported (total number) By Reason (number)

[88 FR 27652, May 2, 2023]

Appendix F to Part 40—Report Format: Split Specimen Failure To Reconfirm

Mail, fax, or submit electronically to: U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue SE, Washington, DC 20590.

Fax: (202) 366-3897.

Submit Electronically: <https://www.transportation.gov/odapc/mro-split-specimen-cancellation-notification>.

The following items are required on each report:

- 1. MRO name, address, phone number, and fax number.

2. Collection site name, address, and phone number.
3. Date of collection.
4. Specimen I.D. number.
5. Specimen type.
6. Laboratory accession number.
7. Primary specimen laboratory name, address, and phone number.
8. Date result reported or certified by primary laboratory.
9. Split specimen laboratory name, address, and phone number.
10. Date split specimen result reported or certified by split specimen laboratory.
11. Primary specimen results (e.g., name of drug, adulterant) in the primary specimen.
12. Reason for split specimen failure-to-reconfirm result (e.g., drug or adulterant not present, specimen invalid, split not collected, insufficient volume).
13. Actions taken by the MRO (e.g., notified employer of failure to reconfirm and requirement for re-collection).
14. Additional information explaining the reason for cancellation.
15. Name of individual submitting the report (if not the MRO).

[88 FR 27652, May 2, 2023]

Appendix G to Part 40—SAP Equivalency Requirements for Certification Organizations

1. **Experience:** Minimum requirements are for three years of full-time supervised experience or 6,000 hours of supervised experience as an alcoholism and/or drug abuse counselor. The supervision must be provided by a licensed or certified practitioner. Supervised experience is important if the individual is to be considered a professional in the field of alcohol and drug abuse evaluation and counseling.
2. **Education:** There exists a requirement of 270 contact hours of education and training in alcoholism and/or drug abuse or related training. These hours can take the form of formal education, in-service training, and professional development courses. Part of any professional counselor's development is participation in formal and non-formal education opportunities within the field.
3. **Continuing Education:** The certified counselor must receive at least 40–60 hours of continuing education units (CEU) during each two year period. These CEUs are important to the counselor's keeping abreast of changes and improvements in the field.
4. **Testing:** A passing score on a national test is a requirement. The test must accurately measure the application of the knowledge, skills, and abilities possessed by the counselor. The test establishes a national standard that must be met to practice.
5. **Testing Validity:** The certification examination must be reviewed by an independent authority for validity (examination reliability and relationship to the knowledge, skills, and abilities required by the counseling field). The reliability of the exam is paramount if counselor attributes are to be accurately measured. The examination passing score point must be placed at an appropriate minimal level score as gauged by statistically reliable methodology.
6. **Measurable Knowledge Base:** The certification process must be based upon measurable knowledge possessed by the applicant and verified through collateral data and testing. That level of knowledge must be of sufficient quantity to ensure a high quality of SAP evaluation and referral services.
7. **Measurable Skills Base:** The certification process must be based upon measurable skills possessed by the applicant and verified through collateral data and testing. That level of skills must be of sufficient quality to ensure a high quality of SAP evaluation and referral services.
8. **Quality Assurance Plan:** The certification agency must ensure that a means exists to determine that applicant records are verified as being true by the certification staff. This is an important check to ensure that true information is being accepted by the certifying agency.

9. **Code of Ethics:** Certified counselors must pledge to adhere to an ethical standard for practice. It must be understood that code violations could result in de-certification. These standards are vital in maintaining the integrity of practitioners. High ethical standards are required to ensure quality of client care and confidentiality of client information as well as to guard against inappropriate referral practices.
10. **Re-certification Program:** Certification is not just a one-time event. It is a continuing privilege with continuing requirements. Among these are continuing education, continuing state certification, and concomitant adherence to the code of ethics. Re-certification serves as a protector of client interests by removing poor performers from the certified practice.
11. **Fifty State Coverage:** Certification must be available to qualified counselors in all 50 states and, therefore, the test must be available to qualified applicants in all 50 states. Because many companies are multi-state operators, consistency in SAP evaluation quality and opportunities is paramount. The test need not be given in all 50 states but should be accessible to candidates from all states.
12. **National Commission for Certifying Agencies (NCCA) Accreditation:** Having NCCA accreditation is a means of demonstrating to the Department of Transportation that your certification has been reviewed by a panel of impartial experts that have determined that your examination(s) has met stringent and appropriate testing standards.

[65 FR 79526, Dec. 19, 2000. Redesignated at 88 FR 27651, May 2, 2023]

Appendix H to Part 40—Drug and Alcohol Testing Information that C/TPAs May Transmit to Employers

1. If you are a C/TPA, you may, acting as an intermediary, transmit the information in the following sections of this part to the DER for an employer, if the employer chooses to have you do so. These are the only items that you are permitted to transmit to the employer as an intermediary. The use of C/TPA intermediaries is prohibited in all other cases, such as transmission of laboratory drug test results to MROs, the transmission of medical information from MROs to employers, the transmission of SAP reports to employers, the transmission of positive alcohol test results, and the transmission of medical information from MROs to employers.
2. In every case, you must ensure that, in transmitting the information, you meet all requirements (e.g., concerning confidentiality and timing) that would apply if the party originating the information (e.g., an MRO or collector) sent the information directly to the employer. For example, if you transmit MROs' drug testing results to DERs, you must transmit each drug test result to the DER in compliance with the requirements for MROs set forth in § 40.167.

Drug Testing Information

§ 40.25: Previous two years' test results

§ 40.35: Notice to collectors of contact information for DER

§ 40.61(a): Notification to DER that an employee is a "no show" for a drug test

§ 40.63(e): Notification to DER of a collection under direct observation

§ 40.65(b)(6) and (7) and (c)(2) and (3): Notification to DER of a refusal to provide a specimen or an insufficient specimen

§ 40.73(a)(9): Transmission of CCF copies to DER (However, MRO copy of CCF must be sent by collector directly to the MRO, not through the C/TPA.)

§ 40.111(a): Transmission of laboratory statistical report to employer

§ 40.127(f): Report of test results to DER

§§ 40.127(g), 40.129(d), 40.159(a)(4)(ii); 40.161(b): Reports to DER that test is cancelled

§ 40.129(e): Report of test results to DER

§ 40.129(g)(1): Report to DER of confirmed positive test in stand-down situation

§§ 40.149(b): Report to DER of changed test result

§ 40.155(a): Report to DER of dilute specimen

§ 40.167(b) and (c): Reports of test results to DER

§ 40.187(a)–(e) Reports to DER concerning the reconfirmation of tests

§ 40.191(d): Notice to DER concerning refusals to test

§ 40.193(b)(3): Notification to DER of refusal in shy bladder situation

§ 40.193(b)(4): Notification to DER of insufficient specimen

§ 40.193(b)(5): Transmission of CCF copies to DER (not to MRO)

§ 40.199: Report to DER of cancelled test and direction to DER for additional collection

§ 40.201: Report to DER of cancelled test

Alcohol Testing Information

§ 40.215: Notice to BATs and STTs of contact information for DER

§ 40.241(b)(1): Notification to DER that an employee is a “no show” for an alcohol test

§ 40.247(a)(2): Transmission of alcohol screening test results only when the test result is less than 0.02

§ 40.255(a)(4): Transmission of alcohol confirmation test results only when the test result is less than 0.02

§ 40.263(a)(3) and 263(b)(3): Notification of insufficient saliva and failure to provide sufficient amount of breath

[65 FR 79526, Dec. 19, 2000, as amended at 66 FR 41955, Aug. 9, 2001; 73 FR 35975, June 25, 2008. Redesignated and amended at 88 FR 27651, 27652, May 2, 2023]

Appendix I to Part 40—Alcohol Testing Form

The following form is the alcohol testing form required for use in the DOT alcohol testing program beginning January 1, 2011. Employers are authorized to use the form effective February 25, 2010.

U.S. Department of Transportation (DOT)

Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # QR Lot # & Exp Date	Activation Time	Reading Time	Result
--------	---------------------	-------------------------------------	-----------------	--------------	--------

CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

Signature of Alcohol Technician _____ Date Month Day Year _____

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee Date Month Day Year

Form DOT F 1380 (Rev. 5/2008)

OMB No. 2105-0529

COPY 1 - ORIGINAL - FORWARD TO THE EMPLOYER

U.S. Department of Transportation (DOT)

Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>QR</u> Lot # & Exp Date	Activation Time	Reading Time	Result
--------	---------------------	--	-----------------	--------------	--------

CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

Signature of Alcohol Technician _____ Date Month Day Year _____

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee Date Month Day Year

U.S. Department of Transportation (DOT) Alcohol Testing Form

(The instructions for completing this form are on the back of Copy 3)

Print Screening Results
Here or Affix with
Tamper Evident Tape

Step 1: TO BE COMPLETED BY ALCOHOL TECHNICIAN

A: Employee Name _____
(Print) (First, M.I., Last)

B: SSN or Employee ID No. _____

C: Employer Name _____
Street _____
City, State, Zip _____

DER Name and Telephone No. _____
()
DER Name _____ DER Phone Number _____

D: Reason for Test: Random Reasonable Susp Post-Accident Return to Duty Follow-up Pre-employment

STEP 2: TO BE COMPLETED BY EMPLOYEE

I certify that I am about to submit to alcohol testing required by US Department of Transportation regulations and that the identifying information provided on the form is true and correct.

Signature of Employee

_____/_____/_____
Date Month Day Year

Print Confirmation
Results Here or Affix
with Tamper Evident
Tape

STEP 3: TO BE COMPLETED BY ALCOHOL TECHNICIAN

(If the technician conducting the screening test is not the same technician who will be conducting the confirmation test, each technician must complete their own form.) I certify that I have conducted alcohol testing on the above named individual in accordance with the procedures established in the US Department of Transportation regulation, 49 CFR Part 40, that I am qualified to operate the testing device(s) identified, and that the results are as recorded.

TECHNICIAN: BAT STT DEVICE: SALIVA BREATH* 15-Minute Wait: Yes No

SCREENING TEST: (For BREATH DEVICE* write in the space below only if the testing device is not designed to print.)

Test #	Testing Device Name	Device Serial # <u>OR</u> Lot # & Exp Date	Activation Time	Reading Time	Result

CONFIRMATION TEST: Results **MUST** be affixed to each copy of this form or printed directly onto the form.

REMARKS:

Alcohol Technician's Company _____ Company Street Address _____
(PRINT) Alcohol Technician's Name (First, M.I., Last) _____ Company City, State, Zip _____ Phone Number _____

_____/_____/_____
Signature of Alcohol Technician Date Month Day Year

Print Additional
Results Here or Affix
With Tamper Evident
Tape

STEP 4: TO BE COMPLETED BY EMPLOYEE IF TEST RESULT IS 0.02 OR HIGHER

I certify that I have submitted to the alcohol test, the results of which are accurately recorded on this form. I understand that I must not drive, perform safety-sensitive duties, or operate heavy equipment because the results are 0.02 or greater.

Signature of Employee

_____/_____/_____
Date Month Day Year

Form DOT F 1380 (Rev. 5/2008) OMB No. 2105-0529

COPY 3 – ALCOHOL TECHNICIAN RETAINS

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 8 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

BACK OF PAGES 1 and 2

INSTRUCTIONS FOR COMPLETING THE U.S. DEPARTMENT OF TRANSPORTATION ALCOHOL TESTING FORM

NOTE: Use a ballpoint pen, press hard, and check all copies for legibility.

STEP 1 The Breath Alcohol Technician (BAT) or Screening Test Technician (STT) completes the information required in this step. Be sure to print the employee's name and check the box identifying the reason for the test.

NOTE: If the employee refuses to provide SSN or I.D. number, be sure to indicate this in the remarks section in STEP 3. Proceed with STEP 2.

STEP 2 Instruct the employee to read, sign, and date the employee certification statement in STEP 2.

NOTE: If the employee refuses to sign the certification statement, do not proceed with the alcohol test. Contact the designated employer representative.

STEP 3 The BAT or STT completes the information required in this step and checks the type of device (saliva or breath) being used. After conducting the alcohol screening test, do the following (as appropriate):

Enter the information for the screening test (test number, testing device name, testing device serial number or lot number and expiration date, time of test with any device-dependent activation times, and the results), on the front of the AFT. For a breath testing device capable of printing, the information may be part of the printed record.

NOTE: Be sure to enter the result of the test exactly as it is indicated on the breath testing device, e.g., 0.00, 0.02, 0.04, etc.

Affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original printed information, or the device may print the results directly on the ATF. If the results of the screening test are less than 0.02, print, sign your name, and enter today's date in the space provided. The test process is complete.

If the results of the screening test are 0.02 or greater, a confirmation test must be administered in accordance with DOT regulations. An EVIDENTIAL BREATH TESTING device that is capable of printing confirmation test information must be used in conducting this test.

Ensure that a waiting period of at least 15 minutes occurs before the confirmation test begins. Check the box indicating that the waiting period lasted at least 15 minutes.

After conducting the alcohol confirmation test, affix the printed information to the front of the form in the space provided, or to the back of the form, in a tamper-evident manner (e.g., tape) such that it does not obscure the original information, or the device may print the results directly on the ATF. Print, sign your name, and enter the date in the space provided. Go to STEP 4.

STEP 4 If the employee has a breath alcohol confirmation test result of 0.02 or higher, instruct the employee to read, sign, and date the employee certification statement in STEP 4.

NOTE: If the employee refuses to sign the certification statement in STEP 4, be sure to indicate this in the remarks line in STEP 3.

Immediately notify the DER if the employee has a breath alcohol confirmation test result of 0.02 or higher.

Forward Copy 1 to the employer. Give Copy 2 to the employee. Retain Copy 3 for BAT/STT records.

BACK OF PAGE 3

Appendix J to Part 40—DOT Drug and Alcohol Testing Management Information System (MIS) Data Collection Form

The following form is the MIS Data Collection form required for use to report calendar year MIS data. The instructions for this form are found at <https://www.transportation.gov/odapc>.

U.S. DEPARTMENT OF TRANSPORTATION DRUG AND ALCOHOL TESTING MIS DATA COLLECTION FORM

Calendar Year Covered by this Report: _____

OMB No. 2105-0529

Form DOT F 1385 (Rev. 4/2019)

I. Employer:

Company Name: _____

Doing Business As (DBA) Name (if applicable): _____

Address: _____ E-mail: _____

Name of Certifying Official: _____ Signature: _____

Telephone: (____) _____ Date Certified: _____

Prepared by (if different): _____ Telephone: (____) _____

C/TPA Name and Telephone (if applicable): _____ (____) _____

Check the DOT agency for which you are reporting MIS data; and complete the information on that same line as appropriate:

___ FMCSA – Motor Carrier: DOT #: _____ Owner-operator: (circle one) YES or NO Exempt (Circle One) YES or NO

___ FAA – Aviation: Certificate # (if applicable): _____ Plan / Registration # (if applicable): _____

___ PHMSA – Pipeline: (Check) Gas Gathering ___ Gas Transmission ___ Gas Distribution ___ Transport Hazardous Liquids ___ Transport Carbon Dioxide ___

___ FRA – Railroad: Total Number of observed/documentated Part 219 “Rule G” Observations for covered employees: _____

___ USCG – Maritime: Vessel ID # (USCG- or State-Issued): _____ (If more than one vessel, list separately.)

___ FTA – Transit

II. Covered Employees: (A) Enter Total Number Safety-Sensitive Employees In All Employee Categories:

(B) Enter Total Number of Employee Categories:

(C)

Employee Category	Total Number of Employees in this Category

If you have multiple employee categories, complete Sections I and II (A) & (B). Take that filled-in form and make one copy for each employee category and complete Sections II (C), III, and IV for each separate employee category.

