

**MINUTES OF THE MEETING OF
THE INDIANA STATE ETHICS COMMISSION
September 12, 2019**

I. Call to Order

A regular meeting of the State Ethics Commission (“Commission”) was called to order at 10:00 a.m. Commission members present included Katherine Noel, Chairperson; Sue Anne Gilroy; Corinne Finnerty; and Priscilla D. Keith (arrived at 10:13 a.m.). Staff present included Jennifer Cooper, Ethics Director; Kelly Elliott, Staff Attorney; Heidi Adair, Staff Attorney; Tiffany Mulligan, Chief Legal Counsel; Darrell Boehmer, Director of Investigations, Office of Inspector General; and Nathan Baker, Legal Assistant, Office of Inspector General.

Others present were Will Forrest, Director of Legal Affairs and Ethics Officer, Indiana State Fair Commission; Kathy Mills, Attorney, Indiana Department of Environmental Management; Connie Neininger, Business Development Director, Indiana State Department of Agriculture; Alecia Nafziger, Associate Commissioner and CFO, Indiana Commission for Higher Education; Kendra Leatherman, Legislative Director, Auditor of State; Aaron Burgess, Data Scientist, Family and Social Services Administration; Erin Sheridan, Deputy Chief of Staff, Lieutenant Governor; James Betley, Executive Director, Indiana Charter School Board; Jake May, Director of Compliance, Indiana Education Employment Relations Board; Kristen Wolfred, Director of Optimization and Strategy, Indiana State Fair Commission; Tammera Glickman, Deputy General Counsel, Indiana Department of Administration; Elizabeth Polleys Burden, Associate General Counsel, Department of Workforce Development; Chris Kulik, Staff Attorney, Indiana State Department of Health; Nicole Buskill, General Counsel, Department of Financial Institutions; Lyndsay Miller, General Counsel, Department of Financial Institutions; Mattheus Mitchel, Compliance and Ethics Specialist, Department of Revenue; Amber Nicole Ying, Special Counsel, Compliance and Ethics, Department of Revenue; Precious Johnson, Administrative Assistant, Department of Natural Resources; Latosha Higgins, Managing Attorney and Ethics Officer, Family and Social Services Administration; Dan Johnson, Chief Counsel – Advisory, Office of Attorney General; and Deana Smith, Ethics Officer, Indiana State Department of Health.

II. Adoption of Amended Agenda and Approval of Minutes

Commissioner Gilroy moved to adopt the amended Agenda reflecting that Cindy Hoye was not present regarding the Waiver of Post-Employment Restrictions for Alecia Nafziger and Commissioner Finnerty seconded the motion which passed (3-0). Commissioner Gilroy moved to approve the Minutes of the August 8, 2019 Commission Meeting and Commissioner Finnerty seconded the motion which passed (3-0).

III. Consideration of Indiana Commission for Higher Education Waiver of Post-Employment Restrictions for Alecia Nafziger

Josh Garrison, Indiana Commission for Higher Education Associate Commissioner and Ethics Officer, via telephone, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Finnerty seconded the motion which passed (3-0).

IV. Consideration of Indiana State Fair Commission Waiver of Post-Employment Restrictions for Kristen Wolfred

Will Forrest, Indiana State Fair Commission Legal Affairs and Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Finnerty seconded the motion which passed (3-0).

V. Consideration of Indiana State Department of Agriculture Waiver of Post-Employment Restrictions for Connie Neining

Bruce Kettler, Indiana State Department of Agriculture Director, via telephone, and Erin Sheridan, Indiana State Department of Agriculture Ethics Officer, presented the proposed Waiver of Post-Employment Restrictions in this matter to the Commission for their approval.

Commissioner Gilroy moved to approve the Waiver, and Commissioner Keith seconded the motion which passed (4-0).

VI. Request for Formal Advisory Opinion

2019-FAO-015

Aaron Burgess, Data Scientist

Latosha N. Higgins, Managing Attorney and Ethics Officer

Family & Social Services Administration

Latosha Higgins is the Ethics Officer for the Indiana Family and Social Services Administration (FSSA). Ms. Higgins is requesting an advisory opinion on behalf of Aaron Burgess, Data Scientist in the Data & Analytics subdivision in FSSA's Division of Healthcare Strategies and Technology.

Mr. Burgess began working for FSSA in this position in 2018. In this position, he is responsible for planning, architecture, and development of analytic tools and models that serve

agency needs as related to various agency populations and policies. In addition, Mr. Burgess is a member of a larger data science team that now consists of five members, including himself. His role on the team is to train and advise team members, review team members' work, implement best practices and standard operating procedures, and serve as a liaison for the team in agency meetings.

FSSA serves various Hoosier populations in need of social services. The programs and policies related to these populations create significant volumes of data. Mr. Burgess was hired because of his expertise in data science and engineering to assist FSSA with tools and models that utilize said data to improve population health outcomes, increase population access to care, decrease population costs and provide for any specific need that can be addressed by the skill sets employed within the paradigm of data science and engineering.

Mr. Burgess is interested in pursuing employment with KSM Consulting, LLC (KSM), a company that currently has a business relationship with FSSA. Mr. Burgess has not applied for a position at this time; however, he is interested in applying for a posted position titled Senior Data Scientist.

KSM is a consulting firm based in Indianapolis that provides services to various State of Indiana agencies, including FSSA. KSM currently has two active contracts with FSSA. Although one of these contracts (#36132, set to expire March 31, 2020) does not impact work within the Data & Analytics unit, the second contract (#29998) has utilized Mr. Burgess as a collaborator on the project. This contract is to assist with a technical assistance grant FSSA was awarded from the National Governors Association (NGA) to expand and enhance data governance to derive more value from the Medicaid and health data maintained by the State. That contract is set to expire December 31, 2019. KSM also provides services to clients in private markets and governments not associated with the State.

As a collaborator on the KSM contract, Mr. Burgess interacts with KSM to provide technical assistance to the project team, review code and provide feedback on data solutions. Although Mr. Burgess has served as a collaborator to the project team, he has never been part of the FSSA team that made contract decisions. He does not supervise KSM staff, and he has no direct oversight or influence over the KSM project direction or deliverables.

Mr. Burgess has never been involved in the negotiation or administration of any past or current contract between KSM and FSSA, nor was he in a position to influence those decisions. Mr. Burgess does not make regulatory or licensing decisions in his role. The primary individual responsible for overseeing the day to day activities of the KSM contract (#29998) is FSSA's Chief Data Officer, Dr. Connor Norwood. The primary individual responsible for overseeing the day to day activities of the other contract (#36132) is FSSA's Chief Information Officer, Mr. Jared Linder.

Regarding the employment position at issue, the Senior Data Scientist position at KSM would spend the majority of his time developing and applying machine learning and advanced analytics algorithms to solve complex problems. The position would also collaborate with data architects and software developers to plan and construct the architecture for self-service

business intelligence and advance analytic solutions. If hired as a Senior Data Scientist, Mr. Burgess would be primarily responsible for the design, development and implementation of technical solutions for KSM clients.

In the event that FSSA contracts with KSM in any future work, KSM and Mr. Burgess would ensure that Mr. Burgess' role was limited to developing and advising on the design, development and deployment of technical solutions that does not include any particular matter subject to restrictions under the Indiana ethics laws.

Mr. Burgess knows and understands that Indiana's ethics laws will continue to apply to him as a private sector employee. He understands and agrees not to divulge confidential information of FSSA during his post-employment endeavors. Furthermore, Mr. Burgess understands and agrees to abide by the one-year cooling off restriction regarding registering as an executive branch lobbyist.

FSSA is seeking the Commission's opinion regarding the application of any of the rules in the Code of Ethics to Mr. Burgess' post-employment opportunity with KSM.

ISSUE

What rules in the Code apply to Mr. Burgess' post-employment opportunity with KSM?

ANALYSIS

A. Confidential Information

IC 4-2-6-6 prohibits Mr. Burgess from accepting any compensation from any employment, transaction or investment that was entered into or made as a result of material information of a confidential nature. So long as any compensation Mr. Burgess receives does not result from confidential information, his potential employment with KSM would not violate IC 4-2-6-6.

B. Conflict of Interests

IC 4-2-6-9(a)(1) prohibits Mr. Burgess from participating in any decision or vote, or matter related to that decision or vote, if he has a financial interest in the outcome of the matter. Similarly, IC 4-2-6-9(a)(4) prohibits him from participating in any decision or vote, or matter related to that decision or vote, in which a person or organization with whom he is negotiating or has an arrangement concerning prospective employment has a financial interest in the outcome of the matter. The definition of financial interest in IC 4-2-6-1(a)(11) includes, "an interest arising from employment or prospective employment for which negotiations have begun."

Based on the information provided, Mr. Burgess has not formally applied for the position of Senior Data Scientist at KSM. Mr. Burgess clarified that he has not been approached

by KSM, nor has he had any back and forth communication with them regarding employment opportunities.

Once employment negotiations begin, Mr. Burgess would be prohibited from participating in any decision or vote, or matter related to a decision or vote, in which he, by virtue of his employment negotiations with KSM, would have a financial interest in the outcome of the matter.

Mr. Burgess collaborates on one of KSM's FSSA contracts and interacts with KSM to provide technical assistance to the project team, reviews code and provides feedback on data solutions. Ms. Higgins provides that Mr. Burgess is not part of the FSSA team that makes contract decisions. He also does not supervise KSM staff nor does he have any direct oversight or influence over the KSM consulting project direction or deliverables.

The Commission determined that Mr. Burgess' interactions with KSM are limited to technical matters including analyzing data and he does not participate in any decisions or votes, or related matters, in which KSM would have a financial interest in the outcome. Ms. Higgins provided that should Mr. Burgess apply for a position with KSM and begin employment negotiations, he would be screened from further collaboration with KSM out of an abundance of caution.

C. Post-Employment

IC 4-2-6-11 consists of two separate limitations: a "cooling off" period and a "particular matter" restriction. The first prohibition, commonly referred to as the cooling off or revolving door period, prevents Mr. Burgess from accepting employment from an employer for 365 days from the date that he leaves state employment under various circumstances.

First, Mr. Burgess is prohibited from accepting employment as a lobbyist for the entirety of the cooling off period. A lobbyist is defined as an individual who seeks to influence decision making of an agency and who is registered as an executive branch lobbyist under the rules adopted by the Indiana Department of Administration.

Ms. Higgins provides that Mr. Burgess understands he is prohibited from engaging in any lobbying activities in his prospective employment with KSM. To the extent that Mr. Burgess does not engage in executive branch lobbying for one year after leaving state employment, the Commission finds that his intended employment with KSM would not violate this provision of the post-employment rule.

Second, Mr. Burgess is prohibited from accepting employment for 365 days from the last day of his state employment from an employer with whom 1) he engaged in the negotiation or administration of a contract on behalf of a state agency and 2) was in a position to make a discretionary decision affecting the outcome of the negotiation or nature of the administration of the contract.

Mr. Burgess' responsibilities at FSSA include collaborating and interacting with KSM on matters related to KSM's FSSA contract. According to Ms. Higgins, Mr. Burgess has not engaged in the negotiation or administration of any contract between the State and KSM, nor was he in a position to make a discretionary decision affecting the outcome of the negotiation or administration of any contract with KSM.

According to Ms. Higgins, Mr. Burgess' interactions with KSM involve analysis of data, code and models, and he is not involved in any aspects of their contract with FSSA.

The Commission finds that Mr. Burgess would not be subject to the cooling off restriction for his role in interacting with KSM as a Data Scientist. He did not administer KSM's contract nor was he in a position to make discretionary decisions affecting the nature of the administration of the contract.

Third, Mr. Burgess is prohibited from accepting employment for 365 days from the last day of his state employment from an employer for whom he made a regulatory or licensing decision that directly applied to the employer or its parent or subsidiary.

Ms. Higgins provides that Mr. Burgess does not make any regulatory or licensing decisions in his position with FSSA. Accordingly, the Commission finds that Mr. Burgess has never made any regulatory or licensing decisions that applied to KSM as a state employee.

Fourth, Mr. Burgess is prohibited from accepting employment from an employer if the circumstances surrounding the hire suggest the employer's purpose is to influence him in his official capacity as a state employee. The information presented to the Commission does not suggest that KSM has extended an offer of employment to Mr. Burgess in an attempt to influence him in his capacity as a state employee.

Accordingly, the Commission finds that Mr. Burgess may accept employment with KSM immediately upon leaving state employment.

Finally, Mr. Burgess is subject to the post-employment rule's "particular matter" prohibition in his prospective post-employment. This restriction prevents him from representing or assisting a person on any of the following twelve matters if he personally and substantially participated in the matter as a state employee: 1) an application, 2) a business transaction, 3) a claim, 4) a contract, 5) a determination, 6) an enforcement proceeding, 7) an investigation, 8) a judicial proceeding, 9) a lawsuit, 10) a license, 11) an economic development project or 12) a public works project. The particular matter restriction is not limited to 365 days but instead extends for the entire life of the matter at issue, which may be indefinite.

In this instance, Mr. Burgess would be prohibited from representing or assisting KSM, as well as any other person, in a particular matter in which he personally and substantially

participated as a state employee. Ms. Higgins provides that Mr. Burgess and KSM would ensure that Mr. Burgess' role was limited to developing and advising on design, development and deployment of technical solutions and that his work will not include any particular matters.

The Commission finds that Mr. Burgess must ensure compliance with the particular matter restrictions and refrain from assisting or representing any person on any other particular matters, including contract #29998, in which he may have been personally and substantially involved during his state employment.

Commissioner Gilroy moved to approve the Commission's findings, and Commissioner Keith seconded the motion which passed (4-0).

VII. Request for Formal Advisory Opinion

2019-FAO-016

Leslie Dillon, Board Member

James R. Betley, Executive Director

Indiana Charter School Board

James Betley is the appointing authority for the Indiana Charter School Board (ICSB). Mr. Betley, along with ICSB's Ethics Officer, Jacob May, are requesting an advisory opinion on behalf of Leslie Dillon, who serves as a board member on ICSB.

ICSB was established by Public Law 91-2011 for the purpose of authorizing charter schools throughout Indiana. IC 20-24-2.2-1(a). It is composed of the following nine (9) members appointed to four (4) year terms:

- (1) Four (4) members appointed by the governor. Not more than two (2) members appointed under this subdivision may be members of the same political party.
- (2) One (1) member who has previous experience with or on behalf of charter schools appointed by the state superintendent of public instruction.
- (3) Four (4) members, who may not be legislators, appointed as follows:
 - a. One (1) member appointed by the president pro tempore of the Senate.
 - b. One (1) member appointed by the minority leader of the Senate.
 - c. One (1) member appointed by the speaker of the House of Representatives.
 - d. One (1) member appointed by the minority leader of the House of Representatives.

IC 20-24-2.2-1(b).

Members appointed to ICSB must collectively possess strong experience and expertise in: 1) public and nonprofit governance; 2) management; 3) finance; 4) public school leadership; 5) higher education; 6) school assessments, curriculum, and instruction; and 7) public education law. IC 20-24-2.1-1(f). A majority of the members appointed to ICSB constitutes a quorum. The

affirmative votes of a majority of the members present are required for ICSB to take action. IC 20-24-2.1-1(d).

ICSB's specific duties include: 1) reviewing proposals to establish a charter school; 2) making decisions on proposals to establish charter schools; 3) monitoring charter schools authorized by the board; and 4) making decisions on the renewal, nonrenewal, and revocation of charters granted by the charter board. IC 20-24-2.1-2. ICSB typically meets four to five times a year. Specific voting matters include:

- 1) Approval of charter applications;
- 2) Approval of charter activation;
- 3) Renewal of existing charter agreements;
- 4) Approval of charter school closure;
- 5) Approval of material changes to charter agreements; and
- 6) Approval of board policies and procedures.

Indiana Senate Minority Leader Tim Lanane appointed Ms. Dillon to ICSB. She is currently employed by Gary Community School Corporation (GCSC) as dean of students at Williams Elementary and is a member of the executive board of the Gary Teachers Union, which is an affiliate of the American Federation of Teachers (AFT).

ICSB currently authorizes three operating charter schools located within GCSC, has received numerous applications for charter schools located within GCSC in the past, and anticipates that it will continue to receive applications for charter schools located within GCSC.

Both charter public schools and traditional public schools receive state funding through application of Indiana's tuition support formula. The funding formula uses two count dates, one in September and one in February, to determine a school's Average Daily Membership (ADM), a physical count of students enrolled and attending the school on a particular day. A school's total tuition support is based on a school's ADM count multiplied by several grants, including the "basic grant," comprised of a base amount per student, and the "complexity grant," which is additional funding based on the school corporation's percentage of students who qualify for Supplemental Nutrition Assistance Program, Temporary Assistance for Needy Families, or who received foster care services.

Because school funding is based on a school's current year ADM count, student mobility from year to year, or between the September and February count dates, directly impacts the amount of funding a school receives, e.g. funding follows the child. As a result, any time a child leaves a traditional public school to attend a public charter school, or vice-versa, the former school corporation or school receives less funding than it would have if the child had remained. This economic reality is often used by opponents of charter schools, including teachers unions, to argue that charter schools are directly harming the traditional public school system.

ICSB is seeking advice to determine whether Ms. Dillon would have a conflict of interests under IC 4-2-6-9 if she voted on matters including but not limited to approval, renewal, monitoring, and closure related to a specific charter school that is currently located in, or proposing to locate in, GCSC.

ICSB further requested the Commission's guidance on whether Ms. Dillon would have a conflict of interests under IC 4-2-6-9 if she voted on matters including but not limited to approval, renewal, monitoring, and closure related to a specific charter school that is currently located in, or proposing to locate in, a school corporation adjoining GCSC. This concern stems from the fact that every nearby open-enrollment school corporation and every currently operating charter school located in an adjoining school corporation serves at least some students with a legal settlement in GCSC and on the assumption that it is highly likely that any new school that is authorized would draw students (and thus funding) from GCSC.

If it is determined that Ms. Dillon would have a potential conflict of interests, ICSB would apply the following proposed screening process that they developed for ICSB members to Ms. Dillon, to ensure she does not violate IC 4-2-6-9:

“To address any potential conflicts that may arise with respect to [board member] and [the entity or organization in which the member has financial interest], and to ensure compliance with the conflict of interest laws, the board member shall notify his or her appointing authority of [the relationship leading to the conflict]. ICSB's Ethics Officer has established the following procedures to screen the board member from participating in any decision or vote, or a matter relating to that decision or vote relating to [the entity or organization in which the member has financial interest]:

- 1) ICSB's Ethics Officer shall monitor the board member's involvement in any matter relating to [the entity or organization in which the member has financial interest] to ensure that the screening procedures are followed.
- 2) If any matter related to [the entity or organization in which the member has financial interest] is presented to ICSB for a discussion and vote, the board member will recuse him or herself from the discussion and vote, as well as submit an “Ethics Disclosure Statement” to the OIG.
- 3) The board member will not be permitted access to any confidential information concerning [the entity or organization in which the member has financial interest] without the written approval of ICSB's Ethics Officer.
- 4) ICSB staff will screen the board member from any and all involvement in matters involving [the entity or organization in which the member has financial interest], including refraining from any discussion in the Board member's presence that might be related to matters involving [the entity or organization in which the member has financial interest].
- 5) The fact that the individual is both an ICSB board member and has a financial interest in [the entity or organization in which the member has financial interest] does not serve as an endorsement by ICSB of [the entity or organization in which the member has financial interest], other than that which normally exists between [the entity or organization in which the member has financial interest] and ICSB as a charter school authorizer.

- 6) ICSB's Ethics Officer will provide written notice to the OIG anytime the screening procedures are implemented.

ISSUE

What ethics issues, if any, arise for Ms. Dillon as a special state appointee (and member of the ICSB), who is also employed by the GCSC?

ANALYSIS

A. Conflict of interests - decisions and votes

Under IC 4-2-6-9, Ms. Dillon, as a special state appointee, is prohibited from participating in a decision or vote, or matter relating to that decision or vote, if she has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The special state appointee;
- (2) Any of the special state appointee's immediate family members;
- (3) A business organization in which the special state appointee is serving as an officer, a director, a member, a trustee, a partner or an employee; or
- (4) Any person or organization with whom the special state appointee is negotiating or has an arrangement concerning prospective employment.

The Code defines "financial interest" in IC 4-2-6-1(a)(11) to include "an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . . ." The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

If a matter requiring a decision or vote comes before ICSB and Ms. Dillon knows that any of the persons outlined above would have a financial interest in the outcome of ICSB's actions, she cannot participate in the matter. Further, she must disclose the interest and be screened from the matter under the supervision of the agency's Ethics Officer. The disclosure and screening process must be carried out through the filing of an ethics disclosure form with the OIG or the request for a formal advisory opinion from the Commission.

The Commission finds that Ms. Dillon's employer, GCSC, would have a financial interest in the outcome of decisions/votes related to charter schools located in or proposing to locate in GCSC and possibly in decisions/votes concerning charter schools in the districts adjoining GCSC. Specifically, votes to approve, renew, monitor, or close a charter school would have a financial impact on GCSC; any time a child leaves a traditional public school within GCSC or an

adjoining district to attend a public charter school, or vice-versa, GCSC or the school receives less funding than it would have if the child had remained.

The Commission understands that Ms. Dillon's role on the ICSB is to provide a voice for the students in public schools, and these restrictions limit her involvement as a voting member of the ICSB when matters involving charter schools in her region come before the ICSB. The Commission suggests that ICSB consider pursuing a legislative solution to allow Ms. Dillon to participate in discussions on these matters in some limited capacity; however, under the Code of Ethics, specifically IC 4-2-6-9(a), she is prohibited from participating in any decisions or vote, or matter related to any such decision or vote, in which her employer would have a financial interest in the outcome.

The Commission finds that her employer would have a financial interest in decisions/votes related to charter schools located within GCSC. The Commission further finds that her employer would possibly have an interest in decisions/votes regarding charter schools in adjoining districts based on the information provided by Mr. Betley.

Accordingly, Ms. Dillon is not permitted to participate in any discussions or decisions/votes coming before the ICSB regarding a charter school within GCSC and must follow all of the requirements in IC 4-2-6-9 each time a potential conflict of interests is identified. Further, the Commission advises that Ms. Dillon should use caution and also follow the requirements in IC 4-2-6-9(b) any time there is a possibility her employer would have a financial interest in decisions/votes regarding charter schools that come before the ICSB, including matters concerning charter schools in adjoining districts.

In order to comply with the requirements in IC 4-2-6-9(b), Ms. Dillon must provide a public disclosure of the potential conflict of interests and a description of the screen in place to ensure she does not participate in these matters through either the filing of a disclosure form with the OIG or through a formal advisory opinion request to the Commission.

ICSB had requested this formal advisory opinion on Ms. Dillon's behalf and submitted a proposed screen for the Commission's approval. The Commission finds that this screen is adequate to ensure that Ms. Dillon is screened from all matters before the ICSB in which her employer would have a financial interest.

B. Confidential information

Ms. Dillon is prohibited under 42 IAC 1-5-10 and 42 IAC 1-5-11 from benefitting from, permitting any other person to benefit from, or divulging information of a confidential nature except as permitted or required by law. To the extent that Ms. Dillon will possess information of a confidential nature by virtue of her position with ICSB that could be used to benefit GCSC, or any other person, she must ensure that she complies with these rules.

Commissioner Finnerty moved to approve the Commission's findings, and Commissioner Gilroy seconded the motion which passed (4-0).

VIII. Consideration of Agreed Settlement

In the Matter of Jason Coffey
Case Number 2019-02-0035
Heidi Adair, Staff Attorney
Indiana Office of Inspector General

Heidi Adair presented the proposed Agreed Settlement in this matter to the Commission for their approval.

Commissioner Finnerty moved to approve the Agreed Settlement and Commissioner Keith seconded the motion which passed (4-0).

IX. Director's Report

State Ethics Director, Jen Cooper, stated that since the last Commission meeting, the Office of Inspector General had issued 31 informal advisory opinions on the subjects of post-employment restrictions, conflicts of interests, outside employment, and gifts.

She further advised that the State Ethics Training was set to launch on October 1, 2019 for all State Employees and Special State Appointees. Ms. Cooper also stated that the 2019 Legal and Ethics Conference is set to take place on November 14, 2019 and extended an invitation for the Commissioners to attend.

X. Adjournment

Commissioner Keith moved to adjourn the public meeting of the State Ethics Commission and Commissioner Gilroy seconded the motion, which passed (4-0).

The public meeting adjourned at 10:57 a.m.

INDIANA
OFFICE OF INSPECTOR GENERAL

315 WEST OHIO STREET, ROOM 104, INDIANAPOLIS, IN 46202 317.232.3850

**Report of Inspector General to
State Ethics Commission
2019 Q3**

1. IAOs: Q3 July 1 – September 30:
 - a. 74 issued in Q3, projecting 296 for the year.
 - i. Compares to 71 issued in Q2
 - ii. Compares to 78 in Q3 in 2018
 - iii. 2018 we issued 321
2. Investigations: Q3 July 1 – September 30:
 - a. 61 Requests to Investigate
 - i. Compares to 92 in Q2
 - ii. Compares to 90 in Q3 in 2018
 - iii. 240 YTD compared to 268 at this time in 2018
 - b. 7 New investigations opened by our office.
 - i. Compared to 19 in Q2
 - ii. Compared to 18 in Q3 2018
 - c. 15 Closed investigations
 - i. Compared to 12 closed in Q2
 - ii. Compared to 10 closed for Q3 in 2018
 - iii. 34 of 43 YTD closed cases are published on the website
3. KPI's for Q3
 - a. KPI #1 - Number of informal advisory opinions (“IAO”s) requested **84**
 - b. KPI #2 - Average number of business days to provide an IAO **1.1**
 - c. KPI #3 - Number of recommendations made to reduce waste, inefficiency, fraud and improve integrity **10 recommendations in Q3 in 5 public reports**
4. 2019 Legal & Ethics Conference
 - i. Tuesday, November 13 1:00 – 4:30 p.m.
5. FY2018 reverted \$34,650 from OIG operating fund

BENJAMIN R. SMITH
2112 S. EMERSON AVE.
INDIANAPOLIS, IN 46203

OCTOBER 1, 2019

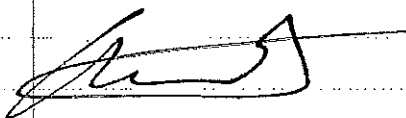
ATTN: SIR OR MADAME

PLEASE ACCEPT THIS WRITTEN REQUEST FOR A FORMAL ADVISORY OPINION. I HAVE BEEN THROUGH AN INFORMAL ADVISORY OPINION WITH HEIDI ADAIR AND WAS RECOMMENDED TO SEEK A DETERMINATION IF THE PARTICULAR MATTER RESTRICTION WOULD APPLY TO MY SITUATION. I HAVE ALSO MADE A REQUEST FROM MY PREVIOUS EMPLOYER, THE DEPARTMENT OF NATURAL RESOURCES, FOR A POST-EMPLOYMENT WAIVER.

I WOULD LIKE TO BE ON THE SCHEDULE FOR THE NEXT MEETING ON THURSDAY, OCTOBER 10TH 2019.

THANK YOU.

BENJAMIN R. SMITH



317-697-4900

Baker, Nathaniel P

From: Benjamin Smith <bsmitty2247@gmail.com>
Sent: Tuesday, October 1, 2019 3:30 PM
To: IG Info
Subject: Formal Advisory Opinion Request - Benjamin Smith
Attachments: 20191001152055471.pdf

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****

Good afternoon.

Please find attached, a hand written, signed request for a Formal Advisory Opinion for the Advisory Board Meeting being held on Thursday, October 10th. Please also let me know if there is anything else you will need from me in the meantime.

Thank you.

Benjamin Smith
317-697-4900

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.IN.gov/isp

September 30, 2019

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

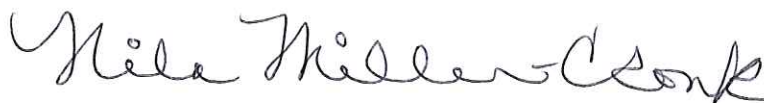
SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on July 19, 2019, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Major Price, a Commander in the ISP Training Section. This request relates to Major Price having the Department's approval for non-department employment to conduct his personal training and consulting business, the Price Consulting Group, LLC ("Price Consulting"). Through his business, he is associated with other trainers from across the country. Over the last eight years, Price Consulting has developed a model and training program called the Q6 Performance Leadership Model (Q6). Specifics of this request are contained in the complex Informal Advisory Opinion response prepared by Staff Attorney Heidi Adair, which is contained in the email attached to this request.

The Indiana State Police Department respectfully requests this matter to be included on the agenda for the next monthly Commission meeting which is scheduled for Thursday, October 10, 2019, for the purposes of rendering an ethics formal advisory opinion on this matter.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,



Nila Miller-Cronk
Major

Attachment

Miller-Cronk, Nila

From: Adair, Heidi
Sent: Friday, July 19, 2019 9:45 AM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion; ISP, Price; Conflict of Interests

Nila,

Thank you for contacting our office as the Ethics Officer for the Indiana State Police (ISP) and for providing additional information. You have contacted us on behalf of Major Price, a Commander in the ISP Training Section. In this role, Major Price's responsibilities include: planning, development, and implementation of training programs for Department personnel; developing a training budget for the Department; and coordinating with other state, county, and local officials on training functions. Other duties include: setting standards of performance for the Recruit Training Schools, preparing and submitting annual training reports and fiscal reports of training funds, establishing division goals with input from Section Commanders, and serving as an instructor at Recruit and in-service training schools.

