

**SPECIAL PROVISIONS--CLASSIFICATION/
SECURITY/FOREIGN CONTROL
SP- 10 REV. 1 3/15/2011**

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1.0 PREAMBLE

These Special Provisions are requirements of any contract in which this Special Provision document is incorporated. These Special Provisions are applicable in their entirety unless specifically deleted or amended in the Contract and are in addition to the General Provisions and other Special Provisions that apply to this Contract. In the event of a conflict between these Special Provisions and the General Provisions, these Special Provisions shall take precedence.

1.1 SUBCONTRACTS

Unless otherwise authorized in writing by Buyer, Contractor shall insert these provisions in all subcontracts under this Contract.

2.0 FOREIGN OWNERSHIP, CONTROL OR INFLUENCE (FOCI)

All offerors must respond to the "Foreign Ownership, Control or Influence (FOCI) Certification" (Attachment A). Return the completed FOCI certification to the Buyer.

One or more offerors may be requested by the buyer to complete the Department of Energy online FOCI application process. Contract award may be delayed until a satisfactory FOCI determination is received from the Department of Energy.

3.0 CLASSIFIED MATTER

3.1 PROTECTING AND CONTROLLING CLASSIFIED MATTER

Classified matter in use shall be constantly attended by, under the control of a person possessing the proper access authorization and a need-to-know, or as stipulated by local DOE policy. The level of protection against loss or compromise afforded to classified matter, regardless of form, shall be commensurate with the level of its

classification. Losses, potential compromises, and unauthorized disclosures of classified matter must be treated as classified information and immediately reported to the Buyer's Security Representative. All activities associated with classified matter must comply with applicable laws, directives, and local policies:

- A. Classification levels shall be used in determining the degree of protection and control required for classified matter.
- B. Access to classified matter shall be limited to persons who possess appropriate access authorization and who require such access (need-to-know) in the performance of official duties. Controls shall be established to detect and deter unauthorized access to classified matter.
- C. Custodians and authorized users of classified matter are responsible for the protection and control of such matter.
- D. Buildings and rooms containing classified matter shall be afforded security measures approved by the Buyer Security Representative.
- E. Security containers required for the storage of classified matter shall be approved by the Buyer Security Representative. Classified matter that is not under the personal control of an authorized person shall be stored in GSA approved security containers equipped with X-07 or X-08 Mas Hamilton combination locks.
- F. Only authorized Hanford Site locksmiths are permitted to work on security containers used for the protection of classified matter.

3.2 USE OF INFORMATION SYSTEMS TO PROCESS CLASSIFIED MATTER

The Contractor must ensure that information systems, i.e., personal computers, microcomputers, networks, data applications, etc., used to collect, create, communicate, compute, disseminate, process, store, and/or control classified information comply with applicable laws, directives, and local policies. The Contractor shall not use information systems to process classified matter without receiving the appropriate written authorization from the Buyer.

3.3 CLASSIFIED INVENTIONS - SPECIAL

- A. The Contractor shall not file or cause to be filed on any invention or discovery conceived or first actually reduced to practice in the course of or under this Contract in any country other than the United States, an application or registration for a patent without first obtaining written approval of the Contracting Officer through the Buyer.
- B. When filing a patent application in the United States on any invention or discovery conceived of or first actually reduced to practice in the course of or under this Contract, the subject matter of which is classified for reasons of security, the Contractor shall observe all applicable security regulations covering the transmission of classified subject matter. When transmitting the patent application to the United States Patent and Trademark Office, the Contractor shall by separate letter identify by agency and number, the contract or contracts that require security classification markings to be placed on the application.
- C. The substance of this Clause shall be included in subcontracts, which cover or are likely to cover classified subject matter.

4.0 FEDERAL ACQUISITION CLAUSES

DEAR 952.204-70, CLASSIFICATION/DECLASSIFICATION (SEPT 1997)

In the performance of work under this Contract, the Contractor or subcontractor shall comply with all provisions of the Department of Energy's regulations and mandatory DOE directives which apply to work involving the classification and declassification of information, documents, or material. In this section, "information" means facts, data, or knowledge itself; "document" means the physical medium on or in which information is recorded; and "material" means a product or substance which contains or reveals information, regardless of its physical form or characteristics. Classified information is "Restricted Data" and "Formerly Restricted Data" (classified under the Atomic Energy Act of 1954, as amended) and "National Security Information" (classified under Executive Order 12958 or prior Executive Orders). The original decision to classify or declassify information is considered an inherently Governmental function. For this reason, only Government personnel may serve as original classifiers, i.e., Federal Government Original Classifiers. Other personnel (Government or Contractor) may serve as derivative classifiers which involves making classification decisions based upon classification guidance which reflect decisions made by Federal Government Original Classifiers.