III. Drug Testing Data

Type of Test	1	2	3	4	5	6	7	8	9	10	11	12	13	
	Total Number Of Test Results [Should equal the sum of Columns 2, 3, 9, 10, 11, and 12]	Verified Negative Results	Verified Positive Results ~ For One Or More Drugs	Positive For Marijuana	Positive For Cocaine	Positive For PCP	Positive For Opioids	Positive For Amphetamines	Refusal Results					Cancelled Results
									Adulterated	Substituted	“Shy Bladder” ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results	
Pre-Employment														
Random														
Post-Accident														
Reasonable Susp./Cause														
Return-to-Duty														
Follow-Up														
TOTAL														

IV. Alcohol Testing Data:

Type of Test	1	2	3	4	5	6	7	8	9
	Total Number Of Screening Test Results [Should equal the sum of Columns 2, 3, 7, and 8]	Screening Tests With Results Below 0.02	Screening Tests With Results 0.02 Or Greater	Number Of Confirmation Tests Results	Confirmation Tests With Results 0.02 Through 0.039	Confirmation Tests With Results 0.04 Or Greater	Refusal Results		
							“Shy Lung” ~ With No Medical Explanation	Other Refusals To Submit To Testing	Cancelled Results
Pre-Employment									
Random									
Post-Accident									
Reasonable Susp./Cause									
Return-to-Duty									
Follow-Up									
TOTAL									

PAPERWORK REDUCTION ACT NOTICE (as required by 5 CFR 1320.21)

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2105-0529. Public reporting for this collection of information is estimated to be approximately 90 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, U.S. Department of Transportation, Office of Drug and Alcohol Policy and Compliance, 1200 New Jersey Avenue, SE, Suite W62-300, Washington, D.C. 20590.

Title 18, USC Section 1001, makes it a criminal offense subject to a maximum fine of \$10,000, or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements of representations in any matter within the jurisdiction of any agency of the United States.

[84 FR 16773, Apr. 23, 2019. Redesignated at 88 FR 27651, May 2, 2023]

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: Initial Modification of an existing PSC (PSC # 46107 - 17/18)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Laboratory Drug Testing ServicesFunding Source: Operating FundsPSC Original Approved Amount: \$200,000 PSC Original Approved Duration: 08/01/18 - 07/31/23 (5 years)PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 08/01/23-01/31/24 (26 weeks 2 days)PSC Cumulative Amount Proposed: \$200,000 PSC Cumulative Duration Proposed: 5 years 26 weeks**1. Description of Work**

A. Scope of Work/Services to be Contracted Out:

To provide federally mandated urine analysis for safety-sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequence of denial:

This is a required service under the Department Of Transportation (DOT)/Federal Transit Administration (FTA) Rules. Denial will jeopardize continued transit agency federal assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC 4026 12/13 app 07/09/12

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for Laboratory Services as drug testing is expected to continue being a regulatory requirement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

n/a

2. Reason(s) for the Request

A. Display all that apply

 Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Explain the qualifying circumstances:

Federal Code 49 CFR Part 40 requires the use of a U.S. Department of Health and Human Services (DHHS) certified lab for all Department of Transportation mandated drug testing.

B. Reason for the request for modification:

The contract term is expiring on 7/31/2023 and we are extending it for 6 months.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: A contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. A Contractor is a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have such laboratory services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

A Contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs or a job class to perform urine analysis.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. A Contract must be a U.S. Department of Health of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified lab and the number of urine analysis needed does not warrant the creation of a new job class.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

N/A

C. Are there legal mandates requiring the use of contractual services?

Yes, 49 CFR Part 40.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Alere Toxicology Services, Inc. 800-433-3823 mike.selph@abbott.com

7. **Union Notification:** On 06/15/22, the Department notified the following employee organizations of this PSC/RFP request:

all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, HR, 6th Fl, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 46107 - 17/18

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 06/27/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Laboratory Drug Testing Services

Funding Source: Operating Funds

PSC Amount: \$200,000

PSC Est. Start Date: 08/01/2018

PSC Est. End Date 07/31/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

To provide federally mandated urine analysis for safety-sensitive employees with the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequence of denial:

This is a required service under the Department Of Transportation (DOT)/Federal Transit Administration (FTA) Rules. Denial will jeopardize continued transit agency federal assistance.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services were provided by Phamatech under PSC # 4026-12/13 approved on July 9, 2012. The contract is due to expire on July 31, 2018.

D. Will the contract(s) be renewed?

Yes. At the end of this contract, the SFMTA will issue a Request for Proposal for Laboratory Services as drug testing is expected to continue being a regulatory requirement.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

B. Explain the qualifying circumstances:

Federal Code 49 CFR Part 40 requires the use of a U.S. Department of Health and Human Services (DHHS) certified lab for all Department of Transportation mandated drug testing.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: A contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:

Yes. A Contractor is a U.S. Department of Health and Human Services (DHHS) certified lab. The City does

not have such laboratory services.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable, the City does not have a U.S. Department of Health and Human Services (DHHS) certified laboratory.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

A Contractor must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified labs or a job class to perform urine analysis.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. A Contract must be a U.S. Department of Health and Human Services (DHHS) certified lab. The City does not have DHHS certified lab and the number of urine analysis needed does not warrant the creation of a new job class.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No. Urine analysis is a highly specialized task that city employees are not expected to participate in and must be done by federally regulated laboratory staff. Training City and County employees are not relevant to this contract.

C. Are there legal mandates requiring the use of contractual services?
Yes. Yes, 49 CFR Part 40.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 06/14/2018, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 South Van Ness, HR, 6th Fl San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 46107 - 17/18

DHR Analysis/Recommendation:

Commission Approval Required

09/17/2018 DHR Approved for 09/17/2018

action date: 09/17/2018

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Sunol Valley Facilities Improvements

Funding Source: SFPUC Water Enterprise

PSC Duration: 11 years 2 days

PSC Amount: \$15,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Perform highly specialized engineering tasks that include conducting geotechnical field explorations, investigations, and laboratory testing; hydraulic modeling, seismic vulnerabilities of water treatment facilities and chemical storage tanks, site surveying in remote locations, reliability and maintenance issues with chemical pumps, preparing reports for new and existing facilities; The SFPUC intends to award one (1) contract, not to exceed \$15,000,000.

B. Explain why this service is necessary and the consequence of denial:

Eighty-five percent of the water supply for the SFPUC customers travels through the Sunol Valley. These water treatment facilities and pipelines vary in age from 5 to over 80 years. If this service is denied, the SFPUC will not be able to understand the condition of the water treatment facilities and pipelines and minimize the potential of unplanned outages that will impact water supply delivery. Thus, these facilities require inspection and repair and or replacement.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

N/A

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The contract term is 10 years because the start/end dates and durations for the various projects in Sunol Valley identified in the Water Capital Plan range from 2 years to 10 years. This contract is meant to support these projects. Will report back in 4 years. The PSC is for 11 years to account for a late execution.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

This is highly specialized work that provides engineering support services to City staff who are performing the bulk of the engineering design work.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Perform highly specialized engineering tasks that include conducting geotechnical field explorations, investigations, and laboratory testing; hydraulic modeling, seismic vulnerabilities of water treatment facilities and chemical storage tanks, site surveying in remote locations, reliability and maintenance issues with chemical pumps, preparing reports for new and existing facilities
- B. Which, if any, civil service class(es) normally perform(s) this work? 5207, Assoc Engineer; 5211, Eng/Arch/Landscape Arch Sr; 5241, Engineer;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
Yes. The consultant will need to provide geotechnical investigation equipment and power testing equipment to perform field investigation work.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

This is highly specialized work that provides engineering support services to City staff who are performing the bulk of the engineering design work.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classifications are not applicable because these skill sets are specialized and require continuous training. SFPUC only requires these services on a project by project basis to support the design development of the capital program for water treatment facilities.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class for this work due to the highly specialized nature and as-needed schedule for the services.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. The Contractor will conduct training sessions in areas related to the scope of services in this RFP, with the objective of transferring technical design knowledge and skills to City staff. While training topics will be determined jointly with the City, potential training topics may include but are not limited to the following: treatment technologies, facility operation and start-up, Building Information Management (BIM), and/or lessons learned.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/27/2023, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sfgwater.org

Address: 525 Golden Gate Ave 8th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 41458 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of shale@sfgov.org
To: [Hale, Shawndrea M.](mailto:Hale_Shawndrea_M.); junko.laxamana@sfgov.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; L21PSCReview@ifpte21.org; [Hale, Shawndrea M.](mailto:Hale_Shawndrea_M.); dhrrpscordinator@sfgov.org
Subject: Receipt of Notice for new PCS over \$100K PSC # 41458 - 23/24
Date: Thursday, July 27, 2023 10:46:52 AM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 41458 - 23/24 more than \$100k

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a request for a Personal Services Contract (PSC) 41458 - 23/24 for \$15,000,000 for Initial Request services for the period 02/01/2024 – 01/31/2035. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrrupal/node/21170> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF -- SHE

Dept. Code: SHE

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Refuse services for San Francisco County Jail #3 located in San Bruno, CA

Funding Source: General Fund

PSC Duration: 1 year

PSC Amount: \$140,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The San Francisco Sheriff's Office proposes to enter into a contract for the garbage collection services for the San Francisco County Jail #3 located in San Bruno, CA, and to comply with the San Bruno Municipal Code 10.20.050, which the City of San Bruno issued an exclusive contract for the collection of garbage.

B. Explain why this service is necessary and the consequence of denial:

San Francisco County Jail #3 located in San Bruno accommodates approximately 200 staff, over 600 incarcerated persons, and a large number of daily visitors. It is anticipated that in the coming weeks, two additional housing need to be open. At full capacity, County Jail #3 will house over 900 incarcerated persons. County Jail #3 generates a large volume of garbage on a daily basis. In addition, the San Bruno Municipal Code 10.20.050 issued an exclusive permanent contract for garbage services within the city of San Bruno. Denial of services will lead to a violation of the San Bruno Municipal Code and will disrupt the garbage service at County Jail #3. Any disruption of the garbage service will quickly lead to health and safety risks from exposure to uncollected refuse.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The Office of Contract Administration has approved Sole Source Waivers for garbage services per the San Bruno Municipal Code 10.20.050.

D. Will the contract(s) be renewed?

The contract will be reviewed and renewed annually to meet the mandate of San Bruno Municipal Code 10.20.050.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The Sheriff's Office does not have the specialized equipment, expertise, and resources to provide the garbage collection services to meet the needs of the department. In addition, the San Bruno Municipal Code 10.20.050 grants an exclusive contract for the collection of garbage within the city of San Bruno.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Garbage service at County Jail #3 requires specialized equipment and knowledge of sanitation codes and the operation of collection equipment.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Garbage service at County Jail #3 requires specialized equipment to collect the refuse in compactors.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The Sheriff's Office do not have the specialized equipment, expertise and resources to provide the garbage collection services to meet the needs of the department. San Bruno Municipal Code 10.20.050 grants an exclusive contract for the collection of garbage within the city of San Bruno.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil Service classes are not applicable. The San Bruno Municipal Code 10.20.050 has an exclusive permanent contract of garbage services within the City of San Bruno.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. It would not be practical to adopt a new civil service class to perform this work. The San Bruno Municipal Code 10.20.050 has an exclusive permanent contract of garbage services within the City of San Bruno.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No. Training is not required in the scope of services as this is a garbage collection service at County Jail #3 in San Bruno, CA. Sheriff's staff does not have the expertise or the equipment to perform the garbage service. The garbage service is performed exclusively by the contractor.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/10/2023, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Peggy Zee Phone: 4155547229 Email: peggy.zee@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place, Room 456 San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 45295 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Receipt of Notice for new PCS over \$100K PSC # 45295 - 23/24

dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org>

on behalf of

peggy.zee@sfgov.org <peggy.zee@sfgov.org>

Thu 8/10/2023 1:36 PM

To:Zee, Peggy (SHF) <peggy.zee@sfgov.org>;jduritz@uapd.com <jduritz@uapd.com>;kdavis@ifpte21.org <kdavis@ifpte21.org>;kdavis@ifpte21.org <kdavis@ifpte21.org>;jharding@ifpte21.org <jharding@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;agarza@ifpte21.org <agarza@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;dvickers@iam1414.org <dvickers@iam1414.org>;SF-DHR-Info@seiu1021.org <SF-DHR-Info@seiu1021.org>;SF-DHR-Info@seiu1021.org <SF-DHR-Info@seiu1021.org>;sbabaria@cirseiu.org <sbabaria@cirseiu.org>;andrea@sfmea.com <andrea@sfmea.com>;camaguey@sfmea.com (contact) <camaguey@sfmea.com>;camaguey@sfmea.com (contact) <camaguey@sfmea.com>;cpark@local39.org <cpark@local39.org>;cpark@local39.org <cpark@local39.org>;khughes@ibew6.org <khughes@ibew6.org>

RECEIPT for Union Notification for PSC 45295 - 23/24 more than \$100k

The SHERIFF -- SHF has submitted a request for a Personal Services Contract (PSC) 45295 - 23/24 for \$140,000 for Initial Request services for the period 10/01/2023 – 09/30/2024. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21221> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions

you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of peggy.zee@sfgov.org
Sent: Thursday, August 10, 2023 1:30 PM
To: Zee, Peggy (SHF); jduritz@uapd.com; kdavis@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; dho@ifpte21.org; dho@ifpte21.org; dvickers@iam1414.org; SF-DHR-Info@seiu1021.org; SF-DHR-Info@seiu1021.org; sbabaria@cirseiu.org; andrea@sfmea.com; camaguey@sfmea.com (contact); camaguey@sfmea.com (contact); cpark@local39.org; cpark@local39.org; khughes@ibew6.org; ewallace@ifpte21.org; ewallace@ifpte21.org; plangrooferslocal40@gmail.com; rooferslocal40@gmail.com; Stan Eichenberger; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; Najuawanda Daniels; Pierre King - UAPD; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snaranjo@cirseiu.org; mdennis@twusf.org; roger marenco; pwilson@twusf.org; cmoyer@nccrc.org; Frigault, Noah (HRC); sfdpoa@icloud.com; mjayne@iam1414.org; Emanuel, Rachel (DEM); laborers261@gmail.com; Laxamana, Junko (DBI); jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; mleach; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; Stan Eichenberger; Jason Klumb; camaguey@sfmea.com (contact); ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Kbasconcillo@swater.org; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy Frigillana; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmllocal300.org; Ramon Hernandez; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; XiuMin Li; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; l21pscreview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; David Canham; jtanner940@aol.com; Osha Ashworth; l21pscreview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; christina@sfmea.com; ecdemvoter@aol.com; Thomas Vitale; Zee, Peggy (SHF); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 45295 - 23/24

RECEIPT for Union Notification for PSC 45295 - 23/24 more than \$100k

The SHERIFF -- SHF has submitted a request for a Personal Services Contract (PSC) 45295 - 23/24 for \$140,000 for Initial Request services for the period 10/01/2023 – 09/30/2024. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21221> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

**ORDINANCE OF THE CITY OF SAN BRUNO
ESTABLISHING GARBAGE AND REFUSE RATES**

Whereas, pursuant to Article XI, Section 7 of the California Constitution and Section 10.20.050 of the San Bruno Municipal Code, the City has granted Recology San Bruno ("Recology") an exclusive contract for the collection of garbage and rubbish within the city; and

Whereas, the City regulates the rates charged by Recology to San Bruno residents and businesses; and

Whereas, pursuant to Section 10.20.050(D) of the Municipal Code, the City has agreed to assist Recology with the billing and collection of such rates; and

Whereas, Recology has requested approval of a rate increase of 5.34% effective July 1, 2019; and

Whereas, notice of a public hearing on that proposed rate increase was mailed to garbage and refuse customers 45 days prior to May 14, 2019; and

Whereas, the City retained R3 Consulting Group, an independent consulting firm specializing in utility rate reviews exclusively for public agencies, to conduct a thorough review of Recology's FY2019-20 rate application. R3 recommended a rate increase of 4.43% after adjustments to Recology's projections for July 1, 2019; and

Whereas, on May 14, 2019, at 7:00 p.m. at the San Bruno Senior Center located at 1555 Crystal Springs Road, San Bruno, California, the City Council held a public hearing on the proposed rate increase; and

Whereas, at the public hearing, the City Council considered testimony and protests from all interested persons; and

Whereas, the City Council did not receive written protests against the rate increase from a majority of the customers or parcels served by Recology; and

Whereas, the City Council now desires to approve the proposed rate increase.

The City Council of the City of San Bruno does ordain as follows:

Section 1. The above-stated recitals are true and correct.

Section 2. By its Ordinance No. 1824, this Council previously approved comprehensive garbage and refuse rates. Ordinance No. 1824 is hereby rescinded and superseded.