You provide that Major Price has no contracting authority for ISP; rather, his role is only to approve requested training to determine if the training complies with ISP's current training and practice. Once approved, it is sent to the Fiscal Division, which handles contractual matters and obtains payment authorization from Col. French, Lt. Col. Turner, or Lt. Col. Bilkey on behalf of the Superintendent.

I understand that ISP permits non-department employment for ISP personnel, subject to Department approval. You write that Major Price has the Department's approval for his personal training and consulting business, the Price Consulting Group, LLC ("Price Consulting"). Through his business, he is associated with other trainers from across the country. Over the last eight years, Price Consulting has developed a model and training program called the Q6 Performance Leadership Model (Q6). Major Price has trained a few agencies outside of Indiana through Price Consulting. He has also been providing Q6 training to ISP personnel while on duty. You provide that teaching Q6 to ISP personnel and to other Indiana law enforcement agencies is part of his official duties. You write that he has not received compensation for this beyond his ISP salary.

Major Price has advised you that the popularity of Q6 is increasing. Price Consulting has organized under the Emerson Group, LLC ("Emerson Group"). The Emerson Group only accepts revenue for licensing and production of Q6 materials. Thus far, when Major Price teaches Q6 for ISP, there is no charge for the materials; however, with the development of the Emerson Group, there will now be a fee for materials for each student. You write that Major Price personally will not receive any compensation for the materials purchased through the Emerson Group; rather, that money goes back into an account used for legal fees, material production, and administrative expenses managed by the Emerson Group.

You provide if the Department decides to continue to provide this training, ISP will need to buy the materials from the Emerson Group. You explain that while Major Price is a member of the Emerson Group through his personal business, he does not receive any payments from the group at this time. When teaching other police agencies in Indiana upon request, he teaches as a courtesy from ISP and receives nothing monetarily from the other agency. These other Indiana police agencies buy the material directly from the Emerson Group. When Major Price teaches Q6 at out-of-state police agencies, Major Price does so on his own time and receives compensation through his personal business.

I understand that you are requesting an informal advisory opinion on behalf of Major Price regarding potential ethical implications surrounding his involvement in Q6. First, as you know, our office cannot provide Major Price with advice on any past conduct. The advice provided in this opinion would apply to Major Price from this day forward, based on the information you have provided.

Regarding the Indiana Code of Ethics, this inquiry invokes consideration of several rules. I will discuss the implications of each in turn, and I include all relevant rules and definitions at the end of this opinion for your reference.

1. IC 4-2-6-9 – Conflicts of Interests; Decisions and Votes

First, Major Price should consider IC 4-2-6-9, which pertains to conflicts of interests; decisions and votes. This rule prohibits a state employee from participating in any decision or vote, or matter related to that decision or vote, if the employee has knowledge that certain persons may have a financial interest in the outcome of the matter, including a business organization in which the employee serves as an officer, a director, a member, a trustee, a partner, or an employee. In addition, the rule requires a state employee who recognizes a potential conflict of interests to notify his agency's appointing authority and ethics officer in writing and either (1) seek a formal advisory opinion from the Commission or (2) file a written disclosure form with our office.

The Code defines "financial interest" in IC 4-2-6-1(a)(11) to include "an interest . . . in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or . . . involving property or services. . ."

A potential conflict of interests would arise for Major Price if he participates in any matter related to a decision/vote in which Price Consulting and/or the Emerson Group has a financial interest. This restriction goes beyond the actual decision/vote and prohibits his participation in any matter related to the decision/vote.

Based on the information you provided, it appears very likely that Major Price's position as Commander of ISP's Training Section requires him to make decisions or participate in matters related to decisions, of which Price Consulting and/or the Emerson Group would have a financial interest. You provide that if ISP decides to continue to provide Q6 training, ISP will need to buy the materials from the Emerson Group. Major Price's business, Price Consulting, which developed Q6, has organized under the Emerson Group. The Emerson Group accepts revenue for licensing and production of Q6 materials. Although you say that Major Price will not personally receive any compensation for the materials purchased through the Emerson Group, it appears likely that he may be a member of the Emerson Group through Price Consulting, who developed Q6. Even if he is not considered a member of the Emerson Group, he is a member of Price Consulting, who may have a financial interest through its relationship with the Emerson Group.

As a result, a potential conflict of interests has been identified, and Major Price must follow the rule's notification requirements prescribed in IC 4-2-6-9(b) to avoid violating this rule. The rule requires a state employee who recognizes a potential conflict of interests to notify his agency's ethics officer and appointing authority in writing and either (1) seek a formal advisory opinion from the Commission; or (2) file a written disclosure form with our office.

In this case, because of the multiple rules this situation touches upon, we would recommend that Major Price seek a Formal Advisory Opinion from the Commission.

2. IC 4-2-6-10.5 – Conflicts of Interests; Contracts

Major Price should also consider IC 4-2-6-10.5, which prohibits a state employee from knowingly having a financial interest in a contract made by any state agency. The Code defines “financial interest” to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract between any state agency and a third party. Please note that “compensation” is defined by the Code to include “a thing of value” and could include items other than money. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for the contracting agency, provided certain statutory criteria are met.

You provide that Major Price has no contracting authority for the agency; rather, his role is only to approve requested training to determine if the training complies with ISP’s current training and practice. Once approved, the Fiscal Division handles the contractual matters. While it does not appear Major Price has “official contracting responsibility” for ISP, it is possible that he at least participates in some aspect of contracting when he approves the requested training and it is sent to the Fiscal Department who handles contractual matters.

The information you provided does not indicate whether the Emerson Group has, or will soon, have a contract with ISP or any state agency; although if ISP purchases Q6 training materials from the Emerson Group, this at least amounts to a business relationship as defined by the Code. Major Price should be aware of this rule and its disclosure requirements if it is determined that the Emerson Group has a contract with the State and if he receives compensation derived from such contract. Please feel free to contact our office if you have further questions regarding the application of this rule.

3. Additional Compensation (42 IAC 1-5-8)

The rule on additional compensation, found in 42 IAC 1-5-8, provides that a state employee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

In your follow-up email, you confirm that teaching Q6 is part of Major Price’s official duties. Also, you provide that he accepts compensation for teaching Q6 at law enforcement agencies outside of Indiana; and if the training continues, ISP will need to purchase Q6 materials from the Emerson Group. Please note that pursuant to this rule, Major Price would be prohibited from accepting compensation (beyond his ISP salary) for teaching Q6 to Indiana law enforcement agencies.

4. Outside Employment/Professional Activity (IC 4-2-6-5.5)

IC 4-2-6-5.5 prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or

- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

As previously mentioned, you write that Major Price is not receiving compensation beyond his ISP salary for teaching Q6 at ISP and other Indiana law enforcement agencies; however, he does receive compensation for teaching Q6 at agencies outside of Indiana. You explain that ISP may soon need to purchase Q6 materials from the Emerson Group. Because it is possible that Major Price may have a conflict of interests if he participates in decisions or votes regarding the Emerson Group, this could also implicate subsection (1) of the outside employment rule because it may require him to recuse himself from matters central or critical to the performance of his official duties.

As for subsection (2), Major Price would need to ensure that his involvement in Price Consulting and the Emerson Group would not require him to disclose confidential information gained in the course of his employment with ISP.

Finally, it is possible that Major Price could use, or at least appear to use, his official ISP position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government. For example, because his official duties involve teaching Q6, it appears he is in a better position to promote his business and have access to various agencies and persons that may be interested in supporting or purchasing materials from the Emerson Group.

Additionally, please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee's state duties. **Based on the information provided, we highly encourage Major Price to request a formal advisory opinion from this Commission on the question of whether his involvement with Price Consulting, Q6, and/or the Emerson Group and ISP's potential future payment to the Emerson Group for materials would violate any of the rules discussed in this opinion.** You can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>. Please let me know if you have any further questions about the formal advisory opinion process.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Heidi Adair
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. ***Thank you!***

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;

or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-8 Additional Compensation

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency;
and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

Heidi L. Adair

Staff Attorney

Office of the Inspector General

315 W. Ohio St., Room 104

Indianapolis, IN 46202

hadair@ig.in.gov

317-234-3993

From: Miller-Cronk, Nila

Sent: Thursday, July 18, 2019 11:55 AM

To: Adair, Heidi <HAdair@ig.IN.gov>

Subject: RE: Advice

Importance: High

Heidi,

Major Price has no contracting authority for the agency. His role is only to approve requested training to determine if the training complies with our current training and practice. Once approved, it is sent to the Fiscal Division who handles contractual matters and obtains payment authorization from Col. French, Lt. Col. Turner, or Lt. Col. Bilkey on behalf of the Superintendent.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Wednesday, July 17, 2019 2:28 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello again,

Thank you for your patience as we are working through this informal advisory opinion. I do actually have another follow-up question. Does Major Danny Price have any contracting responsibilities in his ISP position?

Thank you,

Heidi L. Adair
Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Adair, Heidi
Sent: Tuesday, July 16, 2019 3:39 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hi Nila,

Thank you for providing this additional information. I should have the informal advisory opinion to you in 1-3 business days. (I may reach out again if I end up needing more information.)

Best,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Tuesday, July 16, 2019 1:04 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice
Importance: High

Heidi,

Hello!

Below is the response to your requested information:

- First and last name of the Major

Major Danny Price – Commander, ISP Training Section

- You indicate that the Major has a Non-Duty Employment approval. Could you please explain what this means? It sounds to me like it's related to outside employment, but just want to clarify if this is some type of policy specific to ISP.

Non-department employment is outside employment for our personnel and to work another job in addition to their primary employment with the department their non-department employment must be approved by the Department.

RESPONSIBILITIES

- Administrate the planning, development and implementation of training programs for Department personnel.
- Set performance standards for Division personnel.
- Assign, supervise and evaluate the job performance of subordinate personnel.
- Supervise and evaluate the performance of Department personnel assigned as attendees in various training programs.

- Implement a training needs assessment program to develop the training needs of the Department.
- Develop a training budget for the Department.
- Coordinate with other state, county and local officials on training functions.
- Maintain liaison with the Indiana Law Enforcement Academy and the Law Enforcement Training Board on all training matters.
- Maintain liaison with the academic community for purposes of educational and training opportunities for Department personnel.
- Develop training policy and related Standard Operating Procedures for Executive Staff approval.
- Plan for present and long term training facilities and equipment.

II. DUTIES

- Set standards of performance for the Recruit Training Schools.
- Supervise all phases of the Recruit Training Program.
- Assist in the selection of Recruit School appointments as directed by the Superintendent.
- Serve as an instructor at Recruit and in-service training schools.
- Serve as a guest instructor for other police agencies upon request.
- Maintain liaison with Department personnel and personnel from other agencies regarding training programs.
- Review and evaluate training requests and evaluation reports.
- Maintain a records system for all training received by Department personnel.
- Respond to inquire and correspondence.
- Prepare and submit annual training reports and fiscal reports of training funds.
- Supervise and evaluate the performance of subordinate personnel.
- Coordinate with the Superintendent, Assistant Superintendent, Deputy Superintendents, Division, Area and District Commanders on training functions.
- Establish Division goals with input from Section Commanders.
- Supervise the Commander Assistant and other Training Division personnel.
- Work on special projects, i.e., Drug Evaluation and Classification Program.
- Enforce all state and federal traffic and criminal laws.

- Serve on interview committees.
- Serve as a member of the Personnel Board.
- Perform other duties as required.

- Is teaching the Q6 Performance Leadership Model part of the Major's official duties?

Teaching the Q6 Performance Leadership Model to ISP personnel is done on duty and part of the regular duties. Teaching it to other agencies in Indiana is also part of those duties.

I hope this information helps. If you need additional information please feel free to contact.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Friday, July 12, 2019 9:49 AM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello Nila,

Thank you for contacting our office for ethics advice in your capacity as ISP's Ethics Officer. I understand that a Major in ISP's Training Section is requesting an informal advisory opinion regarding his outside business.

Before I begin drafting the informal advisory opinion, I will need some additional information. Could you please answer the following questions?:

- First and last name of the Major

- You indicate that the Major has a Non-Duty Employment approval. Could you please explain what this means? It sounds to me like it's related to outside employment, but just want to clarify if this is some type of policy specific to ISP.
- Please describe, generally, the Major's duties and responsibilities in his position with ISP.
- Is teaching the Q6 Performance Leadership Model part of the Major's official duties?

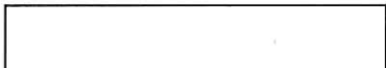
Thank you,

Heidi L. Adair

Staff Attorney
 Office of the Inspector General
 315 W. Ohio St., Room 104
 Indianapolis, IN 46202
hadair@ig.in.gov
 317-234-3993

From: noreply@formstack.com [mailto:noreply@formstack.com]
Sent: Thursday, July 11, 2019 11:43 AM
To: IG Info <info@ig.IN.gov>; Cooper, Jennifer <JCooper@ig.IN.gov>; Torres, Lori <LTorres@ig.IN.gov>
Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: ig_2334
 Submitted at 07/11/19 11:42 AM

Name:	Nila Miller-Cronk
Email:	nmiller-cronk@isp.in.gov
Phone:	(317) 232-8326
State Agency:	Indiana State Police

**Description of
Your State
Occupation:**

Department's Ethics Officer and Major, Commander of the Internal Investigation Section

There is a Major in our Training Section that has a Non-Duty Employment approval for a personal training and consulting business, The Price Consulting Group L.L.C. Through this business, he is associated with other trainers from across the country. Over the last eight years, his group has developed a model and training program called The Q6 Performance Leadership Model. He has trained a few agencies outside of Indiana through The Price Consulting Group. He has also been training ISP personnel on The Q6 Performance Leadership Model but has done so on duty and received no compensation beyond his salary.

He advised that the popularity of the model and training program is increasing. The group who developed the program has organized under The Emerson Group LLC. The only revenue accepted by The Emerson Group is for licensing and production of the Q6 materials. Thus far, when he teaches Q6 for ISP, there is no charge for the materials. However, with the development of The Emerson Group LLC, there will now be a fee per student. He personally will not receive any compensation for the materials purchased through The Emerson Group LLC. That money goes back into an account used for legal fees, material production, and administrative expenses managed by The Emerson Group LLC.

**What is your
ethics question?:**

He just wanted to be completely transparent with his involvement in the Q6 Performance Leadership Model. When teaching it for ISP, he receives nothing monetarily. However, if the department decides to continue to provide this training ISP will need to buy the materials from The Emerson Group LLC. While he is a member of The Emerson Groups LLC through his personal business, he does not receive any payments from that group at this time. When teaching other police agencies in Indiana upon request, he teaches as a courtesy from the ISP and receive nothing monetarily from the other agency. The other agency buys the materials directly from The Emerson Group LLC. When teaching out of state, he does so on his own time and is compensated through his personal business. This employee is requesting an informal advisory opinion on this matter.

I would be willing to excuse myself from any decision-making or approval for training concerning the Q6 Performance Leadership Model if necessary. It is a good program and I would hate to see the ISP not use it due to any perceived conflict on my part.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.IN.gov/isp

October 1, 2019

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on August 7, 2019, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Trooper Steven W. Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP, in addition to his other assigned duties. The purpose of DRE training is to reduce the impact of the drug epidemic affecting Indiana. Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two (2) years. They are both requesting to conduct DRE instruction to police officers from various police agencies during their off-duty time, for non-department employment as contract workers and each have their own LLC (see following).

By way of background, Mr. Duckworth currently serves as Traffic Services Director for the Indiana Criminal Justice Institute (ICJI). He started this position on November 26, 2018. Prior to his employment with ICJI, he was the DRE Coordinator for the State of Indiana. As the DRE Coordinator, he had his own LLC, known as Assured Program Solutions, LLC. This LLC ceased operations in November of 2018 when Mr. Duckworth was hired by ICJI. As the DRE Coordinator, he was a contractor for ICJI who was paid through his LLC.

Marshall Depew was hired as the State of Indiana's DRE Coordinator, to replace Mr. Duckworth, in December of 2018. Similar to his predecessor, Mr. Depew serves as a contractor for ICJI. He also is paid through his LLC, which is known as Dedicated Training Resources, LLC.

If approved, Master Trooper Caswell and Trooper Glass would be DRE and ARIDE instructors, they would be subcontractors of Mr. Depew's LLC. ICJI would not directly contract with either Master Trooper Caswell or Trooper Glass. ICJI only directly contracts with the DRE Coordinator for the State – in this case – Mr. Depew. Master Trooper Caswell previously received compensation from Mr. Duckworth's LLC, and not from ICJI, while Mr. Duckworth's

State Ethics Commission
Glass/Caswell
October 1, 2019
Page 2

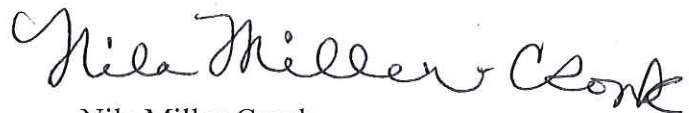
LLC was under contract with ICJI (prior to Mr. Duckworth's employment with ICJI). Master Trooper Caswell does not have any contractual relationship with Mr. Duckworth.

Master Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and this request for Trooper Glass is similar to, but not the same as that original request of Master Trooper Caswell. Master Trooper Caswell's original informal advisory opinion was to instruct DRE classes to employees at an insurance company. An informal advisory opinion on this complex request was received on August 13, 2019, from Staff Attorney Heidi Adair, and a can be provided to the Ethics Commission upon request.

The Indiana State Police Department respectfully requests this matter to be included on the agenda for the next monthly Ethics Commission meeting which is scheduled for Thursday, October 10, 2019, for the purposes of rendering an ethics formal advisory opinion on this matter for **both** Trooper Steven W. Glass and Master Trooper David Caswell.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,



Nila Miller-Cronk
Major

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.IN.gov/isp

September 30, 2019

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on August 7, 2019, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Trooper Steven W. Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP. The purpose of DRE training is to reduce the impact of the drug epidemic affecting Indiana. Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two (2) years. The Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked both Trooper Glass and Master Trooper David Caswell to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Master Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and this request for Trooper Glass is similar to but not the same as that of Trooper Caswell. Trooper Caswell's original informal advisory opinion was to instruct DRE classes to employees at an insurance company. Specifics of this request are contained in the complex Informal Advisory Opinion response prepared by Staff Attorney Heidi Adair, which is contained in the email attached to this request.

The Indiana State Police Department respectfully requests this matter to be included on the agenda for the next monthly Commission meeting which is scheduled for Thursday, October 10, 2019, for the purposes of rendering an ethics formal advisory opinion on this matter for **both** Trooper Steven W. Glass and Master Trooper David Caswell.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,



Nila Miller-Cronk
Major

Attachment

Miller-Cronk, Nila

From: Adair, Heidi
Sent: Tuesday, August 13, 2019 5:10 PM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion; ISP; Miller-Cronk/Glass; Conflict of Interests

Nila,

Thank you again for your patience. As you know, we typically have informal advisory opinions completed and sent fairly quickly; however this informal advisory opinion turned out to be a bit more complicated than originally anticipated. If after reviewing this opinion, you and/or Trooper Glass have any questions or concerns, feel free to reach out.

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP) and providing additional information. I understand you are seeking advice on behalf of Trooper Stephen Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP.

You provide that the Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked Trooper Glass to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and that this request for Trooper Glass is similar to that of Trooper Caswell. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. You provide that Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two years.

Instructing DRE courses for ISP personnel is a part of Trooper Glass's official state duties. In his potential outside employment opportunity, he would be conducting the training outside of his state hours to ICJI (and perhaps other entities) and would not use state equipment or resources when doing so.

I understand you are seeking advice on behalf of Trooper Glass to determine if he is permitted, under the Code of Ethics (Code), to provide the educational consulting for ICJI when off-duty.

Your inquiry invokes consideration of several rules under the Code. I discuss the implications of each below. I include all relevant rules and definitions at the end of this opinion for your reference. **For purposes of this opinion, I focus on analyzing Trooper Glass's potential outside employment as a consultant for ICJI. The analysis may be subject to change if there are other companies or organizations for which he wishes to provide consulting services, and he may wish to request another informal advisory opinion to address specific facts.**

1. Conflicts of Interests; Contracts (IC 4-2-6-10.5)

First, Trooper Glass should consider IC 4-2-6-10.5, which prohibits a state employee from knowingly having a financial interest in a contract or grant made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract or grant between any state agency and a third party. Please note

that “compensation” is defined by the Code to include “a thing of value” and could include items other than money. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for the contracting agency, provided certain statutory criteria are met, including written disclosure.

You provide that ISP receives grant funds from ICJI. Furthermore, it appears that ICJI funds and manages Indiana’s DRE program. You note that Trooper Glass does not participate in or have contracting responsibility for ISP; however, he should be aware of this rule and its disclosure requirements if he determines that his compensation for the consulting services is derived from ICJI grant funds or from a contract between ICJI and ISP. This rule is also implicated if Trooper Glass individually contracts with ICJI for personal services.

While the analysis in this opinion is directed to Trooper Glass and we generally do not provide advice as to past conduct, it appears that the facts involving Trooper Caswell’s outside employment arrangement may have changed since the informal advisory opinion he received in January 2017. As such, if Trooper Caswell is deriving compensation and has a financial interest in a contract/grant with ICJI, he should ensure that he is in compliance with IC 4-2-6-10.5 and promptly files a financial disclosure statement with the State Ethics Commission.

2. Outside Employment/Professional Activity (IC 4-2-6-5.5)

As you know, the outside employment/professional activity rule prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Regarding subsection (1), nothing in the information you provided indicates that Trooper Glass’s potential consulting position with ICJI is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. Generally, we recommend that an employee discuss outside employment matters with their agency’s ethics officer, as they can address any agency-specific conflict of interests concerns and advise of any agency policies that would apply to the employee’s outside employment. As it appears you have not found any inherent incompatibility, we would defer to your review.

As for subsection two (2), nothing in the information you provided indicates that this arrangement would require Trooper Glass to disclose confidential information, so such employment will not violate this subsection. So long as Trooper Glass does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from contracting with ICJI to provide off-duty DRE training while also working for ISP. **Please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee’s state duties.**

3. Conflicts of Interests; Decisions and Votes (IC 4-2-6-9)

IC 4-2-6-9, which pertains to conflicts of interests; decisions and votes, prohibits Trooper Glass from participating in any decision or vote, or matter related to any such decision or vote, if he has knowledge that various persons may have a “financial interest” in the outcome of the matter, including himself, an organization in which he serves as an employee, or an organization with whom he is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote, including discussion.

The Code defines “financial interest” as an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services. Because ICJI funds and manages the DRE program and Trooper Glass will be paid to teach DRE courses for ICJI, it appears Trooper Glass may have a financial interest in a decision or vote involving ICJI. It is unclear if Trooper Glass’s ISP duties involve making decisions or participating in any matters for which ICJI, his potential employer, would have a financial interest; however, if his position does involve such matters, he should avoid participating in them and comply with the rule’s notification requirements.

4. Additional Compensation (42 IAC 1-5-8)

The rule on additional compensation, found in 42 IAC 1-5-8, provides that a state employee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

You explain that part of Trooper Glass’s official state duties include providing DRE training to ISP officers. Based on my understanding of the information you provided, in his prospective consulting position, he would be conducting DRE certification training, but this training would be for ICJI rather than ISP and would be conducted outside of his regular ISP hours and without state equipment or resources.

42 IAC 1-5-8 generally does not prohibit an employee from performing the *same type* of duties for another entity that the employee performs in his or her state position; however, Trooper Glass may wish to consider any appearance of impropriety that could arise from contracting with another state agency to provide services that mirror his official state duties with ISP.

5. Ghost Employment and Use of State Property (42 IAC 1-5-13 and IC 4-2-6-17)

Furthermore, as you know, any activity related to Trooper Glass’s outside employment as a contractor/consultant with ICJI must be done outside of his normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). Also, he cannot use state property, such as equipment or materials, while engaging in activities related to his outside employment in order to comply with the use of state property rule (IC 4-2-6-17).

6. Confidential Information 42 IAC 1-5-10 and 42 IAC 1-5-11

Trooper Glass should keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit him from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that he will possess information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including ICJI, he would need to ensure he complies with these rules.

Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from knowingly or intentionally having financial interests in or deriving a profit from a contract or purchase connected with an action by *the agency that the employee serves*. The criminal statute can be found at

IC 35-44.1-1-4. Our office usually does not provide advice on the Criminal Code, but we recommend that Trooper Glass familiarize himself with the statute and ensure he complies with it. Please note that subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics. Trooper Glass can request such approval from the State Ethics Commission by requesting a formal advisory opinion as discussed above.

In this case, because of the potential implication of several rules, we would recommend that Trooper Glass seek a Formal Advisory Opinion from the Commission. The Commission's next public meeting is September 12, 2019, and all requests for opinions to be rendered at this meeting need to be submitted to our office by September 3, 2019. More information on formal advisory opinions can be found here.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Heidi Adair
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;

or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-8 Additional Compensation

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency;

and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Heidi L. Adair

Staff Attorney

Office of the Inspector General

315 W. Ohio St., Room 104

Indianapolis, IN 46202

hadair@ig.in.gov

317-234-3993

From: Adair, Heidi

Sent: Friday, August 9, 2019 3:00 PM

To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>

Subject: RE: Advice

Nila,

Thank you for the additional information. I believe we have enough for the informal advisory opinion now, but I will let you know if that changes. Otherwise you should expect to see the opinion within 1-3 business days.

Thanks again for your patience,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Friday, August 9, 2019 12:19 PM
To: Adair, Heidi <HADair@ig.IN.gov>
Subject: RE: Advice

Heidi,

This is what I have learned. Trooper Caswell and if approved, Trooper Glass, instruct officers on how to be Drug Recognition Experts (DRE) which is a two (2) week class to become DRE certified. Each class has about 40 officers in it and at times a very small number of those officers are from ISP. They also teach non-ISP officers an ARIDE (Advanced Roadside Impaired Driving Enforcement) course. Trooper Caswell, through his own LLC (DC Consulting, LLC) has been receiving compensation from a contractor, Rob Duckworth's LLC (name unknown), and that Rob Duckworth is now the Traffic Safety Director for ICJI. ICJI pays Rob Duckworth's LLC from grant funds and the ICJI funding source is NHITSA 405D Funding Stream.

I am going to try and get more clarification on this and get back with you.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Friday, August 9, 2019 9:58 AM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello Nila,

I was wondering if you would be able to provide some clarification on how Trooper Glass will be compensated for providing DRE training. Will he be compensated through a contract with ICJI and receive a separate paycheck from them? If you feel that a phone call would be better for the explanation, feel free to contact me at the number below.

Thank you for your patience!

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Adair, Heidi
Sent: Thursday, August 8, 2019 4:17 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Perfect. Thank you. I will have an informal advisory opinion out to you as soon as possible.

Best,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Thursday, August 8, 2019 3:27 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice
Importance: High

Heidi,

Everything we discussed and you have listed below is correct regarding Trooper Glass and his request.

Thanks!

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Thursday, August 8, 2019 3:02 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hi Nila,

Thank you for providing additional information in our phone call. I just wanted to send you a quick recap of our conversation – if you wouldn't mind confirming if this information is correct, I would appreciate it. And feel free to correct me if you notice any factual inaccuracies.

- DRE stands for Drug Recognition Expert
- Trooper Glass is a road trooper but part of his official duties is also to instruct DRE training for ISP personnel
- Trooper Glass does not participate in or have any contracting duties
- He's interested in contracting with ICJI outside of his normal state working hours to provide DRE training. He would work with Trooper Caswell so it would extend beyond ICJI. He may contract with other entities to provide this training as well.
- ISP receives grants through ICJI but this outside employment opportunity doesn't involve the grants
- He wouldn't be conducting DRE training for ICJI or other outside entities on state time or using state equipment/resources

Thank you,

Heidi L. Adair
Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov

317-234-3993

From: noreply@formstack.com [mailto:noreply@formstack.com]

Sent: Wednesday, August 7, 2019 3:53 PM

To: IG Info <info@ig.IN.gov>; Cooper, Jennifer <JCooper@ig.IN.gov>; Torres, Lori <LTorres@ig.IN.gov>

Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: ig_2815

Submitted at 08/07/19 3:52 PM

Name: Nila Miller-Cronk

Email: nmiller-cronk@isp.in.gov

Phone: (317) 232-8326

State Agency: Indiana State Police

Description of Your State Occupation: Department's Ethic's Officer and Commander of the Department's Internal Investigation Section

What is your ethics question?:

Trp. Stephen Glass has been asked by Marshall Depew (ICJI DRE/SFST Coordinator) to become a contractor with Trooper Dave Caswell in providing educational consulting on the effects and long term deficits of drug use and impairment to reduce the impact of the drug epidemic affecting Indiana. Troopers Dave Caswell and Stephen Glass are DRE Instructors for ISP and have been instructing together for approximately 2 years.

