Subpart 324.1—Protection of Individual Privacy

Parent topic: PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

324.103 Procedures for the Privacy Act.

(a) The contracting officer shall review all acquisition request documentation to determine whether the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) are applicable. The Privacy Act requirements apply when a contract or order requires the contractor to design, develop, or operate any Privacy Act system of records on individuals to accomplish an agency function. When applicable, the contracting officer shall include the two Privacy Act clauses required by Federal Acquisition Regulation (FAR) 24.104 in the solicitation and contract or order. In addition, the contracting officer shall include the two FAR Privacy Act clauses, and other pertinent information specified in this subpart, in any modification which results in the Privacy Act requirements becoming applicable to a contract or order.

(b) The contracting officer shall ensure that the statement of work or performance work statement (SOW or PWS) specifies the system(s) of records or proposed system(s) of records to which the Privacy Act and the implementing regulations are applicable or may be applicable. The contracting officer shall send the contractor a copy of 45 CFR part 5b, which includes the rules of conduct and other Privacy Act requirements.

(c) The contracting officer shall ensure that the contract SOW or PWS specifies for both the Privacy Act and the Federal Records Act the disposition to be made of the system(s) of records upon completion of contract performance. The contract SOW or PWS may require the contractor to destroy the records, remove personal identifiers, or turn the records over to the contracting officer. If there is a legitimate need for a contractor to keep copies of the records after completion of a contract, the contractor must take measures, as approved by the contracting officer, to keep the records confidential and protect the individuals' privacy.

(d) For any acquisition subject to Privacy Act requirements, the requiring activity prior to award shall prepare and have published in the Federal Register a “system notice,” describing the Department of Health and Human Services' (HHS) intent to establish a new system of records on individuals, to make modifications to an existing system, or to disclose information in regard to an existing system. The requiring activity shall attach a copy of the system notice to the acquisition plan or other acquisition request documentation. If a system notice is not attached, the contracting officer shall inquire about its status and shall obtain a copy from the requiring activity for inclusion in the contract file. If a notice for the system of records has not been published in the Federal Register, the contracting officer may proceed with the acquisition but shall not award the contract until the system notice is published and the contracting officer verifies its publication.

324.104 Restrictions on Contractor Access to Government or Third Party Information.

The contracting officer shall establish the restrictions that govern the contractor employees' access

to Government or third party information in order to protect the information from unauthorized use or disclosure.

324.105 Contract clauses.

(a) The contracting officer shall insert the clause at 352.224-70, Privacy Act, in solicitations, contracts, and orders that require the design, development, or operation of a system of records to notify the contractor that it and its employees are subject to criminal penalties for violations of the Privacy Act (5 U.S.C. 552a(i)) to the same extent as HHS employees. The clause also requires the contractor to ensure each of its employees knows the prescribed rules of conduct in 45 CFR part 5b and each contractor employee is aware that he or she is subject to criminal penalties for violations of the Privacy Act. These requirements also apply to all subcontracts awarded under the contract or order that require the design, development, or operation of a system of records.

(b) The contracting officer shall insert the clause at 352.224-71, Confidential Information, in solicitations, contracts, and orders that require access to Government or to third party information.