

APPENDIX B: HPHSCC ETHICS GUIDELINES

HPHSCC Ethics Guidelines

The HPHSCC Ethics Guidelines are as follows:

- HPHSCC members shall comply fully with all applicable statutes, laws, and regulations;
- HPHSCC members shall be familiar with the source of the information they maintain access to, to respect the sensitivities and potential harm associated with the compromise of that information;
- HPHSCC members shall handle and distribute sensitive information only in manners permitted by or in keeping with federal policy;
- HPHSCC members shall not use the HPHSCC organization for personal or non-public gain and shall avoid the appearance of using the HPHSCC organization for personal or non-public gain;
- HPHSCC members shall not influence and shall avoid the appearance of influencing or seeking to influence public decisions for non-public benefit;
- HPHSCC members shall not induce any federal official to violate the law and shall avoid the appearance of inducing a federal official to violate the law; and
- HPHSCC members shall not make or give the appearance to make commitments, obligations, or representations improperly binding the United States Government, or the HPHSCC.

Process

A. COMMIT TO ETHICAL CONDUCT

Commitment to doing business honestly, ethically, and with respect for each other is critical to the public-private partnership. This partnership depends on an environment of open communication, empowerment, inclusion, integrity, and trust. These values remain at the forefront of our culture and our business decisions. We must maintain our commitment to these values and continue building a culture that understands what is acceptable and what is not. We should never compromise on issues of integrity. When we are faced with an ethical dilemma, we all have a responsibility to take appropriate action. Regardless of the situation, we must exercise total honesty and integrity in everything we do. As members of public-private partnership, we are responsible for complying with all applicable laws and regulations. Our commitment to doing the right thing will strengthen the partnership and its reputation as a model of public-private cooperation.

B. KNOW THE GUIDELINES

Most people would never knowingly violate a law or policy. Sometimes situations arise where the right thing to do is not clear. HPHSCC members should refer to these Ethics Guidelines for clarification. Long-term, trusting partnerships are built by being honest, open, and fair. These Guidelines reflect this principle. Members of the HPHSCC are expected to know, understand, and abide by these Guidelines. HPHSCC members are expected to watch for potential violations of the Guidelines and to report them to one

of the chairs or the secretariat—whether they occur inside the HPHSCC framework or through external dealings with members’ customers or other persons, businesses, or government organizations. These Guidelines are detailed but cannot address every situation HPHSCC members may possibly face. HPHSCC members are expected to exercise good judgment in decision-making and to seek help when they have questions or concerns not addressed in the Guidelines.

B. SHARE CONCERNS

All HPHSCC member are expected to report promptly any issue or concern they believe, in good faith, may constitute a violation of the Guidelines or their organization’s policies. HPHSCC members are also encouraged to come forward if they encounter a situation that “just does not feel right.” Open communication and empowerment are key elements of trust, and HPHSCC members’ commitment to take action to share concerns will help to ensure an ethical working environment for all public-private sector partnership members.

There are several options available for voicing concerns. If a private sector HPHSCC member has questions about these Guidelines or wants more details about a particular policy, he or she may contact an HPHSCC Officer or an Federal official in the FSLC. Federal government Partnership members should consult their agency/organization’s ethics counselor or legal advisor regarding Federal obligations related to ethics and Executive Branch standards of conduct.

Federal Ethics Legal Considerations

An understanding of Federal Ethics Laws is essential for Federal Officials and for private-sector individuals doing business with the Federal government. These Ethics Guidelines are supported by a host of Federal laws that may be referenced in the U.S. Office of Government Ethics’ (OGE) Compilation of Federal Ethics Laws. Many ethics topics in that compilation—such as conflicts of interest; bribery and gifts; and procurement integrity—warrant specific reference in these Guidelines.

A. CONFLICTS OF INTEREST

Conflicts of interest can be personal or organizational. Personal conflicts of interest can encompass a variety of situations involving use of official position for personal gain. An area that raises particular ethical and business concerns for the Federal government is the “organizational conflicts of interest” or “OCI.” The Government is required to avoid strictly even the appearance of a conflict of interest when it is procuring goods and services. OCI rules detailed in Federal regulations focus upon the unfair competitive advantage that a potential contractor has, or may gain, from previous work performed for, or other involvement with, the Government, or the potential for bias in the evaluation or award of a prospective procurement. OCI concerns are important to the public-private partnership because of the risk posed to the public trust regarding private-sector members in the HPHSCC. To avoid that situation, no private-sector HPHSCC member may be placed or permitted to act in a manner where he or she provides assistance or advice to the government that can result in favor to its product or

service in government procurement. In addition, no private-sector HPHSCC member may be provided access to information that creates an unfair competitive advantage for future government procurements. Failure to address effectively and proactively conflict of interest issues such as these will preclude private-sector entities from being able to compete effectively and will most certainly degrade the public's respect for and trust in the partnership.

B. BRIBES, KICKBACKS, AND ILLEGAL GRATUITIES

Bribery Federal and State bribery laws generally provide that it is a crime to give or promise "anything of value" to a public official (or to a person who has been selected as a public official) with the intent to influence that official to do an official act. Usually bribes are cash payments, however sometimes non-cash payments (such as expensive gifts) are also considered bribes under the law. No HPHSCC member shall offer, solicit, or accept a bribe in connection with any public-private partnership transaction. The partnership is built on mutual trust. HPHSCC members engaging with public partners must be beyond challenge or reproach in connection with every transaction. Violation of the bribery laws can lead to imprisonment, fines, or both, depending on the magnitude of the transaction. Kickbacks HPHSCC members must comply strictly with the Anti-Kickback Act of 1986 and similar state statutes to which they may be subject. A kickback is generally defined as any money, fee, commission, credit, gift, gratuity, thing of value, or compensation of any kind provided, directly or indirectly, by any prime contractor, prime contractor employee, subcontractor or subcontractor employee, for the purpose of improperly obtaining or rewarding favorable treatment in connection with a prime contract or a subcontract relating to a prime contract. A kickback is similar to a bribe, except that, instead of involving an attempt to influence a public official, it extends to obtaining favorable treatment between prime and subcontractors.

