

**Subpart 904.4—Safeguarding
Classified Information Within
Industry**

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.

Classified Information means information that is classified as Restricted Data or Formerly Restricted Data under the Atomic Energy Act of 1954, as amended, or information determined to require protection against unauthorized disclosure under Executive Order 12958, or prior Executive Orders, which is identified as National Security Information.

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 the design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to section 142 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2162).

[67 FR 14875, Mar. 28, 2002]

904.402 General.

(a) The basis of DOE's industrial security requirements is the Atomic Energy Act of 1954, as amended, and Executive Orders 12958 and 12829.

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

[67 FR 14876, Mar. 28, 2002]

904.404 Solicitation provision and contract clause. [DOE Coverage—Paragraph (d)]

(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. DOE utilizes the National Industrial Security Program but 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.

(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 making unclassified information available to certain sensitive foreign nations. The contractor shall be provided at the time of award the listing of nations referenced in DOE N 142.1. (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

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employees to possess access authorizations.

[49 FR 11941, Mar. 28, 1984; 49 FR 38949, Oct. 2, 1984, as amended at 54 FR 27646, June 30, 1989; 59 FR 24358, May 11, 1994; 67 FR 14871, Mar. 28, 2002; 67 FR 14876, Mar. 28, 2002]

Subpart 904.6 [Reserved]

Subpart 904.7—Contractor Records Retention

904.702 Applicability.

(b) Contracts containing the Safety and Health clause at 952.223-71, the Radiation Protection and Nuclear Criticality clause at 952.223-72, or the Nuclear Safety clause at 952.223-74 must also include the Preservation of Individual Occupational Radiation Exposure Records clause at 952.223-75 which will necessitate retention of records in accordance with schedules contained in applicable DOE Directives in the records management series, rather than those found at FAR 4.7.

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 60 FR 47307, Sept. 12, 1995; 62 FR 2312, Jan. 16, 1997]

Subpart 904.8—Contract Files

904.803 Contents of contract files.

(a) (29) The record copy of the Individual Procurement Action Report shall be included in the file section containing procurement management reports.

904.804-1 Closeout by the office administering the contract (DOE Coverage—paragraphs (a) and (b)).

(a) The Head of the Contracting Activity shall ensure that necessary procedures and milestone schedules are established to meet the requirements of FAR 4.804-1, and that resources are applied to effect the earliest practicable deobligation of excess funds and the timely closeout of all contract files which are physically completed or otherwise eligible for closeout action.

(b) Quick closeout procedures for cost reimbursable and other than firm fixed price type contracts are covered under 48 CFR 42.708.

[49 FR 11941, Mar. 28, 1984, as amended at 62 FR 53757, Oct. 16, 1997]

904.805 Disposal of contract files.

Contract files shall be disposed of in accordance with applicable DOE Order 1324.2. (See current version.)

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994]

Subpart 904.70—Facility Clearance

904.7000 Purpose.

This subpart sets forth the Department of Energy policies and procedures regarding Facility Clearances for contractors and subcontractors that require access to classified information or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for classified activities being performed at the facility and upon a favorable foreign ownership, control, or influence (FOCI) determination.

[67 FR 14876, Mar. 28, 2002]

904.7001 Applicability.

The provisions of this subpart shall apply to all offeror(s), contractors, and subcontractors who will or do have access to classified information or a significant quantity of special nuclear material as defined in 10 CFR part 710. In this subpart, the term “contractor” shall also mean subcontractor at any tier, the term “contract” shall also mean subcontract at any tier, and the term “special nuclear material” shall also mean significant quantity of special nuclear material as defined in 10 CFR part 710.

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994]

904.7002 Definitions.

Contracting officer means the DOE contracting officer.

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

Foreign interest means any of the following:

(1) Foreign government or foreign government agency or instrumentality thereof;