

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE U.S. DEPARTMENT OF LABOR'S**

**WAGE AND HOUR DIVISION**

**And**

**THE U.S. DEPARTMENT OF AGRICULTURE'S**

**OFFICE OF CONTRACTING AND PROCUREMENT**

**DECEMBER 2024**

## 1.1 Background

This Memorandum of Understanding (MOU) establishes an agreement between the United States Department of Labor, Wage and Hour Division (hereinafter referred to as “DOL/WHD”) and the United States Department of Agriculture, Office of Contracting and Procurement (hereinafter referred to as “USDA/OCP”) that recognizes the value of a collaborative relationship to enhance and maximize compliance with federal procurement standards, including the Federal Acquisition Regulation (FAR) and the USDA Agriculture Acquisition Regulation (AGAR), and enforcement of federal child labor laws. The parties are forming this partnership to encourage greater coordination and information sharing between them to further the goal of ensuring that USDA is partnering with responsible companies that have adequate experience, staffing, production capability, and technical ability to achieve successful contract performance and improving compliance with child labor laws in USDA contracting and procurement. DOL/WHD and USDA/OCP, when referred to collectively in this MOU, will be described as the “parties” or the “agencies.”

DOL/WHD enforces the Federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act. DOL/WHD also enforces the Migrant and Seasonal Agricultural Worker Protection Act, the Employee Polygraph Protection Act, the Family and Medical Leave Act, wage garnishment provisions of the Consumer Credit Protection Act, and a number of employment standards and worker protections as provided in several immigration related statutes. Additionally, DOL/WHD administers and enforces the prevailing wage requirements of the Davis Bacon Act and the Service Contract Act and other statutes applicable to Federal contracts for construction and for the provision of goods and services.

USDA/OCP provides oversight, policy, guidance and coordination of acquisition planning, contracting and execution for all mission areas. One of those mission areas (Marketing and Regulatory Programs) procures subsistence and agricultural commodities. Additionally, the USDA's senior procurement executive is responsible for management direction of the procurement system of the executive agency, including implementation of the unique procurement policies, regulations, and standards of the executive agency.

## **1.2 Purpose**

The purpose of this MOU is to maximize and improve the enforcement of the federal laws administered by DOL/WHd. This agreement will also encourage enhanced law enforcement and greater coordination between the agencies through information sharing, referrals of potential violations, cross-training and joint education and outreach.

This MOU is a voluntary agreement that expresses the good-faith intentions of DOL/WHd and USDA/OCP, is not intended to be legally binding, does not create any contractual obligations, and is not enforceable by any party, private person, or other third party. By entering into this MOU, the agencies do not imply an endorsement or promotion by either agency of the policies, programs, or services of the other. Nothing in this MOU will be interpreted as limiting, superseding, or otherwise affecting the agencies' normal operations or decisions in carrying out their statutory or regulatory duties, or duties under any Executive Order. This MOU also does not limit or restrict the agencies from participating in similar activities or arrangements with other entities.

## **1.3 Authority**

The authority for this MOU is based on the following:

WHd is authorized to administer and enforce programs under several statutes, including: the Fair Labor Standards Act, 29 U.S.C. § 211; the Davis Bacon and Related Acts, 29 CFR § 5.6; the McNamara O'Hara Service Contract Act, 41 U.S.C. § 6707; the Walsh-Healey Public Contracts Act, 41 U.S.C. § 6506; the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1862; the Immigration and Nationality Act, 20 CFR § 655.800, 29 CFR § 501.6, 29 CFR § 503.7; the Employee Polygraph Protection Act, 29 U.S.C. § 2004; and the Family and Medical Leave Act, 29 U.S.C. § 2616.

USDA enters into this MOU in furtherance of the mission of the USDA. 7 U.S.C. § 2201 et seq., 16 U.S.C. § 472 and 7 CFR § 2.24(a)(6).

