

DEPARTMENT OF INTERIOR

Example Language for Addressing Records Management Compliance in Contracts

Contracting officials should consult with their Records Officers in selection, addition or deletion of any of the following clauses. Additionally, contracting officers **MUST** add applicable FAR & FIPS to contract language.

RECORDS CONTRACT LANGUAGE - Information Handling and Records Management

1.1 Information Sensitivity

The tasks listed in this contract documentation are expected to contain unclassified sensitive information that could cause harm to constituent and organization interests. The Contractor shall handle all documents in accordance with Federal government and DOI specific requirements. The Contractor must meet the requirements of OMB Circular A-130, Appendix III, Computer Security Act of 1987, Federal Records Act, Freedom of Information Act, Privacy Act and the policies of the DOI. Failure to adhere to these records requirements may be punishable in a Court of Law.

1.2 Information Handling and Disposition

Special Provisions of the Contract

Authorities

Per 36 CFR Part 1222, Subpart 1222.48: All data (records) created for Government use and delivered to, or falling under the legal control of, the Government are Federal records and shall be managed in accordance with records management legislation as codified at 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (5 U.S.C. 552), and the Privacy Act (5 U.S.C. 552a), and shall be scheduled for disposition in accordance with 36 CFR part 1228.

1. Contracts for deliverables that include written, coded, digitized, etc. documents, whose creation, compilation, etc. does not require that contract personnel access government IT equipment and/or government records.
 - a. The Contractor will ensure that all contract personnel requiring access to government facilities for a period longer than 180 days have HSPD-12 compliant identification cards prior to the start of the period of the contract performance, or that the time required to obtain such cards and the cost of obtaining them through the Department of the Interior is factored into the period of performance and cost of the contract.
 - b. The Contractor will treat all reports delivered under this contract as the property of the Federal government for which the Federal government shall have unlimited rights to use, dispose of, or disclose such data contained therein as it determines to be in the public interest.

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- c. The Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.
 - d. The Contractor shall not create or maintain any records containing any government records that are not specifically tied to or authorized by the contract.
 - e. The Department of the Interior (DOI) owns the rights to all data/records produced as part of this contract.
 - f. DOI owns the rights to all electronic information (electronic data, electronic information systems, electronic databases, etc.) and all supporting documentation created as part of this contract. Contractor must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.
 - g. The Contractor is required to obtain the Contracting Officer's Approval prior to engaging in any contractual relationship (sub-Contractor) in support of this contract requiring the disclosure of information, documentary material and/or records generated under, or relating to this contract. The Contractor (and any sub-Contractor) is required to abide by government and agency guidance for protecting sensitive and proprietary information.
2. Contracts for services (and/or deliverables that include written, coded, digitized, etc. documents) requiring access to government IT equipment and/or government records.
- a. The Contractor will ensure that all contract personnel requiring access to government IT equipment and/or government records or access to government facilities for a period longer than 180 days have HSPD-12 compliant identification cards prior to the start of the period of the contract performance, or that the time required to obtain such cards and the cost of obtaining them through the Department of the Interior is factored into the period of performance and cost of the contract.
 - b. The Contractor will treat all documentary materials delivered under this contract as the property of the Federal government for which the Federal government shall have unlimited rights to use, dispose of, or disclose such data contained therein as it determines to be in the public interest.
 - c. The Contractor shall not create or maintain any records that are not specifically tied to or authorized by the contract using government IT equipment and/or government records.
 - d. The Contractor shall not retain, use, sell, or disseminate copies of any deliverable that contains information covered by the Privacy Act of 1974 or that which is generally protected by the Freedom of Information Act.

