

ORDINANCE NO. 04-2017

AN ORDINANCE AUTHORIZING THE BOARD OF COMMISSIONERS OF THE COUNTY OF BERKS TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF CORRECTIONS (“DOC”), AND THE COUNTY OF BERKS (“COUNTY”) ESTABLISHING TERMS UNDER WHICH THE DEPARTMENT OF CORRECTIONS WILL ASSIST THE COUNTY OF BERKS IN ESTABLISHING A MECHANISM FOR INDIVIDUALS TO REPORT ALLEGATIONS OF SEXUAL ABUSES OCCURRING AT COUNTY CORRECTIONAL FACILITIES

WHEREAS, the Prison Rape Elimination Act 28 C.F.R. §115.51, requires county jails to establish a mechanism for individuals to report allegations of sexual abuses occurring at county correctional facilities; and

WHEREAS, the County operates a full custody correctional center; and

WHEREAS, DOC operates a Control Center for the reporting of allegations of sexual abuse, and is staffed 24 hours per day, 7 days per week; and

WHEREAS, the Control Center has the ability to receive telephone calls on a 24 hour per day, 7 days per week basis; and

WHEREAS, the County desires to partner with DOC in establishing the terms as described above for individuals to report allegations of sexual abuses occurring at county correctional facilities.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Board of Commissioners of the County of Berks, Pennsylvania as follows:

1. The Title and Background of this Ordinance set forth above are incorporated herein by reference.
2. The Board of Commissioners of the County of Berks (“Commissioners”) hereby approve entering into the Intergovernmental Agreement (“Agreement”), a copy of which is attached hereto and incorporate herein as Attached A (and which shall be filed with the minutes of the meeting at which this Ordinance was enacted), with the intent and effect that the County of Berks (“County”) shall be bound by the Agreement.
3. The Commissioners are hereby authorized and directed on behalf of the County: (i) to execute and deliver the Agreement; and (ii) to execute and deliver such additional instruments, and to take such further actions, as may be necessary or appropriate to carry forth the Agreement and the transactions to be effected under the Agreement.

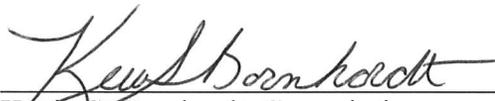
4. All actions of any officer, agent or other representative of the Commonwealth and County heretofore taken in the pursuit of the establishment of the Intergovernmental Agreement is hereby ratified and approved in all respects.
5. The Commissioners are hereby authorized to take such other action as may be necessary or appropriate to carry out the purposes of this Ordinance and of the Agreement.
6. Nothing contained in this Ordinance shall be construed to affect any suit or proceeding in any court, or any rights acquired or liability incurred, or any cause of action existing prior to the enactment of this Ordinance.
7. This Ordinance shall become effective as provided by applicable law.

ENACTED AND ORDAINED this 21st day of December, 2017.

COUNTY OF BERKS

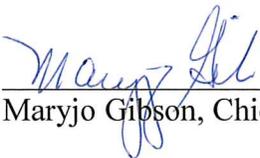


Christian Y. Leinbach, Chair



Kevin S. Barnhardt, Commissioner

Attest:



Maryjo Gibson, Chief Clerk



Mark C. Scott, Esq., Commissioner

EXHIBIT A

INTERGOVERNMENTAL AGREEMENT
ESTABLISHING PREA HOTLINE

This Intergovernmental Agreement is entered into by and between the county of Berks ("County") and the Commonwealth of Pennsylvania, Department of Corrections ("DOC") and establishes the terms under which the DOC will assist the County in establishing a mechanism for individuals to report allegations of sexual abuses occurring at county correctional facilities.

WHEREAS, the Prison Rape Elimination Act ("PREA") (Public Law 108-79 (2003); 42 U.S.C. § 15601 et seq.; 28 C.F.R. 115.5 et seq.) requires county jails to establish a mechanism for individuals to report allegations of sexual abuses occurring at county correctional facilities;

WHEREAS, the DOC operates a Control Center for the reporting of allegations of sexual abuse;

WHEREAS, the Control Center is staffed 24 hours per day, 7 days per week; and

WHEREAS, the Control Center has the ability to receive telephone calls on a 24 hour per day, 7 days per week basis.