## 1.4 Exchange of Information

- a) It is the parties' view that the sharing of information in instances of common interest is to the parties' mutual benefit in achieving their respective program goals. DOL/WHH and USDA/OCP may share, whether upon request or upon an agency's own initiative, any information or data that supports each agency's mandates to the extent permitted by law. This may include information obtained by USDA/OCP from or about their contractors, including but not limited to information obtained through the Contract Data Requirements List (CDRL), concluded case information from DOL/WHH, and referrals and other sharing of information relating to alleged violations of the laws enforced by DOL/WHH or alleged violations of contract provisions required by USDA/OCP regulations.
- b) DOL/WHH will provide enforcement information from concluded cases as requested by USDA/OCP in accordance with this MOU where appropriate and not otherwise prohibited by law.
- c) USDA/OCP will provide information related to the following in accordance with this MOU where appropriate and not otherwise prohibited by law: Subcontractor information as submitted by prime contractors in their Contract Data Requirements List (CDRL).
- d) This MOU will be executed in full compliance with the Privacy Act of 1974, the Freedom of Information Act, the Federal Records Act, and any other applicable federal laws. Exchange of information to one another pursuant to this MOU is not considered a public disclosure under the Freedom of Information Act, 5 U.S.C. 552.
- e) Any transfer of information under this MOU shall be made only where not otherwise prohibited by law and in accordance with Section 1.4 (a), (b) and (c) of this MOU. Information transferred between DOL/WHH and USDA/OCP under this MOU shall not be used by the receiving agency for purposes other than the enforcement of the laws or compliance with the regulations that the receiving agency is guided

by or responsible for. This MOU does not prohibit the sharing of information between DOL/WHHD and USDA/OCP by any means other than those identified to the extent that such means are agreed to by both agencies and not prohibited by law.

- f) The following individuals can make requests for information under this section:

For DOL/WHHD [possible designated individuals listed below]

1. The Administrator
2. The Deputy Administrators
3. The Associate Administrator for Regional Enforcement & Support
4. The Associate Administrator for Policy
5. The Associate Administrator for Enterprise Data & Analytics
6. The Regional Administrators
7. The Regional Solicitors of Labor
8. The Associate Solicitor, Division of Fair Labor Standards
9. For USDA/OCP
10. Senior Procurement Executive
11. Head of Contracting Activity
12. Director of Procurement Policy

- g) Outreach, Education, and Training: Where the parties mutually determine it to be appropriate, DOL/WHHD and USDA/OCP shall provide training to each agency's staff on overlapping issues of concern for both agencies. The parties may engage in outreach and public education; participate in joint presentations; share or co-develop training materials and programs; and develop joint policy statements and technical assistance documents when appropriate to facilitate a greater understanding and awareness of the laws the agencies enforce.
- h) All public materials bearing the USDA/OCP name, logo, or seal must be approved in advance by USDA/OCP. All public materials bearing the DOL/WHHD name, logo, or seal must be approved in advance by

DOL/WHHD. Any such materials that include the opinions, results, findings, and/or interpretations of data arising from the result of activities of the party carrying out the activity do not necessarily represent the opinions, interpretation, or policy of the other partner.

#### **1.4.1 Confidentiality and Disclosure of Shared Information**

- a) Confidential information means information that may be privileged or otherwise exempt from disclosure to the public or other unauthorized persons under applicable federal statutes or laws. Confidential information may include: the identity of persons who have given information to the agencies in confidence or under circumstances in which confidentiality can be implied; any employee statements in enforcement files that were obtained under these conditions; internal opinions, policy statements, memoranda, and recommendations of federal employees, including (but not limited to) investigators and supervisors; any records that would otherwise not be subject to disclosure under law as non-final, intra- or inter-agency documents; information or records covered by Freedom of Information Act exemptions or legal privileges, including the attorney-client privilege and the attorney work-product privilege. It also includes personal information protected by any relevant law or regulation; individually identifiable health information; and confidential business information and trade secrets. The sharing of information under this MOU shall not constitute a waiver of any otherwise applicable privilege or protection from discovery or other disclosure.
- b) Confidential information obtained pursuant to this MOU or any process established to implement the MOU, is intended only for use and access by the receiving agencies for the limited purpose of carrying out activities pursuant to the MOU, or as required by applicable laws and regulations. Except as set forth in this paragraph, such information may not be used or disclosed by the receiving party