The Contractor or subcontractor shall ensure that any document or material that may contain classified information is reviewed by either a Federal Government or a Contractor Derivative Classifier in accordance with classification regulations including mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine whether it contains classified information prior to dissemination. For information which is not addressed in classification/declassification guidance, but whose sensitivity appears to warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.

In addition, the Contractor or subcontractor shall ensure that existing classified documents (containing either Restricted Data or Formerly Restricted Data or National Security Information) which are in its possession or under its control are periodically reviewed by a Federal Government or Contractor Derivative Classifier in accordance with classification regulations, mandatory DOE directives and classification/declassification guidance furnished to the Contractor by the Department of Energy to determine if the documents are no longer appropriately classified. Priorities for declassification review of classified documents shall be based on the degree of public and researcher interest and the likelihood of declassification upon review. Documents which no longer contain classified information are to be declassified. Declassified documents then shall be reviewed to determine if they are publicly releasable. Documents which are declassified and determined to be publicly releasable are to be made available to the public in order to maximize the public's access to as much Government information as possible while minimizing security costs.

The Contractor or subcontractor shall insert this Clause in any subcontract which involves or may involve access to classified information.

DEAR 952.204-2 SECURITY REQUIREMENTS (MAY 2002)

- (a) *Responsibility.* It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security regulations and requirements, be responsible for safeguarding all classified information and protecting against sabotage, espionage, loss or theft of the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract, the contractor shall identify the items and types or categories of matter proposed for retention, the reasons for the retention of the matter, and the proposed period of retention. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

- (b) *Regulations.* The contractor agrees to comply with all security regulations and requirements of DOE in effect on the date of award.
- (c) *Definition of classified information.* The term "classified information" means Restricted Data, Formerly Restricted Data, or National Security Information.
- (d) *Definition of restricted data.* The term "Restricted Data" means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (e) *Definition of formerly restricted data.* The term "Formerly Restricted Data" means all data removed from the Restricted Data category under section 142 d. of the Atomic Energy Act of 1954, as amended.
- (f) *Definition of National Security Information.* The term "National Security Information" means any information or material, regardless of its physical form or characteristics, that is owned by, produced for or by, or is under the control of the United States Government, that has been determined pursuant to Executive Order 12356 or prior Orders to require protection against unauthorized disclosure, and which is so designated.
- (g) *Definition of Special Nuclear Material (SNM).* SNM means: (1) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which pursuant to the provisions of Section 51 of the Atomic Energy Act of 1954, as amended, has been determined to be special nuclear material, but does not include source material; or (2) any material artificially enriched by any of the foregoing, but does not include source material.
- (h) *Security clearance of personnel.* The contractor shall not permit any individual to have access to any classified information, except in accordance with the Atomic Energy Act of 1954, as amended, Executive Order 12356, and the DOE's regulations or requirements applicable to the particular level and category of classified information to which access is required.
- (i) *Criminal liability.* It is understood that disclosure of any classified information relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any classified information that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and E.O. 12356.)
- (j) Foreign Ownership, Control or Influence.
 - (1) The Contractor shall immediately provide the cognizant security office written notice of any change in the extent and nature of foreign ownership, control or influence over the Contractor which would affect any answer to the questions presented in the Certificate Pertaining to Foreign Interests, Standard Form 328 or the Foreign Ownership, Control or Influence questionnaire executed by the Contractor prior to the award of this contract. In addition, any notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to the Contracting Officer.
 - (2) If a Contractor has changes involving foreign ownership, control or influence, DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE will consider proposals made by the Contractor to avoid or mitigate foreign influences.
 - (3) If the cognizant security office at any time determines that the Contractor is, or is potentially, subject to foreign ownership, control or influence, the Contractor shall comply with such instructions as the

Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.

- (4) The Contractor agrees to insert terms that conform substantially to the language of this clause, including this paragraph, in all subcontracts under this contract that will require subcontractor employees to possess access authorizations. Additionally, the Contractor must require subcontractors to have an existing DOD or DOE Facility Clearance or submit a completed Certificate Pertaining to Foreign Interests, Standard Form 328, required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Contracting Officer" means the DOE Contracting Officer. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.
- (5) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause or if the Contractor creates a FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.

ATTACHMENT A: FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) CERTIFICATION

Prior to award of a Contract under this solicitation, the Buyer must determine that award of the Contract to the Offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or a significant quantity of Special Nuclear Material in the performance of the Contract. In making the determination, the Buyer may consider a voting trust or other arrangements proposed by the Offeror to mitigate or avoid FOCI. The Buyer may require the Offeror to submit such additional information as deemed pertinent to this determination.