Section 3. The following rates for the collection of garbage and refuse are hereby approved:

Estimated Recology Cost for FY23-24

Commercial Garbage

	<u>Service</u>	<u>Bin Rental</u>
(1) - 1 yard garbage bins - serviced 1/ week	\$ 444.00	\$ 54.60
	<u>Monthly Cost</u>	<u>Annual Cost</u>
96 gallon garbage toter	\$ 158.72	\$ 1,904.64
Service (1 bin)	\$ 444.00	\$ 5,328.00
Bin Rental (1 bin)	\$ 60.77	\$ 729.24
	\$ 663.49	\$ 7,961.88

Organic Services

	<u>Service</u>	<u>Bin Rental</u>
(1) - 1 yard organics bin - serviced 1/ week	\$ 166.54	\$ 39.26
	<u>Monthly Cost</u>	<u>Annual Cost</u>
Service (1 bin)	\$ 166.54	\$ 1,998.48
Bin Rental (1 bin)	\$ 39.26	\$ 471.12
	\$ 205.80	\$ 2,469.60

Garbage Services - Training Center

	<u>Service</u>	<u>Bin Rental</u>
(2) - 96 gallon garbage toters - serviced 1/ week	\$ 317.44	\$ -
(1) - 96 gallon organics toter - serviced 1/ week	\$ 119.09	\$ -
	<u>Monthly Cost</u>	<u>Annual Cost</u>
Service (2 bin)	\$ 634.88	\$ 7,618.56
Bin Rental (1 bin)	\$ 119.09	\$ 1,429.08
	\$ 753.97	\$ 9,047.64

	<u>Monthly Cost</u>	<u>Annual Cost</u>
Aggregate Garbage & Organic Service	\$ 1,623.26	\$ 19,479.12

Debris Box Service

- (1) - 25 yard compactor, serviced 1x/week - \$2,053.25/ exchange
- (1) - 16 yard open debris box, cardboard, no charge
- (1) - 30 yard open debris box, on call service, \$1,170.42/ exchange

	<u>Exchg Cost</u>	<u># of Exchg</u>	<u>Annual Cost</u>
25 yard compactor	\$ 2,053.25	52	\$ 106,769.00
16 yard open debris box (No Charge)	\$ -	52	\$ -
30 yard open debris box, on call service	\$ 1,170.42	14	\$ 16,385.88
	\$ 3,223.67	118	\$ 123,154.88

Projected Costs **\$ 142,634.00**

Report Title: OCA Waiver Details
Run Date and Time: 2023-08-11 07:11:09 Pacific Daylight Time
Run by: Peggy Zee
Table name: u_oca_waiver

OCA Waiver

Number:	OCAWVR0008266	Request Status:	Completed
Requested for:	Peggy Zee	State:	Completed
Department Head/Delegated authority:	Katherine Johnson	Waiver Type:	Solicitation Waiver
Opened:	2023-08-08 13:06:23	Awaiting Info from:	
		Awaiting Info reason:	
		Requesting Department:	SHF
		Requester Phone:	+14155547229
		Opened by:	Peggy Zee
		Watch list:	

Short Description:

Sheriff 's Office propose to enter into a contract for the garbage collection services for the San Francisco County Jail #3 located in San Bruno

Supplier ID:	0000012410	Requested Amount:	\$140,000.00
Is this a new waiver or are you modifying a previously approved waiver?:	New Waiver	Increase Amount:	\$0.00
Last Approved OCA Waiver Request:		Previously Approved Amount:	\$0.00
		Total Requested Amount:	\$140,000.00
Document Type:	Requisition	Enter Contract ID:	
		Enter Requisition ID:	0000271214
		Enter Purchase Order ID:	

Advertising:

false

Commodities, Equipment and Hardware :

false

Equipment and Vehicle Lease:

false

On Premise Software and Support:

false

Online Content, Reports, Periodicals and Journals:

false

Professional and General Services:

true

Software as a Service (SaaS) and Cloud Software Applications:

false

Vehicles and Trailers:

false

Describe the product or service:

San Francisco County Jail #3 located in San Bruno accommodates approximately 200 staff, over 600 incarcerated persons, and a large number of daily visitors. It is anticipated that in the coming weeks, two additional housing units need to be open. An increased capacity at County Jail #3 and the County Jail #3 annex will house over 900 incarcerated persons. County Jail #3 generates a large volume of garbage on a daily basis. In addition, the San Bruno Municipal Code 10.20.050 issued an exclusive permanent contract for garbage services within San Bruno. Denial of services will lead to a violation of the San Bruno Municipal Code and will disrupt the garbage service at County Jail #3. Any disruption of the garbage service will quickly lead to health and safety risks from exposure to uncollected refuse.

Regulation 21.5(b): No Other Source:

true

Regulation 21.5(b): No Substitute:

false

Regulation 21.5(c): Perishable foods:

false

Regulation 21.5(d): Proprietary Articles Single Source:

false

Regulation 21.5(e): Pilot Project with a Term :

false

Regulation 21.5(f): Micro LBE Set :

false

Regulation 21.16(b): Reciprocal Agreements :

false

Regulation 21.16(c): Solicitations:

false

Regulation 21.30(d): Software Support:

false

Regulation 21.5(d): Proprietary Articles but More than One Source:

false

Cancel Notes:

OCA Admin

OCA Admin:	Connie Dantes	OCA Supervising Purchaser:	Stacey Lo
OCA Admin Decision:	Reviewed and approved	OCA Assistant Director:	Jonathan Medwin

OCA Admin Comments:

For your review/approval.

OCA Supervising Purchaser

OCA Supervising Purchaser:	Stacey Lo	Supervising Purchaser Decision:	Reviewed and approved
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Reason for Determination (Supervisor):

SHF requesting this sole source waiver for Recology San Bruno for the San Bruno Jail. Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno. No others can perform this work.

SP Regulation 21.16(b): Reciprocal Agreements :

false

SP Regulation 21.16(c): Solicitations for Multiple Departments:

false

SP Regulation 21.30(d):

false

SP Regulation 21.5(b): No Other Source:

true

SP Regulation 21.5(b): No Substitute – Bid Required:

false

SP Regulation 21.5(b): No Substitute – No Bid Required:

false

SP Regulation 21.5(c): Perishable foods:

false

SP Regulation 21.5(d): Proprietary Articles – Bid Required:

false

SP Regulation 21.5(d): Proprietary Articles – No Bid Required:

false

SP Regulation 21.5(e): Pilot Project with a Term:

false

SP Regulation 21.5(f): Micro LBE Set Asides:

false

SP Prop 1:

false

SP Prop 2:

false

SP Prop 3:

false

SP Prop 4:

false

SP Prop 5:

false

SP Prop 6:

false

SP Prop 10:

false

SP Prop 12:

false

OCA Asst./Director

OCA Assistant Director:

Jonathan Medwin

Asst./Director Decision:

Reviewed and approved

Reason for Determination (Asst./Director):

The SHF is requesting a sole source waiver for Recology San Bruno for the San Bruno Jail. Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage within the City of San Bruno. No others entities can perform this work because of the exclusive contract. CCSF is required to adhere and utilize the San Bruno Recology contract for the jail in San Bruno.

DP Regulation 21.16(b): Reciprocal Agreements:

false

DP Regulation 21.16(c): Solicitations for Multiple Departments:

false

DP Regulation 21.30(d):

false

DP Regulation 21.5(b): No Other Source:

true

DP Regulation 21.5(b): No Substitute – Bid Required:

false

DP Regulation 21.5(b): No Substitute – No Bid Required:

false

DP Regulation 21.5(c): Perishable foods:

false

DP Regulation 21.5(d): Proprietary Articles – Bid Required:

false

DP Regulation 21.5(d): Proprietary Articles – No Bid Required:

false

DP Regulation 21.5(e): Pilot Project with a Term:

false

DP Regulation 21.5(f): Micro LBE Set Asides:

false

DP Prop 1:

false

DP Prop 2:

false

DP Prop 3:

false

DP Prop 4:

false

DP Prop 5:

false

DP Prop 6:

false

DP Prop 10:

false

DP Prop 12:

false

Regulation 21.5(b1)

Regulation 21.5(b) Question 1:

Recology Peninsula Services will provide garbage collection services for the San Francisco County Jail Facility located in San Bruno, CA.

Regulation 21.5(b) Question 2:

Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno.

Regulation 21.5(b) Question 3:

The City of San Bruno granted Recology the exclusive contract for the collection of garbage within the City of San Bruno since 2010.

Regulation 21.5(b) Question 4:

Pursuant to Article XI, Section 7 of the California Constitution, and Section 10.20.050 of the San Bruno Municipal Code, San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno. Supporting documentation is attached.

Regulation 21.5(b) Question 5:

N/A as San Bruno has granted Recology San Bruno an exclusive contract for the collection of garbage and rubbish within the City of San Bruno.

Regulation 21.5(b) Question 6:

Recology Peninsula Services (Supplier# 0000012410) is 12B Compliant. Sole Source Waiver has been submitted to CMD.

Regulation 21.5(b2)

Regulation 21.5(b) No Substitute Question 1:

Regulation 21.5(b) No Substitute Question 2:

Regulation 21.5(b) No Substitute Question 3:

Regulation 21.5(c)

Regulation 21.5(c) Question 1:

Regulation 21.5(d)

Regulation 21.5(d) Question 1:

Regulation 21.5(d) Question 2:

Regulation 21.5(d) Question 3:

Usr Prop 1:

false

Usr Prop 2:

false

Usr Prop 3:

false

Usr Prop 4:

false

Usr Prop 5:

false

Usr Prop 6:

false

Usr Prop 10:

false

Usr Prop 12:

false

Regulation 21.5(d2)

Regulation 21.5(d2) Question 1:

Regulation 21.5(d2) Question 2:

Usrd2 Prop 1:

false

Usrd2 Prop 2:

false

Usrd2 Prop 3:

false

Usrd2 Prop 4:

false

Usrd2 Prop 5:

false

Usrd2 Prop 6:

false

Usrd2 Prop 10:

false

Usrd2 Prop 12:

false

Regulation 21.5(e)

Regulation 21.5(e) Question 1:

Regulation 21.5(e) Question 2:

Regulation 21.5(e) Question 3:

Regulation 21.5(e) Question 4:

Regulation 21.5(e) Question 5:

Regulation 21.16(b)

Regulation 21.16(b) Question 1:

Regulation 21.16(b) Question 2:

Regulation 21.16(b) Question 3:

Regulation 21.16(b) Question 4:

Regulation 21.16(b) Question 5:

Regulation 21.16(b) Question 6:

Regulation 21.16(b) Question 7:

Regulation 21.16(b) Question 8:

Regulation 21.16(b) Question 9:

Regulation 21.16(c)

Regulation 21.16(c) Question 1:

Regulation 21.16(c) Question 2:

Regulation 21.16(c) Question 3:

Regulation 21.30

Regulation 2130 Revised Question 1:

Regulation 2130 Revised Question 2:

Regulation 2130 Revised Question 3:

Regulation 2130 Revised Question 4:

Regulation 2130 Revised Question 5:

New software not previously purchased:

false

Upgrade of previously purchased software:
false

Standard Support for previously purchased software:
false

Technical Services for previously purchased software:
false

Activities

Additional comments:

Related List Title: Approval List
Table name: sysapproval_approver
Query Condition: Approval for = OCAWVR0008266
Sort Order: Approver in ascending order

1 Approvals

State	▲ Approver	Approving	Created	Comments
Approved	Katherine Johnson	OCA Waiver: OCAWVR0008266	2023-08-10 09:03:34	2023-08-10 09:07:15 - Katherine Johnson (Comments) reply from: Katherine.Johnson@sfgov.org Ref:TIS4413036_IH47pIX953 33DjCy7LaD Sent from Mail<https://go.microsoft.com/ fwlink/?LinkId=550986> for Windows

Related List Title: OCA Waiver List
Table name: u_oca_waiver
Query Condition: Requested for = Peggy Zee AND Active = true
Sort Order: Requesting Department in descending order

4 OCA Waivers

Number	Active	Activity due	Additional assignee list	Approval	Approval history	Assigned to	Assignment group	Business duration
14BPREDID0001704	true	UNKNOWN		Not Yet Requested				
OCAWVR0008292	true	UNKNOWN		Not Yet Requested				
14BPREDID0001712	true	UNKNOWN		Not Yet Requested				
OCAWVR0008266	true	UNKNOWN		Not Yet Requested				

Related List Title: Metric List
Table name: metric_instance
Query Condition: Table = u_oca_waiver AND ID = 9998b3d91b2cbd9086e5c918624bcb8e
Sort Order: None

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS

Dept. Code: TIS

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Professional Services, Support and Maintenance for Cloud Services

Funding Source: Federal, State and City Funds

PSC Amount: \$15,000,000

PSC Est. Start Date: 09/01/2023

PSC Est. End Date 12/31/2030

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Background: The City retired its physical mainframe equipment in 2022. While the City offers its own private City Cloud Platform, it must also offer Public Cloud Service options to those City departments who choose not to leverage the City's Cloud Services. In addition, the City needs Cloud Services from Public Web Services providers for the City to maintain redundancy and disaster recovery services.

The Public Cloud Providers are expected to provide Cloud Technical Support and professional services to cover development and production issues for Cloud products and services, along with other key stack components:

"How to" questions about Cloud services and features,

Best practices to help successfully integrate, deploy, and manage applications in the cloud,

Troubleshooting Application Programming Interface (API) and Software Development Kit (SDK) issues,

Troubleshooting operational or systemic problems with Cloud resources,

Issues with our Management Console or other Cloud tools,

Problems detected by Cloud Providers health check tools, and f

A number of third-party applications such as Operating System (OS), web servers, email, Virtual Private Network (VPN), databases, and storage configuration

B. Explain why this service is necessary and the consequence of denial:

The City retired its mainframe and has adopted the Cloud services platform solution to supplant the equipment based mainframe solution. Although the City has its own Cloud environment, the City must also offer public cloud services options for redundancy and recovery services as well as an alternate option for City Departments who choose not to leverage the City Cloud Services. These technical and professional services are needed from the Cloud providers so that the City's Cloud Services is a robust and secure environment for storing and retrieving City data.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The services were primarily procured through the City's Technology Marketplace.

D. Will the contract(s) be renewed?

Yes, the Cloud Solution Platform has supplanted the physical hardware mainframe equipment for Cloud based hosted services over the internet. These Cloud Solution providers' agreements will be needed for the long term.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The City retired its mainframe solution and will use the Cloud solution more broadly and frequently as it migrates its information to the Cloud platform. With Citywide adoption of the Cloud platform, this solution and its various agreements will endure beyond five years. The Department of Technology is committed to making a Fourth Year report to the Commission as the Department evaluates the viability of the Cloud platform agreements beyond five years.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The Public Web Services Portal is owned by the manufacturer and cannot be fully maintained by the City.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The supplier must be skilled at and have robust experience in the following, but not limited to: Cloud Adoption Planning, Solution Architecture Development, Meeting Planning, Preparation, Execution and Follow Up Services, Project Planning, Resources and Skill Planning Services, Data Transfer Strategy, Security & Compliance Services, Configuration Management, Backup, Replication & Recovery Services, Change & Release Management, Continuous Improvement Strategy, Operational Excellence, Reliability, Performance Efficiency, Cost Optimization, Virtual Private Cloud Building Blocks, Virtual Private Cloud Security, Virtual Public Cloud Connectivity Options, Connect the City's Data Center to the Cloud, Traffic Distribution, and Internet Protocol (IP) Planning

B. Which, if any, civil service class(es) normally perform(s) this work? 1044, IS Engineer-Principal;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Although City employees can complete low level maintenance to the Public Cloud platform, no City employee has the access to perform and conduct troubleshooting services at the Public Web Service provider level.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Although City employees can complete low level maintenance to the Cloud platform, no City employee has the robust experience or skill to perform all the tasks identified above and conduct troubleshooting services at the web service provider level.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the City position exists and City employees oversee the City Cloud environment. However, this Public Cloud Service is outside of the City infrastructure as an alternate solution for City departments who choose not to leverage the City Cloud platform.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. Training for team to conduct low level maintenance of Public Web Services Portal.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 07/27/2023, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: Jolie Gines San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48964 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of jolie.gines@sfgov.org
To: [Gines, Jolie \(TIS\)](mailto:Gines,Jolie(TIS)); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; [Gines, Jolie \(TIS\)](mailto:Gines,Jolie(TIS)); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator,DHR(HRD))
Subject: Receipt of Notice for new PCS over \$100K PSC # 48964 - 23/24
Date: Thursday, July 27, 2023 4:28:55 PM

RECEIPT for Union Notification for PSC 48964 - 23/24 more than \$100k

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a request for a Personal Services Contract (PSC) 48964 - 23/24 for \$15,000,000 for Initial Request services for the period 09/01/2023 – 12/31/2030. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/21172> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Modification

Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # 48582 - 22/23)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-Needed Armed and Unarmed Security Guard Services

Funding Source: General Fund

PSC Original Approved Amount: \$6,000,000 PSC Original Approved Duration: 09/01/23 - 08/31/26 (3 years)

PSC Mod#1 Amount: \$8,000,000 PSC Mod#1 Duration: 07/01/23-08/30/28 (2 years)

PSC Cumulative Amount Proposed: \$14,000,000 PSC Cumulative Duration Proposed: 5 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of Contract Administration (OCA) would like to establish contracts for departments to obtain short-term and intermittent security guard services for special events and locations without existing service. Uniformed security guard services will provide a visible presence to the public and City staff while monitoring the grounds/facilities; protecting the safety of persons on sites; protecting the property against fire, theft, damage, and trespass; and investigating and reporting unusual or suspicious activities. These services will be available to all City departments requiring a short turnaround and for short-term duration services. Services will not cover long-term or consistent/regular security guard services.