An informal advisory opinion was submitted for Trp. Caswell and a response received from Jennifer Cooper on 1/20/2017. This request for Trooper Glass is similar to that of Trooper Caswell.

Trooper Glass is wishing to assure due diligence that there is no adverse viewing by the Department, such as conflict of interest or ethics violation to serve as a consultant with Trooper Caswell to ICJI as they are both are assigned similar

responsibilities as State Police Employees, Drug Recognition Experts (DRE), and DRE Instructors.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

PROFESSIONAL SERVICES CONTRACT

Contract # 00000000000000000000000032932

This Contract (“this Contract”), entered into by and between the **Indiana Criminal Justice Institute** (the “State”) and **Dedicated Training Resources LLC** (the “Contractor”), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor. The Contractor shall provide the following services relative to this Contract as generally outlined in **Attachment A**, which is attached hereto and fully incorporated herein along with the following:

- A. Maintain the proper certifications required to be named as DRE State Coordinator as outlined in **Attachment A**.
- B. Develop and coordinate a two (2) day recertification course for the Standardized Field Sobriety Testing and Drug Recognition Expert (hereinafter referenced as “DRE”) Program to be held annually in 2019.
- C. Coordinate and plan the Standardized Field Sobriety Testing (hereinafter referenced as “SFST”) Basic Course to be held at the Indiana Law Enforcement Academy in 2019.
- D. Coordinate the certification for identified Drug Recognition Experts who were previously trained but have not yet completed the required number of evaluations.
- E. Coordinate and plan at least one Drug Recognition Expert Course to be held in 2019.
- F. Coordinate and plan field certification training for the Drug Recognition Expert Courses held in 2019 which will ultimately result in initial certification of officers.
- G. Coordinate and plan at least one SFST Instructor School annually for 2019.
- H. Coordinate and provide support for SFST Refresher and Course information requests from law enforcement agencies.
- I. Coordinate and provide support for ARIDE Training requests from law enforcement agencies.
- J. Provide support and instruction as requested and achievable by the Indiana Prosecuting Attorneys Council for the training programs for prosecutors and law enforcement officers.
- K. Complete and submit the DRE Annual Report for Indiana.
- L. Facilitate review and submission of documentation to the State of current DRE Officers for recertification to be provided to IACP.
- M. Coordinate attendance and minimally attend representing the Indiana DRE Program at the Annual State Coordinators Meeting and Annual Conference as scheduled by IACP. Costs for the conference will be covered by the State.
- N. Coordinate and develop an annual budget for supplies and support costs for the courses outlined above to the State for approval and administration by the managing agency.
- O. Provide the State with a calendar and brief description of all organized trainings scheduled throughout the duration of this Contract.
- P. Provide event coordination services, travel planning and coordination, and arrange and pay travel for all attendees participating in the Drug Recognition Expert Training Program, ARIDE, SFST and other conferences and training. Contractor shall be compensated upon presentation of estimated travel costs. Travel must be booked within 10 days after receipt of payment. Contractor will leverage the existing Enterprise Rental Agreement rates for ground transportation for all vehicles required.
- Q. Facilitate the attendance of DRE Officers to attend Traffic Safety sponsored outreach events as available to provide subject matter expert knowledge assistance at the on-site facility.

2. Consideration. The Contractor will be paid at the rate of **\$40.00 per hour for twelve (12) hours per week** for a weekly total of **\$480.00** for maintenance of efforts and accessibility. **In addition**, the Contractor will be paid at a rate of **\$45.00 per hour** for all preparation of trainings and instruction at all trainings. Total remuneration under this Contract shall not exceed **\$355,000.00**.

3. Term. This Contract shall be effective for a period of **ten (10) months**. It shall commence on **December 1, 2019** and shall remain in effect through **September 30, 2020**.

4. Access to Records. The Contractor, and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable time during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

6. Assignment of Antitrust Claims. [OMITTED, NOT APPLICABLE]

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. As a recipient of federal funds, Contractor agrees to comply with all applicable NHTSA special conditions, as set forth in **Attachment B**, attached hereto and incorporated herein by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the

Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code § 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification.

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A written determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. [OMITTED; NOT APPLICABLE]

24. Indemnification. In the event that Contractor is found to be negligent, as determined by a neutral third party who is knowledgeable of and has expertise in the duties of the Contractor, in the training or implementation of any component of the subject matter of this contract, the Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Indiana Veteran Owned Small Business Enterprise Compliance. [OMITTED; NOT APPLICABLE]

27. Information Technology Enterprise Architecture Requirements. [OMITTED; NOT APPLICABLE]

28. Insurance.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Automobile liability for personally owned autos with minimum liability limits of \$250,000 per person and \$500,000 per occurrence. Automobile liability for all government owned vehicles shall be the minimum liability limits normally carried by the governmental body.
2. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

29. Key Person(s). [OMITTED; NOT APPLICABLE]

30. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

31. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

32. Minority and Women's Business Enterprises Compliance. [OMITTED; NOT APPLICABLE]

33. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

34. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent via U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Indiana Criminal Justice Institute
Attn: Robert Duckworth
Traffic Safety Division Director
101 W. Washington St., Suite 1170-E
Indianapolis, IN 46204
rduckworth@cji.in.gov

B. Notices to the Contractor shall be sent to:

Dedicated Training Resources, LLC
Attn: Marshall Depew
7633 Stoney Side Lane
Indianapolis, IN 46259
mdepew@cji.in.gov

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

35. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. **All Drug Evaluation and Certification Program materials prepared by the International Association of Chiefs of Police are hereby incorporated fully by reference.**

36. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

37. Payments.

A. All payments shall be made upon receipt in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20 or as outlined in Paragraph 1 of this Contract. Claims are to be submitted on a schedule agreed upon by the parties.

B. The State Budget Agency and the Contractor acknowledge that the Contractor is being paid in advance for travel, in accordance with Section 47 of this Contract. Pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

38. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

39. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

40. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

41. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The contract may be renewed for an additional period of time mutually agreed upon by the parties.

42. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

43. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

44. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

45. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

46. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

47. Travel. Travel will be reimbursed for out-of-state travel at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. The State will provide for in-state lodging and travel reimbursement in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the *2018 OAG/ IDOA Professional Services Contract Manual* or the *2018 SCM Template*) in any way except for the following clauses which are named below:

- Clause 6: Deleted not applicable.
- Clause 10: Amended.
- Clause 23: Deleted not applicable.
- Clause 26: Deleted not applicable.
- Clause 27: Deleted not applicable.
- Clause 29: Deleted not applicable.
- Clause 32: Deleted not applicable.
- Clause 34: Amended.
- Clause 35: Amended.
- Clause 37: Amended.
- Clause 47: Amended.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**Agreement to Use Electronic Signatures
[Applicable only to contracts processed through SCM]**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Dedicated Training Resources, LLC

Indiana Criminal Justice Institute

By: _____

By: _____

Name and Title, Printed

Devon McDonald, Executive Director

Date: _____

Date: _____

Approved by:
Indiana Department of Administration

Approved by:
State Budget Agency

By: _____ (for)
Lesley A. Crane, Commissioner

By: _____ (for)
Jason D. Dudich, Director

Date: _____

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

(for)
Curtis T. Hill, Jr., Attorney General

Date: _____

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**Agreement to Use Electronic Signatures
[Applicable only to contracts processed through SCM]**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Dedicated Training Resources, LLC

By: *M. Depew*

Marshall Depew - Owner
Name and Title, Printed

Date: 1-31-19

Approved by:
Indiana Department of Administration

By: _____ (for)
Lesley A. Crane, Commissioner

Date: _____

Indiana Criminal Justice Institute

By: _____

Devon McDonald, Executive Director

Date: _____

Approved by:
State Budget Agency

By: _____ (for)
Jason D. Dudich, Director

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

_____(for)
Curtis T. Hill, Jr., Attorney General

Date: _____



ATTACHMENT A

Drug Recognition Expert State Coordinator Duties, Roles and Responsibilities



The success of the Drug Evaluation and Classification (DEC) program depends on proper coordination and infrastructure in each of the DRE states. This ultimately rests with the DRE state coordinator working in partnership with the International Association of Chiefs of Police (IACP) and the respective Highway Safety Office's.

The IACP DRE Technical Advisory Panel (TAP) provides oversight and makes recommendations to the IACP Highway Safety Committee regarding the DEC program and other impaired driving issues. The IACP has developed international standards to assist and provide program support for the DEC program. In the IACP DEC Program International Standards a DRE state coordinator is defined as "*An individual designated to act as the statewide coordinator for the DEC program.*" *The duties of the position generally include, but are not limited to:*

- 1. Acting as an information clearinghouse and central communication point for the program within the state.*
- 2. Assisting in coordinating training and other support activities for all agencies participating in the program within the state.*
- 3. Coordinating the assignment of instructors in response to requests for service from federal and other sources.*

Not mentioned in the definition, but vital to the program is ensuring proper communication with IACP and that data is collected, maintained and reported using a reliable data collection program. DRE state coordinators will be called upon to provide justification and report the effectiveness of their program. Without data, this will be difficult if not impossible.

Appointment and Selection of the DRE State Coordinator

Under the guidelines listed in the IACP International Standards for the DEC program, the Governor's Office of Highway Safety is responsible for designating the DRE state coordinator. (Refer to definitions section of the International Standards). The selection may be made by the individual Governor's Highway Safety Representative or by any means approved by the Governor's Office of Highway Safety.

DRE State Coordinator Qualifications

The definition for the DRE state coordinator contained in the International Standards lists minimum *suggested* duties. The duties are general in nature and may be exceeded or expanded.

Qualifications to be a DRE state coordinator vary from state to state and are dependent upon the Governor's Office of Highway Safety. It is not a requirement that the state coordinator be a Drug Recognition Expert (DRE) or has a background in DRE. However, some states have adopted this standard to ensure that the DRE state coordinator understands and is familiar with the DRE process, program and requirements. In addition, the state coordinator does not have to be a sworn law enforcement officer, unless directed by the Governor's Highway Safety Office.

As previously mentioned, the DRE state coordinator must ensure that the DEC program is properly and effectively administered. The state coordinator must be able to work in partnership with federal, state, and local groups and organizations and should be familiar with:

1. IACP Drug Evaluation and Classification (DEC) Program International Standards
2. IACP Drug Recognition Expert training curriculum
3. IACP/NHTSA Standardized Field Sobriety Testing (SFST) curriculum
4. Key state and national impaired driving enforcement issues
5. State, federal and local laws, regulations and court decisions related to and effecting impaired driving prosecution and enforcement
6. Local and state toxicology guidelines and drug testing procedures
7. State training requirements and guidelines for police officers
8. IACP DRE Technical Advisory Panel (TAP) and it's role
9. IACP DRE regional procedures and concept
10. Traffic safety grants and reporting procedures
11. The National DRE Tracking System (DRE data collection system)

In essence, the DRE state coordinator is much like a *project manager* in that they conduct four essential tasks: 1) Define 2) Plan 3) Implement and 4) Evaluate.

DRE state coordinators must **define** the goal for developing and administering an effective DEC program.

They must also **plan** a strategy for accomplishing the goals and objectives for a successful program consistent with those of IACP, NHTSA and their Governor's Highway Safety Office.

They must **implement** effective strategies to meet their objectives and to achieve the goal(s) of the program.

Lastly, they must **evaluate** the effectiveness of the program. They must be prepared at all times to justify their program, which is achieved through periodic evaluation.

Proper evaluation should also include documentation and reporting of supportive information. Many states accomplish this through an annual report, quarterly reports to their Governor's Highway Safety Office or by providing information for the IACP DRE Section Annual Report.

DRE State Coordinator Duties

Duties of the DRE state coordinator may vary depending upon the size of the program and their agency/organization. At a minimum, the state coordinator should:

1. Provide oversight and coordination of the DEC program following the IACP International Standards or equivalent state adopted standards
2. Work in partnership with the IACP DEC program staff
3. Ensure that statewide DRE evaluation data is entered and reported using the National DRE Tracking System
4. Ensure that information is submitted to the IACP DRE Section Chair in a timely manner outlining the state's yearly activities and accomplishments

5. Promote the DEC program with the various key partners within the state
6. Coordinate and assist in providing DRE training when resources allow
7. Appoint and assign course managers to DRE training schools
8. Promote and assist in the continuing education process for DREs within the state
9. Conduct periodic review of DRE files for certification and re-certification procedures
10. Conduct a periodic review of DRE reports and toxicology results to ensure accuracy
11. Assist in the collection and distribution of IACP/NHTSA impaired driving and drug training materials
12. Authorize or assist in obtaining DRE equipment and supplies when needed
13. Work with other state coordinators to advance the effectiveness of the program
14. Assist with or oversee the selection of DRE school candidates
15. Participate whenever possible in the DRE Regional meetings

Training Coordination Responsibilities

As previously mentioned, the DRE state coordinator must ensure that DRE training is conducted within their state whenever needed and when resources and personnel allow. Preparing for and conducting a DRE school requires proper planning and coordination which include, but are not limited to:

1. **Selecting a geographical training location:** Most DRE schools are conducted at a state or regional police training academy or at a location that supports DRE. When considering a new location within the state, the state coordinator should refer to the “Site Selection Criteria” and the Administrators Guide in the DRE School Instructor manual for guidance.
2. **Selection of DRE candidates:** Many states use a DRE school application process to assist in the selection of DRE candidates. (Refer to Appendage #1). However the selection process is accomplished, it is imperative that the best possible candidates are selected. Experience has shown that the best DRE candidates have a background in impaired driving enforcement, write above average reports, have courtroom experience and will use the DRE skills in their assignments.
3. **On-Site Physical needs for the school:** There are numerous on-site needs or requirements for conducting a DRE school. They will include, but are not limited to, lodging, meals, coffee for breaks, etc. Many of these are listed in the DRE School Checklist included with this document. (Refer to Appendage #2)

4. **Out-of-State Instructors:** If a state does not have adequate in-state DRE instructors and there is a need for out-of-state instructors, the state coordinator should contact the IACP for assistance. Out-of-state instructor support is normally for new DEC states, however, all requests will be considered depending upon the circumstances.
5. **DRE School manuals and materials:** DRE state coordinators can order DRE Pre-School and DRE School manuals using the IACP DRE School order form. (Refer to Appendage #3). Note: To ensure proper and timely delivery, manuals should be ordered four to six weeks prior to the school.
6. **Student equipment:** A variety of specialized equipment is required for each DRE student in order to complete the training. (Refer to DRE School Checklist, Appendage #2). Equipment purchases should be made in compliance with local or state purchasing procedures.
7. **DRE School schedule:** Per IACP TAP recommendations, there are three DRE training schedules to choose from. The state coordinator should confer with the school course manager to determine the best and most appropriate schedule to use. (Refer to the DRE Instructor manual under “Alternative Schedules”). Whichever schedule is used, the state coordinator must ensure that the school course manager and DRE instructors are familiar with the schedule of events and agenda and adhere to it.
8. **Coordinating and conducting the Alcohol Workshops:** Due to the importance of these workshops, a great deal of planning and attention must be devoted to these two training sessions. Two alcohol workshops *are required* during the DRE training process; one during the DRE Pre-School and one during the DRE School. Experience has shown live “wet” workshops work best for the students and also give the instructors a better understanding of the student’s skills.
9. **Field Certification Training:** The field certification training can be one of the major obstacles in finalizing the DRE training process. (Refer to IACP International Standards, Standard 1.13). The state coordinator should examine the best options for completing this portion of the training.

Experience has shown that the longer this process takes the more likely that some of the DRE. Some states have determined that sending students out of state to productive certification sites (Arizona and/or California) is more cost effective and practical than conducting in-state certification training. *Note:* For more information about out-of-state certification training, contact the IACP DEC program coordinator or DRE Regional Operations Coordinator.

10. **Final Certification Knowledge Examination:** State coordinators must ensure that DRE students take the final Certification Knowledge Exam as soon as possible after the completion of the DRE School. (Refer to IACP International Standards, Standard 1.12). Experience has shown that the longer the examination is delayed the increased likelihood that the student will not complete this portion of the certification process.
11. **Maintaining DRE certification records:** Many state coordinators maintain files of DREs trained under their jurisdiction. Records retained include copies of the IACP Certification Log, IACP DRE certification letters, their IACP DRE number and other pertinent information. Note: The retention of DRE file information should follow established state retention schedules and public disclosure rules.
12. **DRE Re-certification:** Re-certification is required every two years. (Refer to IACP International Standards). The state coordinator must ensure that DREs are aware of their re-certification requirements and dates. They must also ensure that re-certification opportunities exist and that DRE instructors are available to assist in the process. As a reminder – the International Standards allow for a one-year grace period beyond the last expiration date. However, a DRE is not technically certified

when in their grace period. Any evaluations completed during that period of time could be jeopardized. Standard 4.3 of the International Standards requires a minimum of four (4) acceptable evaluations every two years, one of which must be witnessed by a DRE instructor for recertification. These evaluations may be conducted in classroom simulation. However, this is a *minimum standard*. Some state coordinators have exceeded that standard and require that all re-certification evaluations be conducted on suspected drug impaired subjects.

Latest revision: 07/2013

ATTACHMENT B

GENERAL REQUIREMENTS

The Contractor shall comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94;
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs;
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- Submit all reports in the prescribed format and time frames as determined by ICJI; and
- Submit monthly performance measures as specified by ICJI.

NONDISCRIMINATION

The Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d et seq. 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324, *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686)(prohibits discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), (prohibits discrimination on the basis of disability);
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid Contractors, sub-Contractors and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, an certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of

limited English proficiency (LEP) by ensuring that funding Contractors take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

During the performance of this Contract, the Contractor agrees to comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time, including but not limited to, the following:

- A. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- B. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- C. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- D. To insert this clause, including paragraphs (a) through (c), in every contract and agreement and in every solicitation for a contract or agreement that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

The Contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

The Contractor certifies, to the best of their knowledge and belief, that:

- 1. No Federal appointed funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

RUSH

EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)



Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

RECEIVED

OCT 19 2017

TAM

IDOA CONTRACTS

1. EDS Number: D3-18-12092	2. Date prepared: 9/18/2017
-------------------------------	--------------------------------

3. CONTRACTS & LEASES

<input type="checkbox"/> Professional/Personal Services	<input checked="" type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Amendment# _____
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other _____

FISCAL INFORMATION

4. Account Number: 60110-65203.571904	5. Account Name: ICJI DOT Fund
6. Total amount this action: \$469,000.00	7. New contract total: 469,000.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:	
Year 2017	\$58 625 00
Year 2018	\$175 875 00
Year 2019	\$234 500 00
Year _____	\$ _____

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 10/1/2017	12. To (month, day, year): 9/30/2019
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input type="checkbox"/> RFP# _____	<input type="checkbox"/> Other (specify) _____
<input checked="" type="checkbox"/> Negotiated	<input type="checkbox"/> Special Procurement

AGENCY INFORMATION

14. Name of agency: Criminal Justice Institute	15. Requisition Number: 10510
16. Address: Criminal Justice Institute Traffic Safety 101 W WASHINGTON STREET Indianapolis, IN 46204	

AGENCY CONTACT INFORMATION

17. Name: DEVON MCDONALD	18. Telephone #: 317/232-7611
19. E-mail address: DEMCDONALD@CJI.IN.GOV	

COURIER INFORMATION

20. Name: Mike Lepper	21. Telephone #: 317-234-6227
22. E-mail address: mlepper@cji.in.gov	

VENDOR INFORMATION

23. Vendor ID #	0000352654
24. Name: ROBERT DUCKWORTH	25. Telephone #: 812-614-1593
26. Address: ASSURED PROGRAM SOLUTIONS LL 2148 N FLEETWOOD DR GREENSBURG, IN 47240	
27. E-mail address: rduckworth164@cji.in.gov	
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29. Primary Vendor: M/WBE/IN-Vetera	30. Primary Vendor Percentages
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	100.0 %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
31. Sub Vendor: M/WBE/IN-Veteran	32. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IN- Veteran _____ %
33. Is there Renewal Language in _____	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

35. Will the attached document involve data processing or telecommunications system Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
I.C.5-2-6

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
THIS IS A CONTRACT FOR THE SFST AND DRE TRAINING PROGRAM

RECEIVED

OCT 20 2017

OAG-ADVISORY

38. Justification of vendor selection and determination of price reasonableness:
VENDOR IS IN THE BEST POSITION TO PROVIDE SERVICES TO THE STATE OF INDIANA

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval <i>Robin A. Degree</i>	41. Date Approved 10-6-17	42. Budget agency approval <i>Rubel</i>	43. Date Approved 10-19-17
44. Attorney General's Office approval <i>SWG</i>	45. Date Approved 10/20/17	46. Agency representative receiving from AG	47. Date Approved



PROFESSIONAL SERVICES CONTRACT

EDS # D3-18-12092

This Contract ("this Contract"), entered into by and between the **Indiana Criminal Justice Institute** (the "State") and **Assured Program Solutions, LLC** (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor. The Contractor shall provide the following services relative to this Contract as generally outlined in **Attachment A**, which is attached hereto and fully incorporated herein along with the following:

- A. Maintain the proper certifications required to be named as DRE State Coordinator as outlined in **Attachment A**.
- B. Develop and coordinate a two (2) day recertification course for the Standardized Field Sobriety Testing and Drug Recognition Expert (hereinafter referenced as "DRE") Program to be held annually in 2018 and 2019.
- C. Coordinate and plan the Standardized Field Sobriety Testing (hereinafter referenced as "SFST") Basic Course to be held at the Indiana Law Enforcement Academy in 2018 and 2019.
- D. Coordinate the certification for identified Drug Recognition Experts who were previously trained but have not yet completed the required number of evaluations.
- E. Coordinate and plan at least one Drug Recognition Expert Course to be held annually in 2018 and 2019.
- F. Coordinate and plan field certification training for the Drug Recognition Expert Courses held in 2018 and 2019 which will ultimately result in initial certification of officers.
- G. Coordinate and plan at least one SFST Instructor School annually for 2018 and 2019.
- H. Coordinate and provide support for SFST Refresher and Course information requests from law enforcement agencies.
- I. Coordinate and provide support for ARIDE Training requests from law enforcement agencies.
- J. Provide support and instruction as requested and achievable by the Indiana Prosecuting Attorneys Council for the training programs for prosecutors and law enforcement officers.
- K. Complete and submit the DRE Annual Report for Indiana.
- L. Coordinate data collection for review and submission for the two annual, spring and fall, "Crackdown" events as established by NHTSA for reporting on behalf of Indiana.
- M. Facilitate review and submission of documentation for the State of current DRE Officers for recertification to be provided to IACP.
- N. Coordinate attendance and minimally attend representing the Indiana DRE Program at the Annual State Coordinators Meeting and Annual Conference as scheduled by IACP. Costs for the conference will be covered by the State.
- O. Attend the Annual DRE Section Meeting as scheduled in conjunction with the Annual IACP Conference, representing the interests of the Indiana DRE Program as the DRE Section is the Rule Making Body for the International Program Standards. Costs for the conference will be covered by the State.
- P. Conduct an instructional observation of the SFST Course at all satellite Law Enforcement Academies at a minimum one time (1) during the contract period.
- Q. Coordinate, develop and send an annual budget for equipment, supplies and support costs for the courses outlined above to the State for approval.
- R. Contractor shall provide the State with a calendar and brief description of all organized trainings scheduled throughout the duration of this Contract.

S. Contractor shall provide event coordination services, travel planning and coordination, and arrange and pay travel for all attendees participating in the Drug Recognition Expert Training Program, ARIDE, SFST and other conferences and training, as well as procuring items listed and approved in "Q". Contractor shall be compensated upon presentation of estimated travel costs. Travel must be booked within 10 days after receipt of payment. Contractor will be compensated for procuring items listed and approved in "Q" as per the terms for payment identified within this contract. Contractor will leverage the existing Enterprise Rental Agreement rates for ground transportation for all vehicles required.

2. Consideration. The Contractor will be paid at the rate of **\$40.00 per hour for twelve (12) hours per week** for a weekly total of **\$480.00** and then at a rate of **\$40.00 per hour** for all preparation of and instruction at all trainings. Total remuneration under this Contract shall not exceed **\$469,000.00**

3. Term. This Contract shall be effective for a period of **2 years**. It shall commence on **October 1, 2017** and shall remain in effect through **September 30, 2019**.

4. Access to Records. The Contractor shall provide the State with all original copies of records. The Contractor may maintain copies of all records, but shall have access to all original copies of records upon written request to the State. The State shall maintain all records in accordance with state record retention policies.

5. Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, which will not be unreasonably withheld without explanation to Contractor as to the basis of any objection. The Contractor shall not subcontract the whole or any part of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Assignment of Antitrust Claims. Deleted by mutual agreement of the parties.

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories

hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. As a recipient of federal funds, Contractor agrees to comply with all applicable NHTSA special conditions, as set out in **Attachment B**. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to

do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

- (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The State will not withhold payment on non-disputed items and will continue to pay all invoices containing non-disputed items. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not

limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification. As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program.

The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A written determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification. In the event that Contractor is found to be negligent, as determined by a neutral third party who is knowledgeable of and has expertise in the duties of the Contractor, in the training or implementation of any component of the subject matter of this contract, the Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Information Technology Enterprise Architecture Requirements. Deleted as not applicable.

27. Insurance.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Automobile liability for personally owned autos with minimum liability limits of \$250,000 per person and \$500,000 per occurrence. Automobile liability for all government owned vehicles shall be the minimum liability limits normally carried by the governmental body.
2. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

28. Key Person(s). Deleted as not applicable.

29. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors

are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

30. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

31. Minority and Women’s Business Enterprises Compliance. Deleted as not applicable.

32. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

33. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

Indiana Criminal Justice Institute
Attn: Mike Lepper
101 W. Washington St., Suite 1170-E
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

Robert Duckworth
2148 N. Fleetwood Drive
Greensburg, IN 47240

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

34. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. **All Drug Evaluation and Certification Program materials prepared by the International Association of Chiefs of Police are hereby incorporated fully by reference.**

35. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

36. Payments.

A. All payments shall be made upon receipt in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20 or as outlined in Clause 1 of this Contract. Claims are to be submitted on a schedule agreed upon by the parties.

B. The State Budget Agency and the Contractor acknowledge that the Contractor is being paid in advance for the maintenance of equipment and/ or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

37. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

38. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in

written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

40. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The contract may be renewed for an additional period of time mutually agreed upon by the parties.

41. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

43. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

44. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

46. Travel. Travel will be reimbursed for out-of-state travel at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. The State will provide for in-state lodging and travel reimbursement in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

47. Indiana Veteran's Business Enterprise Compliance. Deleted as not applicable.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2016 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

Clause 4: Amended to show State maintains copies of all original records.

Clause 5: Amended.

Clause 6: Deleted.

Clause 10: Amended to require compliance with NHTSA special conditions.

Clause 16: Amended to require payment on non-disputed claims.

Clause 21: Amended to require written determination by budget director.

Clause 24: Amended the indemnification language.

Clause 26: Deleted not applicable.

Clause 27: Deleted terms not applicable and updated to show auto liability coverage.

Clause 28: Deleted not applicable.

Clause 31: Deleted not applicable.

Clause 34: Amended to incorporate by reference IACP materials.

Clause 36: Amended to allow payment upon receipt and travel costs upon presentment of estimate.

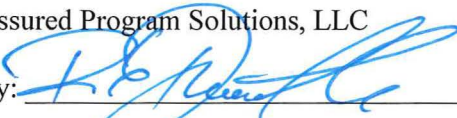
Clause 40: Amended to allow for longer renewal period.
Clause 46: Amended for travel reimbursement.


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Non-Collusion and Acceptance

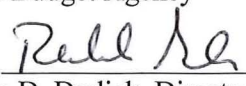
The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

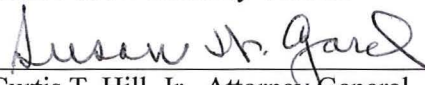
In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Assured Program Solutions, LLC
By: 
ROBERT F. DUCKWORTH, CEO
Name and Title, Printed
Date: 29 Aug 2017

Indiana Criminal Justice Institute
By: _____

David R. Murtaugh, Executive Director
Date: 10/19/17

Approved by:
Indiana Department of Administration
By:  (for)
Jessica Robertson, Commissioner
Date: 10/19/17

Approved by:
State Budget Agency
By:  (for)
Jason D. Dudich, Director
Date: 10-19-17

APPROVED as to Form and Legality:
Office of the Attorney General
 (for)
Curtis T. Hill, Jr., Attorney General
Date: 10/20/2017

ATTACHMENT A



Drug Recognition Expert State Coordinator Duties, Roles and Responsibilities



The success of the Drug Evaluation and Classification (DEC) program depends on proper coordination and infrastructure in each of the DRE states. This ultimately rests with the DRE state coordinator working in partnership with the International Association of Chiefs of Police (IACP) and the respective Highway Safety Office's.