for other purposes outside of the MOU or any process established to implement the MOU, to other authorities, or any third parties unless the producing party expressly approves such use or disclosure in writing. The information shall not be disclosed externally without a federal court order, a formal request from a federal oversight entity, or the supplying agency's written authorization stating that there is no basis for withholding it, including but not limited to, the confidentiality requirements of the Privacy Act. When responding to a federal court order or formal request or demand from a federal oversight entity for records or information that originated with the other agency, a receiving agency will (i) unless prohibited by law, promptly notify the supplying party in writing of such request or demand; (ii) afford the supplying party a reasonable opportunity to take whatever action it deems appropriate to preserve, protect, or maintain the confidentiality of the information or any privileges associated therewith; (iii) consistent with law, notify the requestor seeking the information that requests for such information should be made directly to the supplying party in accordance with applicable law; and (iv) consistent with law, cooperate fully with the providing agency to preserve, protect, and maintain the confidentiality of the information and any privileges associated therewith.

- c) In the event that there is a public proceeding, such as a trial, in which certain records may be used or testimony of DOL/WHd's employees sought, DOL/WHd requires that USDA/OCP notify DOL/WHd's POC under Section 1.6.
- d) Should either party receive a request or subpoena that would, fairly construed, seek production of privileged information that it received pursuant to this MOU, the party receiving such a request or subpoena shall take reasonable measures, including but not limited to asserting the common interest privilege, to preclude or restrict the production of such information for ten (10) business days, and shall promptly notify

the supplying agency's POC under Section 1.6 that such a request or subpoena has been received, so that the supplying agency may file any appropriate objections or motions, or take any other appropriate steps, to preclude or condition the production of such information.

- e) Neither party shall have authority to waive any applicable privilege or doctrine on behalf of the other party, nor shall any waiver of an applicable privilege or doctrine by the conduct of one party be construed to apply to the other party.
- f) The agencies will notify one another, through the agency POC identified in this MOU, upon commencement of litigation, a hearing, or other proceeding that may involve the release, through subpoena, introduction of written evidence, or testimony, of information exchanged under this MOU.

## **1.5 Information Security**

For information security purposes, information (including paper-based documents and electronic information such as emails) exchanged pursuant to this MOU remains the responsibility of the supplying agency while in transit. USDA and DOL will comply with the following standards and procedures for ensuring the administrative, technical, and physical security of the information exchanged under this MOU and the results of such programs:

- a) The Parties will maintain the highest level of security that is commensurate with the risk and magnitude of the harm that could result from the loss, misuse, disclosure or modification of information accessed or shared pursuant to this MOU.
- b) All modifications of transport, use, or storage of either Parties' data pursuant to this MOU require written request and approval from each Party.
- c) The Parties will comply with the Federal Information Security Management Act (FISMA), 44 U.S.C. § 3541 et seq., as amended by the Federal Information Security Modernization Act of 2014 (Pub. L. 113-283); Federal Information Processing Standards (FIPS), Mandatory Security Processing Standards 199 & 200; related Office of Management and Budget (OMB)



circulars and memoranda, including revised Circular A-130, Management of Federal Information Resources, 81 Fed. Reg. 49689 (July 28, 2016) and Memorandum M-06-16, Protection of Sensitive Agency Information (June 23, 2006); National Institute of Standards and Technology (NIST) directives; and the Federal Acquisition Regulations (FAR). These laws, regulations, and directives provide requirements and guidance for safeguarding Federal information systems and PII used in Federal agency business processes, as well as related reporting requirements.

