



GENERAL PROVISIONS SUPPLEMENT

Security / Classified Information
For the Pacific Northwest National Laboratory
Operated by Battelle Memorial Institute

This General Provisions Supplement is in addition to the General Provision provided with this contract. This Supplement is provided because work to be performed or goods to be delivered under this contract have been identified by Battelle as potentially qualifying for additional requirements and liabilities under the Atomic Energy Act. This Supplement is incorporated into the contract with the same force and effect as all other general provisions applicable to this contract.

Facility Clearance *(cl. 307 - May 2002)*

This solicitation provision applies when Battelle anticipates that the resulting contract will require contractor employee(s) to possess security clearance for access to classified matter or significant quantities of special nuclear materials (ref. 10 CFR Part 710).

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) certification is required when the contract or subcontract to be awarded is expected to require employees to have access authorizations to classified information.

Offerors who have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

- A. Use of Certificate Pertaining to Foreign Interests, Standard Form 328
1. The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package.
 2. Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control or influence and will be treated by DOE, to the extent permitted by law, as business or financial information submitted in confidence.
 3. Following submission of a Standard Form 328 and prior to contract award, the Contractor shall immediately submit to the Battelle Contracts Representative written notification of any changes in the extent and nature of FOCI which

could affect the offeror's answers to the questions in Standard Form 328. Following award of a contract, the Contractor must immediately submit to the Battelle Contracts Representative, written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328. 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 must also be furnished concurrently to the Battelle cognizant security office.

- B. Definitions
1. *Foreign Interest* means any of the following:
 - a. A foreign government, foreign government agency, or representative of a foreign government;
 - b. Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and
 - c. Any person who is not a citizen or national of the United States.
 2. *Foreign Ownership, Control, or Influence (FOCI)* means the situation where the degree of ownership, control, or influence over a Contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.
- C. Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is Battelle and DOE policy that all Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:
1. A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;
 2. A contract or proposed contract containing the appropriate security clauses;

3. Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
 4. An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
 5. A survey conducted no more than 6 months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;
 6. Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and
 7. Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
- D. A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the Battelle 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 special nuclear material in the performance of the contract. The Battelle Contracts Representative may require the offeror to submit such additional information as deemed pertinent to this determination.
- E. A Facility Clearance is required even for contracts that do not require the Contractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- F. Except as otherwise authorized in writing by the Battelle Contracts Representative, the provisions of

any resulting contract must require that the Contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Battelle Contracts Representative for the prime contract.

NOTICE TO OFFERORS - CONTENTS REVIEW (PLEASE REVIEW BEFORE SUBMITTING)

Prior to submitting the Standard Form 328, required by paragraph A.1. of this clause, the offeror should review the FOCI submission to ensure that:

1. The Standard Form 328 has been signed and dated by an authorized official of the company;
2. If publicly owned, the Contractor's most recent annual report, and its most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
3. A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
4. A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
5. A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

The following clauses apply to contracts where the scope of the contract requirement will require contractor employee(s) to possess security clearances for access to classified matter or significant quantities of special nuclear materials (ref. 10 CFR Part 710).

Security (cl. 304 – March 2008)

- A. **Responsibility.** It is the Contractor's duty to safeguard all classified information, special nuclear material, and other Department of Energy (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 Battelle 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 Battelle Contracts Representative, 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 and

Battelle in effect on the date of award, including but not limited to 10 CFR 1045, DOE M 470.4-1, DOE M 470.4-2, DOE M 470.4-3, DOE M 470.4-4, DOE M 470.4-5, DOE M 470.4-6 and DOE M 205.1-4, to include any changes, as applicable.

- 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. Penalties for Security Violations
 - 1. *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.)
 - 2. *Civil liability.* It is understood that the Contractor who violates any rule, regulation or order relating to the safeguarding or security of classified information may be subject to a civil penalty in accordance with the Atomic Energy Act of 1954, as amended, Section 234B (42 U.S.C. 2282 b) and 10 CFR Part 824.
- 3. The Contractor agrees to assume full responsibility for its compliance with applicable security regulations and requirements, and shall indemnify, hold harmless and defend Battelle, its officers, directors and employees for any civil liability under Section 234 B., of the Atomic Energy Act of 1954, as amended, or the implementing regulations, arising out of the activities of the Contractor, its subcontractors, suppliers, agents, employees, and their officers and directors. The Contractor's obligations to indemnify and hold harmless shall expressly include attorney fees and other reasonable costs of defending any action or proceedings instituted under Section 234 B., of the Atomic Energy Act of 1954, as amended, and its implementing regulations
- 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 Battelle.
 - 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 Battelle Contracts Representative 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 Battelle Contracts Representative. For purposes of this clause, subcontractor means any subcontractor at any tier and the term "Battelle Contracts

Representative" means the Battelle individual authorized to enter into legally binding contracts on behalf of Battelle. When this clause is included in a subcontract, the term "Contractor" shall mean Subcontractor and the term "contract" shall mean subcontract.

5. The Battelle Contracts Representative 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 Battelle Contracts Representative 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.
- K. If any noncompliance, deficiency, or violation occurs in the programs or activities subject to this clause, including a lack of appropriate or timely corrective action by the Contractor, the Contractor shall promptly notify the Battelle Operations Center at (509) 375-2400
- L. The Contractor shall insert this clause in any subcontract which involves or may involve access to classified matter.

Classification/Declassification *(cl. 305 – March 2008)*

- A. In the performance of the work under this contract, the Contractor 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, including but not limited to 10 CFR 1045, DOE M 470.4-1, DOE M 470.4-2, DOE M 470.4-3, DOE M 470.4-4, DOE M 470.4-5, DOE M 470.4-6 DOE M 205.1-4, to include any changes, as applicable. 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).
- B. The original decision to classify or declassify information is considered and inherently governmental function. For this reason, only the

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 the Federal Government Original Classifiers.

- C. 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 be warrant classification, the Contractor or subcontractor shall ensure that such information is reviewed by a Federal Government Original Classifier.
- D. 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.
- E. The Contractor or subcontractor shall insert this clause in any subcontract, which involves or may involve access to classified information.