The IACP DRE Technical Advisory Panel (TAP) provides oversight and makes recommendations to the IACP Highway Safety Committee regarding the DEC program and other impaired driving issues. The IACP has developed international standards to assist and provide program support for the DEC program. In the IACP DEC Program International Standards a DRE state coordinator is defined as ***"An individual designated to act as the statewide coordinator for the DEC program."*** ***The duties of the position generally include, but are not limited to:***

- 1. Acting as an information clearinghouse and central communication point for the program within the state.***
- 2. Assisting in coordinating training and other support activities for all agencies participating in the program within the state.***
- 3. Coordinating the assignment of instructors in response to requests for service from federal and other sources.***

Not mentioned in the definition, but vital to the program is ensuring proper communication with IACP and that data is collected, maintained and reported using a reliable data collection program. DRE state coordinators will be called upon to provide justification and report the effectiveness of their program. Without data, this will be difficult if not impossible.

Appointment and Selection of the DRE State Coordinator

Under the guidelines listed in the IACP International Standards for the DEC program, the Governor's Office of Highway Safety is responsible for designating the DRE state coordinator. (Refer to definitions section of the International Standards). The selection may be made by the individual Governor's Highway Safety Representative or by any means approved by the Governor's Office of Highway Safety.

DRE State Coordinator Qualifications

The definition for the DRE state coordinator contained in the International Standards lists minimum *suggested* duties. The duties are general in nature and may be exceeded or expanded.

Qualifications to be a DRE state coordinator vary from state to state and are dependent upon the Governor's Office of Highway Safety. It is not a requirement that the state coordinator be a Drug Recognition Expert (DRE) or has a background in DRE. However, some states have adopted this standard to ensure that the DRE state coordinator understands and is familiar with the DRE process, program and requirements. In addition, the state coordinator does not have to be a sworn law enforcement officer, unless directed by the Governor's Highway Safety Office.

As previously mentioned, the DRE state coordinator must ensure that the DEC program is properly and effectively administered. The state coordinator must be able to work in partnership with federal, state, and local groups and organizations and should be familiar with:

1. IACP Drug Evaluation and Classification (DEC) Program International Standards
2. IACP Drug Recognition Expert training curriculum
3. IACP/NHTSA Standardized Field Sobriety Testing (SFST) curriculum
4. Key state and national impaired driving enforcement issues

5. State, federal and local laws, regulations and court decisions related to and effecting impaired driving prosecution and enforcement
6. Local and state toxicology guidelines and drug testing procedures
7. State training requirements and guidelines for police officers
8. IACP DRE Technical Advisory Panel (TAP) and it's role
9. IACP DRE regional procedures and concept
10. Traffic safety grants and reporting procedures
11. The National DRE Tracking System (DRE data collection system)

In essence, the DRE state coordinator is much like a *project manager* in that they conduct four essential tasks: 1) Define 2) Plan 3) Implement and 4) Evaluate.

DRE state coordinators must **define** the goal for developing and administering an effective DEC program.

They must also **plan** a strategy for accomplishing the goals and objectives for a successful program consistent with those of IACP, NHTSA and their Governor's Highway Safety Office.

They must **implement** effective strategies to meet their objectives and to achieve the goal(s) of the program.

Lastly, they must **evaluate** the effectiveness of the program. They must be prepared at all times to justify their program, which is achieved through periodic evaluation.

Proper evaluation should also include documentation and reporting of supportive information. Many states accomplish this through an annual report, quarterly reports to their Governor's Highway Safety Office or by providing information for the IACP DRE Section Annual Report.

DRE State Coordinator Duties

Duties of the DRE state coordinator may vary depending upon the size of the program and their agency/ organization. At a minimum, the state coordinator should:

1. Provide oversight and coordination of the DEC program following the IACP International Standards or equivalent state adopted standards
2. Work in partnership with the IACP DEC program staff
3. Ensure that statewide DRE evaluation data is entered and reported using the National DRE Tracking System
4. Ensure that information is submitted to the IACP DRE Section Chair in a timely manner outlining the state's yearly activities and accomplishments
5. Promote the DEC program with the various key partners within the state
6. Coordinate and assist in providing DRE training when resources allow
7. Appoint and assign course managers to DRE training schools
8. Promote and assist in the continuing education process for DREs within the state
9. Conduct periodic review of DRE files for certification and re-certification procedures
10. Conduct a periodic review of DRE reports and toxicology results to ensure accuracy
11. Assist in the collection and distribution of IACP/NHTSA impaired driving and drug training materials
12. Authorize or assist in obtaining DRE equipment and supplies when needed
13. Work with other state coordinators to advance the effectiveness of the program

14. Assist with or oversee the selection of DRE school candidates
15. Participate whenever possible in the DRE Regional meetings

Training Coordination Responsibilities

As previously mentioned, the DRE state coordinator must ensure that DRE training is conducted within their state whenever needed and when resources and personnel allow. Preparing for and conducting a DRE school requires proper planning and coordination which include, but are not limited to:

1. **Selecting a geographical training location:** Most DRE schools are conducted at a state or regional police training academy or at a location that supports DRE. When considering a new location within the state, the state coordinator should refer to the “Site Selection Criteria” and the Administrators Guide in the DRE School Instructor manual for guidance.
2. **Selection of DRE candidates:** Many states use a DRE school application process to assist in the selection of DRE candidates. (Refer to Appendage #1). However the selection process is accomplished, it is imperative that the best possible candidates are selected. Experience has shown that the best DRE candidates have a background in impaired driving enforcement, write above average reports, have courtroom experience and will use the DRE skills in their assignments.
3. **On-Site Physical needs for the school:** There are numerous on-site needs or requirements for conducting a DRE school. They will include, but are not limited to, lodging, meals, coffee for breaks, etc. Many of these are listed in the DRE School Checklist included with this document. (Refer to Appendage #2)
4. **Out-of-State Instructors:** If a state does not have adequate in-state DRE instructors and there is a need for out-of-state instructors, the state coordinator should contact the IACP for assistance. Out-of-state instructor support is normally for new DEC states, however, all requests will be considered depending upon the circumstances.
5. **DRE School manuals and materials:** DRE state coordinators can order DRE Pre-School and DRE School manuals using the IACP DRE School order form. (Refer to Appendage #3). Note: To ensure proper and timely delivery, manuals should be ordered four to six weeks prior to the school.
6. **Student equipment:** A variety of specialized equipment is required for each DRE student in order to complete the training. (Refer to DRE School Checklist, Appendage #2). Equipment purchases should be made in compliance with local or state purchasing procedures.
7. **DRE School schedule:** Per IACP TAP recommendations, there are three DRE training schedules to choose from. The state coordinator should confer with the school course manager to determine the best and most appropriate schedule to use. (Refer to the DRE Instructor manual under “Alternative Schedules”). Whichever schedule is used, the state coordinator must ensure that the school course manager and DRE instructors are familiar with the schedule of events and agenda and adhere to it.
8. **Coordinating and conducting the Alcohol Workshops:** Due to the importance of these workshops, a great deal of planning and attention must be devoted to these two training sessions. Two alcohol workshops *are required* during the DRE training process; one during the DRE Pre-School and one

during the DRE School. Experience has shown live “wet” workshops work best for the students and also give the instructors a better understanding of the student’s skills.

9. **Field Certification Training:** The field certification training can be one of the major obstacles in finalizing the DRE training process. (Refer to IACP International Standards, Standard 1.13). The state coordinator should examine the best options for completing this portion of the training.

Experience has shown that the longer this process takes the more likely that some of the DRE Some states have determined that sending students out of state to productive certification sites (Arizona and/or California) is more cost effective and practical than conducting in-state certification training. *Note:* For more information about out-of-state certification training, contact the IACP DEC program coordinator or DRE Regional Operations Coordinator.

10. **Final Certification Knowledge Examination:** State coordinators must ensure that DRE students take the final Certification Knowledge Exam as soon as possible after the completion of the DRE School. (Refer to IACP International Standards, Standard 1.12). Experience has shown that the longer the examination is delayed the increased likelihood that the student will not complete this portion of the certification process.
11. **Maintaining DRE certification records:** Many state coordinators maintain files of DREs trained under their jurisdiction. Records retained include copies of the IACP Certification Log, IACP DRE certification letters, their IACP DRE number and other pertinent information. *Note:* The retention of DRE file information should follow established state retention schedules and public disclosure rules.
12. **DRE Re-certification:** Re-certification is required every two years. (Refer to IACP International Standards). The state coordinator must ensure that DREs are aware of their re-certification requirements and dates. They must also ensure that re-certification opportunities exist and that DRE instructors are available to assist in the process. As a reminder – the International Standards allow for a one-year grace period beyond the last expiration date. However, a DRE is not technically certified when in their grace period. Any evaluations completed during that period of time could be jeopardized. Standard 4.3 of the International Standards requires a minimum of four (4) acceptable evaluations every two years, one of which must be witnessed by a DRE instructor for recertification. These evaluations may be conducted in classroom simulation. However, this is a *minimum standard*. Some state coordinators have exceeded that standard and require that all re-certification evaluations be conducted on suspected drug impaired subjects.

Latest revision: 08/2017

ATTACHMENT B

GENERAL REQUIREMENTS

The Contractor shall comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

NONDISCRIMINATION

The Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d et seq. 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324, *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686)(prohibits discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), (prohibits discrimination on the basis of disability);
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid Contractors, sub-Contractors and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, an certain testing) and 49 CFR parts 37 and 38;

- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding Contractors take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Contractor will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- b. Establishing a drug-free awareness program to inform employees about:
 - The dangers of drug abuse in the workplace.
 - The grantee's policy of maintaining a drug-free workplace.
 - Any available drug counseling, rehabilitation, and employee assistance programs.
 - The penalties that may be imposed upon employees for drug violations occurring in the workplace.
 - Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - Abide by the terms of the statement.
 - Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- d. Notifying the State within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction.
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
 - Taking appropriate personnel action against such an employee, up to and including termination.
 - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency.
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

The Contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The Contractor certifies, to the best of their knowledge and belief, that:

1. No Federal appointed funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers(including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subgrantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g. "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct

communication with State or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

The Contractor will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or contractor, to purchase only steel, iron, and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactorily quality or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

The Contractor will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEATBELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in Washington D.C. metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1(800) 221-0045 or visit its website at www.trafficsafety.org.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order, 13513, Federal Leadership On Reducing Text Messaging While Driving and DOT Order 3902.10, Text Messaging While Driving, the Contractor is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or –rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Baker, Nathaniel P

From: Cooper, Jennifer
Sent: Friday, January 20, 2017 9:34 AM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion, Miller-Cronk, Outside employment

Follow Up Flag: Follow up
Flag Status: Flagged

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP). I understand you are seeking advice on behalf of a Trooper who is a Drug Recognition Evaluator (DRE) and is also a DRE Instructor. As a DRE Instructor, the Trooper trains police officers in the DRE program and teaches police officers the signs and symptoms associated with each drug category. Drug evaluation also teaches how to take pulse, blood pressure, body temperature, and field sobriety tests. This class is not taught to civilians, only active law enforcement officers. The class also includes how to correctly perform a Drug Evaluation, as well as the Drug Matrix for each category, which includes if the drug causes Horizontal Gaze Nystagmus, Vertical Nystagmus, Lack of Convergence (Ability to Cross the Eyes), what the drug category or categories do to pulse, blood pressure, body temperature, muscle tone, and pupil size.

You provide that this Trooper was contacted by Ivy Tech in 2016 for possible off duty employment providing "Drug Impairment in the Workplace" training for supervisors to assist the supervisors in recognizing drug impairment in their employees; however, that training did not occur. In December 2016, this Trooper was speaking with a representative from Gibson Insurance about Drug Recognition Evaluation Program, and he was asked to possibly teach a drug impairment in the workplace training to their clients. The Gibson Insurance representative advised him OSHA requirements for drug testing after a workplace accident had changed recently. The Gibson Insurance representative mentioned better training their clients in common regarding recognizable signs and symptoms for drug impairment to assist with lowering drug impairment accidents in the workplace.

If he accepted this opportunity with Gibson Insurance, the Trooper would be teaching the attendees of the training the common indicators for each category (CNS Depressants, CNS Stimulants, Hallucinogens, Inhalants, Dissociative Anesthetics, Narcotic Analgesics, and Cannabis), the common drugs for each category (i.e. Cocaine, Methamphetamine, Heroin, PCP, Ketamine, Marijuana, Kolanpin, Xanax, Psilocibin, and so forth), some example videos for common drug indicators (such as "on the nod", among others), and common medical conditions that mimic the drug signs and symptoms. If searched on the Internet, the commons signs and symptoms for each drug category are readily accessible to the public as well as medical conditions that mimic impairment (stroke, diabetes, traumatic brain injury.) He would also include NSDUH statistical information on current drug use, current number of prescriptions issued in the United States, and workplace drug information (common usage locations, what to do as a supervisor if you believe an employee is impaired). He has compiled this information into his own presentation for the supervisors. However, the information is all readily accessible on the Internet if searched correctly.

You note that this instruction would be done off-duty, and the Trooper would receive compensation as off-duty employment (if approved). The Trooper has indicated he may conduct the trainings as part of his own business or in affiliation with Gibson Insurance.

I understand you are seeking advice to determine if the Trooper is permitted, under the Code of Ethics, to provide the drug impairment training when off-duty.

Your inquiry primarily invokes consideration of 42 IAC 1-5-5 (IC 4-2-6-5.5), which is the ethics rule that pertains to conflicts of interest and outside employment/professional activity. I included all relevant rules and definitions at the end of this opinion for your reference.

42 IAC 1-5-5 prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

In general, whether conducting the training sessions would be contrary to 42 IAC 1-5-5 depends upon whether that activity triggers any of the above listed matters. 42 IAC 1-5-5 provides that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee's state duties. However, in these situations we usually recommend that the employment opportunity be reviewed by the agency's Ethics Officer. As the ISP's Ethics Officer, you would be in the best position to determine if the Trooper's training activities would conflict with his state duties or whether such activity is so far removed from his state duties that the potential for a conflict of interest is low. You would also be able to advise him regarding any internal ISP policies that may apply.

If you are not comfortable making this determination or the Trooper decides that he would like to obtain a written statement that would serve as conclusive proof that this position would not conflict with his state duties, you can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>. The next Commission meeting for which you may submit a request will be held on Thursday, February 9th, and all requests for opinions to be issued at this meeting must be received by Monday, January 30th.

Also, please be aware of 42 IAC 1-5-6 (IC 4-2-6-9), which pertains to conflicts of interest; decisions and voting. This rule prohibits the Trooper from participating in any decision or vote, or matter related to that decision or vote, if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including himself or a business organization through which he is serving as an employee, director, officer or member. In this case, the Trooper would be prohibited in his official state capacity from participating in any decisions or votes, or matter relating to those decisions or votes, regarding his own business or Gibson Insurance. He would need to seek an advisory opinion or follow the disclosure requirements in 42 IAC 1-5-6 if he identifies a potential conflict of interest.

In addition, keep in mind IC 4-2-6-17, which is the use of state property rule and 42 IAC 1-5-13, which is the ghost employment rule. The use of state property rule provides that a state employee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. The ghost employment rule provides that a state employee shall not engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation. In this case, the Trooper would not be permitted to use any state property for his outside training activities unless ISP has a Commission-approved policy in place allowing such use for non-official state business. Moreover, any activity related to his outside training activities must be completed on non-state time, such as on the weekends and after his ISP hours. The Trooper should be mindful not to use any state property or his working hours to conduct any trainings or to compile the materials for his presentations.

Finally, please keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit the Trooper from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that the Trooper possesses information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including an employer or participant in any of the training he conducts, he would need to ensure he complies with these rules.

Thank you again for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Jennifer Cooper
Ethics Director
Office of Inspector General

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IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(11) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed;
or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-5 Outside Employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
 - (2) A member of the immediate family of the state officer, employee, or special state appointee.
 - (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
 - (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
- (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
- (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

IC 4-2-6-17

Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

From: noreply@formstack.com [mailto:noreply@formstack.com]
Sent: Tuesday, January 17, 2017 5:37 PM
To: IG Info <info@ig.IN.gov>; ccarrasco@ig.in.gov; Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: Advice

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Formstack Submission for form ig_2334

Submitted at 01/17/17 5:37 PM

Name:	Nila Miller-Cronk
Email:	nmiller-cronk@isp.in.gov
Phone:	(317) 232-8326
State Agency:	Indiana State Police
Description of Your State Occupation:	Department's Ethic's Officer and Commander (Major) of the Internal Investigation Section

What is your ethics question?: There is a Trooper at the Bremen Post who is a Drug Recognition Evaluator (DRE) and completed training in 2013., and is also a DRE Instructor. As a DRE Instructor, they train police officers in Drug Recognition Evaluation program and teach police officers the signs and symptoms associated with each drug category. Drug evaluation also teaches how to take pulse, blood pressure, body temperature, and field sobriety tests. This class is not taught to civilians, only active law enforcement officers and includes how to correctly perform a Drug Evaluation, as well as the Drug Matrix for each category which includes if the drug causes Horizontal Gaze Nystagmus, Vertical Nystagmus, Lack of Convergence (Ability to Cross the Eyes), what the drug category or categories do to Pulse, Blood Pressure, Body Temperature, Muscle Tone, and Pupil Size.

This Trooper was contacted by Ivy Tech in 2016 for possible off duty employment teaching Drug Impairment in the Workplace training for supervisors to assist the supervisors in recognizing drug impairment in their employees; however, that training did not occur. In December 2016, this Trooper was speaking with a representative from Gibson Insurance about Drug Recognition Evaluation Program and he was asked to possibly teach a drug impairment in the workplace training to their clients. The Gibson Insurance representative advised him OSHA requirements for drug testing after a workplace accident had changed recently. The Gibson Insurance representative mentioned better training their clients in common, recognizable signs and symptoms for drug impairment to assist with lowering workplace accidents drug impairment in the workplace. This Trooper would be teaching the attendees of the training the common indicators for each category (CNS Depressants, CNS Stimulants, Hallucinogens, Inhalants, Dissociative Anesthetics, Narcotic Analgesics, and Cannabis), the common drugs for each category (ie Cocaine, Methamphetamine, Heroin, PCP, Ketamine, Marijuana, Kolanpin, Xanax, Psilocibin, and so forth) , some example videos for common drug indicators (such as “on the nod”, among others), and common medical conditions that mimic the drug signs and symptoms. If searched on the Internet, the commons signs and symptoms for each drug category are readily accessible to the Public as well as medical conditions that mimic impairment (Stroke,

Diabetes, Traumatic Brain injury.) He would also include NSDUH statistical information on current drug use, current number for prescriptions issued in the United States, and Workplace drug information (common usage locations, what to do as a supervisor if you believe an employee is impaired). He has compiled this information into his own presentation for the supervisors however again the information is all readily accessible on the Internet if searched correctly.

This Trooper is wishing to assure due diligence so there is no adverse viewing by the Department, such as conflict of interest or ethics violation to teach the employers Impairment in the Workplace either as a part of my own business or if affiliated with Gibson Insurance. This instruction would be done off-duty, the Trooper would receive compensation as off-duty employment (if approved) and was wanting an informal advisory opinion if this would be an ethic violations.

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8604 Allisonville Rd.

Suite 300

Indianapolis, IN 46250

Baker, Nathaniel P

From: Adair, Heidi
Sent: Tuesday, August 13, 2019 5:10 PM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion; ISP; Miller-Cronk/Glass; Conflict of Interests

Nila,

Thank you again for your patience. As you know, we typically have informal advisory opinions completed and sent fairly quickly; however this informal advisory opinion turned out to be a bit more complicated than originally anticipated. If after reviewing this opinion, you and/or Trooper Glass have any questions or concerns, feel free to reach out.

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP) and providing additional information. I understand you are seeking advice on behalf of Trooper Stephen Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP.

You provide that the Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked Trooper Glass to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and that this request for Trooper Glass is similar to that of Trooper Caswell. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. You provide that Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two years.

Instructing DRE courses for ISP personnel is a part of Trooper Glass's official state duties. In his potential outside employment opportunity, he would be conducting the training outside of his state hours to ICJI (and perhaps other entities) and would not use state equipment or resources when doing so.

I understand you are seeking advice on behalf of Trooper Glass to determine if he is permitted, under the Code of Ethics (Code), to provide the educational consulting for ICJI when off-duty.

Your inquiry invokes consideration of several rules under the Code. I discuss the implications of each below. I include all relevant rules and definitions at the end of this opinion for your reference. **For purposes of this opinion, I focus on analyzing Trooper Glass's potential outside employment as a consultant for ICJI. The analysis may be subject to change if there are other companies or organizations for which he wishes to provide consulting services, and he may wish to request another informal advisory opinion to address specific facts.**

1. Conflicts of Interests; Contracts (IC 4-2-6-10.5)

First, Trooper Glass should consider IC 4-2-6-10.5, which prohibits a state employee from knowingly having a financial interest in a contract or grant made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract or grant between any state agency and a third party. Please note

that “compensation” is defined by the Code to include “a thing of value” and could include items other than money. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for the contracting agency, provided certain statutory criteria are met, including written disclosure.

You provide that ISP receives grant funds from ICJI. Furthermore, it appears that ICJI funds and manages Indiana’s DRE program. You note that Trooper Glass does not participate in or have contracting responsibility for ISP; however, he should be aware of this rule and its disclosure requirements if he determines that his compensation for the consulting services is derived from ICJI grant funds or from a contract between ICJI and ISP. This rule is also implicated if Trooper Glass individually contracts with ICJI for personal services.

While the analysis in this opinion is directed to Trooper Glass and we generally do not provide advice as to past conduct, it appears that the facts involving Trooper Caswell’s outside employment arrangement may have changed since the informal advisory opinion he received in January 2017. As such, if Trooper Caswell is deriving compensation and has a financial interest in a contract/grant with ICJI, he should ensure that he is in compliance with IC 4-2-6-10.5 and promptly files a financial disclosure statement with the State Ethics Commission.

2. Outside Employment/Professional Activity (IC 4-2-6-5.5)

As you know, the outside employment/professional activity rule prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Regarding subsection (1), nothing in the information you provided indicates that Trooper Glass’s potential consulting position with ICJI is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. Generally, we recommend that an employee discuss outside employment matters with their agency’s ethics officer, as they can address any agency-specific conflict of interests concerns and advise of any agency policies that would apply to the employee’s outside employment. As it appears you have not found any inherent incompatibility, we would defer to your review.

As for subsection two (2), nothing in the information you provided indicates that this arrangement would require Trooper Glass to disclose confidential information, so such employment will not violate this subsection. So long as Trooper Glass does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from contracting with ICJI to provide off-duty DRE training while also working for ISP. **Please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee’s state duties.**

3. Conflicts of Interests; Decisions and Votes (IC 4-2-6-9)

IC 4-2-6-9, which pertains to conflicts of interests; decisions and votes, prohibits Trooper Glass from participating in any decision or vote, or matter related to any such decision or vote, if he has knowledge that various persons may have a “financial interest” in the outcome of the matter, including himself, an organization in which he serves as an employee, or an organization with whom he is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote, including discussion.

The Code defines “financial interest” as an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services. Because ICJI funds and manages the DRE program and Trooper Glass will be paid to teach DRE courses for ICJI, it appears Trooper Glass may have a financial interest in a decision or vote involving ICJI. It is unclear if Trooper Glass’s ISP duties involve making decisions or participating in any matters for which ICJI, his potential employer, would have a financial interest; however, if his position does involve such matters, he should avoid participating in them and comply with the rule’s notification requirements.

4. Additional Compensation (42 IAC 1-5-8)

The rule on additional compensation, found in 42 IAC 1-5-8, provides that a state employee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

You explain that part of Trooper Glass’s official state duties include providing DRE training to ISP officers. Based on my understanding of the information you provided, in his prospective consulting position, he would be conducting DRE certification training, but this training would be for ICJI rather than ISP and would be conducted outside of his regular ISP hours and without state equipment or resources.

42 IAC 1-5-8 generally does not prohibit an employee from performing the *same type* of duties for another entity that the employee performs in his or her state position; however, Trooper Glass may wish to consider any appearance of impropriety that could arise from contracting with another state agency to provide services that mirror his official state duties with ISP.

5. Ghost Employment and Use of State Property (42 IAC 1-5-13 and IC 4-2-6-17)

Furthermore, as you know, any activity related to Trooper Glass’s outside employment as a contractor/consultant with ICJI must be done outside of his normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). Also, he cannot use state property, such as equipment or materials, while engaging in activities related to his outside employment in order to comply with the use of state property rule (IC 4-2-6-17).

6. Confidential Information 42 IAC 1-5-10 and 42 IAC 1-5-11

Trooper Glass should keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit him from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that he will possess information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including ICJI, he would need to ensure he complies with these rules.

Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from knowingly or intentionally having financial interests in or deriving a profit from a contract or purchase connected with an action by *the agency that the employee serves*. The criminal statute can be found at

IC 35-44.1-1-4. Our office usually does not provide advice on the Criminal Code, but we recommend that Trooper Glass familiarize himself with the statute and ensure he complies with it. Please note that subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics. Trooper Glass can request such approval from the State Ethics Commission by requesting a formal advisory opinion as discussed above.

In this case, because of the potential implication of several rules, we would recommend that Trooper Glass seek a Formal Advisory Opinion from the Commission. The Commission's next public meeting is September 12, 2019, and all requests for opinions to be rendered at this meeting need to be submitted to our office by September 3, 2019. More information on formal advisory opinions can be found [here](#).

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Heidi Adair
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;

or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-8 Additional Compensation

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Heidi L. Adair

Staff Attorney

Office of the Inspector General

315 W. Ohio St., Room 104

Indianapolis, IN 46202

hadair@ig.in.gov

317-234-3993

From: Adair, Heidi

Sent: Friday, August 9, 2019 3:00 PM

To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>

Subject: RE: Advice

Nila,

Thank you for the additional information. I believe we have enough for the informal advisory opinion now, but I will let you know if that changes. Otherwise you should expect to see the opinion within 1-3 business days.

Thanks again for your patience,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Friday, August 9, 2019 12:19 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice

Heidi,

This is what I have learned. Trooper Caswell and if approved, Trooper Glass, instruct officers on how to be Drug Recognition Experts (DRE) which is a two (2) week class to become DRE certified. Each class has about 40 officers in it and at times a very small number of those officers are from ISP. They also teach non-ISP officers an ARIDE (Advanced Roadside Impaired Driving Enforcement) course. Trooper Caswell, through his own LLC (DC Consulting, LLC) has been receiving compensation from a contractor, Rob Duckworth's LLC (name unknown), and that Rob Duckworth is now the Traffic Safety Director for ICJI. ICJI pays Rob Duckworth's LLC from grant funds and the ICJI funding source is NHITSA 405D Funding Stream.

I am going to try and get more clarification on this and get back with you.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Friday, August 9, 2019 9:58 AM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello Nila,

I was wondering if you would be able to provide some clarification on how Trooper Glass will be compensated for providing DRE training. Will he be compensated through a contract with ICJI and receive a separate paycheck from them? If you feel that a phone call would be better for the explanation, feel free to contact me at the number below.

Thank you for your patience!

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Adair, Heidi
Sent: Thursday, August 8, 2019 4:17 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Perfect. Thank you. I will have an informal advisory opinion out to you as soon as possible.

Best,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Thursday, August 8, 2019 3:27 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice
Importance: High

Heidi,

Everything we discussed and you have listed below is correct regarding Trooper Glass and his request.

Thanks!

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Thursday, August 8, 2019 3:02 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hi Nila,

Thank you for providing additional information in our phone call. I just wanted to send you a quick recap of our conversation – if you wouldn't mind confirming if this information is correct, I would appreciate it. And feel free to correct me if you notice any factual inaccuracies.