The Anti-Kickback Act is a Federal law that prohibits the use of kickbacks by prime contractors and subcontractors who seek the award of Federal government contracts. Violations of the Anti-Kickback Act can result in both criminal and civil penalties against individuals and the company. Gratuities The law regarding gratuities, similar to the bribery law, prohibits giving, offering or promising "anything of value" to a public official. Generally, Federal government employees may never solicit gifts and may not accept gifts or gratuities from individuals and/or companies who seek to do business with the government or that are provided based upon their title or position with very limited exceptions. As distinguished from bribery, however, and to avoid even the appearance of impropriety, the gratuities regulations cover any gift or promise to give, whether or not intent to influence can be demonstrated. Violations of the gratuities law can result in fines and/or imprisonment for companies and individuals, contract termination, suspension or debarment, and assessment of damages. HPHSCC members must comply with their public-sector partners' gift policies even though no contract, procurement, RFP, or RFI may be involved. Questions regarding the offer or acceptance of gifts and gratuities to Federal government officials should be addressed to the

government official's ethics counselor, legal advisor, or to the United States Office of Government Ethics.

C. FEDERAL GOVERNMENT PROCUREMENTS

The Procurement Integrity Act In 1996, Congress passed the Office of Federal Procurement Policy Act, commonly referred to as the Procurement Integrity Act. This law applies to Federal government procurements that exceed \$100,000. It is aptly named Procurement Integrity because it seeks to protect the integrity of the Federal government procurement system. The Act requires that bid and proposal information be protected from disclosure and prohibits improper influence over procurement officials. The Procurement Integrity Act restrictions apply to all contract awards, whether competitive or sole source. Public sector members of the partnership provide Executive Secretariat support services to the Critical Infrastructure Cross-Sector Council (CIC-SC) and several Sector Coordinating Councils (SCCs) when doing so enhances their participation in activities that promote government mission interests. This support is provided through support contracts funded by Federal appropriations. In addition, private sector members provide support to other private-sector members through contracts and other legitimate business arrangements. Because of the complex business, Executive Secretariat support, and CIKR policy coordination relationships involved, disclosure of support contract bid and proposal information to private sector members in the public-private sector environment or the conduct of any industry-to-government business or procurement discussions could easily be perceived as evidence of improper access to or influence over procurement officials and should be strictly avoided. Additionally, the Act places certain post-employment restrictions on Federal government employees involved in procurements.

HPHSCC members must comply with these restrictions when they hire former Government personnel. Violations of the Procurement Integrity Act are criminal and civil offenses, punishable by both imprisonment and fines. Post-Employment Restrictions HPHSCC members cannot offer, and a Federal Government official cannot accept from members, compensation, directly or indirectly, after serving in any of the following capacities in a procurement awarded to the member: procuring contracting officer, source selection authority, member of the source selection evaluation board or head of the finance or technical evaluation teams, program manager, deputy program manager or administrative contracting manager. This ban on compensation applies if the procurement or procurement-related action exceeded ten million dollars (\$10,000,000), and it continues for a period of one year. The one-year compensation ban begins on various dates based on the actual role of the official. Government procurement officials may also be subject to other kinds of post-employment restrictions. Bid or Proposal Information and Source Selection Information Government source selection information, such as procurement plans, technical evaluation plans, or source selection rankings, prepared by an HPHSCC member or rightfully in a member's possession should be protected from unauthorized disclosure, even within the public-private partnership, and marked appropriately. While the member may choose to release its own bid or

proposal information to third parties, it may not solicit or obtain the bid or proposal information of others prior to contract award. In addition to these restrictions, Federal Antitrust law and some state laws also protect companies from improper use of their proprietary and trade secret information. HPHSCC members should only seek access to public domain information about procurements, even after contract award and should never use the public-private partnership framework or relationships developed within the framework as a source for coordination regarding their Federal procurement activities.

D. GOVERNMENT SECURITY

HPHSCC members may maintain facilities authorized by the Federal government to store classified national security information. Access to such information is restricted to those HPHSCC members' employees with proper Federal government clearances and a need to know. All such cleared employees who enter a cleared facility agree to adhere to all stated policies and procedures required to maintain its cleared status. The unauthorized possession, use, or disclosure of classified national security information is punishable under Federal Espionage laws and criminal statutes.

E. LOBBYISTS AND OTHER THIRD PARTIES

Federal laws govern the disclosure of agreements with, and payments to lobbyists and certain third parties. The term "Lobbying" includes influencing or attempting to influence an officer or employee of Congress, or any employee or member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, and the extension, continuation, renewal, amendment, or modification of any Federal contract. HPHSCC members should not, nor should they hire third parties to engage in lobbying on behalf of the HPHSCC regarding the awarding, extension, continuation, renewal, amendment, or modification of any Federal contract.

REVIEW, DISPOSITION, AND DOCUMENTATION PROVISIONS

All new HPHSCC and Cross-Sector Council members must read and acknowledge agreement with these Guidelines. Existing HPHSCC members must annually review and acknowledge agreement as well. Questions regarding ethics issues in the public-private sector environment generally should be addressed to the leadership of the HPHSCC. Similarly, ethics concerns by government members should be addressed to their ethics counselor, legal advisor, or to the Department of Homeland Security's Agency Ethics Official. Suspected violations or infringement of these guidelines may be similarly communicated.