

## WILL THIS CONTRACT CREATE FEDERAL RECORDS?

Ask the question will it include?

- Reports? (Service/Inspection)
- Architect Design Services
- Equipment that retains Veteran Data (Hard Drive/Prints results, etc.)
- Construction/Repair Plans Service
- Preventative Maintenance CBOC
- Contracts-privately ran Contract Care
- Givers
- Temporary Employees
- Contract Employees/Providers
- Training Outside Company Provides
- Legal Dictation/Transcription Services



Fargo VAHCS Records Management Program

### Examples of Contracts that Require Records Management Language

- Any Architect Design Service Contract
- Provider/Temporary Employee Contract
- Shredding Service Contract
- Non-VA Care which creates a report/results
- Coding Contract Transcription
- Contract Stand alone equipment that retains patient information or test results on the Hard Drive. Storage Non-VA
- MRI/CT Contract
- 

How do I add Records Management Language to the Contract? The Records Officer will review the Statement of Work and notify the Acquisition Utilization Specialists if the NARA language needs to be added. Final contracts are reviewed that create, use, store, and/or disposition Federal Records to ensure records management requirements are clearly defined in the contractual document.

Records Management Language for Contracts

# WHAT YOU NEED TO KNOW



Acquisition Utilization Specialists ensure that the Review Process for 6500.6 is sent:

**Information Systems Security Officer**  
[Bob.Berg@va.gov](mailto:Bob.Berg@va.gov) Fargo VAHCS

**Privacy/FOIA Officer**  
[Jamie.Zettel@va.gov](mailto:Jamie.Zettel@va.gov)

**Fargo VAHCS Records Officer**  
[Patricia.Thoen@va.gov](mailto:Patricia.Thoen@va.gov)

VHAFAR Records Management

[VHAFARRecordsManagement@va.gov](mailto:VHAFARRecordsManagement@va.gov)

# RECORDS MANAGEMENT LANGUAGE FOR CONTRACTS

## RECORDS MANAGEMENT OBLIGATIONS

*A. Applicability This clause applies to all Contractors whose employees create, work with, or otherwise handle Federal records, as defined in Section B, regardless of the medium in which the record exists. B. Definitions “Federal Record” as defined in 44 U.S.C. § 3301, includes all recorded information, regardless of form or characteristics, made or received by a Federal agency under Federal law or in connection with the transaction of public business and preserved or appropriate for preservation by that agency or its legitimate successor as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the United States Government or because of the informational value of data in them. The term Federal record: 1. includes [Agency] records. 2. does not include personal materials. 3. applies to records created, received, or maintained by Contractors pursuant to their [Agency] contract. 4. may include deliverables and documentation associated with deliverables. C. Requirements 1. Contractor shall comply with all applicable records management laws and regulations, as well as National Archives and Records Administration (NARA) records policies, including but not limited to the Federal Records Act (44 U.S.C. chs. 21, 29, 31, 33), NARA regulations at 36 CFR Chapter XII Subchapter B, and those policies associated with the safeguarding of records covered by the Privacy Act of 1974 (5 U.S.C. 552a). These policies include the preservation of all 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 Government use and delivered to, or falling under the legal control of, the*

*Government are Federal records subject to the provisions of 44 U.S.C. chapters 21, 29, 31, and 33, the Freedom of Information Act (FOIA) (5 U.S.C. 552), as amended, and the Privacy Act of 1974 (5 U.S.C. 552a), as amended and must be managed and scheduled for disposition only as permitted by statute or regulation.*

*3. In accordance with 36 CFR 1222.32, Contractor shall maintain all records created for Government use or created in the course of performing the contract and/or delivered to, or under the legal control of the Government and must be managed in accordance with Federal law. Electronic records and associated metadata must be accompanied by sufficient technical documentation to permit understanding and use of the records and data.*

*4. [Fargo VA Health Care System] and its contractors are responsible for preventing the alienation or unauthorized destruction of records, including all forms of mutilation. Records may not be removed from the legal custody of [Fargo VA Health Care System] or destroyed except for in accordance with the provisions of the agency records schedules and with the written concurrence of the Head of the Contracting Activity. Willful and unlawful destruction, damage or alienation of Federal records is subject to the fines and penalties imposed by 18 U.S.C. 2701. In the event of any unlawful or accidental removal, defacing, alteration, or destruction of records, Contractor must report to [Fargo VA Health Care System]. The agency must report promptly to NARA in accordance with 36 CFR 1230.*

*5. The Contractor shall immediately notify the appropriate Contracting Officer upon discovery of any inadvertent or unauthorized disclosures of information, data, documentary materials, records or equipment. Disclosure of non-public information is limited to authorized personnel with a need-to-know as described in the [contract vehicle]. The Contractor 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 facilities or systems, or facilities or systems operated or maintained on the Government’s behalf, without the express written permission of the Head of the Contracting Activity. When information, data, documentary material, records and/or equipment is no longer required, it shall be returned to [Fargo VA Health Care System] control or the Contractor must hold it until otherwise directed. Items returned to the Government shall be hand carried, mailed, emailed, or securely electronically transmitted to the Contracting Officer or address prescribed in the [contract vehicle]. Destruction of records is EXPRESSLY PROHIBITED unless in accordance with Paragraph (4).*

*6. 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, contracts. The Contractor (and any sub-contractor) is required to abide by Government and [Fargo VA Health Care System] guidance for protecting sensitive, proprietary information, classified, and controlled unclassified information.*

*7. The Contractor shall only use Government IT equipment for purposes specifically tied to or authorized by the contract and in accordance with [Fargo VA Health Care System] policy.*

*8. The Contractor shall not create or maintain any records containing any non-public [Fargo VA Health Care System] information that are not specifically tied to or authorized by the contract.*

*9. 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 from public disclosure by an exemption to the Freedom of Information Act.*

*10. The [Fargo VA Health Care System] owns the rights to all data and records produced as part of this contract. All deliverables under the contract are the property of the U.S. Government for which [Fargo VA Health Care System] shall have unlimited rights to use, dispose of, or disclose such data contained therein as it determines to be in the public interest. Any Contractor rights in the data or deliverables must be identified as required by FAR 52.227-11 through FAR 52.227-20.*

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

### *D. Flowdown of Requirements to Subcontractors*

*1. The Contractor shall incorporate the substance of this clause, its terms and requirements including this paragraph, in all subcontracts under this [contract vehicle], and require written subcontractor acknowledgment of same.*

*2. Violation by a subcontractor of any provision set forth in this clause will be attributed to the Contractor.*

## FARGO VAHCS RECORDS OFFICER

E-mail:

VHAFARRecordsManagement@va.gov