

QDC: Confidentiality of Single Source Contract Regulations Information

DEFCON 804
Edition 03/15

1. In this Condition the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

“Single Source Contract Regulations Information” and “SSCR Information” means any confidential information in any written or other tangible form, which relates to the contract disclosed by the Contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the Single Source Contract Regulations 2014 (SSCR), relating to the Contract. It shall not include information that:

- (1) is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisors or consultants of the Authority, in breach of the provisions of the Contract, the Defence Reform Act 2014 (DRA), the SSCR or of any other obligation of confidence owed to the party to whom the information relates;
- (2) was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Contractor or otherwise prohibited from disclosing the information to the Authority;
- (3) was lawfully in the possession of the Authority before the information was disclosed to it by the Contractor; or
- (4) the parties agree in writing is not confidential or may be disclosed.

2. The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Condition.

3. The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.

4. Where the Authority discloses SSCR Information to any Central Government Body under clause 3 of this Condition, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

5. Where the Authority discloses SSCR Information to its professional advisors or consultants under clause 3 of this Condition, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of this Condition are on the Authority.

6. To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and, in any event, shall provide prior notification to the Contractor of any decision to disclose the SSCR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Condition shall affect the Contractor's rights at law.

7. If, for the purposes of this Contract, the Contractor enters into a sub-contract which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and SSCR, it shall include in that sub-contract the terms set out in the Appendix to this Condition (inserting relevant party names and / or definitions where appropriate).

8. The obligations set out in this Condition shall be the Authority's sole contractual obligations of confidentiality regarding the SSCR Information. Any other provision of the Contract relating to the confidentiality of information provided under or in connection with the Contract, including but not limited to DEFCON 531, shall be construed in such a way as to exclude the SSCR Information from their application.

9. Nothing in this Condition shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.

Appendix To DEFCON 804

Provisions To Be Included In Qualifying Sub-contracts

1. In this Condition the following words and expressions shall have the meaning given to them, except where the context requires a different meaning:

“Single Source Contract Regulations Information” and “SSCR Information” means any confidential information in any written or other tangible form which relates to the sub-contract disclosed by the Sub-contractor to the Authority or obtained by the Authority, and being of a type specified in Regulation 56 (1) (but not including information described in Regulation 56 (3)(h) to (n)) of the Single Source Contract Regulations 2014 (SSCR). It shall not include information that:

- (1) is or becomes generally available to the public other than as a result of its disclosure by the Authority or a Central Government Body, or the professional advisors or consultants of the Authority, in breach of the provisions of the Contract, the Defence Reform Act 2014 (DRA), the SSCR or of any other obligation of confidence owed to the party to whom the information relates;
- (2) was, is or becomes available to the Authority on a non-confidential basis from a person who, to the Authority's knowledge, is not bound by a confidentiality agreement with the Sub-contractor or otherwise prohibited from disclosing the information to the Authority;
- (3) was lawfully in the possession of the Authority before the information was disclosed to it by the Sub-contractor; or
- (4) the parties agree in writing is not confidential or may be disclosed.

2. The Authority shall keep SSCR Information confidential and, except with the prior written consent of the Sub-contractor, shall not disclose or make available the SSCR Information in whole or in part to any person, except as expressly permitted by this Condition.

3. The Authority may disclose the SSCR Information in all circumstances which would be permitted disclosures under section 5 (1) of Schedule 5 of the DRA.

4. Where the Authority discloses SSCR Information to any Central Government Body under clause 3 of this Condition, the Authority shall ensure that the recipient of the SSCR Information is made aware of and asked to respect its confidentiality.

5. Where the Authority discloses SSCR Information to its professional advisors or consultants under clause 3 of this Condition, the Authority shall inform them of the confidential nature of the SSCR Information before disclosure and shall obtain from them enforceable obligations to keep the SSCR Information confidential in terms at least as extensive and binding on them as the terms of this Condition are on the Authority.

6. To the extent permitted by the time for compliance under the Freedom Of Information Act (FOIA), the Authority shall consult the Sub-contractor where the Authority is considering the disclosure of SSCR Information under the FOIA, and,

in any event, shall provide prior notification to the Sub-contractor of any decision to disclose the SSCR Information. The Sub-contractor's representations on disclosure during consultation may not be determinative and the decision whether to disclose SSCR Information in order to comply with the FOIA is a matter in which the Authority shall exercise its own discretion, subject always to the provisions of the FOIA. For the avoidance of doubt, nothing in this Condition shall affect the Sub-contractor's rights at law.

7. Except where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall include in any sub-contract which it enters into for the purposes of this Sub-contract and which it has assessed to be a Qualifying Sub-contract for the purpose of the DRA and the SSCR, equivalent terms to those specified in this Condition.

8. Nothing in this Condition shall affect the Authority's obligations of confidentiality where information is disclosed orally in confidence.