- d) FISMA requirements apply to all Federal organizations, contractors, or sources that possesses or uses Federal information, or that operate, use, or have access to Federal information systems on behalf of any Other Government Agency (OGA) or Non-Government Organization (NGO). Each agency receiving information under this MOU is responsible for oversight and compliance of its contractors and agents with FISMA requirements.
- e) For information security purposes, after an agency receives information from the supplying agency, the supplying agency retains no responsibility for any security incidents, inadvertent disclosure, or the physical and information technology safeguards in place for protecting that information by the agency that received it.
- f) However, in the event that the agency receiving the information experiences a security breach that results in the suspected or confirmed inadvertent disclosure of the data exchanged pursuant to this MOU, the agency experiencing the incident or disaster will send formal written electronic notification to the supplying agency's designated contact person immediately after detection of the breach. The written electronic notification will describe the security incident or disaster in detail including what data exchanged pursuant to this MOU may have been inadvertently disclosed.
- g) At the conclusion of an investigation and prosecution by either party, the receiving agency will return any and all confidential information to the supplying agency, except as required by law, including the Federal Records Act.

## **1.6 Essential Communications Required Between the Parties to this MOU**

Frequent communications are essential to ensure the successful management and application of the MOU partnership. The parties agree to maintain open lines of communication between designated staff listed below.

To promote collaboration and safeguard the confidentiality of any shared information, the contacts will be kept informed according to the MOU provisions and as necessary to ensure the partnership remains effective and the integrity of shared information remains intact.

1. Point of Contact (POC) for DOL/WHHD: Deputy Administrator, Patricia Davidson, [davidson.patricia@dol.gov](mailto:davidson.patricia@dol.gov)
2. Point of Contact (POC) for USDA: Senior Procurement Executive, Director, Office of Contracting and Procurement, Donald Baker, Jr., [donald.bakerjr@usda.gov](mailto:donald.bakerjr@usda.gov)

## **1.7 Cost Considerations**

Each party is responsible for funding efforts to fulfill their respective roles and responsibilities within this MOU. This agreement does not itself authorize the expenditure or reimbursement of any funds. Nothing in this agreement obligates the parties to expend appropriations or enter into any contract or other obligations. This MOU further does not obligate and will not result in an exchange of funds, personnel, property, or services, nor does this MOU require or authorize any kind of financial commitment on the part of the agencies.

## **1.8 Effect of Memorandum of Understanding**

This MOU does not create or confer any right or benefit, of any kind, either substantive or procedural, that may be enforceable by any third party against the Parties, the United States, or the officers, employees, agents, or associated personnel thereof. Nothing in this MOU is intended to restrict any Party from administering or enforcing any laws within its authority or jurisdiction. Nothing in this MOU shall be interpreted as limiting, superseding, or otherwise affecting either party's normal operations or decisions in carrying out its statutory or regulatory duties, or duties under any Executive Order.

This MOU does not limit or restrict the parties from participating in similar activities or arrangements with other entities. This MOU will be executed in full compliance with the Privacy Act of 1974. Except as expressly provided in this MOU, this MOU constitutes the entire agreement between the parties with respect to the matters set forth herein. This MOU also supersedes all previous agreements between the parties.

## **1.9 Resolution Mechanism**

Should disagreements arise on the interpretation of the provisions of this agreement or amendments and/or revisions thereto, that cannot be resolved at the operating level, the area(s) of disagreement shall be stated in writing by each party and presented to the other party for consideration. If agreement or interpretation is not reached within 30 days, the parties shall forward the written presentation of the disagreement to respective higher officials for appropriate resolution.

## **1.10 Duration of the Memorandum of Understanding**

The terms of this MOU will take effect on the date of the last signature of the parties. Unless terminated by either party upon thirty (30) days of written notice to the other, this MOU shall remain in full force and effect for a period lasting no more than five (5) years. On or before the expiration date, the parties may mutually agree to an extension of this MOU or develop a new MOU. All provisions regarding the protection of records remain in effect as long as either party remains in possession of any such records, or any information derived from the other party.

### **1.11 Signature Authority**

This MOU is executed as of the 11<sup>th</sup> day of December 2024.

The following officials agree to the terms and conditions of this Memorandum of Understanding.

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**Patricia Davidson**

**Deputy Administrator**

**Wage and Hour Division**

**U.S. Department of Labor**

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**Malcom Shorter**

**Chief Acquisition Officer**

**United States Department of Agriculture**

**Office of Contracting and Procurement**