B. Explain why this service is necessary and the consequence of denial:

The request for armed and unarmed security guard services is necessary for short-notice special events, locations without existing services, and intermittent needs to ensure the safety of those on site, conduct possible crowd control, and report suspicious activities. Special events may last for a short duration, take place sporadically and not be ongoing. Locations may need services immediately and for short-term durations or intermittently. Some services may include travel to City owned facilities outside of San Francisco, such as San Mateo and Alameda Counties to monitor the security needs of the facility and enforce safety regulations and policies. The consequences of denial will pose safety and security risks at sites requiring services and will be detrimental to the City's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48582 - 22/23

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

No, it would not be feasible to transition this work back to the City due to the intermittent and sporadic work. This request will not cover long-term or consistent/regular security guard services.

B. Reason for the request for modification:

Increase the amount from \$6,000,000 to 14,000,000 and the duration from 3 years to 5 years. This PSC will cover five contracts, and we need to modify it to cover the full anticipated not to exceed (NTE) amount and the duration.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: All armed and unarmed security guards assigned must possess a security guard state-certified valid Consumer Affairs guard card, have at least one year's experience as a security guard, be a minimum of twenty-one (21) years of age, possess a high school diploma or a General Equivalency Diploma ("GED") equivalent; and armed guards must be appropriately licensed to carry and sufficiently trained to use the firearms they are equipped with.
- B. Which, if any, civil service class(es) normally perform(s) this work? 8202, Security Guard; 8207, Bldg & Grounds Patrol Officer; 8211, Supv Bldg Grounds Patrol Ofcr; 8211, Supv Bldg Grounds Patrol Ofcr; 8302, Deputy Sheriff 1; 8304, Deputy Sheriff; 8306, Senior Deputy Sheriff; 8308, Sheriff's Sergeant; Q002, Police Officer; Q003, Police Officer 2; Q004, Police Officer 3; Q050, Sergeant, (Police Department);
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor will provide staff with uniforms and equipment, i.e., duty belt, radio, cell phone, flashlight, and time management device.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil services classes are not applicable due to the as-needed basis, sporadic/intermittent and short-term need of these services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical due to inconsistency in the frequency of work assignments across many different departments. This request will not cover long-term or consistent/regular security guard services.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
The contractor will not train City employees.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 06/30/23, the Department notified the following employee organizations of this PSC/RFP request:
SFPOA - Q2-Q50; SF Sheriff's Managers and Supv; SEIU 1021 Miscellaneous; Deputy Sheriff's Association;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48582 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of lynn.khaw@sfgov.org
To: [PSC RECEIPT of Modification notification sent to Unions and DHR](mailto:Khaw, Lynn (ADM); mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; sfsmsa@gmail.com; SF-DHR-Info@seiu1021.org; Najuwanda Daniels; Jason Klumb; Frigault, Noah (HRC); Julie.Meyers@sfgov.org; Thomas Vitale; Ricardo.lopez@sfgov.org; Kbasconcillo@sfwater.org; pcamarillo_seiu@sbcglobal.net; Wendy Frigillana; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; XiuMin Li; Sin.Yee.Poon@sfgov.org; David Canham; jtanner940@aol.com; president@sanfranciscodsa.com; kennethlomba@gmail.com; ecdemvoter@aol.com; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 48582 - 22/23 - MODIFICATIONS
Date: Friday, June 30, 2023 12:15:13 PM</p><hr/></div><div data-bbox=)

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a modification request for a Personal Services Contract (PSC) for \$8,000,000 for services for the period July 1, 2023 – August 30, 2028. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21002>

Email sent to the following addresses: ecdemvoter@aol.com
kennethlomba@gmail.com
[resident@sanfranciscodsa.com](mailto:president@sanfranciscodsa.com) jtanner940@aol.com david.canham@seiu1021.org
Sin.Yee.Poon@sfgov.org xiumin.li@seiu1021.org davidmkersten@gmail.com
ted.zarzecki@seiu1021.net pscreview@seiu1021.org
Wendy.Frigillana@seiu1021.org
pcamarillo_seiu@sbcglobal.net Kbasconcillo@sfwater.org
Ricardo.lopez@sfgov.org
thomas.vitale@seiu1021.org Julie.Meyers@sfgov.org noah.frigault@sfgov.org
jason.klumb@seiu1021.org najuawanda.daniels@seiu1021.org
SF-DHR-Info@seiu1021.org sfsmsa@gmail.com tracym@sfpoa.org @sfpoa.org
mlobre@sfpoa.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADM

Dept. Code: ADM

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: As-Needed Armed and Unarmed Security Guard Services

Funding Source: General Fund

PSC Duration: 3 years

PSC Amount: \$6,000,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of Contract Administration (OCA) would like to establish contracts for departments to obtain short-term and intermittent security guard services for special events and locations without existing service. Uniformed security guard services will provide a visible presence to the public and City staff while monitoring the grounds/facilities; protecting the safety of persons on sites; protecting the property against fire, theft, damage, and trespass; and investigating and reporting unusual or suspicious activities. These services will be available to all City departments requiring a short turnaround and for short-term duration services. Services will not cover long-term or consistent/regular security guard services.

B. Explain why this service is necessary and the consequence of denial:

The request for armed and unarmed security guard services is necessary for short-notice special events, locations without existing services, and intermittent needs to ensure the safety of those on site, conduct possible crowd control, and report suspicious activities. Special events may last for a short duration, take place sporadically and not be ongoing. Locations may need services immediately and for short-term durations or intermittently. Some services may include travel to City owned facilities outside of San Francisco, such as San Mateo and Alameda Counties to monitor the security needs of the facility and enforce safety regulations and policies. The consequences of denial will pose safety and security risks at sites requiring services and will be detrimental to the City's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has most recently been provided under OCA's Term Contract 86002 in which departments have obtained their own PSC or Prop J approval.

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

No, it would not be feasible to transition this work back to the City due to the intermittent and sporadic work. This request will not cover long-term or consistent/regular security guard services.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: All armed and unarmed security guards assigned must possess a security guard state-certified valid Consumer Affairs guard card, have at least one year's experience as a security guard, be a minimum of twenty-one (21) years of age, possess a high school diploma or a General Equivalency Diploma ("GED") equivalent; and armed guards must be appropriately licensed to carry and sufficiently trained to use the firearms they are equipped with.
- B. Which, if any, civil service class(es) normally perform(s) this work? 8202, Security Guard; 8207, Bldg & Grounds Patrol Officer; 8211, Supv Bldg Grounds Patrol Ofcr; 8211, Supv Bldg Grounds Patrol Ofcr; 8302, Deputy Sheriff 1; 8304, Deputy Sheriff; 8306, Senior Deputy Sheriff; 8308, Sheriff's Sergeant; Q002, Police Officer; Q003, Police Officer 2; Q004, Police Officer 3; Q050, Sergeant, (Police Department);
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: The contractor will provide staff with uniforms and equipment, i.e., duty belt, radio, cell phone, flashlight, and time management device.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

These contracts will only be used on an as-needed basis for short-term or intermittent needs with a quick turnaround.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil services classes are not applicable due to the as-needed basis, sporadic/intermittent and short-term need of these services.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical due to inconsistency in the frequency of work assignments across many different departments. This request will not cover long-term or consistent/regular security guard services.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. The contractor will not train City employees.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 11/14/2022, the Department notified the following employee organizations of this PSC/RFP request:
Deputy Sheriff's Association; SEIU 1021 Miscellaneous; SF Sheriff's Managers and Supv; SFPOA - Q2-Q50

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Lynn Khaw Phone: 4155546296 Email: lynn.khaw@sfgov.org

Address: City Hall, Room 430, 1 Dr. Carlton B. Goodlett Pl. San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48582 - 22/23

DHR Analysis/Recommendation:

action date: 03/06/2023

Commission Approval Required

Approved by Civil Service Commission

03/06/2023 DHR Approved for 03/06/2023

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # 43319 - 21/22)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport's Noise Insulation Program Consulting Services

Funding Source: Airport Capital/Operating & Federal Funds

PSC Original Approved Amount: \$7,000,000 PSC Original Approved Duration: 01/01/22 - 12/31/26 (5 years)

PSC Mod#1 Amount: \$8,000,000 PSC Mod#1 Duration: 12/31/26-06/30/28 (1 year 25 weeks)

PSC Cumulative Amount Proposed: \$15,000,000 PSC Cumulative Duration Proposed: 6 years 25 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Professional support services for the Noise Insulation Program (NIP) particularly on the following as-needed tasks: review of County records and updated noise impact boundaries to identify properties that may qualify for noise insulation improvements, outreach efforts to invite potentially eligible homeowners to participate in the NIP, coordination of aircraft noise easement acquisitions and recording, coordination of noise insulation design and construction work, handling inquiries from property owners regarding eligibility for noise insulation improvements funded by the Federal Aviation Administration (FAA) and the San Francisco International Airport (Airport), and preparation of outlay reports.

B. Explain why this service is necessary and the consequence of denial:

To maintain its commitments with the surrounding communities, the Airport needs to continue the Noise Insulation Program, monitoring the noise impact area and identifying additional properties that may require insulation and/or easement acquisition. This work requires the support of a specialized noise insulation consultant. The consequences of denial would mean that the Airport would not be able to meet its commitments to the surrounding communities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
PSC 43319-21/22

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for the services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
Need to align with the contract end date.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

This as-needed work is performed as requests are made from homeowners in the impacted areas and funds are available.

- B. Reason for the request for modification:
Need to add money and time to the approval.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Experience in administration and management of aircraft noise insulation programs in communities near commercial airports particularly in California, including coordination of design and construction of noise insulation improvements, experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA, and understanding of the State of California Noise Standards for Airports.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5264, Airport Noise Abatement Spec; 5271, Sr Airport Noise Abatement Spe; 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Current civil service classes are not applicable because none have the specialized experience in administration and management of aircraft noise insulation programs in communities near commercial airports, including experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it would not be practical to adopt a new civil service class to perform this work as this project requires work on an “as-needed basis” as requests are made from homeowners in the impacted areas.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, the contract is currently with CSDA Design Group

7. **Union Notification:** On 07/06/23, the Department notified the following employee organizations of this PSC/RFP request:
SEIU Local 1021; Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43319 - 21/22

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport's Noise Insulation Program Consulting Services

Funding Source: Airport Capital/Operating & Federal Funds

PSC Amount: \$7,000,000

PSC Est. Start Date: 01/01/2022

PSC Est. End Date 12/31/2026

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Professional support services for the Noise Insulation Program (NIP) particularly on the following as-needed tasks: review of County records and updated noise impact boundaries to identify properties that may qualify for noise insulation improvements, outreach efforts to invite potentially eligible homeowners to participate in the NIP, coordination of aircraft noise easement acquisitions and recording, coordination of noise insulation design and construction work, handling inquiries from property owners regarding eligibility for noise insulation improvements funded by the Federal Aviation Administration (FAA) and the San Francisco International Airport (Airport), and preparation of outlay reports.

B. Explain why this service is necessary and the consequence of denial:

To maintain its commitments with the surrounding communities, the Airport needs to continue the Noise Insulation Program, monitoring the noise impact area and identifying additional properties that may require insulation and/or easement acquisition. This work requires the support of a specialized noise insulation consultant. The consequences of denial would mean that the Airport would not be able to meet its commitments to the surrounding communities.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service was provided in the past under PSC 43708-16/17

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for the services.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This PSC duration is intended to match the professional service contract term.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

This as-needed work is performed as requests are made from homeowners in the impacted areas and funds are available.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Experience in administration and management of aircraft noise insulation programs in communities near commercial airports particularly in California, including

coordination of design and construction of noise insulation improvements, experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA, and understanding of the State of California Noise Standards for Airports.

B. Which, if any, civil service class(es) normally perform(s) this work? 5264, Airport Noise Abatement Spec; 5271, Sr Airport Noise Abatement Spe; 5502, Project Manager 1; 5504, Project Manager 2; 5506, Project Manager 3;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

On May 24, 2021, the Airport sent a Notice of Intent to the following city departments (DPW, SFPUC, PORT, MTA), dated May 24, 2021 and no department was interested in doing this work.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Current civil service classes are not applicable because none have the specialized experience in administration and management of aircraft noise insulation programs in communities near commercial airports, including experience in acquisition of aircraft noise easements, understanding of the FAA guidelines related to noise insulation programs for commercial airports funded by the FAA.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it would not be practical to adopt a new civil service class to perform this work as this project requires work on an "as-needed basis" as requests are made from homeowners in the impacted areas.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/06/2021, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21; SEIU Local 1021

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: P.O. Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43319 - 21/22

DHR Analysis/Recommendation:

action date: 11/01/2021

Commission Approval Required

Approved by Civil Service Commission

11/01/2021 DHR Approved for 11/01/2021

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # 44356 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & Maintenance

Funding Source: Airport Operating Funds

PSC Original Approved Amount: \$2,000,000 PSC Original Approved Duration: 12/01/19 - 11/30/23 (4 years)

PSC Mod#1 Amount: \$1,000,000 PSC Mod#1 Duration: 11/30/23-11/28/25 (1 year 52 weeks)

PSC Mod#2 Amount: \$3,500,000 PSC Mod#2 Duration: 11/28/25-12/31/26 (1 year 4 weeks)

PSC Cumulative Amount Proposed: \$6,500,000 PSC Cumulative Duration Proposed: 7 years 4 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

PSC 44356-19/20

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Need to bridge the service before being able to issue a RFP for a new service.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

B. Reason for the request for modification:

Need to bridge the service before being able to issue a RFP for a new service.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training will be provided since City staff do not have access to the proprietary software to maintain the system.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, Scheidt and Bachmann is the current provider

**7. Union Notification: On 08/18/23, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Municipal Executive Association;**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of cynthia.avakian@flysfso.com
To: [Cynthia Avakian \(AIR\)](mailto:Cynthia.Avakian@AIR); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; andrea@sfmea.com; [Laxamana Junko \(DBI\)](mailto:Laxamana.Junko@DBI); Criss@sfmea.com; christina@sfmea.com; staff@sfmea.com; [Sung Kim \(AIR\)](mailto:Sung.Kim@AIR); [DHR-PSCCoordinator.DHR \(HRD\)](mailto:DHR-PSCCoordinator.DHR@HRD)
Subject: Receipt of Modification Request to PSC # 44356 - 19/20 - MODIFICATIONS
Date: Friday, August 18, 2023 3:53:31 PM

PSC RECEIPT of Modification notification sent to Unions and DHR

The AIRPORT COMMISSION -- AIR has submitted a modification request for a Personal Services Contract (PSC) for \$3,500,000 for services for the period November 28, 2025 – December 31, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/14436>

Email sent to the following addresses: staff@sfmea.com Christina@sfmea.com Criss@SFMEA.com junko.laxamana@sfgov.org andrea@sfmea.com L21PSCReview@ifpte21.org amakayan@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ewallace@ifpte21.org agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIRType of Request: Initial Modification of an existing PSC (PSC # 44356 - 19/20)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & MaintenanceFunding Source: Airport Operating FundsPSC Original Approved Amount: \$2,000,000PSC Original Approved Duration: 12/01/19 - 11/30/23 (4 years)PSC Mod#1 Amount: \$1,000,000PSC Mod#1 Duration: 11/30/23-11/28/25 (1 year 52 weeks)PSC Cumulative Amount Proposed: \$3,000,000PSC Cumulative Duration Proposed: 5 years 52 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, this PSC 44356-1/20

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Airport needs PSC approval to align with contract term.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

B. Reason for the request for modification:

Modification to increase PSC amount and duration.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.

