

Health and Human Services

Pt. 324

SOURCE: 80 FR 72151, Nov. 18, 2015, unless otherwise noted.

323.7000 Scope of subpart.

This subpart provides procedures for administering safety and health requirements.

323.7001 Policy.

The contracting officer shall follow the guidance in this subpart when additional requirements for safety and health are necessary for an acquisition.

323.7002 Actions required.

Contracting activities. The contracting officer shall insert the clause at 352.223-70, Safety and Health, or a clause substantially the same, in solicitations and contracts that involve hazardous materials or hazardous operations for the following types of requirements:

- (a) Services or products.
- (b) Research, development, or test projects.
- (c) Transportation of hazardous materials.
- (d) Construction, including construction of facilities on the contractor's premises.

Subpart 323.71—Sustainable Acquisition Requirements

323.7100 Policy.

This subpart provides procedures for sustainable acquisitions and use of the following: Designated recycled content; energy efficient, environmentally preferred, Electronic Product Environmental Assessment Tool (EPEAT)-registered, bio-based, water efficient, non-ozone depleting products and services; and alternate fuel vehicles and fuels. The Department of Health and Human Services (HHS) has designated product and service codes for supplies and services having sustainable acquisition attributes. See FAR part 23.

323.7101 Applicability.

It is HHS policy to include a solicitation provision and to include an evaluation factor for an offeror's Sustainable Action Plan when acquiring sustainable products and services. This applies only to new contracts and orders above the micro-purchase threshold.

Such contracts and orders include, but are not limited to: Office supplies; construction, renovation or repair; building operations and maintenance; landscaping services; pest management; electronic equipment, including leasing; fleet maintenance; janitorial services; laundry services; cafeteria operations; and meetings and conference services. If using a product or service code designated for supplies or services having sustainable acquisition attributes but a review of the requirement determines that no opportunity exists to acquire sustainable acquisition supplies or services, document the determination in the contract file and make note in the solicitation.

323.7102 Procedures.

(a) When required by the solicitation, offerors or quoters must include a Sustainable Acquisition Plan in their technical proposal addressing the environmental products and services for delivery under the resulting contract.

(b) The contracting officer shall incorporate the final Sustainable Acquisition Plan into the contract.

(c) The contracting officer shall ensure that sustainability is included as an evaluation factor in all applicable new contracts and orders when the acquisition utilizes a product or service code designated by HHS for supplies or services having sustainable acquisition attributes.

323.7103 Solicitation Provision.

The contracting officer shall insert the provision at 352.223-71, Instruction to Offerors—Sustainable Acquisition, in solicitations above the micro-purchase threshold when the acquisition utilizes a product or service code designated by HHS as having sustainable acquisition attributes.

PART 324—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 324.1—Protection of Individual Privacy

Sec.

324.103 Procedures for the Privacy Act.

324.104 Restrictions on Contractor Access to Government or Third Party Information.

324.103

324.105 Contract clauses.

Subpart 324.70—Health Insurance Portability and Accountability Act of 1996 (HIPAA)

324.7000 Scope of subpart.

324.7001 Policy on Compliance with HIPAA Business Associate Contract Requirements.

AUTHORITY: 5 U.S.C. 301; 40 U.S.C. 121(c)(2).

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Subpart 324.1—Protection of Individual Privacy

324.103 Procedures for the Privacy Act.

(a) The contracting officer shall review all acquisition request documentation to determine whether the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) are applicable. The Privacy Act requirements apply when a contract or order requires 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 Federal Acquisition Regulation (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) The contracting officer shall ensure that the statement of work or performance work statement (SOW or PWS) specifies the system(s) of records to which the Privacy Act and the implementing regulations are applicable or may be applicable. 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 ensure that the contract SOW or PWS specifies for both the Privacy Act and the Federal Records Act the disposition to be made of the system(s) of records upon completion of contract

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performance. The contract SOW or 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 requiring activity prior to award shall prepare and have published in the FEDERAL REGISTER a "system notice," describing the Department of Health and Human Services' (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 requiring activity 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 requiring activity for inclusion in the contract file. If a notice for the system of records 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.

324.104 Restrictions on Contractor Access to Government or Third Party Information.

The contracting officer shall establish the restrictions that govern the contractor employees' access to Government or third party information in order to protect the information from unauthorized use or disclosure.

324.105 Contract clauses.

(a) The contracting officer shall insert the clause at 352.224–70, Privacy Act, in solicitations, contracts, and orders that require the design, development, or operation of a system of records 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 each of its employees knows the prescribed rules of conduct in 45 CFR part 5b and each contractor employee is aware that he or 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.

(b) The contracting officer shall insert the clause at 352.224-71, Confidential Information, in solicitations, contracts, and orders that require access to Government or to third party information.

Subpart 324.70—Health Insurance Portability and Accountability Act of 1996

324.7000 Scope of subpart.

All individually identifiable health information that is Protected Health Information (PHI), as defined in 45 CFR 160.103 shall be administered in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) implementing regulations at 45 CFR parts 160 and 164 (the HIPAA Privacy, Security, and Breach Notification Rules). The term “HIPAA” is used in this part to refer to title II, subtitle F of the HIPAA statute, at part C of title XI of the Social Security Act, 42 U.S.C. 1320d *et seq.*, section 264 of HIPAA, subtitle D of title XIII of the American Recovery and Reinvestment Act of 2009, and regulations under such provisions.

324.7001 Policy on Compliance with HIPAA business associate contract requirements.

(a) HHS is a HIPAA “covered entity” that is a “hybrid entity” as these terms are defined at sections 160.103 and 164.103 respectively. As such, only the portions of HHS that the Secretary has designated as “health care components” (HCC) as defined at section 164.103, are subject to HIPAA. HHS’ HCCs may utilize persons or entities known as “business associates,” as defined at section 160.103. Generally, “business associate” means a “person” as defined by section 160.103 (including

contractors, and third-party vendors, etc.) if or when the person or entity:

(1) Creates, receives, maintains, or transmits “protected health information”, as the term is defined at section 160.103, on behalf of an HHS HCC to carry out HHS HIPAA “covered functions” as that term is defined at 164.103; or

(2) Provides certain services to an HHS HCC that involve PHI.

(b) Where the Department as a covered entity is required by 45 CFR 164.502(e)(1) and 164.504(e) and, if applicable, sections 164.308(b)(3) and 164.314(a), to enter into a HIPAA business associate contract, the relevant HCC contracting officer, acting on behalf of the Department, shall ensure that such contract meets the requirements at section 164.504(e)(2) and, if applicable, section 164.314(a)(2).

PART 326—OTHER SOCIOECONOMIC PROGRAMS

Subpart 326.5—Indian Preference in Employment, Training, and Subcontracting Opportunities

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- 326.502 Definitions.
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Subpart 326.6—Acquisitions Under the Buy Indian Act

326.600—GENERAL

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326.601—DEFINITIONS

- 326.601 Definitions.

326.602—APPLICABILITY

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- 326.602-2 Restrictions on the use of the Buy Indian Act.

326.603—POLICY

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326.604—PROCEDURES

- 326.604-1 General.