NOW THEREFORE, the parties hereto agree as follows:

1. The DOC will establish a telephone line at the Control Center to receive telephone calls from individuals who wish to report allegations of sexual abuse at the County's correctional facilities.
2. The DOC will provide the County with the telephone number of the line established pursuant to Paragraph 1. The County may post such telephone number at such locations within its correctional facilities as it deems appropriate.
3. The Control Center will receive telephone calls to the line established pursuant to Paragraph 1 and notify the County contact designated pursuant to Paragraph 4 below of any allegations of sexual abuse at a County correctional facility. Notification shall be both verbally via a telephone call to the person at the number provided by the County and electronically to the email address provided by the County.

4. The County will notify the Control Center of the name, title, telephone number and email address to which the notification described in Paragraph 3 is to be directed.
5. Neither the Control Center nor the DOC, its officers, employees or agents shall be responsible for investigating allegations of sexual abuse at the County's correctional facilities.
6. *Costs.* Each party will be responsible for any costs that party incurs in performing its obligations under this Intergovernmental Agreement.
7. *Indemnification.* The County shall indemnify and hold harmless the Control Center and the DOC, its officers, employees and agents for any loss, cost, damage or expense arising from litigation initiated by any person not a party to this agreement and arising from the establishment, operation or failure to operate the telephone line established pursuant to Paragraph 1.
8. *No Third-Party Rights.* This Intergovernmental Agreement is not intended to, and does not create, any contractual rights or obligations with respect to persons not a party hereto.
9. *Choice of Law.* This Intergovernmental Agreement shall be interpreted under the laws of the Commonwealth of Pennsylvania.
10. *Modification.* The Intergovernmental Agreement may be modified only in writing with the same formality as the original Intergovernmental Agreement.
11. *Termination.* The Intergovernmental Agreement may be terminated by either party and shall become effective within (10) days after receipt of written notice.
12. *Independent Parties.* The parties hereto are each independent entities. The relationship of the parties shall not be construed to constitute a partnership, joint venture or any other relationship other than that of independent entities.
13. *Integration and Merger.* This Agreement, when executed, approved and delivered, shall constitute the final, complete and exclusive Agreement between the parties containing all the terms and conditions agreed on by the parties. All representations, understandings, promises and agreements pertaining to the subject matter of this Agreement made prior to or at the time this Agreement is executed are superseded by this Agreement unless specifically accepted by any other term or provision of this Agreement. There are no conditions precedent to the performance of this Agreement except as expressly set forth herein..

14. *Referenced Attachments.* The County agrees to abide by all the contractor terms set forth in Attachments 1 through 6 of this Agreement.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have signed this Agreement below.

ATTEST

BERKS COUNTY

Maryjo Gibson, Chief Clerk

Christian Y. Leinbach, Chair

Kevin S. Barnhardt, Commissioner

Mark C. Scott, Commissioner

APPROVED AS TO FORM

County Solicitor

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF CORRECTIONS

Secretary

APPROVED AS TO FORM AND LEGALITY

Office of Chief Counsel

Office of General Counsel

Office of Attorney General

ATTACHMENT 1

COMMONWEALTH HELD HARMLESS

a. The Contractor shall hold the Commonwealth harmless from and indemnify the Commonwealth against any and all third party claims, demands and actions based upon or arising out of any activities performed by the Contractor and its employees and agents under this Contract, provided the Commonwealth gives Contractor prompt notice of any such claim of which it learns. Pursuant to the Commonwealth Attorneys Act (71 P.S. Section 732-101, *et seq.*), the Office of Attorney General (OAG) has sole authority to represent the Commonwealth in actions brought against the Commonwealth. The OAG may, however, in its sole discretion and under such terms as it deems appropriate, delegate its right of defense. If OAG delegates the defense to the Contractor, the Commonwealth will cooperate with all reasonable requests of Contractor made in defense of such suits.

b. Notwithstanding the above, neither party shall enter into any settlements without the other party's written consent, which shall not be unreasonably withheld. The Commonwealth may, in its sole discretion, allow the Contractor to control the defense of any related settlement negotiations.