B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

No training will be provided since City staff do not have access to the proprietary software to maintain the system.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. **Union Notification:** On 01/24/20, the Department notified the following employee organizations of this PSC/RFP request:

Prof & Tech Eng, Local 21; Municipal Executive Association;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: PO Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 02/11/2020

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Airport Parking Access Revenue Control System (PARCS) Support & Maintenance

Funding Source: Airport Operating Funds

PSC Amount: \$2,000,000

PSC Est. Start Date: 12/01/2019

PSC Est. End Date 11/30/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Complete integrated parking access revenue control system (PARCS) support and maintenance for both hardware and software at the San Francisco International Airport (Airport) public and employee parking facilities. Contractor shall provide all labor, materials, spare parts, software, testing equipment, tools, etc. necessary to perform technical maintenance services for all PARCS equipment and software.

B. Explain why this service is necessary and the consequence of denial:

The existing PARCS has reached the end of its useful life and requires consistent maintenance support to remain functional while the Airport seeks a replacement solution. When the initial PARCS was installed in 1986, Airport had a total capacity of approximately 9,000 parking spaces. Currently that capacity has now grown to over 23,000 parking spaces. If comprehensive maintenance service does not continue, the PARCS will become unstable, jeopardizing revenue flow and the ability for Airport to provide safe and secure parking operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has been provided in the past through PSC #41758-14/15.

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for such services at the Airport.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

Airport does not have access to the proprietary software to maintain this system.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expertise providing software and hardware maintenance for the proprietary PARCS system at the Airport's parking facilities, including skills and experience installing new equipment for the PARCS system.

B. Which, if any, civil service class(es) normally perform(s) this work? 1042, IS Engineer-Journey; 1043, IS Engineer-Senior; 1054, IS Business Analyst-Principal; 0932, Manager IV;

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The contractor will provide provide access to specialized PARCS components (both software and hardware components), as well as specialized testing equipment used to verify the functionality of the PARCS.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
There are no Civil Service classes for the specialty of maintaining this or other proprietary parking control systems.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, this is a highly specialized field of expertise, and the Airport's PARCS system requires it to be maintained by authorized technicians.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided since City staff do not have access to the proprietary software to maintain the system.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes. Scheidt & Bachmann holds the current contract for PARCS maintenance.

**7. Union Notification: On 09/09/2019, the Department notified the following employee organizations of this PSC/RFP request:
Municipal Executive Association; Prof & Tech Eng, Local 21**

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: PO Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44356 - 19/20

DHR Analysis/Recommendation:

action date: 11/04/2019

Commission Approval Required
11/04/2019 DHR Approved for 11/04/2019

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: Initial Modification of an existing PSC (PSC # 32594 - 15/16)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Medical Review Officer

Funding Source: Operating Budget

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 07/01/16 - 06/30/23 (7 years)

PSC Mod#1 Amount: no amount added PSC Mod#1 Duration: 07/01/23-06/30/25 (2 years 1 day)

PSC Mod#2 Amount: \$10,000 PSC Mod#2 Duration: no duration added

PSC Cumulative Amount Proposed: \$110,000 PSC Cumulative Duration Proposed: 9 years 1 day

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/ Federal Transit Administration (DOT/FTA), TITLE 49: TRANSPORTATION, Code of Federal Regulations, PART 40 – PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS (49 CFR Part 40).

B. Explain why this service is necessary and the consequence of denial:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Denial of this service will place the SFMTA Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency's Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 32594 - 15/16

D. Will the contract(s) be renewed?

Yes. The contract will be for an initial term of three (3) years with the option to renew for two (2) additional two-year terms

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The proposed Request For Proposal will reflect a 3-year contract with two, 2-year options to extend.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

B. Reason for the request for modification:

SFMTA-2016-75 – Medical Review Officer Services, aligned with PSC 32594-15-16 Medical Review Officer Services is expiring on 2/14/24, and we are extending the contract through August 2024. The reason for modification is to request for additional amount to cover the funding for the contract extension through August 2024.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The consultant must be a licensed physician whom is a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations. Please see attachment.

B. Which, if any, civil service class(es) normally perform(s) this work? 2220, Physician; 2230, Physician Specialist;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation. No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No training
- C. Are there legal mandates requiring the use of contractual services?
Please see attachment, Subpart G - Medical Review Officers and the Verification Process.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
no
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
no
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Comprehensive Drug Testing Inc. Patti McKitterick, (714) 852-5200

7. Union Notification: On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21; Physicians and Dentists - 8CC; Physicians and Dentists - 11AA;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: One South Van Nes Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 32594 - 15/16

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Wednesday, August 23, 2023 11:25 AM
To: Nuque, Amy (MTA); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; Laxamana, Junko (DBI); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; l21pscreview@ifpte21.org; Pierre King - UAPD; tjenkins@uapd.com; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 32594 - 15/16 - MODIFICATIONS

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

PSC RECEIPT of Modification notification sent to Unions and DHR

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a modification request for a Personal Services Contract (PSC) for \$10,000 for services for the period July 1, 2023 – June 30, 2025. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

https://url.avanan.click/v2/___http://apps.sfgov.org/dhrdrupal/node/16237___YXAzOnNmZHQyOmE6bzpkOWYxMWRmNTQ0ZWViNTAxN2JlMDUxYjBhNTdmZTM2NT02OmU1MTY6YmJkZTJjN2FIM2I5NjZjZTUzZDE0MzU4MzRiYTfmODU0ODQxZmMyNTJmODI3NWFiZDMxMjFhNTAyNzg3OTI1YjpwOIQ

Email sent to the following addresses: tjenkins@uapd.com pking@uapd.com L21PSCReview@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com junko.laxamana@sfgov.org ewallace@ifpte21.org agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org

Additional Attachment(s)

**PUBLIC TRANSPORTATION COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 99 - 116

WHEREAS, In 1994 the FTA issued Drug and Alcohol Testing Regulations, requiring that recipients of federal assistance have an ongoing drug and alcohol testing program and

WHEREAS, An essential component of such a program is a Medical Review Officer (MRO), whose function is to interpret and evaluate an individual's confirmed positive test result, together with his or her medical history and any other relevant biomedical information; and now therefore, be it

RESOLVED, That this Public Transportation Commission hereby authorizes the General Manager of the Public Transportation Department to request proposals, interview, select and recommend to the Commission a Medical Review Officer for the Substance Abuse Program.

I hereby certify that the foregoing resolution was adopted by the Public Transportation Commission at its meeting of DEC 07 1999


Secretary, Public Transportation Commission

Attachment 1

TITLE 49:
TRANSPORTATION, Code of Federal Regulations, PART 40
PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG
AND
ALCOHOL TESTING PROGRAMS
(49 CFR Part 40).

Page 84 of the CSC Packet

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: Initial Modification of an existing PSC (PSC # 32594 - 15/16)Type of Approval: Expedited Regular Annual Continuing (Omit Posting)Type of Service: Medical Review OfficerFunding Source: Operating BudgetPSC Original Approved Amount: \$100,000PSC Original Approved Duration: 07/01/16 - 06/30/23 (7 years)PSC Mod#1 Amount: no amount addedPSC Mod#1 Duration: 07/01/23-06/30/25 (2 years 1 day)PSC Cumulative Amount Proposed: \$100,000PSC Cumulative Duration Proposed: 9 years 1 day**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

The consultant will provide the services of a Medical Review Officer (MRO) for the San Francisco Municipal Transportation Agency (SFMTA). This is a mandatory service under the Department of Transportation/ Federal Transit Administration (DOT/FTA), TITLE 49: TRANSPORTATION, Code of Federal Regulations, PART 40 – PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG AND ALCOHOL TESTING PROGRAMS (49 CFR Part 40).

B. Explain why this service is necessary and the consequence of denial:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Denial of this service will place the SFMTA Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency's Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes.

D. Will the contract(s) be renewed?

Yes. The contract will be for an initial term of three (3) years with the option to renew for two (2) additional two-year terms

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The proposed Request For Proposal will reflect a 3-year contract with two, 2-year options to extend.

2. Reason(s) for the Request

A. Display all that apply

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Regulatory or legal requirements, or requirements or mandates of funding source(s) which limit or preclude the use of Civil Service Employees. Include a copy of the applicable requirement or mandate.
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

The PSC #3068-11/12 was approved through July 31, 2017 and a contract was awarded. The consultant's business was purchased by another firm that will not comply with the City and County's contracting requirements. This submission is prior to expiration of the previous personal services contract (PSC) approval and the SFMTA requests a new approval as a result of this unexpected contract termination. Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

B. Reason for the request for modification:

The contract term is expiring on 8/14/2021 and we are extending it for two years.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The consultant must be a licensed physician whom is a Board-certified MRO that possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations. Please see attachment.
- B. Which, if any, civil service class(es) normally perform(s) this work? 2220, Physician; 2230, Physician Specialist;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. The consultant will provide the appropriate facilities and necessary equipment to perform the DOT/FTA-required MRO function.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is a certified MRO and performs independent of the employer for those whom are subject to testing.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Classifications already exist.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
N/a
- C. Are there legal mandates requiring the use of contractual services?
Please see attachment, Subpart G - Medical Review Officers and the Verification Process.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Comprehensive Drug Testing Inc. Patti McKitterick, (714) 852-5200

7. Union Notification: On 03/24/21, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21; Physicians and Dentists - 8CC; Physicians and Dentists - 11AA;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: One South Van Nes Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 32594 - 15/16

DHR Analysis/Recommendation:
Commission Approval Not Required
Approved by DHR on 03/31/2021

PERSONAL SERVICES CONTRACT SUMMARY

DATE: February 21, 2012

DEPARTMENT NAME: San Francisco Municipal Transportation Agency

DEPARTMENT NUMBER: 68

TYPE OF APPROVAL: (X) EXPEDITED () REGULAR (OMIT POSTING)

() CONTINUING () ANNUAL

TYPE OF REQUEST: (X) INITIAL REQUEST () MODIFICATION (PSC#)

TYPE OF SERVICE: Medical Review Officer

FUNDING SOURCE: SFMTA Operating Budget

PSC AMOUNT: \$50,000.00

PSC DURATION: August 1, 2012 through July 31, 2017

1. DESCRIPTION OF WORK

A. Concise description of proposed work:

To provide medical review officer consulting services for the San Francisco Municipal Transportation Agency (SFMTA).

B. Explain why this service is necessary and the consequences of denial:

This is a mandatory service under the Department of Transportation/Federal Transit Administration (DOT/FTA) regulations. Denial of this service will place the Substance Abuse Program out of compliance with the Federal regulations and also jeopardize transit agency Federal funding assistance. Denial would result in grave consequences for SFMTA's operations.

C. Explain how this service has been provided in the past (If this service was previously approved by the Civil Service Commission, indicate most recent personal services contract approval number):

University Services has previously provided this service under CSC personal services contract number 3094-07/08 for the period of August 1, 2008 through April 30, 2012.

D. Will the contract(s) be renewed:

Yes. The contract will be renewed every year for the next four (4) years.

2. UNION NOTIFICATION: Copy of this summary is to be sent to employee organizations as appropriate (refer to instructions for specific procedures):

IFPTE, Local 21 Union Name Signature of person mailing / faxing form Date 2/21/12

RFP sent to Union Name on Date Signature

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 3068-11/12

SFMTA approved 2-21-12 FB

Approval Date: 2/24/12

Received 2/21/12

By: Micki Callahan, Human Resources Director

3. DESCRIPTION OF REQUIRED SKILLS/EXPERTISE

A. Specify required skills and/or expertise:

Contractor must be a licensed physician who possesses specialized knowledge and experience in substance abuse disorders to direct the administration of drug tests and interpret drug test results in accordance with the Federal DOT/FTA Substance Abuse regulations.

B. Which, if any, civil service class normally performs this work?

Classifications such as 2220, Physician or 2230 Physician Specialist may perform this work. However, these classifications may not possess the specialized discipline and experience (knowledge of substance abuse disorders with appropriate training and certification) that is required by the Federal DOT/FTA regulations.

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:

Yes. The contractual services will include all necessary facilities and/or equipment which the City is unable to provide. With the contractor providing its own facilities and necessary equipment, the City will not expend any additional monies to set-up a specialized medical facility, purchase equipment and provide staffing.

4. WHY CLASSIFIED CIVIL SERVICE CANNOT PERFORM

A. Explain why civil service classes are not applicable:

Civil services classes are not applicable because the knowledge and experience required for this type of work requires a classification of physician who is licensed and possesses the knowledge, experience, certification, and medical training in substance abuse disorders and drug test results interpretation. This type of specialized position is not classified by the City.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No. Adopting a new civil service class may result in a recruitment and retention problem due to the as-needed nature of the service.

5. ADDITIONAL INFORMATION (if "yes", attach explanation)

	<u>Yes</u>	<u>No</u>
A. Will the contractor directly supervise City and County employees?	()	(X)
B. Will the contractor train City and County employees?	()	(X)
C. Are there legal mandates requiring the use of contractual services? <i>49 CFR Part 40</i>	(X)	()
D. Are there federal or state grant requirements regarding the use of contractual services? <i>49 CFR Part 40</i>	(X)	()
E. Has a board or commission determined that contracting is the most effective way to provide this service? <i>(MTA Resolution #99-116)</i>	(X)	()
F. Will the proposed work be completed by a contractor that has a current personal services contract with your department? <i>University Services is providing Medical Review Officer services.</i>	(X)	()

THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD:

Parveen Boparai

Signature of Departmental Personal Services Contract Coordinator

Parveen Boparai
Print or Type Name

415-701-5377
Telephone Number

San Francisco Municipal Transportation Agency

1 S. Van Ness Ave., 7th Floor, San Francisco, CA 94103
Address

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # 39913 - 23/24)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: SFPD Background Investigations

Funding Source: General Fund

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 11/01/22 - 10/31/26 (4 years)

PSC Mod#1 Amount: \$425,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$525,000 PSC Cumulative Duration Proposed: 4 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

48133-19/20

D. Will the contract(s) be renewed?

Unknown

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.

B. Reason for the request for modification:

The Department experienced a lot of turnover on the civilian side during the past year. At its peak, civilian position vacancies were at 104 (out of 666 total FTEs) and this created a significant surge in volume of pre-employment background investigation services to be performed within a short period of time. While the Department has several retired sworn officers to work as Prop F background investigators, their

caseload is primarily for recruit and police service aides candidates. The Department has continued to experience a significant shortfall in sworn staffing and has needed to rely upon overtime to help address the shortage of policing services. Last fiscal year, the Department reported that it was expecting a deficit of \$20+ million for the six-month Controller's report due to overtime usage. Due to the projected deficit, the Department was placed on a hiring freeze that did not lift until after a budget supplemental was passed. These factors have further complicated the hiring process and has forced the Department to adopt an accelerated hiring schedule to fill vacancies.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify records.
- B. Which, if any, civil service class(es) normally perform(s) this work? Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1251, Background Investigator;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 Background Investigator positions exists, SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. The 1251 background investigator classification exists.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Explanation of training has not been provided by the department
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
SFPOA - Q2-Q50; Prof & Tech Eng, Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd St, 6th Fl, San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 39913 - 23/24

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of vincent.lee@sfgov.org
Sent: Wednesday, August 23, 2023 12:24 PM
To: Lee, Vincent (POL); mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; l21pscreview@ifpte21.org; Leung, Patrick (POL); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 39913 - 23/24 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The POLICE -- POL has submitted a modification request for a Personal Services Contract (PSC) for \$425,000 for services for the period October 1, 2023 – October 31, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21262>

Email sent to the following addresses: L21PSCReview@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com ewallace@ifpte21.org dho@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org kdavis@ifpte21.org amakayan@ifpte21.org agarza@ifpte21.org tracym@sfpoa.org @sfpoa.org mlobre@sfpoa.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE -- POL

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: SFPD Background Investigations

Funding Source: General Fund

PSC Duration: 4 years

PSC Amount: \$100,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48133 - 19/20

D. Will the contract(s) be renewed?

Unknown

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify

records.