- DRE stands for Drug Recognition Expert
- Trooper Glass is a road trooper but part of his official duties is also to instruct DRE training for ISP personnel
- Trooper Glass does not participate in or have any contracting duties
- He's interested in contracting with ICJI outside of his normal state working hours to provide DRE training. He would work with Trooper Caswell so it would extend beyond ICJI. He may contract with other entities to provide this training as well.
- ISP receives grants through ICJI but this outside employment opportunity doesn't involve the grants
- He wouldn't be conducting DRE training for ICJI or other outside entities on state time or using state equipment/resources

Thank you,

Heidi L. Adair
Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov

From: noreply@formstack.com [<mailto:noreply@formstack.com>]
Sent: Wednesday, August 7, 2019 3:53 PM
To: IG Info <info@ig.IN.gov>; Cooper, Jennifer <JCooper@ig.IN.gov>; Torres, Lori <LTorres@ig.IN.gov>
Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: **ig_2815**

Submitted at 08/07/19 3:52 PM

Name:	Nila Miller-Cronk
Email:	nmiller-cronk@isp.in.gov
Phone:	(317) 232-8326
State Agency:	Indiana State Police
Description of Your State Occupation:	Department's Ethic's Officer and Commander of the Department's Internal Investigation Section
What is your ethics question?:	<p>Trp. Stephen Glass has been asked by Marshall Depew (ICJI DRE/SFST Coordinator) to become a contractor with Trooper Dave Caswell in providing educational consulting on the effects and long term deficits of drug use and impairment to reduce the impact of the drug epidemic affecting Indiana. Troopers Dave Caswell and Stephen Glass are DRE Instructors for ISP and have been instructing together for approximately 2 years.</p> <p>An informal advisory opinion was submitted for Trp. Caswell and a response received from Jennifer Cooper on 1/20/2017. This request for Trooper Glass is similar to that of Trooper Caswell.</p> <p>Trooper Glass is wishing to assure due diligence that there is no adverse viewing by the Department, such as conflict of interest or ethics violation to serve as a consultant with Trooper Caswell to ICJI as they are both are assigned similar</p>

responsibilities as State Police Employees, Drug Recognition Experts (DRE),
and DRE Instructors.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

Baker, Nathaniel P

From: Turner, Laura A
Sent: Tuesday, October 1, 2019 11:54 AM
To: Cooper, Jennifer
Cc: Miller-Cronk, Nila; Duckworth, Robert; Palin, Jade
Subject: Formal Advisory Opinion for ISP Scheduled for October 10th
Attachments: 2017 to 2019 DRE Coordinator State Contract (002).pdf; 20190930155343268.pdf; Contract_32923 Dedicated Training Resources.pdf

Importance: High

Good Morning Jen!

Rob Duckworth recently received a *Memorandum for Request for a Formal Advisory Opinion*, drafted Nila Miller-Cronk, Ethics Officer of ISP (Memorandum). It was brought to Mr. Duckworth's attention due to some facts in the documentation that were incorrect. I am writing to bring these factual statements to your attention and seek guidance on how to proceed. For your convenience, the Memorandum is attached.

By way of background, Mr. Duckworth currently serves as Traffic Services Director for the Indiana Criminal Justice Institute (ICJI). He started this position on November 26, 2018. Prior to his employment with ICJI, he was the DRE Coordinator for the State of Indiana. As the DRE Coordinator, he had his own LLC, known as Assured Program Solutions, LLC. This LLC ceased operations in November 2018 when Mr. Duckworth was hired by ICJI. AS the DRE Coordinator, he was a contractor for ICJI who was paid through his LLC. His contract with ICJI is attached to this email for your review and reference.

Marshall Depew was hired as the State of Indiana's DRE Coordinator, to replace Mr. Duckworth, in December 2018. Similar to his predecessor, Mr. Depew serves as a contractor for ICJI. He also is paid through his LLC, which is known as Dedicated Training Resources, LLC. Mr. Depew's LLC's contract with ICJI is also attached for your review and convenience.

If Troopers Caswell and Glass would be DRE and ARIDE instructors, they would be subcontractors of Mr. Depew's LLC. ICJI would not directly contract with either Trooper. ICJI only directly contracts with the DRE Coordinator for the State – in this case – Mr. Depew. Trooper Caswell previously received compensation from Mr. Duckworth's LLC, and not from ICJI, while Mr. Duckworth's LLC was under contract with ICJI (prior to Mr. Duckworth's employment with ICJI). Trooper Caswell does not have any contractual relationship with Mr. Duckworth.

These facts are important, since there appear to be factual errors through the documentation accompanying the Memorandum; specifically, page 8 and page 10. These erroneous facts were then used as a basis for the informal advisory opinion issued on August 13th. This is also reference of another opinion issued on January 20, 2017. However, I have not seen or reviewed this opinion.

As Ethics Officer for ICJI, I believe, at a minimum, the record needs corrected. I also seek your guidance on the method preferred by the OIG to clarify these key facts. ICJI would be happy to assist in whatever way it can.

Thank you!
Laura

Laura A. Turner
Deputy General Counsel

Indiana Criminal Justice Institute
101 W. Washington Street, Suite 1170 - East Tower
Indianapolis, IN 46204
Phone: (317) 234-8891

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.IN.gov/isp

October 1, 2019

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on August 7, 2019, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Trooper Steven W. Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP, in addition to his other assigned duties. The purpose of DRE training is to reduce the impact of the drug epidemic affecting Indiana. Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two (2) years. They are both requesting to conduct DRE instruction to police officers from various police agencies during their off-duty time, for non-department employment as contract workers and each have their own LLC (see following).

By way of background, Mr. Duckworth currently serves as Traffic Services Director for the Indiana Criminal Justice Institute (ICJI). He started this position on November 26, 2018. Prior to his employment with ICJI, he was the DRE Coordinator for the State of Indiana. As the DRE Coordinator, he had his own LLC, known as Assured Program Solutions, LLC. This LLC ceased operations in November of 2018 when Mr. Duckworth was hired by ICJI. As the DRE Coordinator, he was a contractor for ICJI who was paid through his LLC.

Marshall Depew was hired as the State of Indiana's DRE Coordinator, to replace Mr. Duckworth, in December of 2018. Similar to his predecessor, Mr. Depew serves as a contractor for ICJI. He also is paid through his LLC, which is known as Dedicated Training Resources, LLC.

If approved, Master Trooper Caswell and Trooper Glass would be DRE and ARIDE instructors, they would be subcontractors of Mr. Depew's LLC. ICJI would not directly contract with either Master Trooper Caswell or Trooper Glass. ICJI only directly contracts with the DRE Coordinator for the State – in this case – Mr. Depew. Master Trooper Caswell previously received compensation from Mr. Duckworth's LLC, and not from ICJI, while Mr. Duckworth's

State Ethics Commission
Glass/Caswell
October 1, 2019
Page 2

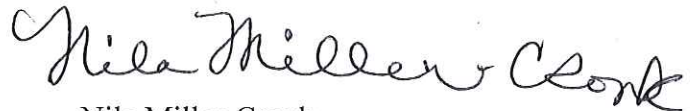
LLC was under contract with ICJI (prior to Mr. Duckworth's employment with ICJI). Master Trooper Caswell does not have any contractual relationship with Mr. Duckworth.

Master Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and this request for Trooper Glass is similar to, but not the same as that original request of Master Trooper Caswell. Master Trooper Caswell's original informal advisory opinion was to instruct DRE classes to employees at an insurance company. An informal advisory opinion on this complex request was received on August 13, 2019, from Staff Attorney Heidi Adair, and a can be provided to the Ethics Commission upon request.

The Indiana State Police Department respectfully requests this matter to be included on the agenda for the next monthly Ethics Commission meeting which is scheduled for Thursday, October 10, 2019, for the purposes of rendering an ethics formal advisory opinion on this matter for **both** Trooper Steven W. Glass and Master Trooper David Caswell.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,

A handwritten signature in black ink that reads "Nila Miller-Cronk". The signature is written in a cursive, flowing style.

Nila Miller-Cronk
Major

INDIANA STATE POLICE

INDIANA GOVERNMENT CENTER NORTH
100 NORTH SENATE AVENUE

INDIANAPOLIS, INDIANA 46204-2259

www.IN.gov/isp

September 30, 2019

TO: Indiana Ethics Commission

FROM: Nila Miller-Cronk, Major
Commander, Office of Professional Standards

SUBJECT: Request for Formal Advisory Opinion

As the Department's Ethics Officer, on August 7, 2019, I requested an ethics informal advisory opinion through the Inspector General's Office on behalf of Trooper Steven W. Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP. The purpose of DRE training is to reduce the impact of the drug epidemic affecting Indiana. Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two (2) years. The Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked both Trooper Glass and Master Trooper David Caswell to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Master Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and this request for Trooper Glass is similar to but not the same as that of Trooper Caswell. Trooper Caswell's original informal advisory opinion was to instruct DRE classes to employees at an insurance company. Specifics of this request are contained in the complex Informal Advisory Opinion response prepared by Staff Attorney Heidi Adair, which is contained in the email attached to this request.

The Indiana State Police Department respectfully requests this matter to be included on the agenda for the next monthly Commission meeting which is scheduled for Thursday, October 10, 2019, for the purposes of rendering an ethics formal advisory opinion on this matter for **both** Trooper Steven W. Glass and Master Trooper David Caswell.

If you have any questions or need any additional information, please feel free to contact me at 317-232-8326 (office) or 317-694-7620 (cell).

Respectfully requested,



Nila Miller-Cronk
Major

Attachment

Miller-Cronk, Nila

From: Adair, Heidi
Sent: Tuesday, August 13, 2019 5:10 PM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion; ISP; Miller-Cronk/Glass; Conflict of Interests

Nila,

Thank you again for your patience. As you know, we typically have informal advisory opinions completed and sent fairly quickly; however this informal advisory opinion turned out to be a bit more complicated than originally anticipated. If after reviewing this opinion, you and/or Trooper Glass have any questions or concerns, feel free to reach out.

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP) and providing additional information. I understand you are seeking advice on behalf of Trooper Stephen Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP.

You provide that the Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked Trooper Glass to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and that this request for Trooper Glass is similar to that of Trooper Caswell. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. You provide that Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two years.

Instructing DRE courses for ISP personnel is a part of Trooper Glass's official state duties. In his potential outside employment opportunity, he would be conducting the training outside of his state hours to ICJI (and perhaps other entities) and would not use state equipment or resources when doing so.

I understand you are seeking advice on behalf of Trooper Glass to determine if he is permitted, under the Code of Ethics (Code), to provide the educational consulting for ICJI when off-duty.

Your inquiry invokes consideration of several rules under the Code. I discuss the implications of each below. I include all relevant rules and definitions at the end of this opinion for your reference. **For purposes of this opinion, I focus on analyzing Trooper Glass's potential outside employment as a consultant for ICJI. The analysis may be subject to change if there are other companies or organizations for which he wishes to provide consulting services, and he may wish to request another informal advisory opinion to address specific facts.**

1. Conflicts of Interests; Contracts (IC 4-2-6-10.5)

First, Trooper Glass should consider IC 4-2-6-10.5, which prohibits a state employee from knowingly having a financial interest in a contract or grant made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract or grant between any state agency and a third party. Please note

that “compensation” is defined by the Code to include “a thing of value” and could include items other than money. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for the contracting agency, provided certain statutory criteria are met, including written disclosure.

You provide that ISP receives grant funds from ICJI. Furthermore, it appears that ICJI funds and manages Indiana’s DRE program. You note that Trooper Glass does not participate in or have contracting responsibility for ISP; however, he should be aware of this rule and its disclosure requirements if he determines that his compensation for the consulting services is derived from ICJI grant funds or from a contract between ICJI and ISP. This rule is also implicated if Trooper Glass individually contracts with ICJI for personal services.

While the analysis in this opinion is directed to Trooper Glass and we generally do not provide advice as to past conduct, it appears that the facts involving Trooper Caswell’s outside employment arrangement may have changed since the informal advisory opinion he received in January 2017. As such, if Trooper Caswell is deriving compensation and has a financial interest in a contract/grant with ICJI, he should ensure that he is in compliance with IC 4-2-6-10.5 and promptly files a financial disclosure statement with the State Ethics Commission.

2. Outside Employment/Professional Activity (IC 4-2-6-5.5)

As you know, the outside employment/professional activity rule prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Regarding subsection (1), nothing in the information you provided indicates that Trooper Glass’s potential consulting position with ICJI is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. Generally, we recommend that an employee discuss outside employment matters with their agency’s ethics officer, as they can address any agency-specific conflict of interests concerns and advise of any agency policies that would apply to the employee’s outside employment. As it appears you have not found any inherent incompatibility, we would defer to your review.

As for subsection two (2), nothing in the information you provided indicates that this arrangement would require Trooper Glass to disclose confidential information, so such employment will not violate this subsection. So long as Trooper Glass does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from contracting with ICJI to provide off-duty DRE training while also working for ISP. **Please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee’s state duties.**

3. Conflicts of Interests; Decisions and Votes (IC 4-2-6-9)

IC 4-2-6-9, which pertains to conflicts of interests; decisions and votes, prohibits Trooper Glass from participating in any decision or vote, or matter related to any such decision or vote, if he has knowledge that various persons may have a “financial interest” in the outcome of the matter, including himself, an organization in which he serves as an employee, or an organization with whom he is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote, including discussion.

The Code defines “financial interest” as an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services. Because ICJI funds and manages the DRE program and Trooper Glass will be paid to teach DRE courses for ICJI, it appears Trooper Glass may have a financial interest in a decision or vote involving ICJI. It is unclear if Trooper Glass’s ISP duties involve making decisions or participating in any matters for which ICJI, his potential employer, would have a financial interest; however, if his position does involve such matters, he should avoid participating in them and comply with the rule’s notification requirements.

4. Additional Compensation (42 IAC 1-5-8)

The rule on additional compensation, found in 42 IAC 1-5-8, provides that a state employee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

You explain that part of Trooper Glass’s official state duties include providing DRE training to ISP officers. Based on my understanding of the information you provided, in his prospective consulting position, he would be conducting DRE certification training, but this training would be for ICJI rather than ISP and would be conducted outside of his regular ISP hours and without state equipment or resources.

42 IAC 1-5-8 generally does not prohibit an employee from performing the *same type* of duties for another entity that the employee performs in his or her state position; however, Trooper Glass may wish to consider any appearance of impropriety that could arise from contracting with another state agency to provide services that mirror his official state duties with ISP.

5. Ghost Employment and Use of State Property (42 IAC 1-5-13 and IC 4-2-6-17)

Furthermore, as you know, any activity related to Trooper Glass’s outside employment as a contractor/consultant with ICJI must be done outside of his normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). Also, he cannot use state property, such as equipment or materials, while engaging in activities related to his outside employment in order to comply with the use of state property rule (IC 4-2-6-17).

6. Confidential Information 42 IAC 1-5-10 and 42 IAC 1-5-11

Trooper Glass should keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit him from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that he will possess information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including ICJI, he would need to ensure he complies with these rules.

Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from knowingly or intentionally having financial interests in or deriving a profit from a contract or purchase connected with an action by *the agency that the employee serves*. The criminal statute can be found at

IC 35-44.1-1-4. Our office usually does not provide advice on the Criminal Code, but we recommend that Trooper Glass familiarize himself with the statute and ensure he complies with it. Please note that subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics. Trooper Glass can request such approval from the State Ethics Commission by requesting a formal advisory opinion as discussed above.

In this case, because of the potential implication of several rules, we would recommend that Trooper Glass seek a Formal Advisory Opinion from the Commission. The Commission's next public meeting is September 12, 2019, and all requests for opinions to be rendered at this meeting need to be submitted to our office by September 3, 2019. More information on formal advisory opinions can be found here.

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Heidi Adair
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;

or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-8 Additional Compensation

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:

(A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency;

and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Heidi L. Adair

Staff Attorney

Office of the Inspector General

315 W. Ohio St., Room 104

Indianapolis, IN 46202

hadair@ig.in.gov

317-234-3993

From: Adair, Heidi

Sent: Friday, August 9, 2019 3:00 PM

To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>

Subject: RE: Advice

Nila,

Thank you for the additional information. I believe we have enough for the informal advisory opinion now, but I will let you know if that changes. Otherwise you should expect to see the opinion within 1-3 business days.

Thanks again for your patience,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Friday, August 9, 2019 12:19 PM
To: Adair, Heidi <HADair@ig.IN.gov>
Subject: RE: Advice

Heidi,

This is what I have learned. Trooper Caswell and if approved, Trooper Glass, instruct officers on how to be Drug Recognition Experts (DRE) which is a two (2) week class to become DRE certified. Each class has about 40 officers in it and at times a very small number of those officers are from ISP. They also teach non-ISP officers an ARIDE (Advanced Roadside Impaired Driving Enforcement) course. Trooper Caswell, through his own LLC (DC Consulting, LLC) has been receiving compensation from a contractor, Rob Duckworth's LLC (name unknown), and that Rob Duckworth is now the Traffic Safety Director for ICJI. ICJI pays Rob Duckworth's LLC from grant funds and the ICJI funding source is NHITSA 405D Funding Stream.

I am going to try and get more clarification on this and get back with you.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Friday, August 9, 2019 9:58 AM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello Nila,

I was wondering if you would be able to provide some clarification on how Trooper Glass will be compensated for providing DRE training. Will he be compensated through a contract with ICJI and receive a separate paycheck from them? If you feel that a phone call would be better for the explanation, feel free to contact me at the number below.

Thank you for your patience!

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Adair, Heidi
Sent: Thursday, August 8, 2019 4:17 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Perfect. Thank you. I will have an informal advisory opinion out to you as soon as possible.

Best,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Thursday, August 8, 2019 3:27 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice
Importance: High

Heidi,

Everything we discussed and you have listed below is correct regarding Trooper Glass and his request.

Thanks!

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Thursday, August 8, 2019 3:02 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hi Nila,

Thank you for providing additional information in our phone call. I just wanted to send you a quick recap of our conversation – if you wouldn't mind confirming if this information is correct, I would appreciate it. And feel free to correct me if you notice any factual inaccuracies.

- DRE stands for Drug Recognition Expert
- Trooper Glass is a road trooper but part of his official duties is also to instruct DRE training for ISP personnel
- Trooper Glass does not participate in or have any contracting duties
- He's interested in contracting with ICJI outside of his normal state working hours to provide DRE training. He would work with Trooper Caswell so it would extend beyond ICJI. He may contract with other entities to provide this training as well.
- ISP receives grants through ICJI but this outside employment opportunity doesn't involve the grants
- He wouldn't be conducting DRE training for ICJI or other outside entities on state time or using state equipment/resources

Thank you,

Heidi L. Adair
Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov

317-234-3993

From: noreply@formstack.com [mailto:noreply@formstack.com]

Sent: Wednesday, August 7, 2019 3:53 PM

To: IG Info <info@ig.IN.gov>; Cooper, Jennifer <JCooper@ig.IN.gov>; Torres, Lori <LTorres@ig.IN.gov>

Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission For: ig_2815

Submitted at 08/07/19 3:52 PM

Name: Nila Miller-Cronk

Email: nmiller-cronk@isp.in.gov

Phone: (317) 232-8326

State Agency: Indiana State Police

Description of Your State Occupation: Department's Ethic's Officer and Commander of the Department's Internal Investigation Section

What is your ethics question?:

Trp. Stephen Glass has been asked by Marshall Depew (ICJI DRE/SFST Coordinator) to become a contractor with Trooper Dave Caswell in providing educational consulting on the effects and long term deficits of drug use and impairment to reduce the impact of the drug epidemic affecting Indiana. Troopers Dave Caswell and Stephen Glass are DRE Instructors for ISP and have been instructing together for approximately 2 years.

An informal advisory opinion was submitted for Trp. Caswell and a response received from Jennifer Cooper on 1/20/2017. This request for Trooper Glass is similar to that of Trooper Caswell.

Trooper Glass is wishing to assure due diligence that there is no adverse viewing by the Department, such as conflict of interest or ethics violation to serve as a consultant with Trooper Caswell to ICJI as they are both are assigned similar

responsibilities as State Police Employees, Drug Recognition Experts (DRE), and DRE Instructors.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

2. Consideration. The Contractor will be paid at the rate of **\$40.00 per hour for twelve (12) hours per week** for a weekly total of **\$480.00** for maintenance of efforts and accessibility. **In addition**, the Contractor will be paid at a rate of **\$45.00 per hour** for all preparation of trainings and instruction at all trainings. Total remuneration under this Contract shall not exceed **\$355,000.00**.

3. Term. This Contract shall be effective for a period of **ten (10) months**. It shall commence on **December 1, 2019** and shall remain in effect through **September 30, 2020**.

4. Access to Records. The Contractor, and its subcontractors, if any, shall maintain all books, documents, papers, accounting records, and other evidence pertaining to all costs incurred under this Contract. They shall make such materials available at their respective offices at all reasonable time during this Contract, and for three (3) years from the date of final payment under this Contract, for inspection by the State or its authorized designees. Copies shall be furnished at no cost to the State if requested.

5. Assignment; Successors.

A. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

B. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent. Additionally, the Contractor shall provide prompt written notice to the State of any change in the Contractor's legal name or legal status so that the changes may be documented and payments to the successor entity may be made.

6. Assignment of Antitrust Claims. [OMITTED, NOT APPLICABLE]

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. As a recipient of federal funds, Contractor agrees to comply with all applicable NHTSA special conditions, as set forth in **Attachment B**, attached hereto and incorporated herein by reference. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC § 4-2-6, *et seq.*, IC § 4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC § 5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

(1) The Contractor and any principals of the Contractor certify that:

(A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:

(i) IC §24-4.7 [Telephone Solicitation Of Consumers];

(ii) IC §24-5-12 [Telephone Solicitations]; or

(iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];

in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

(2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,

(A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and

(B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the

Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code § 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code § 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification.

As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. As required by Financial Management Circular 2007-1 and IC § 5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A written determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. [OMITTED; NOT APPLICABLE]

24. Indemnification. In the event that Contractor is found to be negligent, as determined by a neutral third party who is knowledgeable of and has expertise in the duties of the Contractor, in the training or implementation of any component of the subject matter of this contract, the Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Indiana Veteran Owned Small Business Enterprise Compliance. [OMITTED; NOT APPLICABLE]

27. Information Technology Enterprise Architecture Requirements. [OMITTED; NOT APPLICABLE]

28. Insurance.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Automobile liability for personally owned autos with minimum liability limits of \$250,000 per person and \$500,000 per occurrence. Automobile liability for all government owned vehicles shall be the minimum liability limits normally carried by the governmental body.
2. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

29. Key Person(s). [OMITTED; NOT APPLICABLE]

30. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

31. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

32. Minority and Women's Business Enterprises Compliance. [OMITTED; NOT APPLICABLE]

33. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC § 22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

34. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent via U.S. mail service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

Indiana Criminal Justice Institute
Attn: Robert Duckworth
Traffic Safety Division Director
101 W. Washington St., Suite 1170-E
Indianapolis, IN 46204
rduckworth@cji.in.gov

B. Notices to the Contractor shall be sent to:

Dedicated Training Resources, LLC
Attn: Marshall Depew
7633 Stoney Side Lane
Indianapolis, IN 46259
mdepew@cji.in.gov

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

35. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. **All Drug Evaluation and Certification Program materials prepared by the International Association of Chiefs of Police are hereby incorporated fully by reference.**

36. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

37. Payments.

A. All payments shall be made upon receipt in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20 or as outlined in Paragraph 1 of this Contract. Claims are to be submitted on a schedule agreed upon by the parties.

B. The State Budget Agency and the Contractor acknowledge that the Contractor is being paid in advance for travel, in accordance with Section 47 of this Contract. Pursuant to IC § 4-13-2-20(b)(14), the Contractor agrees that if it fails to perform under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

38. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

39. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

40. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by IC § 5-14-3.5-2. Use by the public of the information contained in this Contract shall not be considered an act of the State.

41. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The contract may be renewed for an additional period of time mutually agreed upon by the parties.

42. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

43. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

44. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

45. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

46. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

47. Travel. Travel will be reimbursed for out-of-state travel at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. The State will provide for in-state lodging and travel reimbursement in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the *2018 OAG/ IDOA Professional Services Contract Manual* or the *2018 SCM Template*) in any way except for the following clauses which are named below:

Clause 6: Deleted not applicable.
Clause 10: Amended.
Clause 23: Deleted not applicable.
Clause 26: Deleted not applicable.
Clause 27: Deleted not applicable.
Clause 29: Deleted not applicable.
Clause 32: Deleted not applicable.
Clause 34: Amended.
Clause 35: Amended.
Clause 37: Amended.
Clause 47: Amended.

THE REMAINDER OF THIS PAGE WAS INTENTIONALLY LEFT BLANK.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

**Agreement to Use Electronic Signatures
[Applicable only to contracts processed through SCM]**

In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Dedicated Training Resources, LLC

Indiana Criminal Justice Institute

By: _____

By: _____

Name and Title, Printed

Devon McDonald, Executive Director

Date: _____

Date: _____

Approved by:
Indiana Department of Administration

Approved by:
State Budget Agency

By: _____ (for)
Lesley A. Crane, Commissioner

By: _____ (for)
Jason D. Dudich, Director

Date: _____

Date: _____

APPROVED as to Form and Legality:
Office of the Attorney General

(for)
Curtis T. Hill, Jr., Attorney General

Date: _____



ATTACHMENT A

Drug Recognition Expert State Coordinator Duties, Roles and Responsibilities



The success of the Drug Evaluation and Classification (DEC) program depends on proper coordination and infrastructure in each of the DRE states. This ultimately rests with the DRE state coordinator working in partnership with the International Association of Chiefs of Police (IACP) and the respective Highway Safety Office's.

The IACP DRE Technical Advisory Panel (TAP) provides oversight and makes recommendations to the IACP Highway Safety Committee regarding the DEC program and other impaired driving issues. The IACP has developed international standards to assist and provide program support for the DEC program. In the IACP DEC Program International Standards a DRE state coordinator is defined as "*An individual designated to act as the statewide coordinator for the DEC program.*" *The duties of the position generally include, but are not limited to:*

- 1. Acting as an information clearinghouse and central communication point for the program within the state.*
- 2. Assisting in coordinating training and other support activities for all agencies participating in the program within the state.*
- 3. Coordinating the assignment of instructors in response to requests for service from federal and other sources.*

Not mentioned in the definition, but vital to the program is ensuring proper communication with IACP and that data is collected, maintained and reported using a reliable data collection program. DRE state coordinators will be called upon to provide justification and report the effectiveness of their program. Without data, this will be difficult if not impossible.

Appointment and Selection of the DRE State Coordinator

Under the guidelines listed in the IACP International Standards for the DEC program, the Governor's Office of Highway Safety is responsible for designating the DRE state coordinator. (Refer to definitions section of the International Standards). The selection may be made by the individual Governor's Highway Safety Representative or by any means approved by the Governor's Office of Highway Safety.

DRE State Coordinator Qualifications

The definition for the DRE state coordinator contained in the International Standards lists minimum *suggested* duties. The duties are general in nature and may be exceeded or expanded.

Qualifications to be a DRE state coordinator vary from state to state and are dependent upon the Governor's Office of Highway Safety. It is not a requirement that the state coordinator be a Drug Recognition Expert (DRE) or has a background in DRE. However, some states have adopted this standard to ensure that the DRE state coordinator understands and is familiar with the DRE process, program and requirements. In addition, the state coordinator does not have to be a sworn law enforcement officer, unless directed by the Governor's Highway Safety Office.

As previously mentioned, the DRE state coordinator must ensure that the DEC program is properly and effectively administered. The state coordinator must be able to work in partnership with federal, state, and local groups and organizations and should be familiar with:

1. IACP Drug Evaluation and Classification (DEC) Program International Standards
2. IACP Drug Recognition Expert training curriculum
3. IACP/NHTSA Standardized Field Sobriety Testing (SFST) curriculum
4. Key state and national impaired driving enforcement issues
5. State, federal and local laws, regulations and court decisions related to and effecting impaired driving prosecution and enforcement
6. Local and state toxicology guidelines and drug testing procedures
7. State training requirements and guidelines for police officers
8. IACP DRE Technical Advisory Panel (TAP) and it's role
9. IACP DRE regional procedures and concept
10. Traffic safety grants and reporting procedures
11. The National DRE Tracking System (DRE data collection system)

In essence, the DRE state coordinator is much like a *project manager* in that they conduct four essential tasks: 1) Define 2) Plan 3) Implement and 4) Evaluate.

DRE state coordinators must **define** the goal for developing and administering an effective DEC program.

They must also **plan** a strategy for accomplishing the goals and objectives for a successful program consistent with those of IACP, NHTSA and their Governor's Highway Safety Office.

They must **implement** effective strategies to meet their objectives and to achieve the goal(s) of the program.

Lastly, they must **evaluate** the effectiveness of the program. They must be prepared at all times to justify their program, which is achieved through periodic evaluation.

Proper evaluation should also include documentation and reporting of supportive information. Many states accomplish this through an annual report, quarterly reports to their Governor's Highway Safety Office or by providing information for the IACP DRE Section Annual Report.