ATTACHMENT 2

CONTRACTOR RESPONSIBILITY PROVISIONS – (MD 215.9 Amended)

For the purpose of these provisions, the term contractor is defined as any person, including, but not limited to, a bidder, offeror, loan recipient, grantee or lessor, who has furnished or performed or seeks to furnish or perform, goods, supplies, services, leased space, construction or other activity, under a contract, grant, lease, purchase order or reimbursement agreement with the Commonwealth of Pennsylvania (Commonwealth). The term contractor includes a permittee, licensee, or any agency, political subdivision, instrumentality, public authority, or other public entity in the Commonwealth.

1. The Contractor certifies, in writing, for itself and its subcontractors required to be disclosed or approved by the Commonwealth, that as of the date of its execution of this Bid/Contract, that neither the Contractor, nor any such subcontractors, are under suspension or debarment by the Commonwealth or any governmental entity, instrumentality, or authority and, if the Contractor cannot so certify, then it agrees to submit, along with its Bid/Contract, a written explanation of why such certification cannot be made.
2. The Contractor also certifies, in writing, that as of the date of its execution of this Bid/Contract it has no tax liabilities or other Commonwealth obligations, or has filed a timely administrative or judicial appeal if such liabilities or obligations exist, or is subject to a duly approved deferred payment plan if such liabilities exist.
3. The Contractor's obligations pursuant to these provisions are ongoing from and after the effective date of the Contract through the termination date thereof. Accordingly, the Contractor shall have an obligation to inform the Commonwealth if, at any time during the term of the Contract, it becomes delinquent in the payment of taxes, or other Commonwealth obligations, or if it or, to the best knowledge of the Contractor, any of its subcontractors are suspended or debarred by the Commonwealth, the federal government, or any other state or governmental entity. Such notification shall be made within 15 days of the date of suspension or debarment.
4. The failure of the Contractor to notify the Commonwealth of its suspension or debarment by the Commonwealth, any other state, or the federal government shall constitute an event of default of the Contract with the Commonwealth.
5. The Contractor agrees to reimburse the Commonwealth for the reasonable costs of investigation incurred by the Office of State Inspector General for investigations of the Contractor's compliance with the terms of this or any other agreement between the Contractor and the Commonwealth that results in the suspension or debarment of the contractor. Such costs shall include, but shall not be limited to, salaries of investigators, including overtime; travel and lodging expenses; and expert witness and documentary fees. The Contractor shall not be responsible for investigative costs for investigations that do not result in the Contractor's suspension or debarment.
6. The Contractor may obtain a current list of suspended and debarred Commonwealth contractors by either searching the Internet at <http://www.dgs.state.pa.us/> or contacting the:

Department of General Services
Office of Chief Counsel
603 North Office Building
Harrisburg, PA 17125
Telephone No: (717) 783-6472
FAX No: (717) 787-9138

ATTACHMENT 3

OFFSET PROVISION- (MD 215.9 Amended)

The Contractor agrees that the Commonwealth of Pennsylvania (Commonwealth) may set off the amount of any state tax liability or other obligation of the Contractor or its subsidiaries to the Commonwealth against any payments due the Contractor under any contract with the Commonwealth.

ATTACHMENT 4

NONDISCRIMINATION/SEXUAL HARASSMENT – (MD 215.16 Amended)

The Contractor agrees:

1. In the hiring of any employee(s) for the manufacture of supplies, performance of work, or any other activity required under the contract or any subcontract, the Contractor, each subcontractor, or any person acting on behalf of the Contractor or subcontractor shall not, by reason of gender, race, creed, or color, discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
2. Neither the Contractor nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under the contract on account of gender, race, creed, or color.
3. The Contractor and each subcontractor shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
4. The Contractor and each subcontractor shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
5. The Contractor and each subcontractor shall, within the time periods requested by the Commonwealth, furnish all necessary employment documents and records and permit access to their books, records, and accounts by the contracting agency and the Bureau of Minority and Women Business Opportunities (BMWBO), for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. Within fifteen (15) days after award of any contract, the Contractor shall be required to complete, sign and submit Form STD-21, the "Initial Contract Compliance Data" form. If the contract is a construction contract, then the Contractor shall be required to complete, sign and submit Form STD-28, the "Monthly Contract Compliance Report for Construction Contractors", each month no later than the 15th of the month following the reporting period beginning with the initial job conference and continuing through the completion of the project. Those contractors who have fewer than five employees or whose employees are all from the same family or who have completed the Form STD-21 within the past 12 months may, within the 15 days, request an exemption from the Form STD-21 submission requirement from the contracting agency.
6. The Contractor shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.
7. The Commonwealth may cancel or terminate the contract and all money due or to become due under the contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Contractor in the Contractor Responsibility File.

