

Health and Human Services

324.102

(2) Evaluating a prospective contractor's safety and health programs; and

(3) Conducting post-award reviews and surveillance to the extent deemed necessary.

(c) *Initiators.* Initiators of acquisition requests for items described in paragraph (a) of this section shall—

(1) During the preparation of an acquisition plan or other acquisition request documentation, and in the solicitation, ensure that hazardous materials and operations to be used in the performance of the contract are clearly identified; and

(2) During the period of performance—

(i) Apprise the Contracting Officer of any noncompliance with safety and health provisions identified in the contract; and

(ii) Cooperate with the safety officer in conducting review and surveillance activities.

Subpart 323.71—Green Purchasing Requirements

323.7100 Policy.

(a) The HHS guidelines and procedures for “green purchasing” may be found in the HHS Affirmative Procurement Plan (APP), “Purchasing Environmentally Preferable Products and Services at the U.S. Department of Health and Human Services.” The APP encompasses the acquisition and use of designated recycled content, and Energy Star®, Electronic Product Environmental Assessment Tool (EPEAT)-registered, energy-efficient, bio-based, and environmentally preferable products.

(1) ASFR/OGAPA/DA has overall responsibility for monitoring the OPDIVs' implementation of HHS' APP to ensure compliance with Executive Order 13423, “Strengthening Federal Environmental, Energy, and Transportation Management;” the White House Council on Environmental Quality's Implementing Instructions for Executive Order 13423; Section 6002 of the Resource Conservation and Recovery Act of 1976; Section 104 of the Energy Policy Act of 2005; Section 9002 of the Farm Security and Rural Investment Act of 2002; Section 612 of the Clean Air Act of 1990; and FAR *Part 23*.

(2) The OPDIVs, through their designated APP Program Managers, are responsible for establishing the necessary local procedures and appropriate training requirements to ensure effective implementation of the HHS APP.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.

324.000 Scope of subpart.

324.102 General.

324.103 Procedures.

Subpart 324.2—Freedom of Information Act

324.203 Policy.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 486(c).

SOURCE: 74 FR 62398, Nov. 27, 2009, unless otherwise noted.

Subpart 324.1—Protection of Individual Privacy

324.000 Scope of subpart.

This part prescribes policies and procedures that apply requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and *OMB Circular A-130, Revised, November 30, 2000*, to HHS contracts and cites the Freedom of Information Act (5 U.S.C. 552, as amended).

324.102 General.

(a) It is HHS policy to protect the privacy of individuals to the maximum possible extent, while permitting the exchange of records required to fulfill HHS administrative and program responsibilities and its responsibilities for disclosing records to which the general public is entitled under the Freedom of Information Act (5 U.S.C. 552). The Privacy Act of 1974 and the HHS implementation under 45 CFR Part 5b apply “when an agency provides by a contract for the operation by or on behalf of the agency of a system of records to accomplish any agency function * * *.” The key factor is whether an HHS function is involved. Therefore, the Privacy Act requirements apply to an HHS contract when, under the contract, the contractor must maintain or

operate a system of records to accomplish an HHS function.

(e) The Project Officer, and, as necessary, the official designated as the OPDIV's Privacy Act Coordinator and OGC–GLD, shall determine the applicability of the Privacy Act to each proposed acquisition. The Project Officer is required to include a statement in the AP or other acquisition request document indicating whether the Privacy Act is or is not applicable to a proposed acquisition.

(f) Whenever a Contracting Officer is informed that the Privacy Act is not applicable, but the resultant contract will involve the collection of individually identifiable personal data by the contractor, the Contracting Officer shall include provisions to protect the confidentiality of the records and the privacy of individuals identified in the records.

[74 FR 62398, Nov. 27, 2009, as amended at 75 FR 21511, Apr. 26, 2010]

324.103 Procedures.

(a) The Contracting Officer shall review all acquisition request documentation to determine whether the Privacy Act requirements are applicable. The Privacy Act requirements apply when a contract or order will require 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 *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)(1) The Contracting Officer shall identify in the SOW/PWS the system(s) of records to which the Privacy Act and the implementing regulations are applicable.

(2) The Contracting Officer shall include the clause specified in *352.224–70*, Privacy Act, in solicitations, contracts, and orders that involve Privacy Act requirements 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 that each of its employees knows the prescribed rules of conduct and each contractor employee is aware that he/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. 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 specify in the contract SOW/PWS the disposition to be made of the system(s) of records upon completion of contract performance. The contract SOW/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 Project Officer, prior to award, or the COTR, after award, shall prepare and have published in the FEDERAL REGISTER a "system notice," describing 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 Project Officer 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 Project Officer for inclusion in the contract file. If a system notice 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.