DRE State Coordinator Duties

Duties of the DRE state coordinator may vary depending upon the size of the program and their agency/ organization. At a minimum, the state coordinator should:

1. Provide oversight and coordination of the DEC program following the IACP International Standards or equivalent state adopted standards
2. Work in partnership with the IACP DEC program staff
3. Ensure that statewide DRE evaluation data is entered and reported using the National DRE Tracking System
4. Ensure that information is submitted to the IACP DRE Section Chair in a timely manner outlining the state's yearly activities and accomplishments

5. Promote the DEC program with the various key partners within the state
6. Coordinate and assist in providing DRE training when resources allow
7. Appoint and assign course managers to DRE training schools
8. Promote and assist in the continuing education process for DREs within the state
9. Conduct periodic review of DRE files for certification and re-certification procedures
10. Conduct a periodic review of DRE reports and toxicology results to ensure accuracy
11. Assist in the collection and distribution of IACP/NHTSA impaired driving and drug training materials
12. Authorize or assist in obtaining DRE equipment and supplies when needed
13. Work with other state coordinators to advance the effectiveness of the program
14. Assist with or oversee the selection of DRE school candidates
15. Participate whenever possible in the DRE Regional meetings

Training Coordination Responsibilities

As previously mentioned, the DRE state coordinator must ensure that DRE training is conducted within their state whenever needed and when resources and personnel allow. Preparing for and conducting a DRE school requires proper planning and coordination which include, but are not limited to:

1. **Selecting a geographical training location:** Most DRE schools are conducted at a state or regional police training academy or at a location that supports DRE. When considering a new location within the state, the state coordinator should refer to the "Site Selection Criteria" and the Administrators Guide in the DRE School Instructor manual for guidance.
2. **Selection of DRE candidates:** Many states use a DRE school application process to assist in the selection of DRE candidates. (Refer to Appendage #1). However the selection process is accomplished, it is imperative that the best possible candidates are selected. Experience has shown that the best DRE candidates have a background in impaired driving enforcement, write above average reports, have courtroom experience and will use the DRE skills in their assignments.
3. **On-Site Physical needs for the school:** There are numerous on-site needs or requirements for conducting a DRE school. They will include, but are not limited to, lodging, meals, coffee for breaks, etc. Many of these are listed in the DRE School Checklist included with this document. (Refer to Appendage #2)

4. **Out-of-State Instructors:** If a state does not have adequate in-state DRE instructors and there is a need for out-of-state instructors, the state coordinator should contact the IACP for assistance. Out-of-state instructor support is normally for new DEC states, however, all requests will be considered depending upon the circumstances.
5. **DRE School manuals and materials:** DRE state coordinators can order DRE Pre-School and DRE School manuals using the IACP DRE School order form. (Refer to Appendage #3). Note: To ensure proper and timely delivery, manuals should be ordered four to six weeks prior to the school.
6. **Student equipment:** A variety of specialized equipment is required for each DRE student in order to complete the training. (Refer to DRE School Checklist, Appendage #2). Equipment purchases should be made in compliance with local or state purchasing procedures.
7. **DRE School schedule:** Per IACP TAP recommendations, there are three DRE training schedules to choose from. The state coordinator should confer with the school course manager to determine the best and most appropriate schedule to use. (Refer to the DRE Instructor manual under “Alternative Schedules”). Whichever schedule is used, the state coordinator must ensure that the school course manager and DRE instructors are familiar with the schedule of events and agenda and adhere to it.
8. **Coordinating and conducting the Alcohol Workshops:** Due to the importance of these workshops, a great deal of planning and attention must be devoted to these two training sessions. Two alcohol workshops *are required* during the DRE training process; one during the DRE Pre-School and one during the DRE School. Experience has shown live “wet” workshops work best for the students and also give the instructors a better understanding of the student’s skills.
9. **Field Certification Training:** The field certification training can be one of the major obstacles in finalizing the DRE training process. (Refer to IACP International Standards, Standard 1.13). The state coordinator should examine the best options for completing this portion of the training.

Experience has shown that the longer this process takes the more likely that some of the DRE. Some states have determined that sending students out of state to productive certification sites (Arizona and/or California) is more cost effective and practical than conducting in-state certification training.
Note: For more information about out-of-state certification training, contact the IACP DEC program coordinator or DRE Regional Operations Coordinator.

10. **Final Certification Knowledge Examination:** State coordinators must ensure that DRE students take the final Certification Knowledge Exam as soon as possible after the completion of the DRE School. (Refer to IACP International Standards, Standard 1.12). Experience has shown that the longer the examination is delayed the increased likelihood that the student will not complete this portion of the certification process.
11. **Maintaining DRE certification records:** Many state coordinators maintain files of DREs trained under their jurisdiction. Records retained include copies of the IACP Certification Log, IACP DRE certification letters, their IACP DRE number and other pertinent information. Note: The retention of DRE file information should follow established state retention schedules and public disclosure rules.
12. **DRE Re-certification:** Re-certification is required every two years. (Refer to IACP International Standards). The state coordinator must ensure that DREs are aware of their re-certification requirements and dates. They must also ensure that re-certification opportunities exist and that DRE instructors are available to assist in the process. As a reminder – the International Standards allow for a one-year grace period beyond the last expiration date. However, a DRE is not technically certified

when in their grace period. Any evaluations completed during that period of time could be jeopardized. Standard 4.3 of the International Standards requires a minimum of four (4) acceptable evaluations every two years, one of which must be witnessed by a DRE instructor for recertification. These evaluations may be conducted in classroom simulation. However, this is a *minimum standard*. Some state coordinators have exceeded that standard and require that all re-certification evaluations be conducted on suspected drug impaired subjects.

Latest revision: 07/2013

ATTACHMENT B

GENERAL REQUIREMENTS

The Contractor shall comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended;
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94;
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs;
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards;
- Submit all reports in the prescribed format and time frames as determined by ICJI; and
- Submit monthly performance measures as specified by ICJI.

NONDISCRIMINATION

The Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d et seq. 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324, *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686)(prohibits discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), (prohibits discrimination on the basis of disability);
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid Contractors, sub-Contractors and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, an certain testing) and 49 CFR parts 37 and 38;
- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of

limited English proficiency (LEP) by ensuring that funding Contractors take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

During the performance of this Contract, the Contractor agrees to comply with all Federal nondiscrimination laws and regulations, as may be amended from time to time, including but not limited to, the following:

- A. Not to participate directly or indirectly in the discrimination prohibited by any Federal non-discrimination law or regulation, as set forth in appendix B of 49 CFR part 21 and herein;
- B. To permit access to its books, records, accounts, other sources of information, and its facilities as required by the State highway safety office, US DOT or NHTSA;
- C. That, in event a contractor/funding recipient fails to comply with any nondiscrimination provisions in this contract/funding agreement, the State highway safety agency will have the right to impose such contract/agreement sanctions as it or NHTSA determine are appropriate, including but not limited to withholding payments to the contractor/funding recipient under the contract/agreement until the contractor/funding recipient complies; and/or cancelling, terminating, or suspending a contract or funding agreement, in whole or in part; and
- D. To insert this clause, including paragraphs (a) through (c), in every contract and agreement and in every solicitation for a contract or agreement that receives Federal funds under this program.

POLITICAL ACTIVITY (HATCH ACT)

The Contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

The Contractor certifies, to the best of their knowledge and belief, that:

- 1. No Federal appointed funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- 2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- 3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under

RUSH

EXECUTIVE DOCUMENT SUMMARY

State Form 41221 (R10/4-06)



Instructions for completing the EDS and the Contract process.

1. Please read the guidelines on the back of this form.
2. Please type all information.
3. Check all boxes that apply.
4. For amendments / renewals, attach original contract.
5. Attach additional pages if necessary.

RECEIVED

OCT 19 2017

TAM

IDA CONTRACTS

1. EDS Number: D3-18-12092	2. Date prepared: 9/18/2017
-------------------------------	--------------------------------

3. CONTRACTS & LEASES

<input type="checkbox"/> Professional/Personal Services	<input checked="" type="checkbox"/> Contract for procured Services
<input type="checkbox"/> Grant	<input type="checkbox"/> Maintenance
<input type="checkbox"/> Lease	<input type="checkbox"/> License Agreement
<input type="checkbox"/> Attorney	<input type="checkbox"/> Amendment# _____
<input type="checkbox"/> MOU	<input type="checkbox"/> Renewal # _____
<input type="checkbox"/> QPA	<input type="checkbox"/> Other _____

FISCAL INFORMATION

4. Account Number: 60110-65203.571904	5. Account Name: ICJI DOT Fund
6. Total amount this action: \$469,000.00	7. New contract total: 469,000.00
8. Revenue generated this action: \$0.00	9. Revenue generated total contract: \$0.00
10. New total amount for each fiscal year:	
Year 2017	\$58 625 00
Year 2018	\$175 875 00
Year 2019	\$234 500 00
Year _____	\$ _____

TIME PERIOD COVERED IN THIS EDS

11. From (month, day, year): 10/1/2017	12. To (month, day, year): 9/30/2019
13. Method of source selection:	
<input type="checkbox"/> Bid/Quotation	<input type="checkbox"/> Emergency
<input type="checkbox"/> RFP# _____	<input checked="" type="checkbox"/> Negotiated
	<input type="checkbox"/> Special Procurement
	<input type="checkbox"/> Other (specify) _____

AGENCY INFORMATION

14. Name of agency: Criminal Justice Institute	15. Requisition Number: 10510
16. Address: Criminal Justice Institute Traffic Safety 101 W WASHINGTON STREET Indianapolis, IN 46204	

AGENCY CONTACT INFORMATION

17. Name: DEVON MCDONALD	18. Telephone #: 317/232-7611
19. E-mail address: DEMCDONALD@CJI.IN.GOV	

COURIER INFORMATION

20. Name: Mike Lepper	21. Telephone #: 317-234-6227
22. E-mail address: mlepper@cji.in.gov	

VENDOR INFORMATION

23. Vendor ID #	0000352654
24. Name: ROBERT DUCKWORTH	25. Telephone #: 812-614-1593
26. Address: ASSURED PROGRAM SOLUTIONS LL 2148 N FLEETWOOD DR GREENSBURG, IN 47240	
27. E-mail address: rduckworth164@cji.in.gov	
28. Is the vendor registered with the Secretary of State? (Out of State Corporations, must be registered) <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
29. Primary Vendor: M/WBE/IN-Vetera	30. Primary Vendor Percentages
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	100.0 %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
31. Sub Vendor: M/WBE/IN-Veteran	32. If yes, list the %:
Minority: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Minority: _____ %
Women: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	Women: _____ %
IN-Veteran <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	IN- Veteran _____ %
33. Is there Renewal Language in _____	34. Is there a "Termination for Convenience" clause in the document? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

35. Will the attached document involve data processing or telecommunications system Yes: IOT or Delegate has signed off on contract

36. Statutory Authority (Cite applicable Indiana or Federal Codes):
I.C.5-2-6

37. Description of work and justification for spending money. (Please give a brief description of the scope of work included in this agreement.)
THIS IS A CONTRACT FOR THE SFST AND DRE TRAINING PROGRAM

RECEIVED

OCT 20 2017

OAG-ADVISORY

38. Justification of vendor selection and determination of price reasonableness:
VENDOR IS IN THE BEST POSITION TO PROVIDE SERVICES TO THE STATE OF INDIANA

39. If this contract is submitted late, please explain why: (Required if more than 30 days late.)

40. Agency fiscal officer or representative approval <i>Robin A. Degree</i>	41. Date Approved 10-6-17	42. Budget agency approval <i>Rubel</i>	43. Date Approved 10-19-17
44. Attorney General's Office approval <i>SWG</i>	45. Date Approved 10/20/17	46. Agency representative receiving from AG	47. Date Approved



PROFESSIONAL SERVICES CONTRACT

EDS # D3-18-12092

This Contract ("this Contract"), entered into by and between the **Indiana Criminal Justice Institute** (the "State") and **Assured Program Solutions, LLC** (the "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor. The Contractor shall provide the following services relative to this Contract as generally outlined in **Attachment A**, which is attached hereto and fully incorporated herein along with the following:

- A. Maintain the proper certifications required to be named as DRE State Coordinator as outlined in **Attachment A**.
- B. Develop and coordinate a two (2) day recertification course for the Standardized Field Sobriety Testing and Drug Recognition Expert (hereinafter referenced as "DRE") Program to be held annually in 2018 and 2019.
- C. Coordinate and plan the Standardized Field Sobriety Testing (hereinafter referenced as "SFST") Basic Course to be held at the Indiana Law Enforcement Academy in 2018 and 2019.
- D. Coordinate the certification for identified Drug Recognition Experts who were previously trained but have not yet completed the required number of evaluations.
- E. Coordinate and plan at least one Drug Recognition Expert Course to be held annually in 2018 and 2019.
- F. Coordinate and plan field certification training for the Drug Recognition Expert Courses held in 2018 and 2019 which will ultimately result in initial certification of officers.
- G. Coordinate and plan at least one SFST Instructor School annually for 2018 and 2019.
- H. Coordinate and provide support for SFST Refresher and Course information requests from law enforcement agencies.
- I. Coordinate and provide support for ARIDE Training requests from law enforcement agencies.
- J. Provide support and instruction as requested and achievable by the Indiana Prosecuting Attorneys Council for the training programs for prosecutors and law enforcement officers.
- K. Complete and submit the DRE Annual Report for Indiana.
- L. Coordinate data collection for review and submission for the two annual, spring and fall, "Crackdown" events as established by NHTSA for reporting on behalf of Indiana.
- M. Facilitate review and submission of documentation for the State of current DRE Officers for recertification to be provided to IACP.
- N. Coordinate attendance and minimally attend representing the Indiana DRE Program at the Annual State Coordinators Meeting and Annual Conference as scheduled by IACP. Costs for the conference will be covered by the State.
- O. Attend the Annual DRE Section Meeting as scheduled in conjunction with the Annual IACP Conference, representing the interests of the Indiana DRE Program as the DRE Section is the Rule Making Body for the International Program Standards. Costs for the conference will be covered by the State.
- P. Conduct an instructional observation of the SFST Course at all satellite Law Enforcement Academies at a minimum one time (1) during the contract period.
- Q. Coordinate, develop and send an annual budget for equipment, supplies and support costs for the courses outlined above to the State for approval.
- R. Contractor shall provide the State with a calendar and brief description of all organized trainings scheduled throughout the duration of this Contract.

S. Contractor shall provide event coordination services, travel planning and coordination, and arrange and pay travel for all attendees participating in the Drug Recognition Expert Training Program, ARIDE, SFST and other conferences and training, as well as procuring items listed and approved in "Q". Contractor shall be compensated upon presentation of estimated travel costs. Travel must be booked within 10 days after receipt of payment. Contractor will be compensated for procuring items listed and approved in "Q" as per the terms for payment identified within this contract. Contractor will leverage the existing Enterprise Rental Agreement rates for ground transportation for all vehicles required.

2. Consideration. The Contractor will be paid at the rate of **\$40.00 per hour for twelve (12) hours per week** for a weekly total of **\$480.00** and then at a rate of **\$40.00 per hour** for all preparation of and instruction at all trainings. Total remuneration under this Contract shall not exceed **\$469,000.00**

3. Term. This Contract shall be effective for a period of **2 years**. It shall commence on **October 1, 2017** and shall remain in effect through **September 30, 2019**.

4. Access to Records. The Contractor shall provide the State with all original copies of records. The Contractor may maintain copies of all records, but shall have access to all original copies of records upon written request to the State. The State shall maintain all records in accordance with state record retention policies.

5. Assignment; Successors. The Contractor binds its successors and assignees to all the terms and conditions of this Contract. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent, which will not be unreasonably withheld without explanation to Contractor as to the basis of any objection. The Contractor shall not subcontract the whole or any part of this Contract. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that the Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.

6. Assignment of Antitrust Claims. Deleted by mutual agreement of the parties.

7. Audits. The Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC §5-11-1, *et seq.*, and audit guidelines specified by the State.

The State considers the Contractor to be a "Contractor" under 2 C.F.R. 200.330 for purposes of this Contract. However, if it is determined that the Contractor is a "subrecipient" and if required by applicable provisions of 2 C.F.R. 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements), Contractor shall arrange for a financial and compliance audit, which complies with 2 C.F.R. 200.500 *et seq.*

8. Authority to Bind Contractor. The signatory for the Contractor represents that he/she has been duly authorized to execute this Contract on behalf of the Contractor and has obtained all necessary or applicable approvals to make this Contract fully binding upon the Contractor when his/her signature is affixed, and accepted by the State.

9. Changes in Work. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. The Contractor shall make no claim for additional compensation in the absence of a prior written approval and amendment executed by all signatories

hereto. This Contract may only be amended, supplemented or modified by a written document executed in the same manner as this Contract.

10. Compliance with Laws.

A. The Contractor shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, and all provisions required thereby to be included herein are hereby incorporated by reference. As a recipient of federal funds, Contractor agrees to comply with all applicable NHTSA special conditions, as set out in **Attachment B**. The enactment or modification of any applicable state or federal statute or the promulgation of rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

B. The Contractor and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the Contractor has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this contract.** If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the Contractor or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under IC §§4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

C. The Contractor certifies by entering into this Contract that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. The Contractor agrees that any payments currently due to the State of Indiana may be withheld from payments due to the Contractor. Additionally, further work or payments may be withheld, delayed, or denied and/or this Contract suspended until the Contractor is current in its payments and has submitted proof of such payment to the State.

D. The Contractor warrants that it has no current, pending or outstanding criminal, civil, or enforcement actions initiated by the State, and agrees that it will immediately notify the State of any such actions. During the term of such actions, the Contractor agrees that the State may delay, withhold, or deny work under any supplement, amendment, change order or other contractual device issued pursuant to this Contract.

E. If a valid dispute exists as to the Contractor's liability or guilt in any action initiated by the State or its agencies, and the State decides to delay, withhold, or deny work to the Contractor, the Contractor may request that it be allowed to continue, or receive work, without delay. The Contractor must submit, in writing, a request for review to the Indiana Department of Administration (IDOA) following the procedures for disputes outlined herein. A determination by IDOA shall be binding on the parties. Any payments that the State may delay, withhold, deny, or apply under this section shall not be subject to penalty or interest, except as permitted by IC §5-17-5.

F. The Contractor warrants that the Contractor and its subcontractors, if any, shall obtain and maintain all required permits, licenses, registrations, and approvals, and shall comply with all health, safety, and environmental statutes, rules, or regulations in the performance of work activities for the State. Failure to

do so may be deemed a material breach of this Contract and grounds for immediate termination and denial of further work with the State.

G. The Contractor affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

H. As required by IC §5-22-3-7:

- (1) The Contractor and any principals of the Contractor certify that:
 - (A) the Contractor, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the Contractor will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.
- (2) The Contractor and any principals of the Contractor certify that an affiliate or principal of the Contractor and any agent acting on behalf of the Contractor or on behalf of an affiliate or principal of the Contractor, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Contract, even if IC §24-4.7 is preempted by federal law.

11. Condition of Payment. All services provided by the Contractor under this Contract must be performed to the State's reasonable satisfaction, as determined at the discretion of the undersigned State representative and in accordance with all applicable federal, state, local laws, ordinances, rules and regulations. The State shall not be required to pay for work found to be unsatisfactory, inconsistent with this Contract or performed in violation of any federal, state or local statute, ordinance, rule or regulation.

12. Confidentiality of State Information. The Contractor understands and agrees that data, materials, and information disclosed to the Contractor may contain confidential and protected information. The Contractor covenants that data, material, and information gathered, based upon or disclosed to the Contractor for the purpose of this Contract will not be disclosed to or discussed with third parties without the prior written consent of the State.

The parties acknowledge that the services to be performed by Contractor for the State under this Contract may require or allow access to data, materials, and information containing Social Security numbers maintained by the State in its computer system or other records. In addition to the covenant made above in this section and pursuant to 10 IAC 5-3-1(4), the Contractor and the State agree to comply with the provisions of IC §4-1-10 and IC §4-1-11. If any Social Security number(s) is/are disclosed by Contractor, Contractor agrees to pay the cost of the notice of disclosure of a breach of the security of the system in addition to any other claims and expenses for which it is liable under the terms of this contract.

13. Continuity of Services.

A. The Contractor recognizes that the service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Contract expiration, a successor, either the State or another contractor, may continue them. The Contractor agrees to:

1. Furnish phase-in training; and
2. Exercise its best efforts and cooperation to effect an orderly and efficient transition to a successor.

B. The Contractor shall, upon the State's written notice:

1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires; and
2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required. The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to ensure that the services called for by this Contract are maintained at the required level of proficiency.

C. The Contractor shall allow as many personnel as practicable to remain on the job to help the successor maintain the continuity and consistency of the services required by this Contract. The Contractor also shall disclose necessary personnel records and allow the successor to conduct on-site interviews with these employees. If selected employees are agreeable to the change, the Contractor shall release them at a mutually agreeable date and negotiate transfer of their earned fringe benefits to the successor.

D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out costs (i.e., costs incurred within the agreed period after contract expiration that result from phase-in, phase-out operations).

14. Debarment and Suspension.

A. The Contractor certifies by entering into this Contract that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor.

B. The Contractor certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this Contract and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The Contractor shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this Contract.

15. Default by State. If the State, sixty (60) days after receipt of written notice, fails to correct or cure any material breach of this Contract, the Contractor may cancel and terminate this Contract and institute measures to collect monies due up to and including the date of termination.

16. Disputes.

A. Should any disputes arise with respect to this Contract, the Contractor and the State agree to act immediately to resolve such disputes. Time is of the essence in the resolution of disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all of its responsibilities under this Contract that are not affected by the dispute. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work, without delay, any additional costs incurred by the State or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs.

C. If the parties are unable to resolve a contract dispute between them after good faith attempts to do so, a dissatisfied party shall submit the dispute to the Commissioner of the Indiana Department of Administration for resolution. The dissatisfied party shall give written notice to the Commissioner and the other party. The notice shall include: (1) a description of the disputed issues, (2) the efforts made to resolve the dispute, and (3) a proposed resolution. The Commissioner shall promptly issue a Notice setting out documents and materials to be submitted to the Commissioner in order to resolve the dispute; the Notice may also afford the parties the opportunity to make presentations and enter into further negotiations. Within thirty (30) business days of the conclusion of the final presentations, the Commissioner shall issue a written decision and furnish it to both parties. The Commissioner's decision shall be the final and conclusive administrative decision unless either party serves on the Commissioner and the other party, within ten (10) business days after receipt of the Commissioner's decision, a written request for reconsideration and modification of the written decision. If the Commissioner does not modify the written decision within thirty (30) business days, either party may take such other action helpful to resolving the dispute, including submitting the dispute to an Indiana court of competent jurisdiction. If the parties accept the Commissioner's decision, it may be memorialized as a written Amendment to this Contract if appropriate.

D. The State may withhold payments on disputed items pending resolution of the dispute. The State will not withhold payment on non-disputed items and will continue to pay all invoices containing non-disputed items. The unintentional nonpayment by the State to the Contractor of one or more invoices not in dispute in accordance with the terms of this Contract will not be cause for the Contractor to terminate this Contract, and the Contractor may bring suit to collect these amounts without following the disputes procedure contained herein.

E. With the written approval of the Commissioner of the Indiana Department of Administration, the parties may agree to forego the process described in subdivision C. relating to submission of the dispute to the Commissioner.

F. This paragraph shall not be construed to abrogate provisions of Ind. Code 4-6-2-11 in situations where dispute resolution efforts lead to a compromise of claims in favor of the State as described in that statute. In particular, releases or settlement agreements involving releases of legal claims or potential legal claims of the state should be processed consistent with Ind. Code 4-6-2-11, which requires approval of the Governor and Attorney General.

17. Drug-Free Workplace Certification. As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The Contractor will give written notice to the State within ten (10) days after receiving actual notice that the Contractor, or an employee of the Contractor in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not

limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraph, if the total amount set forth in this Contract is in excess of \$25,000.00, the Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will: (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

18. Employment Eligibility Verification. As required by IC §22-5-1.7, the Contractor swears or affirms under the penalties of perjury that the Contractor does not knowingly employ an unauthorized alien. The Contractor further agrees that:

- A. The Contractor shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The Contractor is not required to participate should the E-Verify program cease to exist. Additionally, the Contractor is not required to participate if the Contractor is self-employed and does not employ any employees.
- B. The Contractor shall not knowingly employ or contract with an unauthorized alien. The Contractor shall not retain an employee or contract with a person that the Contractor subsequently learns is an unauthorized alien.
- C. The Contractor shall require his/her/its subcontractors, who perform work under this Contract, to certify to the Contractor that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program.

The Contractor agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if the Contractor fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

19. Employment Option. If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-competition agreements that may be in effect. This release will be at no cost to the State or the employee.

20. Force Majeure. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

21. Funding Cancellation. When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be canceled. A written determination by the Director of State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

22. Governing Law. This Contract shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

23. HIPAA Compliance. If this Contract involves services, activities or products subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the Contractor covenants that it will appropriately safeguard Protected Health Information (defined in 45 CFR 160.103), and agrees that it is subject to, and shall comply with, the provisions of 45 CFR 164 Subpart E regarding use and disclosure of Protected Health Information.

24. Indemnification. In the event that Contractor is found to be negligent, as determined by a neutral third party who is knowledgeable of and has expertise in the duties of the Contractor, in the training or implementation of any component of the subject matter of this contract, the Contractor agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third party claims and suits including court costs, attorney's fees, and other expenses caused by any act or omission of the Contractor and/or its subcontractors, if any, in the performance of this Contract. The State shall not provide such indemnification to the Contractor.

25. Independent Contractor; Workers' Compensation Insurance. The Contractor is performing as an independent entity under this Contract. No part of this Contract shall be construed to represent the creation of an employment, agency, partnership or joint venture agreement between the parties. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. The Contractor shall provide all necessary unemployment and workers' compensation insurance for the Contractor's employees, and shall provide the State with a Certificate of Insurance evidencing such coverage prior to starting work under this Contract.

26. Information Technology Enterprise Architecture Requirements. Deleted as not applicable.

27. Insurance.

A. The Contractor and their subcontractors (if any) shall secure and keep in force during the term of this Contract the following insurance coverages (if applicable) covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from Contractor's performance under this Contract:

1. Automobile liability for personally owned autos with minimum liability limits of \$250,000 per person and \$500,000 per occurrence. Automobile liability for all government owned vehicles shall be the minimum liability limits normally carried by the governmental body.
2. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative a certificate of insurance prior to the commencement of this Contract and proof of workers' compensation coverage meeting all statutory requirements of IC §22-3-2. In addition, proof of an "all states endorsement" covering claims occurring outside the State is required if any of the services provided under this Contract involve work outside of Indiana.

B. The Contractor's insurance coverage must meet the following additional requirements:

1. The insurer must have a certificate of authority or other appropriate authorization to operate in the state in which the policy was issued.
2. Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
3. The State will be defended, indemnified and held harmless to the full extent of any coverage actually secured by the Contractor in excess of the minimum requirements set forth above. The duty to indemnify the State under this Contract shall not be limited by the insurance required in this Contract.
4. The insurance required in this Contract, through a policy or endorsement(s), shall include a provision that the policy and endorsements may not be canceled or modified without thirty (30) days' prior written notice to the undersigned State agency.
5. The Contractor waives and agrees to require their insurer to waive their rights of subrogation against the State of Indiana.

C. Failure to provide insurance as required in this Contract may be deemed a material breach of contract entitling the State to immediately terminate this Contract. The Contractor shall furnish a certificate of insurance and all endorsements to the State before the commencement of this Contract.

28. Key Person(s). Deleted as not applicable.

29. Licensing Standards. The Contractor, its employees and subcontractors shall comply with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules, or regulations governing services to be provided by the Contractor pursuant to this Contract. The State will not pay the Contractor for any services performed when the Contractor, its employees or subcontractors

are not in compliance with such applicable standards, laws, rules, or regulations. If any license, certification or accreditation expires or is revoked, or any disciplinary action is taken against an applicable license, certification, or accreditation, the Contractor shall notify the State immediately and the State, at its option, may immediately terminate this Contract.

30. Merger & Modification. This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, except by written agreement signed by all necessary parties.

31. Minority and Women’s Business Enterprises Compliance. Deleted as not applicable.

32. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Contractor covenants that it shall not discriminate against any employee or applicant for employment relating to this Contract with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee’s or applicant’s race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law (“Protected Characteristics”). Contractor certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Contract, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Contractor or any subcontractor.

The State is a recipient of federal funds, and therefore, where applicable, Contractor and any subcontractors shall comply with requisite affirmative action requirements, including reporting, pursuant to 41 CFR Chapter 60, as amended, and Section 202 of Executive Order 11246 as amended by Executive Order 13672.

33. Notice to Parties. Whenever any notice, statement or other communication is required under this Contract, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to: **(Include contact name and/or title, name of agency & address)**

Indiana Criminal Justice Institute
Attn: Mike Lepper
101 W. Washington St., Suite 1170-E
Indianapolis, IN 46204

B. Notices to the Contractor shall be sent to: **(Include contact name and/or title, name of vendor & address)**

Robert Duckworth
2148 N. Fleetwood Drive
Greensburg, IN 47240

As required by IC §4-13-2-14.8, payments to the Contractor shall be made via electronic funds transfer in accordance with instructions filed by the Contractor with the Indiana Auditor of State.

34. Order of Precedence; Incorporation by Reference. Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) this Contract, (2) attachments prepared by the State, (3) attachments prepared by the Contractor. All attachments, and all documents referred to in this paragraph, are hereby incorporated fully by reference. **All Drug Evaluation and Certification Program materials prepared by the International Association of Chiefs of Police are hereby incorporated fully by reference.**

35. Ownership of Documents and Materials.

A. All documents, records, programs, applications, data, algorithms, film, tape, articles, memoranda, and other materials (the "Materials") not developed or licensed by the Contractor prior to execution of this Contract, but specifically developed under this Contract shall be considered "work for hire" and the Contractor hereby transfers and assigns any ownership claims to the State so that all Materials will be the property of the State. If ownership interest in the Materials cannot be assigned to the State, the Contractor grants the State a non-exclusive, non-cancelable, perpetual, worldwide royalty-free license to use the Materials and to use, modify, copy and create derivative works of the Materials.

