Subpart 904.4—Safeguarding Classified Information Within Industry

Parent topic: PART 904—ADMINISTRATIVE MATTERS

904.401 Definitions.

Access authorization means an administrative determination that an individual is eligible for access to classified information or is eligible for access to, or control over, special nuclear material under the Atomic Energy Act of 1954; Executive Order 12968, Access to Classified Information, dated August 2, 1995; or 10 CFR part 710.

Applicant means an individual who has submitted an expression of interest in employment; who is under consideration by the contractor for employment in a particular position; and who has not removed himself or herself from further consideration or otherwise indicated that he or she is no longer interested in the position.

Classified information or *Classified National Security Information* mean information officially determined to be Restricted Data, Formerly Restricted Data, or Transclassified Foreign Nuclear Information under the Atomic Energy Act of 1954, as amended, or information determined to require protection under Executive Order 13526, Classified National Security Information, dated December 29, 2009.

Counterintelligence means information gathered and activities conducted to protect against espionage, other intelligence activities, sabotage, or assassinations conducted for or on behalf of foreign powers, organizations or persons, or international terrorist activities, but not including personnel, physical, document or communication security programs.

Facility clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material.

Restricted data means all data concerning design, manufacture, or utilization of atomic weapons; production of special nuclear material; or use of special nuclear material in the production of energy, but excluding data declassified or removed from the restricted data category pursuant to Section 142, as amended, of the Atomic Energy Act of 1954 (42 U.S.C. 2162).

Review or background review means a Contractor's assessment of the background of an uncleared applicant or uncleared employee for a position requiring a DOE access authorization prior to selecting that individual for such a position.

904.402 General.

(b) The basis of Department of Energy's (DOE) industrial security requirements is the Atomic Energy Act of 1954, as amended, the DOE Organization Act of 1977, as amended, and Executive Orders 13526 and 12829.

(3) DOE has established a counterintelligence program. All DOE elements and contractors managing

DOE-owned or leased facilities that require access authorizations, should undertake the necessary precautions to ensure that DOE and covered contractor personnel, programs and resources are properly protected from foreign intelligence threats and activities.

(4) DOE security regulations concerning restricted data are codified at 10 CFR part 1045.

(5) Section 234B of the Atomic Energy Act (42 U.S.C. 2282b) requires that DOE contracts include a clause providing for appropriate reductions in fees or amounts paid to the contractor under the contract in the event of violations of any rule, regulation, or order relating to the safeguarding or security of Restricted Data or other classified information. The clause is required for all DOE prime contracts that involve any possibility of contractor access to Restricted Data or other classified information. The clause specifies various degrees of violations and the amount of reduction attributable to each degree. The clause at 952.242-71, Conditional Payment of Fee, Profit, or Other Incentives, shall be used to comply with 42 U.S.C. 2282b (unless the clause at 970.5215-3, Conditional Payment of Fee, Profit, and Other Incentives—Facility Management Contracts is used). See 942.71(d) for the clause's prescription.

(e) Part 927 contains policies and procedures for safeguarding classified information in patent applications and patents.

904.404 Solicitation provision and contract clause.

(d) The security clauses to be used in DOE contracts are found at 952.204. They are:

(1) *Security, 952.204-2.* This clause is required in contracts and subcontracts, the performance of which involves or is likely to involve classified information, access to special nuclear materials or the provision of protective services. This includes contracts awarded under simplified acquisition procedures, as well as National Security Program contracts, under which access to proscribed information is required. Although DOE utilizes the National Industrial Security Program, DOE's security authority is derived from the Atomic Energy Act which contains specific language not found in other agencies' authorities. For this reason, DOE contracts must contain the clause at 952.204-2 rather than the clause at FAR 52.204-2 and Contracting Officers must incorporate DOE Form 470.1 or equivalent.

(2) *Classification/Declassification, 952.204-70.* This clause is to be used in all contracts which involve classified information.

(3) *Sensitive foreign nation controls, 952.204-71.* This clause is required in unclassified research contracts which may involve sharing unclassified information about nuclear technology with certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE Order 142.3, Unclassified Foreign Visits and Assignments Program, or its successor. (The attachment referred to in the clause shall set forth the applicable requirements of the DOE regulations on dissemination of unclassified published and unpublished technical information to foreign nations.)

(4) *Disclosure of information, 952.204-72.* This clause may be used in place of the clauses entitled “Security” and “Classification” in contracts with educational institutions for research work performed in their own institute facilities that are not likely to produce classified information.

(5) *Facility Clearance, 952.204-73.* This solicitation provision should be used in solicitations

expected to result in contracts and subcontracts that require employees to possess access authorizations.

(6) *Computer Security, 952.204-77.* This clause is required in contracts in which the contractor may have access to computers owned, leased or operated on behalf of the Department of Energy.

(7) *Counterintelligence.* The Contracting Officer shall include the clause at 952.204-74, Counterintelligence, in all contracts that include the clauses at 952.204-2, Security Requirements, and 952.204-70, Classification/Declassification.