- B. Which, if any, civil service class(es) normally perform(s) this work? Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1251, Background Investigator;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 Background Investigator positions exists, SFPD has experienced an increase in attrition over the last year and currently has 84 vacant positions. SFPD has a need to outsource this service to address the number of background packets to process during this short-term surge.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The 1251 background investigator classification exists.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. Explanation of training has not been provided by the department
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 07/13/2023, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21; Prof & Tech Eng, Local 21; SFPOA - Q2-Q50

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd St, 6th Fl San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 39913 - 23/24

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 07/26/2023

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: POLICE

Dept. Code: POL

Type of Request: Initial Modification of an existing PSC (PSC # 48133 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Background Investigations

Funding Source: General Fund

PSC Original Approved Amount: \$62,500 PSC Original Approved Duration: 11/01/20 - 10/31/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$125,000 PSC Mod#1 Duration: 11/01/22-10/31/26 (4 years 1 day)

PSC Cumulative Amount Proposed: \$187,500 PSC Cumulative Duration Proposed: 6 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor will provide background investigation services for civilian and command-level San Francisco Police Department (SFPD) employment applicant positions. The contractor's services will include, but not be limited to, interviewing applicants, investigating records from the criminal justice system, credit reporting agencies, and Department of Motor Vehicles, and contacting employers and references.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary to support the hiring process for the Police Department. This service will also be used for special background investigations that would not be appropriate for internal staff to conduct, such as investigations of command staff positions.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 48133 - 19/20

D. Will the contract(s) be renewed?

Unknown at this time.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

SFPD continues to require as-needed background investigations for this modification.

2. Reason(s) for the Request

A. Display all that apply

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

Contract is needed for anticipated very limited hiring of civilians. This contract would also be used for command level positions, such as Police Chief, that require third party independent background investigations to remove potential perceived bias by internal staff conducting background investigations.

B. Reason for the request for modification:

Add amount and continue contracting

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Contract staff must have private investigator licenses and extensive background investigations experience to conduct interviews and research and verify records.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1241, Personnel Analyst; Q002, Police Officer; Q050, Sergeant, (Police Department); Q060, Lieutenant (Police Department); 1241, Human Resources Analyst;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Although the 1251 classification is applicable, the need for this service is needed due to extremely limited anticipated hiring by SFPD.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: Although the 1251 classification is applicable, the need for this service is needed due to extremely limited anticipated hiring by SFPD.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Training is not needed.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contract extension for current contractor

7. Union Notification: On 05/10/22, the Department notified the following employee organizations of this PSC/RFP request:

Bldg Mtl & Constr Teamsters, L 853;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Vincent Lee Phone: 4158377127 Email: vincent.lee@sfgov.org

Address: 1245 3rd Street, 6th Floor, San Francisco, CA 94158

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48133 - 19/20

DHR Analysis/Recommendation:
Commission Approval Required
06/06/2022 DHR Approved for 06/06/2022

06/06/2022
Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Mod#7 Amount: no amount added PSC Mod#7 Duration: 05/01/23-06/30/26 (1 year)

PSC Mod#8 Amount: \$5,000,000 PSC Mod#8 Duration: 10/01/23-12/31/28 (2 years 26 weeks)

PSC Cumulative Amount Proposed: \$7,590,000 PSC Cumulative Duration Proposed: 12 years 13 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The total PSC duration is in excess of five years because evaluations of programs are performed by firms that have highly trained evaluators in the subject area of the program being evaluated. In addition, program evaluators may also be seen as an independent evaluator of the program so the findings can be considered objective and unbiased therefore the evaluation services should be performed by outside experts.

2. Reason(s) for the Request

A. Display all that apply

- Short-term or capital projects requiring diverse skills, expertise and/or knowledge.
- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

This modification is to account for program evaluation services specifically related to expanded wellness centers and other substance use or Behavioral Health Programs.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.
- C. Are there legal mandates requiring the use of contractual services?
No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. Union Notification: On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:
 Commission Approval Required
 DHR Approved for 10/02/2023

Civil Service Commission Action:

Receipt of Union Notification(s)

Receipt of Modification Request to PSC # 47706 - 16/17 - MODIFICATIONS

dhr-psccordinator@sfgov.org

on behalf of

kelly.hiramoto@sfdph.org

Wed 8/23/2023 10:44 AM

To:Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;agarza@ifpte21.org <agarza@ifpte21.org>;amakayan@ifpte21.org <amakayan@ifpte21.org>;andrea@sfmea.com <andrea@sfmea.com>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;Criss@sfmea.com <Criss@sfmea.com>;christina@sfmea.com <christina@sfmea.com>;staff@sfmea.com <staff@sfmea.com>;kdavis@ifpte21.org <kdavis@ifpte21.org>;jharding@ifpte21.org <jharding@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;dho@ifpte21.org <dho@ifpte21.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;ecassidy@ifpte21.com <ecassidy@ifpte21.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;kpage@ifpte21.org <kpage@ifpte21.org>;eerbach@ifpte21.org <eerbach@ifpte21.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$5,000,000 for services for the period October 1, 2023 – December 31, 2028. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/8372>

Email sent to the following addresses: L21PSCReview@ifpte21.org
eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com
ecassidy@ifpte21.com ewallace@ifpte21.org dho@ifpte21.org
mweirick@ifpte21.org
jharding@ifpte21.org kdavis@ifpte21.org staff@sfmea.com Christina@sfmea.com
Criss@SFMEA.com junko.laxamana@sfgov.org andrea@sfmea.com
amakayan@ifpte21.org
agarza@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Mod#7 Amount: no amount added PSC Mod#7 Duration: 05/01/23-06/30/26 (1 year)

PSC Cumulative Amount Proposed: \$2,590,000 PSC Cumulative Duration Proposed: 9 years 39 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such as Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

There is an on-going need for these core public health services.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

- Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).
- Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).
- Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

To extend the term at \$0 in order to accommodate the new grant term which funds existing programs.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. **Union Notification:** On 11/29/22, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 12/19/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Mod#6 Amount: \$700,000 PSC Mod#6 Duration: 10/01/22-06/30/25 (2 years 4 weeks)

PSC Cumulative Amount Proposed: \$2,590,000 PSC Cumulative Duration Proposed: 8 years 39 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

There is an on-going need for these core public health services.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

To extend the approval and to add additional funds to the request to continue existing projects and to incorporate additional grant funds.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.

B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. **Union Notification:** On 09/13/22, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 09/26/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47706 - 16/17)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Services to support Department, Community and City initiatives

Funding Source: General Fund, Grants, Work Order

PSC Original Approved Amount: \$95,000 PSC Original Approved Duration: 10/01/16 - 09/30/18 (1 year 52 weeks)

PSC Mod#1 Amount: \$500,000 PSC Mod#1 Duration: 04/01/17-12/31/19 (1 year 13 weeks)

PSC Mod#2 Amount: \$295,000 PSC Mod#2 Duration: 07/01/17-09/30/20 (39 weeks 23 hours)

PSC Mod#3 Amount: \$500,000 PSC Mod#3 Duration: no duration added

PSC Mod#4 Amount: no amount added PSC Mod#4 Duration: 07/01/19-12/31/20 (13 weeks 1 day)

PSC Mod#5 Amount: \$500,000 PSC Mod#5 Duration: 10/01/19-05/31/23 (2 years 21 weeks)

PSC Cumulative Amount Proposed: \$1,890,000 PSC Cumulative Duration Proposed: 6 years 34 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The initial engagement will be in support of a task force established by the Board of Supervisors in preparation for the possible legalization and regulation of adult use and possession of cannabis, the Cannabis State Legalization Task Force, begun in early 2016, to be active for a two-year period. The Task Force is comprised of 22 members, including non-voting representatives of City departments such as Planning, Fire, Police, Building Inspection and Public Health and voting members from various sectors, including advocates, business and tourism sector representatives. Services will include assistance in planning; identifying best practices, legal mandates and other relevant information; determining the stakeholder needs; facilitating meetings and handling task force/project documentation and communications; development of findings and recommendations; and making large and small group presentations.

B. Explain why this service is necessary and the consequence of denial:

Contractor assistance is needed to augment Department capacity and allow civil service staff to lead the project and to provide oversight and implementation, legislative and policy development, and project specific tasks essential to advance any initiative or project through to completion.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47706 - 16/17

D. Will the contract(s) be renewed?

Only if there are additional projects and continued funding.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

There is an on-going need for these core public health services.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Cases where future funding is so uncertain that the establishment of new civil service positions, classes or programs is not feasible (including situations where there is grant funding).

Explain the qualifying circumstances:

The subject area for an individual project will be diverse in nature. In addition, the need for the service is based on a given project and funding to support this service. Funding is typically based on grant funds, or one time funding to support a given initiative.

B. Reason for the request for modification:

This modification adds additional spending authority and extends the term in order to continue preexisting services and add two new grants for additional services that fall within the scope.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The Contractor must have: strong facilitation skills in managing a large and smaller groups; meeting planning and preparation; creating agendas and synthesizing meeting minutes; report and issue brief and technical writing; experience in developing and delivering presentations to legislative bodies and commissions, community groups, executive and line staff, and City departments.

B. Which, if any, civil service class(es) normally perform(s) this work? 1805, Performance Analyst II;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Contractor may be required to provide own equipment for documentation and presentations.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil service classes are not applicable due to the project-specific nature of the work, which requires specific knowledge on a given topic. In addition, the work is intermittent and temporary in nature.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: It is not practical to adopt a new civil service class because of the short term, project-specific, topic-specific nature of the services needed.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

While formal training is not part of the central scope of the needed services, some knowledge transfer is expected due to the nature of the project, e.g., staff and stakeholders are expected to learn from any research or presentations made by the contractor.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Contractors: Harder & Company; Hatchuel,Tabernik,&Associates

7. **Union Notification:** On 01/23/20, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, SFAPP; Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Municipal Executive Association; Management & Superv Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 101 Grove St. Rm. 307, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47706 - 16/17

DHR Analysis/Recommendation:

03/16/2020

Commission Approval Required

Approved by Civil Service Commission

03/16/2020 DHR Approved for 03/16/2020

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # 47743 - 17/18)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Behavioral Health Services-Workforce Development-Drug & Alcohol Studies Certificate Program

Funding Source: General Fund

PSC Original Approved Amount: \$962,000 PSC Original Approved Duration: 01/01/18 - 12/31/23 (6 years)

PSC Mod#1 Amount: \$550,000 PSC Mod#1 Duration: 01/01/24-12/31/24 (1 year 1 day)

PSC Cumulative Amount Proposed: \$1,512,000 PSC Cumulative Duration Proposed: 7 years 1 day

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide a behavioral workforce program to prepare students and residents for the behavioral health services workforce by teaching up-to-date, evidenced-based practices. This program will develop and implement a drug and alcohol studies certificate program (currently provided at City College of San Francisco) that will span 2-3 academic years for counselors employed through Department of Public Health (DPH) Behavioral Health Services (BHS)-funded programs, or those who plan to seek employment with San Francisco agencies. The program will reinforce segments of the DPH BHS's planned education and training "pipeline," with a focus on drawing candidates of varying ethnic and cultural heritages, language backgrounds, sexual orientations/gender identities, and experiences with behavioral health systems.

The format will be weekly night classes accessible to working adults and those who may have interrupted academic histories due to family responsibilities and/or time needed for recovery. Enrollment will be aimed to reflect the populations currently served, prioritizing students from diverse communities (e.g., African Americans, Latino/as, Asians, Pacific Islanders, Native Americans and immigrant groups from the neighborhoods of Bayview-Hunters Point, Visitacion Valley, the Mission, Western Addition, Tenderloin and other disenfranchised areas of the city) and marginalized groups (e.g., Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex [LGBTQQI], formerly-incarcerated, homeless, etc.).

B. Explain why this service is necessary and the consequence of denial:

Without this program, San Francisco residents will participate in behavioral health services with providers who are less educated and less trained to treat substance abuse issues. This can lead to increased levels of addiction, anxiety, depression, and other behavioral health symptoms. These services can only be offered where facilities and staffing exist. These services exist to prevent more extensive behavioral health treatment and costs. Not providing services may result in communities feeling victimized by the City, increased lawsuits and related costs. In addition, this program will train a large number of individuals from isolated and/or economically/socially marginalized communities, such as LGBTQQI, formerly-incarcerated, in recovery, and homeless or marginally-housed. This personal lived experience can act as a bridge when counselors are engaging and working with clients who have similar experiences. Studies show that clients are more engaged and better follow treatment recommendations when working with counselors from similar backgrounds. Training counselors with "lived experience" and when/how to best use this "lived experience" requires a very skilled level of expertise not found in civil service

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 47743 - 17/18

D. Will the contract(s) be renewed?

Yes, as funding is available.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Department expects the need for these services to continue. The duration requested corresponds to the anticipated maximum term of contract(s) awarded under this PSC.

2. Reason(s) for the Request

A. Display all that apply

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

While Civil Service staff work in close partnership with contractors, the City does not have the breadth and depth of cultural expertise and linkages available through community contractors. This program requires the use of community college level faculty to provide professional level education offering college credits through an accredited college. The State requires formal and professional education be provided in the field of substance use/abuse, and requires the use of college/university-level faculty to provide this education through an accredited college. In addition, this program must be based on the wellness and recovery principles, and must recruit behavioral health clients with lived experience. This specialty is difficult to require under Civil Service.

B. Reason for the request for modification:

Extend the duration to align with the anticipated contract term and increase the amount accordingly.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Demonstrated experience in: designing, implementing and evaluating a behavioral health workforce development program for specific populations (e.g., community college, university, etc.); serving as a major segment of a behavioral health workforce development career pipeline; and incorporating wellness and recovery principles into the program's curricula and training. Must also have the proven capacity to teach program participants how to deliver responsive services to community members in ways that are respectful and also honor each person's heritage, language and cultural worldviews, and the ability to provide educational institution certificate programs at the community college level.

B. Which, if any, civil service class(es) normally perform(s) this work? 1232, Training Officer;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor will provide instructional space/classrooms, educational equipment, curricula, professional instruction, and other services necessary to the provision of an appropriate certificate program.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Community-based behavioral health contractors provide cultural expertise and linkages otherwise unavailable through Civil Service classifications. Civil Service staff work in close partnership with contractors. In addition, this program requires the use of community college level faculty to provide professional level education offering college credits through an accredited college. The State requires formal and professional education be provided in the field of substance use/abuse, and requires the use of

college/university-level faculty to provide this education through an accredited college. In addition, this program must be based on the wellness and recovery principles, and must recruit behavioral health clients with lived experience. This specialty is difficult to require under Civil Service.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, demand currently exceeds the capacity at City and County of San Francisco facilities to provide this services, so the City has worked in partnership with City College of San Francisco and current behavioral health contractors to develop a program to meet the needs of as many students and clients as possible.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not. The nature of the services is training, but not of civil service employees, although this training may help to prepare participants to become future Civil Service employees.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 08/23/23, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kelly Hiramoto Phone: 415-255-3492 Email: kelly.hiramoto@sfdph.org

Address: 101 Grove Street, Room 405, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47743 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Receipt of Modification Request to PSC # 47743 - 17/18 - MODIFICATIONS

dhr-psccordinator@sfgov.org

on behalf of

kelly.hiramoto@sfdph.org

Wed 8/23/2023 12:53 PM

To:Hiramoto, Kelly (DPH) <kelly.hiramoto@sfdph.org>;kdavis@ifpte21.org <kdavis@ifpte21.org>;jharding@ifpte21.org <jharding@ifpte21.org>;mweirick@ifpte21.org <mweirick@ifpte21.org>;agarza@ifpte21.org <agarza@ifpte21.org>;ewallace@ifpte21.org <ewallace@ifpte21.org>;Laxamana, Junko (DBI) <Junko.Laxamana@sfgov.org>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;WendyWong26@yahoo.com <WendyWong26@yahoo.com>;tmathews@ifpte21.org <tmathews@ifpte21.org>;kschumacher@ifpte21.org <kschumacher@ifpte21.org>;l21pscreview@ifpte21.org <l21pscreview@ifpte21.org>;DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC HEALTH -- DPH has submitted a modification request for a Personal Services Contract (PSC) for \$550,000 for services for the period January 1, 2024

– December 31, 2024. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrrupal/node/21304>

Email sent to the following addresses: L21PSCReview@ifpte21.org
kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com
WendyWong26@yahoo.com junko.laxamana@sfgov.org ewallace@ifpte21.org
agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org
kdavis@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC HEALTH -- DPH

Dept. Code: DPH

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Behavioral Health Services-Workforce Development-Drug & Alcohol Studies Certificate Program

Funding Source: General Fund

PSC Duration: 6 years

PSC Amount: \$962,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The contractor(s) will provide a behavioral workforce program to prepare students and residents for the behavioral health services workforce by teaching up-to-date, evidenced-based practices. This program will develop and implement a drug and alcohol studies certificate program (currently provided at City College of San Francisco) that will span 2-3 academic years for counselors employed through Department of Public Health (DPH) Behavioral Health Services (BHS)-funded programs, or those who plan to seek employment with San Francisco agencies. The program will reinforce segments of the DPH BHS's planned education and training "pipeline," with a focus on drawing candidates of varying ethnic and cultural heritages, language backgrounds, sexual orientations/gender identities, and experiences with behavioral health systems.

