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PROHIBITION AGAINST THE USE OF GOVERNMENT EMPLOYEES (FEB 2006)

In accordance with Federal Acquisition Regulation 3.601, contracts are not to be awarded to government employees or a business concern or other organization owned or substantially owned or controlled by one or more government employees. For the purposes of this contract, this prohibition against the use of government employees includes any work performed by the contractor or any of its employees, subcontractors, or consultants.

(End of clause)

[71 FR 2438, Jan. 13, 2006]

2452.204–70 Preservation of, and access to, contract records (tangible and electronically stored information (ESI) formats).

As prescribed in 2404.7001, insert the following clause:

PRESERVATION OF, AND ACCESS TO, CONTRACT RECORDS (TANGIBLE AND ELECTRONICALLY STORED INFORMATION (ESI) FORMATS) (DEC 2012)

(a) For the purposes of this clause—

Contract records means information created or maintained by the contractor in the performance of the contract. Contract records include documents required to be retained in accordance with FAR 4.703 and other information generated or maintained by the contractor that is pertinent to the contract and its performance including, but not limited to: email and attachments, formal and informal correspondence, calendars, notes, reports, memoranda, spreadsheets, tables, telephone logs, forms, survey, books, papers, photographs, drawings, machine-readable materials, and data. Contract records may be maintained as electronically stored information or as tangible materials. Contract records may exist in either final or any interim version (*e.g.*, drafts that have been circulated for official purposes and contain unique information, such as notes, edits, comments, or highlighting). Contract records may be located or stored on the contractor's premises or at off-site locations.

Electronically stored information (ESI) means any contract records that are stored on, or generated by, an electronic device, or contained in electronically accessible media, either owned by the contractor, subcontractor(s), or employees of the contractor or subcontractor(s) regardless of the physical location of the device or media (*e.g.*, offsite servers or data storage).

ESI devices and media include, but are not be limited to:

(1) Computers (mainframe, desktop, and laptop);

(2) Network servers, including shared and personal drives;

(3) Individual email accounts of the contractor's principals, officers, and employees, including all folders contained in each email account such as ''inbox,'' ''outbox,'' ''drafts,'' ''sent,'' ''trash,'' ''archive,'' and any other folders;

(4) Personal data assistants (PDAs);

(5) External data storage devices including portable devices (*e.g.*, flash drive); and

(6) Data storage media (magnetic, *e.g.*, tape; optical, *e.g.*, compact disc, microfilm, etc.).

Tangible materials means contract records that exist in a physical (*i.e.*, non-electronic) state.

(b) If during the period of performance of this contract, HUD becomes, or anticipates becoming, a party to any litigation concerning matters related to records maintained or generated by the Contractor in the performance of this contract, the Contracting Officer may provide the contractor with a written (either hardcopy or email) preservation hold notice and certification of compliance with the preservation hold notice. Upon receipt of the hold notice, the Contractor shall immediately take the following actions—

(1) Discontinue any alteration, overwriting, deletion, or destruction of all tangible materials and ESI.

(2) Preserve tangible materials and ESI. The contractor shall preserve ESI in its ''native'' form to preserve metadata (*i.e.*, creation and modification history of a document).

(3) Identify all individuals who possess or may possess tangible materials and ESI related to this matter, including contractor employees, subcontractors, and subcontractor employees. The contractor shall provide the names of all such individuals via email to the HUD official indicated in the notice.

(4) Document in writing the contractor's efforts to preserve tangible materials and ESI. It may be useful to maintain a log documenting preservation efforts.

(5) Complete the certification of compliance with the preservation hold notice upon receipt and return it to the identified contact person; and

(6) Upon the request of the Contracting Officer, provide the Contracting Officer or other HUD official designated by the Contracting Officer with any of the information described in this clause. The contractor shall immediately confirm receipt of such request. The contractor shall describe in detail any records that the contractor knows or believes to be unavailable and provide a detailed explanation of why they are unavailable, and if known, their location.

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in the contract price, the delivery schedule, or both, and shall modify the contract.

(2) The Contractor must assert its right to an adjustment under this clause within ____ [*Contracting Officer insert period; 30 days if no other period inserted*] from the date of receipt of the Contracting Officer's request made pursuant to paragraph (b)(6) of this clause. However, if the Contracting Officer decides that the facts justify it, the Contracting Officer may receive and act upon a request submitted before final payment of the contract.

(3) Failure to agree to any adjustment shall be a dispute under the ''Disputes'' clause of this contract. However, nothing in this clause shall excuse the contractor from providing the records requested by the Contracting Officer.

(e) The Contractor shall include this clause in all subcontracts.

(End of clause)

Alterate I (DEC 2012) For cost-reimbursement type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one of the following and modify the contract accordingly—

(i) Estimated cost;

(ii) Delivery or completion schedule, or both; (ii) Amount of any fixed fee; or

(iii) Other affected terms.

Alternate II (DEC 2012) For labor-hour or time-and-materials type contracts, substitute the following paragraph (c)(1) for paragraph (c)(1) of the basic clause:

(c)(1) If any request for records pursuant to paragraph (b)(6) of this clause causes an increase in the estimated cost or price or the time required for performance of any part of the work under this contract, or otherwise affects any other terms and conditions of this contract, the Contracting Officer shall make an equitable adjustment in any one or more of the following and will modify the contract accordingly:

(i) Ceiling price;

(ii) Hourly rates;

(iii) Delivery schedule; or

(iv) Other affected terms.

[77 FR 73532, Dec. 10, 2012]

2452.208–71 Reproduction of reports.

As prescribed in 2437.110(b), insert the following clause in solicitations and contracts where the Contractor is required to produce, as an end product, publications or other written materials.

REPRODUCTION OF REPORTS (APR 1984)

In accordance with Title I of the Government Printing and Binding Regulations, printing of reports, data, or other written material, if required herein, is authorized provided that the material produced does not exceed 5,000 production units of any page and that items consisting of multiple pages do not exceed 25,000 production units in aggregate. The aggregate number of production units is determined by multiplying pages times copies. A production unit is one set, size 8½ by 11 inches or less, printed on one side only and in one color. All copy preparation to produce camera ready copy for reproduction must be set by methods other than hot metal typesetting. The reports should be produced by methods employing stencils, masters, and plates which are to be used in single unit duplicating equipment no larger than 11 by 17 inches with a maximum image of 10¾ by 14¼ inches and are prepared by methods or devices that do not utilize reusable contact negatives and/or positives prepared with a camera requiring a darkroom. All reproducibles (camera ready copies for reproduction by photo offset methods) shall become the property of the Government and shall be delivered to the Government with the report, data, or other written materials.

(End of clause)

[53 FR 46538, Nov. 17, 1988. Redesignated at 71 FR 2440, Jan. 13, 2006]

2452.209–70 Potential organizational conflicts of interest.

As prescribed in 2409.507–1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST (FEB 2000)

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR subpart 9.5 for