




Washington, D.C. 20530

November 21, 2006

MEMORANDUM FOR BUREAU PROCUREMENT CHIEFS

FROM: Michael H. Allen 
Procurement Executive

SUBJECT: DOJ Procurement Guidance Document 06-10, Contractor Must Notify
Individuals if Personal Data is Lost or Accessed by Unauthorized Party

The Conference Report for the Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006, includes language encouraging the Attorney General to ensure that every contract the Department enters into that contemplates the exchange of personal data between a contractor and the Department includes a provision requiring that entity to have a security policy in place that contains procedures to promptly notify any individual whose personal information was, or is reasonably believed to have been, lost or acquired by an unauthorized person. The Conference Report notes that notification may be delayed or may not occur if it would impede a law enforcement investigation or jeopardize national security. See H.R. Conf. Rep. No. 272, 109th Cong., 1st Sess. 64 (2005).

The following clause shall be used in all contracts that contemplate the exchange of personal data between a contractor and the Department.

Security of Personal Data

The work to be performed under this contract requires the exchange of personal data between the contractor and the Department. The contractor, by acceptance of or performance on this contract, certifies that it has a security policy in place which contains procedures to promptly notify any individual whose personal information was, or is reasonably believed to have been, lost or acquired by an unauthorized person (subject to the exception below). In any case in which the data that was lost or improperly acquired originated with the Department, was acquired or managed for the Department, or reflects sensitive law enforcement or national security interest in the data, the contractor shall notify the Department contracting officer so that the Department may determine whether notification would impede a law enforcement investigation or jeopardize national security. In such cases, the contractor shall not notify the individuals until it receives further instruction from the Department.

Upon receiving notification from a contractor under this clause, the contracting officer shall contact the component legal counsel. The component legal counsel shall consult with the component security office and the Privacy and Civil Liberties Office as necessary, and provide advice to the contracting officer on whether notification may be made by the contractor.

If you have any questions about the use of this clause, please call Larry Silvis on (202) 616-3754.