The format will be weekly night classes accessible to working adults and those who may have interrupted academic histories due to family responsibilities and/or time needed for recovery. Enrollment will be aimed to reflect the populations currently served, prioritizing students from diverse communities (e.g., African Americans, Latino/as, Asians, Pacific Islanders, Native Americans and immigrant groups from the neighborhoods of Bayview-Hunters Point, Visitacion Valley, the Mission, Western Addition, Tenderloin and other disenfranchised areas of the city) and marginalized groups (e.g., Lesbian/Gay/Bisexual/Transgender/Queer/Questioning/Intersex [LGBTQQI], formerly-incarcerated, homeless, etc.).

B. Explain why this service is necessary and the consequence of denial:

Without this program, San Francisco residents will participate in behavioral health services with providers who are less educated and less trained to treat substance abuse issues. This can lead to increased levels of addiction, anxiety, depression, and other behavioral health symptoms. These services can only be offered where facilities and staffing exist. These services exist to prevent more extensive behavioral health treatment and costs. Not providing services may result in communities feeling victimized by the City, increased lawsuits and related costs. In addition, this program will train a large number of individuals from isolated and/or economically/socially marginalized communities, such as LGBTQQI, formerly-incarcerated, in recovery, and homeless or marginally-housed. This personal lived experience can act as a bridge when counselors are engaging and working with clients who have similar experiences. Studies show that clients are more engaged and better follow treatment recommendations when working with counselors from similar backgrounds. Training counselors with "lived experience" and when/how to best use this "lived experience" requires a very skilled level of expertise not found in civil service

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.
PSC 4162-09/10

D. Will the contract(s) be renewed?

Yes, as funding is available.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The Department expects the need for these services to continue. The duration requested corresponds to the anticipated maximum term of contract(s) awarded under this PSC.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

While Civil Service staff work in close partnership with contractors, the City does not have the breadth and depth of cultural expertise and linkages available through community contractors. This program requires the use of community college level faculty to provide professional level education offering college credits through an accredited college. The State requires formal and professional education be provided in the field of substance use/abuse, and requires the use of college/university-level faculty to provide this education through an accredited college. In addition, this program must be based on the wellness and recovery principles, and must recruit behavioral health clients with lived experience. This specialty is difficult to require under Civil Service.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Demonstrated experience in: designing, implementing and evaluating a behavioral health workforce development program for specific populations (e.g., community college, university, etc.); serving as a major segment of a behavioral health workforce development career pipeline; and incorporating wellness and recovery principles into the program's curricula and training. Must also have the proven capacity to teach program participants how to deliver responsive services to community members in ways that are respectful and also honor each person's heritage, language and cultural worldviews, and the ability to provide educational institution certificate programs at the community college level.

B. Which, if any, civil service class(es) normally perform(s) this work? 1232, Training Officer;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes, contractor will provide instructional space/classrooms, educational equipment, curricula, professional instruction, and other services necessary to the provision of an appropriate certificate program.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

While there are no City and County of San Francisco Civil Service positions to provide these services, these services are typically well-provided through the contractor, City College of San Francisco, through their Drug and Alcohol Certificate program, developed in partnership with DPH BHS.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Community-based behavioral health contractors provide cultural expertise and linkages otherwise unavailable through Civil Service classifications. Civil Service staff work in close partnership with contractors. In addition, this program requires the use of community college level faculty to provide professional level education offering college credits through an accredited college. The State requires formal and professional education be provided in the field of substance use/abuse, and requires the use of college/university-level faculty to provide this education through an accredited college. In addition, this program must be based on the wellness and recovery principles, and must recruit behavioral health clients with lived experience. This specialty is difficult to require under Civil Service.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, demand currently exceeds the capacity at City and County of San Francisco facilities to provide this services, so the City has worked in partnership with City College of San Francisco and current behavioral health contractors to develop a program to meet the needs of as many students and clients as possible.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
No. The nature of the services is training, but not of civil service employees, although this training may help to prepare participants to become future Civil Service employees.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 09/09/2017, the Department notified the following employee organizations of this PSC/RFP request:
Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jacquie Hale Phone: (415) 554-2609 Email: jacquie.hale@sfdph.org

Address: 101 Grove Street, Room 405 San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47743 - 17/18

DHR Analysis/Recommendation:

action date: 12/04/2017

Commission Approval Required

Approved by Civil Service Commission

12/04/2017 DHR Approved for 12/04/2017

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION

Dept. Code: PUC

Type of Request: Initial Modification of an existing PSC (PSC # 43527 - 17/18)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Assist SFPUC staff with complex real estate and land use issues and negotiations(PRO.0105).

Funding Source: Real Estate Services Operating Budget

PSC Original Approved Amount: \$1,200,000 PSC Original Approved Duration: 09/01/18 - 08/30/23 (4 years 52 weeks)

PSC Mod#1 Amount: \$200,000 PSC Mod#1 Duration: 08/28/23-04/01/27 (3 years 30 weeks)

PSC Cumulative Amount Proposed: \$1,400,000 PSC Cumulative Duration Proposed: 8 years 30 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The work under this agreement includes identifying underutilized and other SFPUC properties that are candidates for revenue enhancement; assessing land economics; assessing project and entitlement feasibility; making entitlement applications; building and sustaining local government and community relationships to generate project support; securing necessary local government entitlement approvals outside of San Francisco; analyzing and resolving complex title issues and boundary issues; performing appraisals and providing pre-acquisition and pre-disposition services.

B. Explain why this service is necessary and the consequence of denial:

The service is necessary to help with the sales program for underutilized properties currently in progress and this program could be delayed further if denied. The SFPUC will not have certain expertise needed for complex projects. The SFPUC owns properties in San Francisco, San Mateo, Santa Clara, Alameda, Tuolumne, Stanislaus, and San Joaquin Counties. Almost all of the underutilized properties that are candidates for revenue enhancement are outside of the City and County of San Francisco. Each jurisdiction has its own entitlement requirements and economic environment which necessitate local expertise for entitlement feasibility and applications. The inability to complete these complex projects could lead to loss of income and ratepayer return.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 43527 - 17/18

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

Explain the qualifying circumstances:

Short -Term Services: Once the underutilized properties are developed and/or sold, the need for additional services will end. Intermittent/Periodic Services: The SFPUC has certain complex leases (quarries, golf course, grazing, industrial) that require specialized experience to negotiate. These leases generally are long-term (20 - 40 years), so once the transactions are completed, the need for additional services will end. Specialized Services: SFPUC staff

purchases properties and easements for utility use and capital projects. Due to the unique nature of the properties outside of San Francisco (watershed, remote locations), specialized expertise is required to handle title, boundary and land valuation issues. Conflict of Interest: Real estate appraisers are professionals who provide independent opinions of value as to real property. It is necessary to hire outside qualified appraisers to avoid potential conflicts of interest.

B. Reason for the request for modification:

SFPUC Real Estate Services Division (RES) desires to extend the ending date of its real estate as needed professional services, Pro. 0105 Real Estate Negotiation and Land Use Services with Century Urban by three years. The contract presently expires on April 1, 2024, and RES seeks to extend the expiration date to April 1, 2027. Here are the reasons: RES has given Century Urban and its subconsultants ongoing projects that it does not want to disrupt. RES still has unused budgetary authority under the existing contract. RES staff works well with Century Urban and its subconsultants. A three-year extension would give RES time to finish the projects and to engage in a RFP process for a new professional as needed services contract.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Expertise in (i) negotiating complex leases (such as quarries, golf course, grazing, industrial, etc.); (ii) handling sales of complex and/or large parcels of land (e.g., agricultural land or land in remote locations, etc.); (iii) handling complex land use entitlements for lands outside of San Francisco; (iv) analyzing and resolving complex title issues; (v) analyzing and resolving boundary issues to support land use entitlements for projects on SFPUC lands outside of San Francisco; and (vi) assessing economics of real estate and land use projects (utility use, capital projects, etc.).

B. Which, if any, civil service class(es) normally perform(s) this work? 1825, Prnpl Admin Analyst II; 4143, Principal Real Property Ofc;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Current 1825 Principal Analyst II and 4143 Principal Real Property Officer classifications do not have the required expertise.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, it is not practical to adopt a new class because of the unique nature of SFPUC lands and the short term and intermittent nature of the consultant work. Once the complex long-term lease transactions and development and sale of underutilized properties are completed, there will be no need for additional services. Additionally, the work itself, especially the economic analysis and appraisal work, requires independent analysis to support the SFPUC's efforts to lease and sell property at fair market value for approvals by the SFPUC's Commission and the Board of Supervisors. In addition, the SFPUC uses specialty economists from time to time to assess the unique rent for its remote agricultural, grazing, quarry and golf course leases where standard commercial property "comps" are not applicable to assess fair market value.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.

This SFPUC requires different and deep specialized expertise on a short-term or on an intermittent basis where the work is not suitable to build internal capacity. For instance, the SFPUC requires the services of a title expert, usually a former title company researcher, to research unique complex historic title issues for the SFPUC's watershed lands only a few times a year where the projects are beyond the expertise of current SFPUC analysts. This is important work that the SFPUC often requires to resolve pre-litigation property disputes where SFPUC staff has tried to do the work but has not had the resources to find the required documents located outside of San Francisco. In addition, the

SFPUC has less than 10 underutilized properties that it is seeking to sell. All of these properties are located outside of San Francisco, have original property boundaries dating from before 1930 and have unique land use issues, such as the need for agricultural lot line adjustments or new parcel maps, in order to sell such property. The SFPUC requires the use of local land use consultants who understand how to comply with development and land use ordinances outside of San Francisco to handle the boundary issues and complex land use entitlements process. In addition, two areas of expertise required under this contract (land economics and appraisal) require independent analysis to support the approval by the SFPUC's Commission and the Board of Supervisors of the long-term lease and sale of property at fair market value.

- C. Are there legal mandates requiring the use of contractual services?
We are required to get independent appraisals from qualified appraisers for purchase and sale of property in accordance with Chapter 23 of the Administrative Code.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 08/28/23, the Department notified the following employee organizations of this PSC/RFP request: Professional & Tech Engrs, Local 21; Prof & Tech Eng, Local 21; Architect & Engineers, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Shawndrea Hale Phone: (415) 551-4540 Email: shale@sflower.org

Address: 525 Golden Gate Avenue, 8th Floor, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43527 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of shale@sfgov.org
To: [Hale, Shawndrea M.](mailto:Hale,Shawndrea.M.); junko.laxamana@sfgov.org; agarza@ifpte21.org; amakayan@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; dho@ifpte21.org; ewallace@ifpte21.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; erbach@ifpte21.org; L21PSCReview@ifpte21.org; dhr-psccordinator@sfgov.org
Subject: Receipt of Modification Request to PSC # 43527 - 17/18 - MODIFICATIONS
Date: Monday, August 28, 2023 3:25:43 PM

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

PSC RECEIPT of Modification notification sent to Unions and DHR

The PUBLIC UTILITIES COMMISSION -- PUC has submitted a modification request for a Personal Services Contract (PSC) for \$200,000 for services for the period August 28, 2023 – April 1, 2027. For all Modification requests, there is a 7-Day notice to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21341>

Email sent to the following addresses: L21PSCReview@ifpte21.org
erbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org
tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com
ecassidy@ifpte21.com ewallace@ifpte21.org dho@ifpte21.org
mweirick@ifpte21.org
jharding@ifpte21.org kdavis@ifpte21.org amakayan@ifpte21.org
agarza@ifpte21.org
junko.laxamana@sfgov.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: PUBLIC UTILITIES COMMISSION -- PUC

Dept. Code: PUC

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: Assist SFPUC staff with complex real estate and land use issues and negotiations(PRO.0105)

Funding Source: Real Estate Services Operating Budget

PSC Duration: 4 years 52 weeks

PSC Amount: \$1,200,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The work under this agreement includes identifying underutilized and other SFPUC properties that are candidates for revenue enhancement; assessing land economics; assessing project and entitlement feasibility; making entitlement applications; building and sustaining local government and community relationships to generate project support; securing necessary local government entitlement approvals outside of San Francisco; analyzing and resolving complex title issues and boundary issues; performing appraisals and providing pre-acquisition and pre-disposition services.

B. Explain why this service is necessary and the consequence of denial:

The service is necessary to help with the sales program for underutilized properties currently in progress and this program could be delayed further if denied. The SFPUC will not have certain expertise needed for complex projects. The SFPUC owns properties in San Francisco, San Mateo, Santa Clara, Alameda, Tuolumne, Stanislaus, and San Joaquin Counties. Almost all of the underutilized properties that are candidates for revenue enhancement are outside of the City and County of San Francisco. Each jurisdiction has its own entitlement requirements and economic environment which necessitate local expertise for entitlement feasibility and applications. The inability to complete these complex projects could lead to loss of income and ratepayer return.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes. Through SFPUC Contract No. CS-287, Real Estate and Land Use Services (PSC #4066-12/13).

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

B. Explain the qualifying circumstances:

Short -Term Services: Once the underutilized properties are developed and/or sold, the need for additional services will end. Intermittent/Periodic Services: The SFPUC has certain complex leases (quarries, golf course, grazing, industrial) that require specialized experience to negotiate. These leases generally are long-term (20 - 40 years), so once the transactions are completed, the need for additional services will end. Specialized Services: SFPUC staff purchases properties and easements for utility use and capital projects. Due to the unique nature of the properties outside of San Francisco (watershed, remote locations), specialized expertise is required to handle title, boundary and land valuation issues. Conflict of Interest: Real estate appraisers are professionals who provide independent opinions of value as to real property. It is necessary to hire outside qualified appraisers to avoid potential conflicts of interest.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Expertise in (i) negotiating complex leases (such as quarries, golf course, grazing, industrial, etc.); (ii) handling sales of complex and/or large parcels of land (e.g., agricultural land or land in remote locations, etc.); (iii) handling complex land use entitlements for lands outside of San Francisco; (iv) analyzing and resolving complex title issues; (v) analyzing and resolving boundary issues to support land use entitlements for projects on SFPUC lands outside of San Francisco; and (vi) assessing economics of real estate and land use projects (utility use, capital projects, etc.).
- B. Which, if any, civil service class(es) normally perform(s) this work? 1825, Prnpl Admin Analyst II; 4143, Principal Real Property Ofc;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not applicable. Certain classes can do some of this work, but specialized expertise is not available at current city departments.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Current 1825 Principal Analyst II and 4143 Principal Real Property Officer classifications do not have the required expertise.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, it is not practical to adopt a new class because of the unique nature of SFPUC lands and the short term and intermittent nature of the consultant work. Once the complex long-term lease transactions and development and sale of underutilized properties are completed, there will be no need for additional services. Additionally, the work itself, especially the economic analysis and appraisal work, requires independent analysis to support the SFPUC's efforts to lease and sell property at fair market value for approvals by the SFPUC's Commission and the Board of Supervisors. In addition, the SFPUC uses specialty economists from time to time to assess the unique rent for its remote agricultural, grazing, quarry and golf course leases where standard commercial property "comps" are not applicable to assess fair market value.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. This SFPUC requires different and deep specialized expertise on a short-term or on an intermittent basis where the work is not suitable to build internal capacity. For instance, the SFPUC requires the services of a title expert, usually a former title company researcher, to research unique complex historic title issues for the SFPUC's watershed lands only a few times a year where the projects are beyond the expertise of current SFPUC analysts. This is important work that the SFPUC often requires to resolve pre-litigation property disputes where SFPUC staff has tried to do the work but has not had the resources to find the required documents located outside of San Francisco. In addition, the SFPUC has less than 10 underutilized properties that it is seeking to sell. All of these properties are located outside of San Francisco, have original property boundaries dating from before 1930 and have unique land use issues, such as the need for agricultural lot line adjustments or new parcel maps, in order to sell such property. The SFPUC requires the use of local land use consultants who understand how to comply with development and land use ordinances outside of San Francisco to handle the boundary issues and complex land use entitlements process. In addition, two areas of expertise required under this contract (land economics and appraisal) require independent analysis to support the approval by the SFPUC's Commission and the Board of Supervisors of the long-term lease and sale of property at fair market value.
- C. Are there legal mandates requiring the use of contractual services?
Yes. We are required to get independent appraisals from qualified appraisers for purchase and sale of property in accordance with Chapter 23 of the Administrative Code.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 03/08/2018, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21; Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Bill Irwin Phone: 415-934-3975 Email: wirwin@sfgwater.org

Address: 525 Golden Gate Avenue, 8th Floor San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 43527 - 17/18

DHR Analysis/Recommendation:

action date: 05/07/2018

Commission Approval Required

Approved by Civil Service Commission

05/07/2018 DHR Approved for 05/07/2018

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF

Dept. Code: SHF

Type of Request: Initial Modification of an existing PSC (PSC # 37035 - 22/23)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: TO ADVANCE MEDI-CAL ENROLLMENT IN THE SAN FRANCISCO COUNTY JAILS

Funding Source: Grant

PSC Original Approved Amount: \$100,000 PSC Original Approved Duration: 09/07/22 - 09/07/23 (1 year)

PSC Mod#1 Amount: \$61,000 PSC Mod#1 Duration: 05/01/23-04/20/25 (1 year 32 weeks)

PSC Cumulative Amount Proposed: \$161,000 PSC Cumulative Duration Proposed: 2 years 32 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Coordinate efforts among multiple city agencies to identify and reduce barriers to pre-release Medi-Cal enrollment for persons incarcerated in the San Francisco County jails. Interview stakeholders and map existing Medi-Cal enrollment processes that occur in custody,

Identify barriers for enrollment efforts and operational gaps that need to be addressed to implement the pre-release enrollment and suspension processes, including but not limited to IT system modifications, Facilitate meetings and collaborative planning sessions between Sheriff’s Office and County Health and Social Service agencies. Identify protocols and IT modifications to strengthen pre-release enrollment, Identify the technology systems and staff needed to more efficiently identify Medi-Cal status at booking, provide enrollment assistance to those in need, while also providing accurate booking and release information to the HSA. Work with partner agencies to develop a comprehensive application for implementation funding which is due to the State Department of Health Care Services by December 31, 2022. The initial deliverable of the implementation grant proposal is due no later than December 9, 2022.