ATTACHMENT 5

THE AMERICANS WITH DISABILITIES ACT (M.D. 215.12)

During the term of this contract, the Contractor agrees as follows:

1. Pursuant to federal regulations promulgated under the authority of The Americans With Disabilities Act, 28 C.F.R. 35.101 et seq., the Contractor understands and agrees that it shall not cause any individual with a disability to be excluded from participation in this Contract or from activities provided for under this Contract on the basis of the disability. As a condition of accepting this contract, the Contractor agrees to comply with the "General Prohibitions Against Discrimination," 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans With Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the Commonwealth of Pennsylvania through contracts with outside contractors.

2. The Contractor shall be responsible for and agrees to indemnify and hold harmless the Commonwealth of Pennsylvania from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Commonwealth of Pennsylvania as a result of the Contractor's failure to comply with the provisions of paragraph 1 above.

ATTACHMENT 6

CONTRACT PROVISIONS – RIGHT TO KNOW LAW 8-K-1532

- a. The Pennsylvania Right-to-Know Law, 65 P.S. §§ 67.101-3104, (“RTKL”) applies to this Contract. For the purpose of these provisions, the term “the Commonwealth” shall refer to the contracting Commonwealth agency.
- b. If the Commonwealth needs the Contractor’s assistance in any matter arising out of the RTKL related to this Contract, it shall notify the Contractor using the legal contact information provided in this Contract. The Contractor, at any time, may designate a different contact for such purpose upon reasonable prior written notice to the Commonwealth.
- c. Upon written notification from the Commonwealth that it requires the Contractor’s assistance in responding to a request under the RTKL for information related to this Contract that may be in the Contractor’s possession, constituting, or alleged to constitute, a public record in accordance with the RTKL (“Requested Information”), the Contractor shall:
1. Provide the Commonwealth, within ten (10) calendar days after receipt of written notification, access to, and copies of, any document or information in the Contractor’s possession arising out of this Contract that the Commonwealth reasonably believes is Requested Information and may be a public record under the RTKL; and
 2. Provide such other assistance as the Commonwealth may reasonably request, in order to comply with the RTKL with respect to this Contract.
- d. If the Contractor considers the Requested Information to include a request for a Trade Secret or Confidential Proprietary Information, as those terms are defined by the RTKL, or other information that the Contractor considers exempt from production under the RTKL, the Contractor must notify the Commonwealth and provide, within seven (7) calendar days of receiving the written notification, a written statement signed by a representative of the Contractor explaining why the requested material is exempt from public disclosure under the RTKL.
- e. The Commonwealth will rely upon the written statement from the Contractor in denying a RTKL request for the Requested Information unless the Commonwealth determines that the Requested Information is clearly not protected from disclosure under the RTKL. Should the Commonwealth determine that the Requested Information is clearly not exempt from disclosure, the Contractor shall provide the Requested Information within five (5) business days of receipt of written notification of the Commonwealth’s determination.
- f. If the Contractor fails to provide the Requested Information within the time period required by these provisions, the Contractor shall indemnify and hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory damages assessed against the Commonwealth.
- g. The Commonwealth will reimburse the Contractor for any costs associated with complying with these provisions only to the extent allowed under the fee schedule established by the Office of Open Records or as otherwise provided by the RTKL if the fee schedule is inapplicable.
- h. The Contractor may file a legal challenge to any Commonwealth decision to release a record to the public with the Office of Open Records, or in the Pennsylvania Courts, however, the Contractor shall indemnify the Commonwealth for any legal expenses incurred by the Commonwealth as a result of such a challenge and shall hold the Commonwealth harmless for any damages, penalties, costs, detriment or harm that the Commonwealth may incur as a result of the Contractor’s failure, including any statutory

damages assessed against the Commonwealth, regardless of the outcome of such legal challenge. As between the parties, the Contractor agrees to waive all rights or remedies that may be available to it as a result of the Commonwealth's disclosure of Requested Information pursuant to the RTKL.

i. The Contractor's duties relating to the RTKL are continuing duties that survive the expiration of this Contract and shall continue as long as the Contractor has Requested Information in its possession.