3452.204-70 Records management.

As prescribed in 3404.770, insert the following clause:

Records Management (OCT 2023)

A. Applicability

This clause applies to all Contractors and subcontractors that receive, create, work with, or otherwise handle Federal records, as defined in paragraph B, regardless of the medium in which the record exists.

B. Definitions

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

“Records inventory,” as used in this clause, means a descriptive listing of each Federal record series or system that a Contractor creates, receives, or maintains in performance of its contract with the Department, together with an indication of its location, retention, custodian, volume, and other pertinent data.

C. Requirements

1. The Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including the Federal Records Act (44 U.S.C. chapters 21, 29, 31, and 33), NARA regulations at 36 CFR chapter XII, subchapter B, including 36 CFR part 1236, and those policies associated with the safeguarding of Federal records covered by the Privacy Act of 1974, as amended (Privacy Act) (5 U.S.C. 552a). These laws, regulations, and policies include the appropriate preservation of all Federal records, regardless of form or characteristics, mode of transmission, or state of completion.

2. In accordance with 36 CFR 1222.32, all data created for U.S. Government use and delivered to, or falling under the legal control of, the U.S. Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act, as amended (FOIA) (5 U.S.C. 552), and the Privacy Act, and must be managed and scheduled for disposition only as permitted by Federal statute or regulation.

3. In accordance with 36 CFR 1222.32, the Contractor shall maintain and manage all Federal records created for U.S. Government use, created during performance of this contract, and/or delivered to, or under the legal control of, the U.S. Government in accordance with Federal law. Electronic Federal records and associated metadata specified for delivery under this contract must be accompanied by sufficient technical documentation to facilitate their understanding and use.

4. (a) The Contractor shall provide a records inventory to the Contracting Officer Representative and Contracting Officer within 60 business days after contract or order award. The Department will review the records inventory for accuracy and accept or reject the records inventory within 60

business days after receipt.

(b) If the Contractor creates, receives, or maintains a Federal record series or system that is not included in the records inventory, the Contractor shall notify the Contracting Officer Representative and Contracting Officer within five business days of the Contractor's creation, receipt, or maintenance of such Federal record series or system, and provide the Contracting Officer with a revised records inventory. The Department will review the records inventory for accuracy and accept or reject the records inventory within 60 business days after receipt.

(c) The Department will periodically review, and may, in its sole discretion, update, the records inventory to ensure that it is current, accurate, and complete. The Department will provide the Contractor with a copy of any such updated records inventory.

5. The U.S. Government reserves the right to inspect, at any time, Contractor and subcontractor policies, procedures, and strategies for ensuring that Federal records are appropriately maintained.

6. The Contractor is responsible for preventing the alienation or unauthorized destruction of Federal records under this contract, including all forms of mutilation. Federal records may not be removed from the legal custody of the Department or destroyed except in accordance with the provisions of this contract and the Federal Records Act. Willful and unlawful destruction, damage, or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. The Contractor shall report any unlawful or accidental removal, defacing, alteration, or destruction of Federal records to the Contracting Officer within one business day.

7. The Contractor shall ensure that the appropriate personnel, administrative, technical, and physical safeguards are established to ensure the security and confidentiality of all Federal records in accordance with this contract and applicable law.

8. The Contractor shall not remove material from U.S. Government facilities or systems, or facilities or systems operated or maintained on the U.S. Government's behalf, without the express prior written authorization of the Contracting Officer.

9. The Contractor shall not create or maintain any Federal records containing any non-public Department information not specified or authorized by this contract.

10. (a) During the term of this contract, the Contractor shall not (i) disclose any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or FOIA (with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor); or (ii) sell any Federal record, or any copy thereof.

(b) After expiration or termination of this contract, the Contractor shall not retain or have access to any Federal record, or any copy thereof, that contains information covered by 32 CFR part 2002 or that is generally protected from public disclosure by an exemption under FOIA with the exception, for the purposes of FOIA, of information that exclusively implicates the exemption 4 interests of the Contractor.

(c) Under no circumstances shall the Contractor destroy Federal records except in accordance with the provisions of this contract and the Federal Records Act.

11. All Contractor employees assigned to this contract who create, work with, or otherwise handle Federal records are required to complete Department-provided records management training. The Contractor is responsible for confirming training has been completed according to Department policies, including initial training and any annual or refresher training.

12. The Contractor is required to notify the Contracting Officer of any contractual relationship (sub-contractor) in support of this contract requiring the disclosure of information, documentary material and/or Federal records generated under, or relating to, contracts. The Contractor (and any sub-contractor) is required to abide by U.S. Government and the Department's guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.

(a) The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph, in all subcontracts requiring the disclosure to a subcontractor of information, documentary material, and/or Federal records generated under, or relating to, the performance of this contract, and require written subcontractor acknowledgement of the same.

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

(End of clause)

Parent topic: Subpart 3452.2—Text of Provisions and Clauses