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e. The Contractor agrees to comply with Federal and Department of the Interior records management policies, including those policies associated with the safeguarding of records covered by the Privacy Act of 1974. These policies include the preservation of ALL records created or received (regardless of format [paper, electronic, etc.] or mode of transmission [email, fax, etc.] or state of completion [drafts, final, etc.] associated with all DOI court orders regarding on-going litigation and records preservation orders. (See 10. below.)

f. No disposition of documents will be allowed without the prior written consent of the Contracting Officer. DOI and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. Records may not be removed from the legal custody of Federal agencies or destroyed without regard to the provisions of agency record schedules.

g. The Department of the Interior (DOI) owns the rights to all data/records produced as part of this contract. All records (in all media, paper and electronic) created or produced in part or in whole are to be maintained for the duration of the contract, made available upon request, and upon termination of the contract are to be turned over to the office/customer. Refer to specified contract deliverables for a general scope of records to be maintained and provided to DOI. Other specific record keeping requirements may be added to the contract on a case by case basis.

h. The Contractor is required to protect all information, documentary materials and records. Letters of Transmittal for deliverables, when used, will be unclassified and will only reference material delivered under separate cover. Letters of Transmittal must include a transmittal or receipt number. Sensitive material must be delivered by a cleared courier, person-to-person, to the COR, by prior appointment only.

i. DOI owns the rights to all electronic information (electronic data, electronic information systems, electronic databases, etc.) and all supporting documentation created as part of this contract. Contractor must deliver sufficient technical documentation with all data deliverables to permit the agency to use the data.

j. Court Orders and Litigation: Contractor employees must comply with all DOI court orders regarding on-going litigation and records preservation orders.

Current records restrictions due to litigation and court orders are:

- a. Cobell v Norton class action lawsuit: Any Indian fiduciary trust records (IFTR) cannot be disposed of and are to be retained permanently. See DOI Departmental Manual, 303 DM 6, Indian Fiduciary Trust Records, dated 9/5/03, for policy and guidance on identifying IFT records.

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- b. All e-mail messages (with all attachments) related to:
 - i. American Indian trust reform;
 - ii. the Cobell v Norton litigation, or
 - iii. administration of Individual Indian Money (IIM) accounts must be printed and filed in the Federal office's official record keeping system and cannot be deleted until receiving notice from the e-mail system administrator that a successful backup has been completed.

- c. Jicarilla Apache Nation and the Pueblo of Laguna – U.S. Court Order, General Obligation to Preserve: “every document, data or tangible thing in its possession, custody or control, containing information that is relevant to, or may reasonably lead to the discovery of information relevant to, the subject matter involved in the pending litigation.”

- k. Should the contractor receive a request for records under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a); the contractor shall forward the request to the Contracting Officer for appropriate action.

- l. The Contractor shall immediately notify the appropriate COR upon discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure is limited to authorized personnel with a need-to-know as described in the delivery/task order. The holder 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 is properly protected. The Contractor shall not remove material from Government sites without the expressed permission of DOI. When no longer required, this information, data, documentary material, records and/or equipment shall be returned to DOI control or held until otherwise directed. Items returned to the Government shall be hand carried or mailed to COR or address prescribed in the delivery/task order. Destruction of records is EXPRESSLY PROHIBITED.

- m. The contractor is required to obtain the Contracting Officer's Approval prior to engaging in any contractual relationship (sub-Contractor) in support of this contract requiring the disclosure of information, documentary material and/or records received under, generated under, or relating to this contract. The Contractor (and any sub-Contractor) is required to abide by government and agency guidance for protecting sensitive and proprietary information.

- n. Upon termination of contract, the contractor shall, within ninety (90) working days from the date of termination, assemble all records, complete all working paper files and transfer such records to a place and location determined by the agency/office. All costs directly associated with the requirements of this provision are reimbursable under the terms of this contract.

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- o. The contractor shall maintain in a separate record or file maintenance system and in a safe and secure manner all records, work papers, documents, information, reports and correspondence gained or developed as a consequence of audit or investigative activities conducted under the contract. All such records shall be made available for monitoring, review and inspection upon request by the Comptroller General of the United States and representatives of the Secretary of the Interior during and upon completion of the audit and at the locations where the records are created or maintained until such time as the provisions of subparagraph 1 are implemented. (30 CFR 227.200(d))

- p. As prescribed in FAR Subpart 4.7, Contractor Records Retention, the contractor shall maintain and make available to the agency and/or the Comptroller General for auditing purposes all records in support of contract negotiation, administration, and audit requirements, regardless of form. Refer to this regulation for specific retention period policy. FAR Subpart 4.7 applies to records generated under contracts that contain one of the following clauses:
 - a. Audit and Records – Sealed Bidding
 - b. Audit and Records – Negotiation