The Offeror shall require any subcontractors having access to classified information or a significant quantity of special Nuclear Material to submit the certification below directly to the Buyer.

Information submitted by the Offeror is to be used solely for purposes of evaluating foreign ownership, control, or influence and shall be treated by the Buyer to the extent permitted by law, as business or financial information submitted in confidence.

Answer the following questions either "yes" or "no". If the answer is yes, furnish in detail on a separate sheet of paper all the information requested in parentheses. Copies of information which responds to these questions and which was submitted to other Government agencies may be submitted as responses to these questions if the earlier responses are accurate, complete, and current.

1. Does a Foreign Interest own or have beneficial ownership in 5% or more of your organization's voting securities?

Yes No

(Identify the percentage of any class of shares or other securities issued which are owned by Foreign Interests, listed by country. If you answer "yes" and have received from an investor a copy of schedule 13D and/or schedule 13G filed by the investors with the Securities and Exchange Commission, you are to attach a copy of schedule 13D and/or schedule 13G)

2. Does your organization own 10% or more of any Foreign Interest?

Yes No

(Furnish the name of the Foreign Interest, address by country, and the percentage owned. Include names and title of officials of your organization who occupy positions with the Foreign Interest, if any.)

3. Do any Foreign Interests have management positions such as Directors, Officers, or Executive Personnel in your organization?

Yes No

(Furnish full information concerning the identity of the Foreign Interest and the position he/she holds in your organization.)

4. Does any Foreign Interest control or influence, or is any Foreign Interest in a position to control or influence the election, appointment, or tenure of any of your directors, officers, or executive personnel?

Yes No

(Identify the Foreign Interest(s) and furnish full details concerning the control or influence.)

5. Does your organization have any contracts, binding agreements, understandings, or arrangements with a Foreign Interest(s) that cumulatively represents 10% or more of your organization's gross income?

Yes No

(Furnish the name of the Foreign Interest, country, nature of agreement or involvement. Agreements include licensing, sales, patent exchange, trade secrets, agency, cartel, partnership, joint venture, proxy, etc. Give overall percentage by country as related to total income and type of services or products in general terms. If you answer "yes" and have received from the Foreign Interest a copy of schedule 13D and/or schedule 13G filed by the Foreign Interest with the securities and exchange commission, you are to attach a copy of schedule 13D and/or schedule 13G.)

6. Is your organization indebted to any Foreign Interests?

Yes No

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(Furnish the amount of indebtedness as related to the current assets of the organization and identify the creditor. Include specifics as to the type of indebtedness and what, if any, collateral, including voting stock, has been furnished or pledged. If any debentures are convertible, specifics about the indebtedness, collateral, if any, and what will be received after conversion are to be furnished.)

7. Does your organization derive any income from Communist Countries?

Yes No

(Discuss in detail any income derived from Communist Countries, including percentage from each such country as related to total income, and the type of services or products involved.)

8. Is 5% or more of any class of your organization's securities held in any method, which does not disclose beneficial owner of equitable title?

Yes No

(Identify each foreign institutional investor holding 5 percent or more of the voting stock. Identification should include the name and address of the investor and percentage of stock held. State whether the investor has attempted to, or has, exerted any management control or influence over the appointment of directors, officers, or other key management personnel, and whether such investors have attempted to influence the policies of the corporation. If you have receive from the investor a copy of the schedule 13D and/or schedule 13G filed by the investor with the Securities and Exchange Commission, you are to attach a copy of schedule 13D and/or schedule 13G.)

9. Does your organization have interlocking directors with Foreign Interests?

Yes No

(Include identifying data on all such directors. If they have a security clearance, so state. Also indicate the name and address of all other corporations with which they serve in any capacity.)

10. Are there any citizens of foreign countries employed by, or who may visit your offices or facilities in a capacity, which may permit them to have access to classified information or a significant quantity of Special Nuclear Material?

Yes No

(Provide complete information by identifying the individuals and the country of which they are citizens.)

11. Does your organization have foreign involvement not otherwise covered in your answers to the above questions?

Yes No

(Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.)

CERTIFICATION

The Offeror certifies that the entries made above are accurate, complete and current to the best of my knowledge and belief and are made in good faith.

The Offeror certifies that the information requested above has previously been submitted to the Buyer as required for a facility security clearance and that the information is accurate, complete and current.

Date Certified

By

Offeror

Title

Address

Signature and Date