Scope Change

Implementation Assistance, meetings, and Project Management.

B. Explain why this service is necessary and the consequence of denial:

California statute (AB-133 Health; Chapter 143) mandates all counties implement pre-release Medi-Cal enrollment processes by January 1, 2023. Establishing pre-release Medi-Cal enrollment processes is part of the State’s vision to enhance the Medi-Cal health care delivery system for justice-involved populations. Implementation of pre-release enrollment and suspension processes will help ensure Medi-Cal coverage upon re-entry into the community in order to facilitate access to needed Medi-Cal covered services.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Services have been provided in the past through earlier PSC request. See 37035 - 22/23

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

This is one time funding provided by the State Department of Health Care Services to support planning for Medi-Cal enrollment in the jails

B. Reason for the request for modification:

Adding \$61K for PATH grant round 2. Extending contract period from May 1, 2023, to April 20, 2025.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Needed expertise working across a variety of City Departments, (SFSO, DPH and HSA) mapping business practices and suggesting improvements.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:
No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

This is one time funding provided by the State Department of Health Care Services to support planning for Medi-Cal enrollment in the jails

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, this funding is short term and has a major deliverable due by 12/31/22.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not. Prepare and maintain a written process operating and training manual (including process policy and standards documentation)

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 08/29/23, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Peggy Zee Phone: 4155547229 Email: peggy.zee@sfgov.org

Address: 1 Dr. Carlton B Goodlett Place Room 456, San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 37035 - 22/23

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of peggy.zee@sfgov.org
Sent: Tuesday, August 29, 2023 1:01 PM
To: Zee, Peggy (SHF); cade.crowell@seiu1021.org; jduritz@uapd.com; kdavis@ifpte21.org; kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; dho@ifpte21.org; dho@ifpte21.org; dvickers@iam1414.org; SF-DHR-Info@seiu1021.org; SF-DHR-Info@seiu1021.org; sbabaria@cirseiu.org; andrea@sfmea.com; camaguey@sfmea.com (contact); camaguey@sfmea.com (contact); cpark@local39.org; cpark@local39.org; khughes@ibew6.org; ewallace@ifpte21.org; ewallace@ifpte21.org; plangrooferslocal40@gmail.com; rooferslocal40@gmail.com; Stan Eichenberger; dtuttle@oe3.org; dtubble@oe3.org; pkim@ifpte21.org; Najuwanda Daniels; Pierre King - UAPD; president@sanfranciscodsa.com; max.porter@seiu1021.org; kennethlomba@gmail.com; snaranjo@cirseiu.org; mdennis@twusf.org; roger marengo; pwilson@twusf.org; cmoyer@nccrc.org; Frigault, Noah (HRC); sfdpoa@icloud.com; mjayne@iam1414.org; Emanuel, Rachel (DEM); laborers261@gmail.com; Laxamana, Junko (DBI); jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; @sfpoa.org; Tracy McCray; mleach; rooferslocal40@gmail.com; sal@local16.org; Criss@sfmea.com; Julie.Meyers@sfgov.org; Stan Eichenberger; Jason Klumb; camaguey@sfmea.com (contact); ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Kbasconillo@sfgwater.org; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy Frigillana; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; Ramon Hernandez; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; XiuMin Li; Sin.Yee.Poon@sfgov.org; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@sfmea.com; mike@dc16.us; khughes@ibew6.org; l21pscreview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; David Canham; jtanner940@aol.com; Osha Ashworth; l21pscreview@ifpte21.org; laborers261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; christina@sfmea.com; ecdemvoter@aol.com; Thomas Vitale; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 37035 - 22/23 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The SHERIFF -- SHF has submitted a modification request for a Personal Services Contract (PSC) for \$61,000 for services for the period May 1, 2023 – April 20, 2025. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/21349>

Email sent to the following addresses: Please check the record to see if you selected a union where a corresponding email in the TO: field isn't present.

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF -- SHE

Dept. Code: SHE

Type of Request: Initial Modification of an existing PSC (PSC # _____)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: TO ADVANCE MEDI-CAL ENROLLMENT IN THE SAN FRANCISCO COUNTY JAILS

Funding Source: Grant

PSC Amount: \$100,000

PSC Est. Start Date: 09/07/2022

PSC Est. End Date 09/07/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Coordinate efforts among multiple city agencies to identify and reduce barriers to pre-release Medi-Cal enrollment for persons incarcerated in the San Francisco County jails. Interview stakeholders and map existing Medi-Cal enrollment processes that occur in custody,

Identify barriers for enrollment efforts and operational gaps that need to be addressed to implement the pre-release enrollment and suspension processes, including but not limited to IT system modifications, Facilitate meetings and collaborative planning sessions between Sheriff's Office and County Health and Social Service agencies. Identify protocols and IT modifications to strengthen pre-release enrollment, Identify the technology systems and staff needed to more efficiently identify Medi-Cal status at booking, provide enrollment assistance to those in need, while also providing accurate booking and release information to the HSA. Work with partner agencies to develop a comprehensive application for implementation funding which is due to the State Department of Health Care Services by December 31, 2022. The initial deliverable of the implementation grant proposal is due no later than December 9, 2022.

B. Explain why this service is necessary and the consequence of denial:

California statute (AB-133 Health; Chapter 143) mandates all counties implement pre-release Medi-Cal enrollment processes by January 1, 2023. Establishing pre-release Medi-Cal enrollment processes is part of the State's vision to enhance the Medi-Cal health care delivery system for justice-involved populations. Implementation of pre-release enrollment and suspension processes will help ensure Medi-Cal coverage upon re-entry into the community in order to facilitate access to needed Medi-Cal covered services.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

N/A

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

This is one time funding provided by the State Department of Health Care Services to support planning for Medi-Cal enrollment in the jails

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Needed expertise working across a variety of City Departments, (SFSO, DPH and HSA) mapping business practices and suggesting improvements.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

SFSO reached out to the Controller's Office about available city resources and were directed to a list of preapproved vendors.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

This is one time funding provided by the State Department of Health Care Services to support planning for Medi-Cal enrollment in the jails

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, this funding is short term and has a major deliverable due by 12/31/22.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. The scope of work does not include training.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 09/07/2022, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Caroline Xu Phone: (415) 554-7229 Email: caroline.xu@sfgov.org

Address: 1 Dr. Carlton B Goodlett Place Room 456 San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 37035 - 22/23

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 10/03/2022

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: TREASURER/TAX COLLECTOR

Dept. Code: TTX

Type of Request: Initial Modification of an existing PSC (PSC # 44886 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: TTX-Smart Money Coach-Low Income

Funding Source: General Funds

PSC Original Approved Amount: \$270,000 PSC Original Approved Duration: 07/01/20 - 06/30/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$1,400,000 PSC Mod#1 Duration: 03/19/21-06/30/24 (2 years 1 day)

PSC Mod#2 Amount: \$1,000,000 PSC Mod#2 Duration: 09/01/23-06/30/26 (2 years)

PSC Cumulative Amount Proposed: \$2,670,000 PSC Cumulative Duration Proposed: 6 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of the Treasurer and Tax Collector, Office of Financial Empowerment (OFE) is seeking to expand its one-on-one financial coaching program, Smart Money Coaching (SMC), to reach more residents in low-income communities and in communities with inequitable economic opportunity. The financial coaching service provider would have opportunities to support coaching across the City at City department sites, community-based organizations (CBOs) and other locations identified by the financial coaching service provider in partnership with OFE.

B. Explain why this service is necessary and the consequence of denial:

This service is important to financially support residents in low-income neighborhoods, communities with banking deserts, and for populations with the highest rates of economic disparities. This is a specialized service and requires working with an organization that has financially trained and certified coaches with expertise in working with low-income populations to effectively support their financial needs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC 44886-19/20

D. Will the contract(s) be renewed?

Potentially.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The Treasurer and Tax Collector (TTX) requires a sustained partnership for certified Smart Money Coaching services to support increased interest from other City departments to create financial coaching pilot programs for their respective constituents.

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The service is very technical and not enough financial coaches are yet needed to create a civil service class to perform this work. Coaches must be certified.

B. Reason for the request for modification:

Exercising an option to extend the contract terms and increase funds.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: The required skills and expertise include: • Knowledge and/or assessment of the financial service and coaching needs of the proposed service area and a successful track record to providing solutions and services most appropriate to addressing the specific needs of clients in the proposed service area. • Experience with data tracking and reporting to government agencies and the ability to track, manage and report on critical data points for each client. • Financial coaches must be Certified Financial Counselors through the National Association of Certified Credit Counselors (NACCC) by start of service. • A minimum of three (3) years of experience working with residents in low-income communities and communities with inequitable economic opportunity • A minimum of three (3) years of experience working with the specific neighborhood(s) (Bayview-Hunters Point, Treasure Island, Tenderloin, South of Market) and/or communities (African American/Black, Hispanic/Latinx, Pacific Islander, Native American) identified in your proposal.
- B. Which, if any, civil service class(es) normally perform(s) this work? 2589, Health Program Coordinator 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: NO

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The services are highly specialized and require individuals trained and certified as financial coaches.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, the service is very technical and not enough financial coaches are yet needed to create a civil service class to perform this work.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Contractor will not be training City staff. Financial coaching is for residents of SF.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, we are using the same contractor for PSC 44886-19/20

7. Union Notification: On 09/01/23, the Department notified the following employee organizations of this PSC/RFP request:

Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amanda Wentworth Phone: 14155544871 Email: amanda.wentworth@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place, Room 140, San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44886 - 19/20

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 10/02/2023

Receipt of Union Notification(s)

From: dhr-psccordinator@sfgov.org on behalf of amanda.wentworth@sfgov.org
To: [Wentworth, Amanda \(TTX\)](mailto:Wentworth.Amanda@ttx.com); kdavis@ifpte21.org; jharding@ifpte21.org; mweirick@ifpte21.org; agarza@ifpte21.org; ewallace@ifpte21.org; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; amakayan@ifpte21.org; l21pscreview@ifpte21.org; [Wu, Kimmie \(TTX\)](mailto:Wu.Kimmie@ttx.com); [DHR-PSCCoordinator, DHR \(HRD\)](mailto:DHR-PSCCoordinator_DHR@hrd.com)
Subject: Receipt of Modification Request to PSC # 44886 - 19/20 - MODIFICATIONS
Date: Friday, September 1, 2023 3:11:28 PM

PSC RECEIPT of Modification notification sent to Unions and DHR

The TREASURER/TAX COLLECTOR -- TTX has submitted a modification request for a Personal Services Contract (PSC) for \$1,000,000 for services for the period September 1, 2023 – June 30, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/16225>

Email sent to the following addresses: L21PSCReview@ifpte21.org
amakayan@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org
wendywong26@yahoo.com WendyWong26@yahoo.com ewallace@ifpte21.org
agarza@ifpte21.org mweirick@ifpte21.org jharding@ifpte21.org
kdavis@ifpte21.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: TREASURER/TAX COLLECTOR

Dept. Code: TTX

Type of Request: Initial Modification of an existing PSC (PSC # 44886 - 19/20)

Type of Approval: Expedited Regular Annual Continuing (Omit Posting)

Type of Service: TTX-Smart Money Coach-Low Income

Funding Source: General Funds

PSC Original Approved Amount: \$270,000 PSC Original Approved Duration: 07/01/20 - 06/30/22 (1 year 52 weeks)

PSC Mod#1 Amount: \$1,400,000 PSC Mod#1 Duration: 03/19/21-06/30/24 (2 years 1 day)

PSC Cumulative Amount Proposed: \$1,670,000 PSC Cumulative Duration Proposed: 4 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The Office of the Treasurer and Tax Collector, Office of Financial Empowerment (OFE) is seeking to expand its one-on-one financial coaching program, Smart Money Coaching (SMC), to reach more residents in low-income communities and in communities with inequitable economic opportunity. The financial coaching service provider would have opportunities to support coaching across the City at City department sites, community-based organizations (CBOs) and other locations identified by the financial coaching service provider in partnership with OFE.

B. Explain why this service is necessary and the consequence of denial:

This service is important to financially support residents in low-income neighborhoods, communities with banking deserts, and for populations with the highest rates of economic disparities. This is a specialized service and requires working with an organization that has financially trained and certified coaches with expertise in working with low-income populations to effectively support their financial needs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, PSC 44886-19/20

D. Will the contract(s) be renewed?

Potentially.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The service is very technical and not enough financial coaches are yet needed to create a civil service class to perform this work. Coaches must be certified.

B. Reason for the request for modification:

Adding time and money.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The required skills and expertise include: • Knowledge and/or assessment of the financial service and coaching needs of the proposed service area and a successful track record to providing

solutions and services most appropriate to addressing the specific needs of clients in the proposed service area. • Experience with data tracking and reporting to government agencies and the ability to track, manage and report on critical data points for each client. • Financial coaches must be Certified Financial Counselors through the National Association of Certified Credit Counselors (NACCC) by start of service. • A minimum of three (3) years of experience working with residents in low-income communities and communities with inequitable economic opportunity • A minimum of three (3) years of experience working with the specific neighborhood(s) (Bayview-Hunters Point, Treasure Island, Tenderloin, South of Market) and/or communities (African American/Black, Hispanic/Latinx, Pacific Islander, Native American) identified in your proposal.

- B. Which, if any, civil service class(es) normally perform(s) this work? 2589, Health Program Coordinator 1;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: NO

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The services are highly specialized and require individuals trained and certified as financial coaches.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, the service is very technical and not enough financial coaches are yet needed to create a civil service class to perform this work.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
There will be no training as services must be performed by certified financial coaches with specialized knowledge and experience.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, we are using the same contractor for PSC 44886-19/20

7. Union Notification: On 03/19/21, the Department notified the following employee organizations of this PSC/RFP request:

Prof & Tech Eng, Local 21;

I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Kimmmie Wu Phone: 415-554-4513 Email: Kimmmie.wu@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place, Room 140, San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44886 - 19/20

DHR Analysis/Recommendation:

05/03/2021

Commission Approval Required

Approved by Civil Service Commission

05/03/2021 DHR Approved for 05/03/2021