B. Use of the Materials, other than related to contract performance by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to the Materials developed for or supplied by the State and used to develop or assist in the services provided while the Materials are in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. The Contractor shall provide the State full, immediate, and unrestricted access to the Materials and to Contractor's work product during the term of this Contract.

36. Payments.

A. All payments shall be made upon receipt in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the Contractor in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Contract except as permitted by IC §4-13-2-20 or as outlined in Clause 1 of this Contract. Claims are to be submitted on a schedule agreed upon by the parties.

B. The State Budget Agency and the Contractor acknowledge that the Contractor is being paid in advance for the maintenance of equipment and/ or software. Pursuant to IC §4-13-2-20(b)(14), Contractor agrees that if it fails to perform the maintenance required under this Contract, upon receipt of written notice from the State, it shall promptly refund the consideration paid, pro-rated through the date of non-performance.

37. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

Notwithstanding the provisions contained in IC §5-17-5, any liability resulting from the State's failure to make prompt payment shall be based solely on the amount of funding originating from the State and shall not be based on funding from federal or other sources.

38. Progress Reports. The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in

written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Public Record. The Contractor acknowledges that the State will not treat this Contract as containing confidential information, and will post this Contract on its website as required by Executive Order 05-07. Use by the public of the information contained in this Contract shall not be considered an act of the State.

40. Renewal Option. This Contract may be renewed under the same terms and conditions, subject to the approval of the Commissioner of the Department of Administration and the State Budget Director in compliance with IC §5-22-17-4. The contract may be renewed for an additional period of time mutually agreed upon by the parties.

41. Severability. The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance. This Contract shall be deemed to be substantially performed only when fully performed according to its terms and conditions and any written amendments or supplements.

43. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

44. Termination for Convenience. This Contract may be terminated, in whole or in part, by the State, which shall include and is not limited to IDOA and the State Budget Agency whenever, for any reason, the State determines that such termination is in its best interest. Termination of services shall be effected by delivery to the Contractor of a Termination Notice at least thirty (30) days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The Contractor shall be compensated for services properly rendered prior to the effective date of termination. The State will not be liable for services performed after the effective date of termination. The Contractor shall be compensated for services herein provided but in no case shall total payment made to the Contractor exceed the original contract price or shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date. For the purposes of this paragraph, the parties stipulate and agree that IDOA shall be deemed to be a party to this agreement with authority to terminate the same for convenience when such termination is determined by the Commissioner of IDOA to be in the best interests of the State.

45. Termination for Default.

A. With the provision of thirty (30) days' notice to the Contractor, the State may terminate this Contract in whole or in part if the Contractor fails to:

1. Correct or cure any breach of this Contract; the time to correct or cure the breach may be extended beyond thirty (30) days if the State determines progress is being made and the extension is agreed to by the parties;
2. Deliver the supplies or perform the services within the time specified in this Contract or any extension;
3. Make progress so as to endanger performance of this Contract; or
4. Perform any of the other provisions of this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any excess costs for those supplies or services. However, the Contractor shall continue the work not terminated.

C. The State shall pay the contract price for completed supplies delivered and services accepted. The Contractor and the State shall agree on the amount of payment for manufacturing materials delivered and accepted and for the protection and preservation of the property. Failure to agree will be a dispute under the Disputes clause. The State may withhold from these amounts any sum the State determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

D. The rights and remedies of the State in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

46. Travel. Travel will be reimbursed for out-of-state travel at the current rate paid by the State and in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular. Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines. The State will provide for in-state lodging and travel reimbursement in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular.

47. Indiana Veteran's Business Enterprise Compliance. Deleted as not applicable.

48. Waiver of Rights. No right conferred on either party under this Contract shall be deemed waived, and no breach of this Contract excused, unless such waiver is in writing and signed by the party claimed to have waived such right. Neither the State's review, approval or acceptance of, nor payment for, the services required under this Contract shall be construed to operate as a waiver of any rights under this Contract or of any cause of action arising out of the performance of this Contract, and the Contractor shall be and remain liable to the State in accordance with applicable law for all damages to the State caused by the Contractor's negligent performance of any of the services furnished under this Contract.

49. Work Standards. The Contractor shall execute its responsibilities by following and applying at all times the highest professional and technical guidelines and standards. If the State becomes dissatisfied with the work product of or the working relationship with those individuals assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, and the Contractor shall grant such request.

50. State Boilerplate Affirmation Clause. I swear or affirm under the penalties of perjury that I have not altered, modified, changed or deleted the State's Boilerplate contract clauses (as contained in the 2016 OAG/ IDOA *Professional Services Contract Manual*) in any way except for the following clauses which are named below:

Clause 4: Amended to show State maintains copies of all original records.

Clause 5: Amended.

Clause 6: Deleted.

Clause 10: Amended to require compliance with NHTSA special conditions.

Clause 16: Amended to require payment on non-disputed claims.

Clause 21: Amended to require written determination by budget director.

Clause 24: Amended the indemnification language.

Clause 26: Deleted not applicable.

Clause 27: Deleted terms not applicable and updated to show auto liability coverage.

Clause 28: Deleted not applicable.

Clause 31: Deleted not applicable.

Clause 34: Amended to incorporate by reference IACP materials.

Clause 36: Amended to allow payment upon receipt and travel costs upon presentment of estimate.

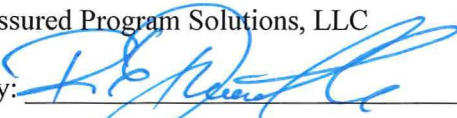
Clause 40: Amended to allow for longer renewal period.
Clause 46: Amended for travel reimbursement.


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Non-Collusion and Acceptance

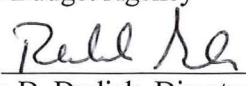
The undersigned attests, subject to the penalties for perjury, that the undersigned is the Contractor, or that the undersigned is the properly authorized representative, agent, member or officer of the Contractor. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Contract other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Contract, the Contractor attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

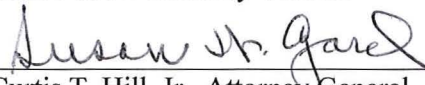
In Witness Whereof, Contractor and the State have, through their duly authorized representatives, entered into this Contract. The parties, having read and understood the foregoing terms of this Contract, do by their respective signatures dated below agree to the terms thereof.

Assured Program Solutions, LLC
By: 
ROBERT F. DUCKWORTH, CEO
Name and Title, Printed
Date: 29 Aug 2017

Indiana Criminal Justice Institute
By: _____

David R. Murtaugh, Executive Director
Date: 10/19/17

Approved by:
Indiana Department of Administration
By:  (for)
Jessica Robertson, Commissioner
Date: 10/19/17

Approved by:
State Budget Agency
By:  (for)
Jason D. Dudich, Director
Date: 10-19-17

APPROVED as to Form and Legality:
Office of the Attorney General
 (for)
Curtis T. Hill, Jr., Attorney General
Date: 10/20/2017

ATTACHMENT A



Drug Recognition Expert State Coordinator Duties, Roles and Responsibilities



The success of the Drug Evaluation and Classification (DEC) program depends on proper coordination and infrastructure in each of the DRE states. This ultimately rests with the DRE state coordinator working in partnership with the International Association of Chiefs of Police (IACP) and the respective Highway Safety Office's.

The IACP DRE Technical Advisory Panel (TAP) provides oversight and makes recommendations to the IACP Highway Safety Committee regarding the DEC program and other impaired driving issues. The IACP has developed international standards to assist and provide program support for the DEC program. In the IACP DEC Program International Standards a DRE state coordinator is defined as ***"An individual designated to act as the statewide coordinator for the DEC program."*** ***The duties of the position generally include, but are not limited to:***

- 1. Acting as an information clearinghouse and central communication point for the program within the state.***
- 2. Assisting in coordinating training and other support activities for all agencies participating in the program within the state.***
- 3. Coordinating the assignment of instructors in response to requests for service from federal and other sources.***

Not mentioned in the definition, but vital to the program is ensuring proper communication with IACP and that data is collected, maintained and reported using a reliable data collection program. DRE state coordinators will be called upon to provide justification and report the effectiveness of their program. Without data, this will be difficult if not impossible.

Appointment and Selection of the DRE State Coordinator

Under the guidelines listed in the IACP International Standards for the DEC program, the Governor's Office of Highway Safety is responsible for designating the DRE state coordinator. (Refer to definitions section of the International Standards). The selection may be made by the individual Governor's Highway Safety Representative or by any means approved by the Governor's Office of Highway Safety.

DRE State Coordinator Qualifications

The definition for the DRE state coordinator contained in the International Standards lists minimum *suggested* duties. The duties are general in nature and may be exceeded or expanded.

Qualifications to be a DRE state coordinator vary from state to state and are dependent upon the Governor's Office of Highway Safety. It is not a requirement that the state coordinator be a Drug Recognition Expert (DRE) or has a background in DRE. However, some states have adopted this standard to ensure that the DRE state coordinator understands and is familiar with the DRE process, program and requirements. In addition, the state coordinator does not have to be a sworn law enforcement officer, unless directed by the Governor's Highway Safety Office.

As previously mentioned, the DRE state coordinator must ensure that the DEC program is properly and effectively administered. The state coordinator must be able to work in partnership with federal, state, and local groups and organizations and should be familiar with:

1. IACP Drug Evaluation and Classification (DEC) Program International Standards
2. IACP Drug Recognition Expert training curriculum
3. IACP/NHTSA Standardized Field Sobriety Testing (SFST) curriculum
4. Key state and national impaired driving enforcement issues

5. State, federal and local laws, regulations and court decisions related to and effecting impaired driving prosecution and enforcement
6. Local and state toxicology guidelines and drug testing procedures
7. State training requirements and guidelines for police officers
8. IACP DRE Technical Advisory Panel (TAP) and it's role
9. IACP DRE regional procedures and concept
10. Traffic safety grants and reporting procedures
11. The National DRE Tracking System (DRE data collection system)

In essence, the DRE state coordinator is much like a *project manager* in that they conduct four essential tasks: 1) Define 2)Plan 3) Implement and 4) Evaluate.

DRE state coordinators must **define** the goal for developing and administering an effective DEC program.

They must also **plan** a strategy for accomplishing the goals and objectives for a successful program consistent with those of IACP, NHTSA and their Governor's Highway Safety Office.

They must **implement** effective strategies to meet their objectives and to achieve the goal(s) of the program.

Lastly, they must **evaluate** the effectiveness of the program. They must be prepared at all times to justify their program, which is achieved through periodic evaluation.

Proper evaluation should also include documentation and reporting of supportive information. Many states accomplish this through an annual report, quarterly reports to their Governor's Highway Safety Office or by providing information for the IACP DRE Section Annual Report.

DRE State Coordinator Duties

Duties of the DRE state coordinator may vary depending upon the size of the program and their agency/ organization. At a minimum, the state coordinator should:

1. Provide oversight and coordination of the DEC program following the IACP International Standards or equivalent state adopted standards
2. Work in partnership with the IACP DEC program staff
3. Ensure that statewide DRE evaluation data is entered and reported using the National DRE Tracking System
4. Ensure that information is submitted to the IACP DRE Section Chair in a timely manner outlining the state's yearly activities and accomplishments
5. Promote the DEC program with the various key partners within the state
6. Coordinate and assist in providing DRE training when resources allow
7. Appoint and assign course managers to DRE training schools
8. Promote and assist in the continuing education process for DREs within the state
9. Conduct periodic review of DRE files for certification and re-certification procedures
10. Conduct a periodic review of DRE reports and toxicology results to ensure accuracy
11. Assist in the collection and distribution of IACP/NHTSA impaired driving and drug training materials
12. Authorize or assist in obtaining DRE equipment and supplies when needed
13. Work with other state coordinators to advance the effectiveness of the program

14. Assist with or oversee the selection of DRE school candidates
15. Participate whenever possible in the DRE Regional meetings

Training Coordination Responsibilities

As previously mentioned, the DRE state coordinator must ensure that DRE training is conducted within their state whenever needed and when resources and personnel allow. Preparing for and conducting a DRE school requires proper planning and coordination which include, but are not limited to:

1. **Selecting a geographical training location:** Most DRE schools are conducted at a state or regional police training academy or at a location that supports DRE. When considering a new location within the state, the state coordinator should refer to the “Site Selection Criteria” and the Administrators Guide in the DRE School Instructor manual for guidance.
2. **Selection of DRE candidates:** Many states use a DRE school application process to assist in the selection of DRE candidates. (Refer to Appendage #1). How ever the selection process is accomplished, it is imperative that the best possible candidates are selected. Experience has shown that the best DRE candidates have a background in impaired driving enforcement, write above average reports, have courtroom experience and will use the DRE skills in their assignments.
3. **On-Site Physical needs for the school:** There are numerous on-site needs or requirements for conducting a DRE school. They will include, but are not limited to, lodging, meals, coffee for breaks, etc. Many of these are listed in the DRE School Checklist included with this document. (Refer to Appendage #2)
4. **Out-of-State Instructors:** If a state does not have adequate in-state DRE instructors and there is a need for out-of-state instructors, the state coordinator should contact the IACP for assistance. Out-of-state instructor support is normally for new DEC states, however, all requests will be considered depending upon the circumstances.
5. **DRE School manuals and materials:** DRE state coordinators can order DRE Pre-School and DRE School manuals using the IACP DRE School order form. (Refer to Appendage #3). Note: To ensure proper and timely delivery, manuals should be ordered four to six weeks prior to the school.
6. **Student equipment:** A variety of specialized equipment is required for each DRE student in order to complete the training. (Refer to DRE School Checklist, Appendage #2). Equipment purchases should be made in compliance with local or state purchasing procedures.
7. **DRE School schedule:** Per IACP TAP recommendations, there are three DRE training schedules to choose from. The state coordinator should confer with the school course manager to determine the best and most appropriate schedule to use. (Refer to the DRE Instructor manual under “Alternative Schedules”). Whichever schedule is used, the state coordinator must ensure that the school course manager and DRE instructors are familiar with the schedule of events and agenda and adhere to it.
8. **Coordinating and conducting the Alcohol Workshops:** Due to the importance of these workshops, a great deal of planning and attention must be devoted to these two training sessions. Two alcohol workshops *are required* during the DRE training process; one during the DRE Pre-School and one

during the DRE School. Experience has shown live “wet” workshops work best for the students and also give the instructors a better understanding of the student’s skills.

9. **Field Certification Training:** The field certification training can be one of the major obstacles in finalizing the DRE training process. (Refer to IACP International Standards, Standard 1.13). The state coordinator should examine the best options for completing this portion of the training.

Experience has shown that the longer this process takes the more likely that some of the DRE Some states have determined that sending students out of state to productive certification sites (Arizona and/or California) is more cost effective and practical than conducting in-state certification training. *Note:* For more information about out-of-state certification training, contact the IACP DEC program coordinator or DRE Regional Operations Coordinator.

10. **Final Certification Knowledge Examination:** State coordinators must ensure that DRE students take the final Certification Knowledge Exam as soon as possible after the completion of the DRE School. (Refer to IACP International Standards, Standard 1.12). Experience has shown that the longer the examination is delayed the increased likelihood that the student will not complete this portion of the certification process.
11. **Maintaining DRE certification records:** Many state coordinators maintain files of DREs trained under their jurisdiction. Records retained include copies of the IACP Certification Log, IACP DRE certification letters, their IACP DRE number and other pertinent information. *Note:* The retention of DRE file information should follow established state retention schedules and public disclosure rules.
12. **DRE Re-certification:** Re-certification is required every two years. (Refer to IACP International Standards). The state coordinator must ensure that DREs are aware of their re-certification requirements and dates. They must also ensure that re-certification opportunities exist and that DRE instructors are available to assist in the process. As a reminder – the International Standards allow for a one-year grace period beyond the last expiration date. However, a DRE is not technically certified when in their grace period. Any evaluations completed during that period of time could be jeopardized. Standard 4.3 of the International Standards requires a minimum of four (4) acceptable evaluations every two years, one of which must be witnessed by a DRE instructor for recertification. These evaluations may be conducted in classroom simulation. However, this is a *minimum standard*. Some state coordinators have exceeded that standard and require that all re-certification evaluations be conducted on suspected drug impaired subjects.

Latest revision: 08/2017

ATTACHMENT B

GENERAL REQUIREMENTS

The Contractor shall comply with applicable statutes and regulations, including but not limited to:

- 23 U.S.C. Chapter 4—Highway Safety Act of 1966, as amended
- Sec. 1906, Pub. L. 109-59, as amended by Sec. 4011, Pub. L. 114-94
- 23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs
- 2 CFR part 200—Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- 2 CFR part 1201—Department of Transportation, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

NONDISCRIMINATION

The Contractor will comply with all Federal statutes and implementing regulations relating to nondiscrimination (“Federal Nondiscrimination Authorities”). These include but are not limited to:

- **Title VI of the Civil Rights Act of 1964** (42 U.S.C. 2000d et seq. 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970**, (42 U.S.C. 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- **Federal-Aid Highway Act of 1973**, (23 U.S.C. 324, *et seq.*), and **Title IX of the Education Amendments of 1972**, as amended (20 U.S.C. 1681-1683 and 1685-1686)(prohibits discrimination on the basis of sex);
- **Section 504 of the Rehabilitation Act of 1973**, (29 U.S.C. 794 *et seq.*), (prohibits discrimination on the basis of disability);
- **The Age Discrimination Act of 1975**, as amended, (42 U.S.C. 6101 *et seq.*), (prohibits discrimination on the basis of age);
- **The Civil Rights Restoration Act of 1987**, (Pub. L. 100-209), (broadens scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal aid Contractors, sub-Contractors and contractors, whether such programs or activities are Federally-funded or not);
- **Titles II and III of the Americans with Disabilities Act** (42 U.S.C. 12131-12189) (prohibits discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, an certain testing) and 49 CFR parts 37 and 38;

- **Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations** (prevents discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations); and
- **Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency** (guards against Title VI national origin discrimination/discrimination because of limited English proficiency (LEP) by ensuring that funding Contractors take reasonable steps to ensure that LEP persons have meaningful access to programs (70 FR at 74087 to 74100).

THE DRUG-FREE WORKPLACE ACT OF 1988 (41 U.S.C. 8103)

The Contractor will provide a drug-free workplace by:

- a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- b. Establishing a drug-free awareness program to inform employees about:
 - The dangers of drug abuse in the workplace.
 - The grantee's policy of maintaining a drug-free workplace.
 - Any available drug counseling, rehabilitation, and employee assistance programs.
 - The penalties that may be imposed upon employees for drug violations occurring in the workplace.
 - Making it a requirement that each employee engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- c. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - Abide by the terms of the statement.
 - Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction.
- d. Notifying the State within ten days after receiving notice under subparagraph (c)(2) from an employee or otherwise receiving actual notice of such conviction.
- e. Taking one of the following actions, within 30 days of receiving notice under subparagraph (c)(2), with respect to any employee who is so convicted—
 - Taking appropriate personnel action against such an employee, up to and including termination.
 - Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, state, or local health, law enforcement, or other appropriate agency.
- f. Making a good faith effort to continue to maintain a drug-free workplace through implementation of all the paragraphs above.

POLITICAL ACTIVITY (HATCH ACT)

The Contractor will comply with provisions of the Hatch Act (5 U.S.C. 1501-1508), which limits the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

CERTIFICATION REGARDING FEDERAL LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The Contractor certifies, to the best of their knowledge and belief, that:

1. No Federal appointed funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence and officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers(including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subgrantees shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

RESTRICTION ON STATE LOBBYING

None of the funds under this program will be used for any activity specifically designed to urge or influence a State or local legislator to favor or oppose the adoption of any specific legislative proposal pending before any state or local legislative body. Such activities include both direct and indirect (e.g. "grassroots") lobbying activities, with one exception. This does not preclude a State official whose salary is supported with NHTSA funds from engaging in direct

communication with State or local legislative officials, in accordance with customary state practice, even if such communications urge legislative officials to favor or oppose the adoption of a specific pending legislative proposal.

CERTIFICATION REGARDING DEBARMENT AND SUSPENSION

Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that its principals
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of record, making false statements, or receiving stolen property.
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the Statements in this certification, such prospective participant shall attach an explanation to this proposal.

BUY AMERICA ACT

The Contractor will comply with the Buy America requirement (23 U.S.C. 313) when purchasing items using Federal funds. Buy America requires a State, or contractor, to purchase only steel, iron, and manufactured products produced in the United States with Federal funds, unless the Secretary of Transportation determines that such domestically produced items would be inconsistent with the public interest, that such materials are not reasonably available and of a satisfactorily quality or that inclusion of domestic materials will increase the cost of the overall project contract by more than 25 percent. In order to use Federal funds to purchase foreign produced items, the State must submit a waiver request that provides an adequate basis and justification to and approved by the Secretary of Transportation.

PROHIBITION ON USING GRANT FUNDS TO CHECK FOR HELMET USAGE

The Contractor will not use 23 U.S.C. Chapter 4 grant funds for programs to check helmet usage or to create checkpoints that specifically target motorcyclists.

POLICY ON SEATBELT USE

In accordance with Executive Order 13043, Increasing Seat Belt Use in the United States, dated April 16, 1997, the Contractor is encouraged to adopt and enforce on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-owned vehicles. The National Highway Traffic Safety Administration (NHTSA) is responsible for providing leadership and guidance in support of this Presidential initiative. For information on how to implement such a program, or statistics on the potential benefits and cost-savings to your company or organization, please visit the Buckle Up America section on NHTSA's website at www.nhtsa.dot.gov. Additional resources are available from the Network of Employers for Traffic Safety (NETS), a public-private partnership headquartered in Washington D.C. metropolitan area, and dedicated to improving the traffic safety practices of employers and employees. NETS is prepared to provide technical assistance, a simple, user-friendly program kit, and an award for achieving the President's goal of 90 percent seat belt use. NETS can be contacted at 1(800) 221-0045 or visit its website at www.trafficsafety.org.

POLICY ON BANNING TEXT MESSAGING WHILE DRIVING

In accordance with Executive Order, 13513, Federal Leadership On Reducing Text Messaging While Driving and DOT Order 3902.10, Text Messaging While Driving, the Contractor is encouraged to adopt and enforce workplace safety policies to decrease crashes caused by distracted driving, including policies to ban text messaging while driving company-owned or –rented vehicles, Government-owned, leased or rented vehicles, or privately-owned when on official Government business or when performing any work on or behalf of the Government. States are also encouraged to conduct workplace safety initiatives in a manner commensurate with the size of the business, such as establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving, and education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

Baker, Nathaniel P

From: Cooper, Jennifer
Sent: Friday, January 20, 2017 9:34 AM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion, Miller-Cronk, Outside employment

Follow Up Flag: Follow up
Flag Status: Flagged

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP). I understand you are seeking advice on behalf of a Trooper who is a Drug Recognition Evaluator (DRE) and is also a DRE Instructor. As a DRE Instructor, the Trooper trains police officers in the DRE program and teaches police officers the signs and symptoms associated with each drug category. Drug evaluation also teaches how to take pulse, blood pressure, body temperature, and field sobriety tests. This class is not taught to civilians, only active law enforcement officers. The class also includes how to correctly perform a Drug Evaluation, as well as the Drug Matrix for each category, which includes if the drug causes Horizontal Gaze Nystagmus, Vertical Nystagmus, Lack of Convergence (Ability to Cross the Eyes), what the drug category or categories do to pulse, blood pressure, body temperature, muscle tone, and pupil size.

You provide that this Trooper was contacted by Ivy Tech in 2016 for possible off duty employment providing "Drug Impairment in the Workplace" training for supervisors to assist the supervisors in recognizing drug impairment in their employees; however, that training did not occur. In December 2016, this Trooper was speaking with a representative from Gibson Insurance about Drug Recognition Evaluation Program, and he was asked to possibly teach a drug impairment in the workplace training to their clients. The Gibson Insurance representative advised him OSHA requirements for drug testing after a workplace accident had changed recently. The Gibson Insurance representative mentioned better training their clients in common regarding recognizable signs and symptoms for drug impairment to assist with lowering drug impairment accidents in the workplace.

If he accepted this opportunity with Gibson Insurance, the Trooper would be teaching the attendees of the training the common indicators for each category (CNS Depressants, CNS Stimulants, Hallucinogens, Inhalants, Dissociative Anesthetics, Narcotic Analgesics, and Cannabis), the common drugs for each category (i.e. Cocaine, Methamphetamine, Heroin, PCP, Ketamine, Marijuana, Kolanpin, Xanax, Psilocibin, and so forth), some example videos for common drug indicators (such as "on the nod", among others), and common medical conditions that mimic the drug signs and symptoms. If searched on the Internet, the commons signs and symptoms for each drug category are readily accessible to the public as well as medical conditions that mimic impairment (stroke, diabetes, traumatic brain injury.) He would also include NSDUH statistical information on current drug use, current number of prescriptions issued in the United States, and workplace drug information (common usage locations, what to do as a supervisor if you believe an employee is impaired). He has compiled this information into his own presentation for the supervisors. However, the information is all readily accessible on the Internet if searched correctly.

You note that this instruction would be done off-duty, and the Trooper would receive compensation as off-duty employment (if approved). The Trooper has indicated he may conduct the trainings as part of his own business or in affiliation with Gibson Insurance.

I understand you are seeking advice to determine if the Trooper is permitted, under the Code of Ethics, to provide the drug impairment training when off-duty.

Your inquiry primarily invokes consideration of 42 IAC 1-5-5 (IC 4-2-6-5.5), which is the ethics rule that pertains to conflicts of interest and outside employment/professional activity. I included all relevant rules and definitions at the end of this opinion for your reference.

42 IAC 1-5-5 prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

In general, whether conducting the training sessions would be contrary to 42 IAC 1-5-5 depends upon whether that activity triggers any of the above listed matters. 42 IAC 1-5-5 provides that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee's state duties. However, in these situations we usually recommend that the employment opportunity be reviewed by the agency's Ethics Officer. As the ISP's Ethics Officer, you would be in the best position to determine if the Trooper's training activities would conflict with his state duties or whether such activity is so far removed from his state duties that the potential for a conflict of interest is low. You would also be able to advise him regarding any internal ISP policies that may apply.

If you are not comfortable making this determination or the Trooper decides that he would like to obtain a written statement that would serve as conclusive proof that this position would not conflict with his state duties, you can find instructions for submitting a request for a formal advisory opinion from the Commission on our website: <http://www.in.gov/ig/2334.htm>. The next Commission meeting for which you may submit a request will be held on Thursday, February 9th, and all requests for opinions to be issued at this meeting must be received by Monday, January 30th.

Also, please be aware of 42 IAC 1-5-6 (IC 4-2-6-9), which pertains to conflicts of interest; decisions and voting. This rule prohibits the Trooper from participating in any decision or vote, or matter related to that decision or vote, if he has knowledge that various persons may have a "financial interest" in the outcome of the matter, including himself or a business organization through which he is serving as an employee, director, officer or member. In this case, the Trooper would be prohibited in his official state capacity from participating in any decisions or votes, or matter relating to those decisions or votes, regarding his own business or Gibson Insurance. He would need to seek an advisory opinion or follow the disclosure requirements in 42 IAC 1-5-6 if he identifies a potential conflict of interest.

In addition, keep in mind IC 4-2-6-17, which is the use of state property rule and 42 IAC 1-5-13, which is the ghost employment rule. The use of state property rule provides that a state employee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the Commission. The ghost employment rule provides that a state employee shall not engage in work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation. In this case, the Trooper would not be permitted to use any state property for his outside training activities unless ISP has a Commission-approved policy in place allowing such use for non-official state business. Moreover, any activity related to his outside training activities must be completed on non-state time, such as on the weekends and after his ISP hours. The Trooper should be mindful not to use any state property or his working hours to conduct any trainings or to compile the materials for his presentations.

Finally, please keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit the Trooper from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that the Trooper possesses information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including an employer or participant in any of the training he conducts, he would need to ensure he complies with these rules.

Thank you again for submitting your inquiry. Please let me know if you have any questions regarding this opinion. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving an informal advisory opinion, and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Jennifer Cooper
Ethics Director
Office of Inspector General

CONFIDENTIALITY NOTICE:

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IC 4-2-6-1

Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(11) "Financial interest" means an interest:

- (A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or
- (B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

- (A) obtained by reason of the position or office held; and
- (B) which:
 - (i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed;
or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-5 Outside Employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-5.5; IC 4-2-7

Sec. 5. Outside employment restrictions are set forth in IC 4-2-6-5.5.

IC 4-2-6-5.5

Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

42 IAC 1-5-6 Conflicts of interest; decisions and voting

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-6-9; IC 4-2-7

Sec. 6. Decision and voting restrictions are set forth in IC 4-2-6-9.

