1252.239-91 Records Management.

As prescribed in 1239.7403, insert the following clause:

Records Management (NOV 2022)

(a) *Definition.*

Federal record, as defined in 44 U.S.C. 3301, means all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record:

(1) Includes all DOT records.

(2) Does not include personal materials.

(3) Applies to records created, received, or maintained by Contractors pursuant to a DOT contract.

(4) May include deliverables and documentation associated with deliverables.

(b) *Requirements.*

(1) *Compliance.* Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to 44 U.S.C. chapters 21, 29, 31, and 33, NARA regulations at 36 CFR chapter XII, subchapter B, and those policies associated with the safeguarding of records covered by Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all records, regardless of form or characteristics, mode of transmission, or state of completion.

(2) *Applicability.* In accordance with 36 CFR 1222.32, all data created for Government use and delivered to, or falling under, the legal control of the Government, are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended. Such Federal records shall be managed and scheduled for disposition only as permitted by the Federal Records Act, other relevant statutes or regulations, and DOT Order 1351.28, Departmental Records Management Policy.

(3) *Records maintenance.* While DOT records are in the Contractor's custody, the Contractor is responsible for preventing the alienation or unauthorized destruction of DOT records, including all forms of mutilation. Records may not be removed from the legal custody of DOT or destroyed except in accordance with the provisions of the agency records schedules and with the written concurrence of the DOT or Component Records Officer, as appropriate. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, the Contractor must report the event to the Contracting Officer in accordance with 36 CFR part 1230, Unlawful or Accidental Removal, Defacing, Alteration, or Destruction of Records, for reporting to NARA.

(4) *Unauthorized disclosure.* The Contractor shall notify the Contracting Officer within two hours of discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the contract. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of this information, data, documentary material, records and/or equipment. The Contractor shall not remove material from Government facilities or systems, or facilities or systems operated or maintained on the Government's behalf, without the express written permission of the Contracting Officer. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to DOT control or the Contractor must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the Contracting Officer or address prescribed in the contract. Destruction of records is expressly prohibited unless in accordance with the contract.

(c) *Non-public information.* The Contractor shall not create or maintain any records containing any non-public DOT information that are not specifically authorized by the contract.

(d) *Rights in data.* Rights in data under this contract are set forth in clauses prescribed by FAR part 27 and included in this contract, (*e.g.,* 52.227–14 Rights in Data—General). The Contractor must make any assertion of copyright in the data or other deliverables under this contract and substantiate such assertions. The Contractor must add or correct all limited rights, restricted rights, or copyright notices and take all other appropriate actions in accordance with the terms of this contract and the clauses included herein.

(e) *Notification of third-party access requests.* The Contractor shall notify the Contracting Officer promptly of any requests from a third party for access to Federal records, including any warrants, seizures, or subpoenas it receives, including those from another Federal, State, or local agency. The Contractor shall cooperate with the Contracting Officer to take all measures to protect Federal records, from any unauthorized disclosure.

(f) *Training.* All Contractor employees assigned to this contract who create, work with, or otherwise handle records are required to take DOT-provided records management training. The Contractor is responsible for confirming to the Contracting Officer that training, including initial training and any annual or refresher training, has been completed in accordance with agency policies.

(g) *Subcontract flowdown requirements.*

(1) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph (g), in all subcontracts under this contract, and require written subcontractor acknowledgment of same.

(2) Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.

(End of clause)

Parent topic: Subpart 1252.2—Text of Provisions and Clauses