IC 4-2-6-9

Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
 - (2) A member of the immediate family of the state officer, employee, or special state appointee.
 - (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
 - (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.
- (b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
- (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or
 - (B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.
- (2) File a written disclosure statement with the commission that:
- (A) details the conflict of interest;
 - (B) describes and affirms the implementation of a screen established by the ethics officer;
 - (C) is signed by both:
 - (i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and
 - (ii) the agency ethics officer;
 - (D) includes a copy of the disclosure provided to the appointing authority; and
 - (E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

IC 4-2-6-17

Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

From: noreply@formstack.com [mailto:noreply@formstack.com]
Sent: Tuesday, January 17, 2017 5:37 PM
To: IG Info <info@ig.IN.gov>; ccarrasco@ig.in.gov; Cooper, Jennifer <JCooper@ig.IN.gov>
Subject: Advice

**** This is an EXTERNAL email. Exercise caution. DO NOT open attachments or click links from unknown senders or unexpected email. ****



Formstack Submission for form ig_2334

Submitted at 01/17/17 5:37 PM

Name:	Nila Miller-Cronk
Email:	nmiller-cronk@isp.in.gov
Phone:	(317) 232-8326
State Agency:	Indiana State Police
Description of Your State Occupation:	Department's Ethic's Officer and Commander (Major) of the Internal Investigation Section

What is your ethics question?: There is a Trooper at the Bremen Post who is a Drug Recognition Evaluator (DRE) and completed training in 2013., and is also a DRE Instructor. As a DRE Instructor, they train police officers in Drug Recognition Evaluation program and teach police officers the signs and symptoms associated with each drug category. Drug evaluation also teaches how to take pulse, blood pressure, body temperature, and field sobriety tests. This class is not taught to civilians, only active law enforcement officers and includes how to correctly perform a Drug Evaluation, as well as the Drug Matrix for each category which includes if the drug causes Horizontal Gaze Nystagmus, Vertical Nystagmus, Lack of Convergence (Ability to Cross the Eyes), what the drug category or categories do to Pulse, Blood Pressure, Body Temperature, Muscle Tone, and Pupil Size.

This Trooper was contacted by Ivy Tech in 2016 for possible off duty employment teaching Drug Impairment in the Workplace training for supervisors to assist the supervisors in recognizing drug impairment in their employees; however, that training did not occur. In December 2016, this Trooper was speaking with a representative from Gibson Insurance about Drug Recognition Evaluation Program and he was asked to possibly teach a drug impairment in the workplace training to their clients. The Gibson Insurance representative advised him OSHA requirements for drug testing after a workplace accident had changed recently. The Gibson Insurance representative mentioned better training their clients in common, recognizable signs and symptoms for drug impairment to assist with lowering workplace accidents drug impairment in the workplace. This Trooper would be teaching the attendees of the training the common indicators for each category (CNS Depressants, CNS Stimulants, Hallucinogens, Inhalants, Dissociative Anesthetics, Narcotic Analgesics, and Cannabis), the common drugs for each category (ie Cocaine, Methamphetamine, Heroin, PCP, Ketamine, Marijuana, Kolanpin, Xanax, Psilocibin, and so forth) , some example videos for common drug indicators (such as “on the nod”, among others), and common medical conditions that mimic the drug signs and symptoms. If searched on the Internet, the commons signs and symptoms for each drug category are readily accessible to the Public as well as medical conditions that mimic impairment (Stroke,

Diabetes, Traumatic Brain injury.) He would also include NSDUH statistical information on current drug use, current number for prescriptions issued in the United States, and Workplace drug information (common usage locations, what to do as a supervisor if you believe an employee is impaired). He has compiled this information into his own presentation for the supervisors however again the information is all readily accessible on the Internet if searched correctly.

This Trooper is wishing to assure due diligence so there is no adverse viewing by the Department, such as conflict of interest or ethics violation to teach the employers Impairment in the Workplace either as a part of my own business or if affiliated with Gibson Insurance. This instruction would be done off-duty, the Trooper would receive compensation as off-duty employment (if approved) and was wanting an informal advisory opinion if this would be an ethic violations.

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This is a customer service email.

Formstack, LLC

8604 Allisonville Rd.

Suite 300

Indianapolis, IN 46250

Baker, Nathaniel P

From: Adair, Heidi
Sent: Tuesday, August 13, 2019 5:10 PM
To: Miller-Cronk, Nila
Subject: Ethics Informal Advisory Opinion; ISP; Miller-Cronk/Glass; Conflict of Interests

Nila,

Thank you again for your patience. As you know, we typically have informal advisory opinions completed and sent fairly quickly; however this informal advisory opinion turned out to be a bit more complicated than originally anticipated. If after reviewing this opinion, you and/or Trooper Glass have any questions or concerns, feel free to reach out.

Nila,

Thank you for contacting our office in your capacity as the Ethics Officer for the Indiana State Police (ISP) and providing additional information. I understand you are seeking advice on behalf of Trooper Stephen Glass, who is a Drug Recognition Expert (DRE) and a DRE Instructor for ISP.

You provide that the Indiana Criminal Justice Institute (ICJI) DRE/SFST Coordinator, Marshall Depew, recently asked Trooper Glass to provide educational consulting to ICJI on the effects and long term deficits of drug use and impairment. You write that Trooper Caswell received an informal advisory opinion from Jennifer Cooper on January 20, 2017, and that this request for Trooper Glass is similar to that of Trooper Caswell. The purpose of this training is to reduce the impact of the drug epidemic affecting Indiana. You provide that Troopers Caswell and Glass are both DRE instructors for ISP and have been instructing together for approximately two years.

Instructing DRE courses for ISP personnel is a part of Trooper Glass's official state duties. In his potential outside employment opportunity, he would be conducting the training outside of his state hours to ICJI (and perhaps other entities) and would not use state equipment or resources when doing so.

I understand you are seeking advice on behalf of Trooper Glass to determine if he is permitted, under the Code of Ethics (Code), to provide the educational consulting for ICJI when off-duty.

Your inquiry invokes consideration of several rules under the Code. I discuss the implications of each below. I include all relevant rules and definitions at the end of this opinion for your reference. **For purposes of this opinion, I focus on analyzing Trooper Glass's potential outside employment as a consultant for ICJI. The analysis may be subject to change if there are other companies or organizations for which he wishes to provide consulting services, and he may wish to request another informal advisory opinion to address specific facts.**

1. Conflicts of Interests; Contracts (IC 4-2-6-10.5)

First, Trooper Glass should consider IC 4-2-6-10.5, which prohibits a state employee from knowingly having a financial interest in a contract or grant made by any state agency. The Code defines "financial interest" to include an interest arising from employment. The Commission has interpreted this rule to apply when a state employee derives compensation from a contract or grant between any state agency and a third party. Please note

that “compensation” is defined by the Code to include “a thing of value” and could include items other than money. This prohibition however does not apply to an employee that does not participate in or have official contracting responsibility for the contracting agency, provided certain statutory criteria are met, including written disclosure.

You provide that ISP receives grant funds from ICJI. Furthermore, it appears that ICJI funds and manages Indiana’s DRE program. You note that Trooper Glass does not participate in or have contracting responsibility for ISP; however, he should be aware of this rule and its disclosure requirements if he determines that his compensation for the consulting services is derived from ICJI grant funds or from a contract between ICJI and ISP. This rule is also implicated if Trooper Glass individually contracts with ICJI for personal services.

While the analysis in this opinion is directed to Trooper Glass and we generally do not provide advice as to past conduct, it appears that the facts involving Trooper Caswell’s outside employment arrangement may have changed since the informal advisory opinion he received in January 2017. As such, if Trooper Caswell is deriving compensation and has a financial interest in a contract/grant with ICJI, he should ensure that he is in compliance with IC 4-2-6-10.5 and promptly files a financial disclosure statement with the State Ethics Commission.

2. Outside Employment/Professional Activity (IC 4-2-6-5.5)

As you know, the outside employment/professional activity rule prohibits state employees from:

- (1) accepting other employment that would involve compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or would require them to recuse themselves from matters so central or critical to the performance of their official duties that their ability to perform them would be materially impaired;
- (2) accepting other employment or engaging in professional activity that would require them to disclose confidential information that was gained in the course of state employment; or
- (3) using their official position to secure unwarranted privileges or exemptions that are of substantial value and not properly available to similarly situated individuals outside state government.

Regarding subsection (1), nothing in the information you provided indicates that Trooper Glass’s potential consulting position with ICJI is inherently incompatible with his ISP position or would require his recusal from his official state duties to the extent that his ability to perform them would be materially impaired. Generally, we recommend that an employee discuss outside employment matters with their agency’s ethics officer, as they can address any agency-specific conflict of interests concerns and advise of any agency policies that would apply to the employee’s outside employment. As it appears you have not found any inherent incompatibility, we would defer to your review.

As for subsection two (2), nothing in the information you provided indicates that this arrangement would require Trooper Glass to disclose confidential information, so such employment will not violate this subsection. So long as Trooper Glass does not use his official ISP position to secure unwarranted privileges or exemptions that subsection (3) prohibits, IC 4-2-6-5.5 does not prohibit him from contracting with ICJI to provide off-duty DRE training while also working for ISP. **Please note that only the State Ethics Commission (Commission) can provide conclusive proof that an outside employment/professional activity is not in conflict with an employee’s state duties.**

3. Conflicts of Interests; Decisions and Votes (IC 4-2-6-9)

IC 4-2-6-9, which pertains to conflicts of interests; decisions and votes, prohibits Trooper Glass from participating in any decision or vote, or matter related to any such decision or vote, if he has knowledge that various persons may have a “financial interest” in the outcome of the matter, including himself, an organization in which he serves as an employee, or an organization with whom he is negotiating or has an arrangement concerning prospective employment. Please note that this prohibition extends beyond merely the decision or vote on the matter to encompass any participation in that decision or vote, including discussion.

The Code defines “financial interest” as an interest in a purchase, sale, lease, contract, option, or other transaction between an agency and any person; or involving property or services. Because ICJI funds and manages the DRE program and Trooper Glass will be paid to teach DRE courses for ICJI, it appears Trooper Glass may have a financial interest in a decision or vote involving ICJI. It is unclear if Trooper Glass’s ISP duties involve making decisions or participating in any matters for which ICJI, his potential employer, would have a financial interest; however, if his position does involve such matters, he should avoid participating in them and comply with the rule’s notification requirements.

4. Additional Compensation (42 IAC 1-5-8)

The rule on additional compensation, found in 42 IAC 1-5-8, provides that a state employee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

You explain that part of Trooper Glass’s official state duties include providing DRE training to ISP officers. Based on my understanding of the information you provided, in his prospective consulting position, he would be conducting DRE certification training, but this training would be for ICJI rather than ISP and would be conducted outside of his regular ISP hours and without state equipment or resources.

42 IAC 1-5-8 generally does not prohibit an employee from performing the *same type* of duties for another entity that the employee performs in his or her state position; however, Trooper Glass may wish to consider any appearance of impropriety that could arise from contracting with another state agency to provide services that mirror his official state duties with ISP.

5. Ghost Employment and Use of State Property (42 IAC 1-5-13 and IC 4-2-6-17)

Furthermore, as you know, any activity related to Trooper Glass’s outside employment as a contractor/consultant with ICJI must be done outside of his normal state working hours to avoid violations of the ghost employment rule (42 IAC 1-5-13). Also, he cannot use state property, such as equipment or materials, while engaging in activities related to his outside employment in order to comply with the use of state property rule (IC 4-2-6-17).

6. Confidential Information 42 IAC 1-5-10 and 42 IAC 1-5-11

Trooper Glass should keep in mind the ethics rules pertaining to confidential information found at 42 IAC 1-5-10 and 42 IAC 1-5-11. These rules prohibit him from benefitting from, permitting another person to benefit from, or divulging information of a confidential nature except as permitted by law. To the extent that he will possess information of a confidential nature by virtue of his position at ISP that could be used to benefit any person, including ICJI, he would need to ensure he complies with these rules.

Indiana Criminal Code

In addition to the Code of Ethics rules described above, the Indiana Criminal Code also prohibits a state employee from knowingly or intentionally having financial interests in or deriving a profit from a contract or purchase connected with an action by *the agency that the employee serves*. The criminal statute can be found at

IC 35-44.1-1-4. Our office usually does not provide advice on the Criminal Code, but we recommend that Trooper Glass familiarize himself with the statute and ensure he complies with it. Please note that subsection (c)(5) permits a state employee to obtain approval from the State Ethics Commission that he or she does not have a conflict of interests under the IC 35-44.1-1-4 or the Code of Ethics. Trooper Glass can request such approval from the State Ethics Commission by requesting a formal advisory opinion as discussed above.

In this case, because of the potential implication of several rules, we would recommend that Trooper Glass seek a Formal Advisory Opinion from the Commission. The Commission's next public meeting is September 12, 2019, and all requests for opinions to be rendered at this meeting need to be submitted to our office by September 3, 2019. More information on formal advisory opinions can be found [here](#).

Thank you again for submitting your question to our office. Please note that this response does not constitute an official advisory opinion. Only the Commission may issue an official advisory opinion. This informal advisory opinion allows us to give you quick, written advice. The Commission will consider that an employee or former employee acted in good faith if it is determined that the individual committed a violation after receiving advice and the alleged violation was directly related to the advice rendered. Also, remember that the advice given is based on the facts as I understand them. If this e-mail misstates facts in a material way, or omits important information, please bring those inaccuracies to my attention.

Sincerely,

Heidi Adair
Office of Inspector General

Please take a few moments to provide feedback on your experience:
<https://www.surveymonkey.com/r/OIGInformals>. *Thank you!*

IC 4-2-6-1 Definitions

Sec. 1. (a) As used in this chapter, and unless the context clearly denotes otherwise:

(7) "Compensation" means any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another.

(10) "Employer" means any person from whom a state officer or employee or the officer's or employee's spouse received compensation.

(11) "Financial interest" means an interest:

(A) in a purchase, sale, lease, contract, option, or other transaction between an agency and any person;
or

(B) involving property or services.

The term includes an interest arising from employment or prospective employment for which negotiations have begun. The term does not include an interest of a state officer or employee in the common stock of a corporation unless the combined holdings in the corporation of the state officer or the employee, that individual's spouse, and that individual's unemancipated children are more than one percent (1%) of the outstanding shares of the common stock of the corporation. The term does not include an interest that is not greater than the interest of the general public or any state officer or any state employee.

(12) "Information of a confidential nature" means information:

(A) obtained by reason of the position or office held; and

(B) which:

(i) a public agency is prohibited from disclosing under IC 5-14-3-4(a);

(ii) a public agency has the discretion not to disclose under IC 5-14-3-4(b) and that the agency has not disclosed; or

(iii) is not in a public record, but if it were, would be confidential.

(13) "Person" means any individual, proprietorship, partnership, unincorporated association, trust, business trust, group, limited liability company, or corporation, whether or not operated for profit, or a governmental agency or political subdivision.

42 IAC 1-5-8 Additional Compensation

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 8. A state officer, employee, or special state appointee shall not solicit or accept compensation for the performance of official duties other than provided for by law.

IC 4-2-6-5.5 Conflict of interest; advisory opinion by commission

Sec. 5.5. (a) A current state officer, employee, or special state appointee may not knowingly do any of the following:

- (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.
- (2) Accept employment or engage in business or professional activity that would require the individual to disclose confidential information that was gained in the course of state employment.
- (3) Use or attempt to use the individual's official position to secure unwarranted privileges or exemptions that are:
 - (A) of substantial value; and
 - (B) not properly available to similarly situated individuals outside state government.

(b) A written advisory opinion issued by the commission stating that an individual's outside employment does not violate subsection (a)(1) or (a)(2) is conclusive proof that the individual's outside employment does not violate subsection (a)(1) or (a)(2).

IC 4-2-6-9 Conflict of economic interests; commission advisory opinions; disclosure statement; written determinations

Sec. 9. (a) A state officer, an employee, or a special state appointee may not participate in any decision or vote, or matter relating to that decision or vote, if the state officer, employee, or special state appointee has knowledge that any of the following has a financial interest in the outcome of the matter:

- (1) The state officer, employee, or special state appointee.
- (2) A member of the immediate family of the state officer, employee, or special state appointee.
- (3) A business organization in which the state officer, employee, or special state appointee is serving as an officer, a director, a member, a trustee, a partner, or an employee.
- (4) Any person or organization with whom the state officer, employee, or special state appointee is negotiating or has an arrangement concerning prospective employment.

(b) A state officer, an employee, or a special state appointee who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

- (1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. The commission shall:
 - (A) with the approval of the appointing authority, assign the particular matter to another person and implement all necessary procedures to screen the state officer, employee, or special state appointee seeking an advisory opinion from involvement in the matter; or

(B) make a written determination that the interest is not so substantial that the commission considers it likely to affect the integrity of the services that the state expects from the state officer, employee, or special state appointee.

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state officer, employee, or special state appointee who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

A written disclosure filed under this subdivision shall be posted on the inspector general's Internet web site.

(c) A written determination under subsection (b)(1)(B) constitutes conclusive proof that it is not a violation for the state officer, employee, or special state appointee who sought an advisory opinion under this section to participate in the particular matter. A written determination under subsection (b)(1)(B) shall be filed with the appointing authority.

IC 4-2-6-10.5 State officers and employees; financial interest in contract made by agency; exceptions

Sec. 10.5. (a) Subject to subsection (b), a state officer, an employee, or a special state appointee may not knowingly have a financial interest in a contract made by an agency.

(b) The prohibition in subsection (a) does not apply to a state officer, an employee, or a special state appointee who:

(1) does not participate in or have contracting responsibility for the contracting agency; and

(2) files a written statement with the inspector general before the state officer, employee, or special state appointee executes the contract with the state agency.

(c) A statement filed under subsection (b)(2) must include the following for each contract:

(1) An affirmation that the state officer, employee, or special state appointee does not participate in or have contracting responsibility for the contracting agency.

(2) An affirmation that the contract:

(A) was made after public notice and, if applicable, through competitive bidding; or

(B) was not subject to notice and bidding requirements and the basis for that conclusion.

(3) A statement making full disclosure of all related financial interests in the contract.

(4) A statement indicating that the contract can be performed without compromising the performance of the official duties and responsibilities of the state officer, employee, or special state appointee.

(5) In the case of a contract for professional services, an affirmation by the appointing authority of the contracting agency that no other state officer, employee, or special state appointee of that agency is available to perform those services as part of the regular duties of the state officer, employee, or special state appointee.

A state officer, employee, or special state appointee may file an amended statement upon discovery of additional information required to be reported.

(d) A state officer, employee, or special state appointee who:

(1) fails to file a statement required by rule or this section; or

(2) files a deficient statement;

before the contract start date is, upon a majority vote of the commission, subject to a civil penalty of not more than ten dollars (\$10) for each day the statement remains delinquent or deficient. The maximum penalty under this subsection is one thousand dollars (\$1,000).

IC 4-2-6-17 Use of state property for other than official business; exceptions; Violations

Sec. 17. (a) Subject to IC 4-2-7-5, a state officer, an employee, or a special state appointee may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. The commission may withhold approval of a policy or rule that violates the intent of Indiana law or the code of ethics, even if Indiana law or the code of ethics does not explicitly prohibit that policy or rule.

(b) An individual who violates this section is subject to action under section 12 of this chapter.

42 IAC 1-5-10 Benefiting from confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 10. A state officer, employee, or special state appointee shall not benefit from, or permit any other person to benefit from, information of a confidential nature except as permitted or required by law.

42 IAC 1-5-11 Divulging confidential information

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 11. A state officer, employee, or special state appointee shall not divulge information of a confidential nature except as permitted by law.

42 IAC 1-5-13 Ghost employment

Authority: IC 4-2-7-3; IC 4-2-7-5

Affected: IC 4-2-7

Sec. 13. A state officer, employee, or special state appointee shall not engage in, or direct others to engage in, work other than the performance of official duties during working hours, except as permitted by general written agency, departmental, or institutional policy or regulation.

Heidi L. Adair

Staff Attorney

Office of the Inspector General

315 W. Ohio St., Room 104

Indianapolis, IN 46202

hadair@ig.in.gov

317-234-3993

From: Adair, Heidi

Sent: Friday, August 9, 2019 3:00 PM

To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>

Subject: RE: Advice

Nila,

Thank you for the additional information. I believe we have enough for the informal advisory opinion now, but I will let you know if that changes. Otherwise you should expect to see the opinion within 1-3 business days.

Thanks again for your patience,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Friday, August 9, 2019 12:19 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice

Heidi,

This is what I have learned. Trooper Caswell and if approved, Trooper Glass, instruct officers on how to be Drug Recognition Experts (DRE) which is a two (2) week class to become DRE certified. Each class has about 40 officers in it and at times a very small number of those officers are from ISP. They also teach non-ISP officers an ARIDE (Advanced Roadside Impaired Driving Enforcement) course. Trooper Caswell, through his own LLC (DC Consulting, LLC) has been receiving compensation from a contractor, Rob Duckworth's LLC (name unknown), and that Rob Duckworth is now the Traffic Safety Director for ICJI. ICJI pays Rob Duckworth's LLC from grant funds and the ICJI funding source is NHITSA 405D Funding Stream.

I am going to try and get more clarification on this and get back with you.

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Friday, August 9, 2019 9:58 AM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hello Nila,

I was wondering if you would be able to provide some clarification on how Trooper Glass will be compensated for providing DRE training. Will he be compensated through a contract with ICJI and receive a separate paycheck from them? If you feel that a phone call would be better for the explanation, feel free to contact me at the number below.

Thank you for your patience!

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Adair, Heidi
Sent: Thursday, August 8, 2019 4:17 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Perfect. Thank you. I will have an informal advisory opinion out to you as soon as possible.

Best,

Heidi L. Adair

Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov
317-234-3993

From: Miller-Cronk, Nila
Sent: Thursday, August 8, 2019 3:27 PM
To: Adair, Heidi <HAdair@ig.IN.gov>
Subject: RE: Advice
Importance: High

Heidi,

Everything we discussed and you have listed below is correct regarding Trooper Glass and his request.

Thanks!

Sincerely,

Nila

Major Nila Miller-Cronk
Indiana State Police
Internal Investigations Section
100 North Senate Avenue, IGCN
Indianapolis, IN 46204-2259
Office (317) 232-8326



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From: Adair, Heidi
Sent: Thursday, August 8, 2019 3:02 PM
To: Miller-Cronk, Nila <NMiller-Cronk@isp.IN.gov>
Subject: RE: Advice

Hi Nila,

Thank you for providing additional information in our phone call. I just wanted to send you a quick recap of our conversation – if you wouldn't mind confirming if this information is correct, I would appreciate it. And feel free to correct me if you notice any factual inaccuracies.

- DRE stands for Drug Recognition Expert
- Trooper Glass is a road trooper but part of his official duties is also to instruct DRE training for ISP personnel
- Trooper Glass does not participate in or have any contracting duties
- He's interested in contracting with ICJI outside of his normal state working hours to provide DRE training. He would work with Trooper Caswell so it would extend beyond ICJI. He may contract with other entities to provide this training as well.
- ISP receives grants through ICJI but this outside employment opportunity doesn't involve the grants
- He wouldn't be conducting DRE training for ICJI or other outside entities on state time or using state equipment/resources

Thank you,

Heidi L. Adair
Staff Attorney
Office of the Inspector General
315 W. Ohio St., Room 104
Indianapolis, IN 46202
hadair@ig.in.gov

From: noreply@formstack.com [<mailto:noreply@formstack.com>]
Sent: Wednesday, August 7, 2019 3:53 PM
To: IG Info <info@ig.IN.gov>; Cooper, Jennifer <JCooper@ig.IN.gov>; Torres, Lori <LTorres@ig.IN.gov>
Subject: Advice

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Formstack Submission For: [ig_2815](#)

Submitted at 08/07/19 3:52 PM

Name: Nila Miller-Cronk

Email: nmiller-cronk@isp.in.gov

Phone: (317) 232-8326

State Agency: Indiana State Police

Description of Your State Occupation: Department's Ethic's Officer and Commander of the Department's Internal Investigation Section

What is your ethics question?: Trp. Stephen Glass has been asked by Marshall Depew (ICJI DRE/SFST Coordinator) to become a contractor with Trooper Dave Caswell in providing educational consulting on the effects and long term deficits of drug use and impairment to reduce the impact of the drug epidemic affecting Indiana. Troopers Dave Caswell and Stephen Glass are DRE Instructors for ISP and have been instructing together for approximately 2 years.

An informal advisory opinion was submitted for Trp. Caswell and a response received from Jennifer Cooper on 1/20/2017. This request for Trooper Glass is similar to that of Trooper Caswell.

Trooper Glass is wishing to assure due diligence that there is no adverse viewing by the Department, such as conflict of interest or ethics violation to serve as a consultant with Trooper Caswell to ICJI as they are both are assigned similar

responsibilities as State Police Employees, Drug Recognition Experts (DRE),
and DRE Instructors.

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Formstack, 11671 Lantern Road, Suite 300, Fishers, IN 46038

Baker, Nathaniel P

From: Turner, Laura A
Sent: Tuesday, October 1, 2019 11:54 AM
To: Cooper, Jennifer
Cc: Miller-Cronk, Nila; Duckworth, Robert; Palin, Jade
Subject: Formal Advisory Opinion for ISP Scheduled for October 10th
Attachments: 2017 to 2019 DRE Coordinator State Contract (002).pdf; 20190930155343268.pdf; Contract_32923 Dedicated Training Resources.pdf

Importance: High

Good Morning Jen!

Rob Duckworth recently received a *Memorandum for Request for a Formal Advisory Opinion*, drafted Nila Miller-Cronk, Ethics Officer of ISP (Memorandum). It was brought to Mr. Duckworth's attention due to some facts in the documentation that were incorrect. I am writing to bring these factual statements to your attention and seek guidance on how to proceed. For your convenience, the Memorandum is attached.

By way of background, Mr. Duckworth currently serves as Traffic Services Director for the Indiana Criminal Justice Institute (ICJI). He started this position on November 26, 2018. Prior to his employment with ICJI, he was the DRE Coordinator for the State of Indiana. As the DRE Coordinator, he had his own LLC, known as Assured Program Solutions, LLC. This LLC ceased operations in November 2018 when Mr. Duckworth was hired by ICJI. AS the DRE Coordinator, he was a contractor for ICJI who was paid through his LLC. His contract with ICJI is attached to this email for your review and reference.

Marshall Depew was hired as the State of Indiana's DRE Coordinator, to replace Mr. Duckworth, in December 2018. Similar to his predecessor, Mr. Depew serves as a contractor for ICJI. He also is paid through his LLC, which is known as Dedicated Training Resources, LLC. Mr. Depew's LLC's contract with ICJI is also attached for your review and convenience.

If Troopers Caswell and Glass would be DRE and ARIDE instructors, they would be subcontractors of Mr. Depew's LLC. ICJI would not directly contract with either Trooper. ICJI only directly contracts with the DRE Coordinator for the State – in this case – Mr. Depew. Trooper Caswell previously received compensation from Mr. Duckworth's LLC, and not from ICJI, while Mr. Duckworth's LLC was under contract with ICJI (prior to Mr. Duckworth's employment with ICJI). Trooper Caswell does not have any contractual relationship with Mr. Duckworth.

These facts are important, since there appear to be factual errors through the documentation accompanying the Memorandum; specifically, page 8 and page 10. These erroneous facts were then used as a basis for the informal advisory opinion issued on August 13th. This is also reference of another opinion issued on January 20, 2017. However, I have not seen or reviewed this opinion.

As Ethics Officer for ICJI, I believe, at a minimum, the record needs corrected. I also seek your guidance on the method preferred by the OIG to clarify these key facts. ICJI would be happy to assist in whatever way it can.

Thank you!
Laura

Laura A. Turner
Deputy General Counsel

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STATE OF INDIANA) INDIANA STATE ETHICS COMMISSION
)SS:
COUNTY OF MARION) CASE: 2019-02-0035

IN RE THE MATTER OF JASON COFFEY

FINAL REPORT OF THE INDIANA STATE ETHICS COMMISSION

Comes now the Ethics Commission for the State of Indiana (“Commission”), and hereby reports its findings of fact, conclusions of law, and sanctions in the above captioned matter.

FINDINGS OF FACT

1. The Respondent and the Inspector General entered into an Agreed Settlement (“Agreement”) which was accepted by the Commission during their September 12, 2019 meeting.
2. Pursuant to the Agreement, the Respondent, a former employee of the Indiana Department of Homeland Security, admitted to a violation of the Indiana Code of Ethics; specifically he admitted to a violation of 42 IAC 1-5-13, the ethics rule pertaining to ghost employment.
3. Pursuant to the Agreement, Respondent admitted that he violated 42 IAC 1-5-13 by engaging in work other than performance of his official duties during his work hours.

CONCLUSIONS OF LAW

Said conduct, admitted and acknowledged by Respondent, constitutes a violation of 42 IAC 1-5-13.

SANCTIONS

The Commission sanctions the Respondent a fine in the amount of Four Thousand Dollars (\$4000.00) to be paid to the “Indiana State Ethics Commission” in installments as agreed upon by both parties in the Agreed Settlement.

Approved on October 10, 2019.

Katherine Noel, Chair

Corinne Finnerty, Commissioner

NOT PRESENT

Priscilla Keith, Commissioner

Sue Anne Gilroy, Commissioner

Kenneth Todd, Commissioner