

Single Source Confidentiality of Open Book and Reporting Information

DEFCON 814
Edition 12/14

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

a. "Open Book and Reporting Information (OBR Information)" means all confidential information provided to the Authority under this Contract in accordance with DEFCON 812 and DEFCON 813. 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 advisers or consultants of the Authority, in breach of the provisions of this Condition or of any other obligation of confidence addressed 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 OBR Information confidential and, except with the prior written consent of the Contractor, shall not disclose or make available the OBR Information in whole or in part to any person, except as expressly permitted by this Condition.

3. The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under Section 5 (1) of Schedule 5 of the Defence Reform Act 2014 (DRA) had Schedule 5 of the DRA applied to that information.

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

5. Where the Authority discloses OBR Information to its professional advisers or consultants under clause 3 of this Condition, the Authority shall inform them of the confidential nature of the OBR Information before disclosure and shall obtain from them enforceable obligations to keep the OBR Information confidential in terms at least as extensive and binding on them as 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 OBR Information under the FOIA and, in any event, shall provide prior notification to the Contractor of any decision to disclose the OBR Information. The Contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose OBR 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 clause shall affect the Contractor's rights at law.

7. If, for the purposes of this Contract, the Contractor enters into a sub-contract in which it has been required to include the provisions set out in the Appendices to DEFCONs 812 and 813, it shall include in that sub-contract the terms set out in the Appendix to this Condition (inserting relevant party names where appropriate).

8. The obligations set out in this Condition shall be the Authority's sole contractual obligations of confidentiality regarding the OBR 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 OBR Information from their application.

Appendix to DEFCON 814

Provisions To Be Included In Qualifying Sub-Contracts

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

“Open Book and Reporting Information (OBR Information)” means all confidential information provided to the Authority in accordance with provisions of this Sub-contract incorporated as a requirement of DEFCON 812 or 813 in the Contractor’s contract with the Authority. 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 this Condition or of any other obligation of confidence addressed 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 OBR Information confidential and, except with the prior written consent of the Sub-contractor, shall not disclose or make available the OBR Information in whole or part to any person, except as expressly permitted by this Condition.

3. The Authority may disclose the OBR Information in all circumstances which would be permitted disclosures under Section 5(1) of Schedule 5 of the Defence Reform Act 2014 (DRA) had Schedule 5 of the DRA applied to that information.

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

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

any event, shall provide prior notification to the Sub-contractor of any decision to disclose the OBR Information. The Sub-contractor acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose 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 clause shall affect the Sub-contractor's rights at law.

7. Save where the Authority notifies the Sub-contractor in writing that it is not required, the Sub-contractor shall use reasonable endeavours to include equivalent terms to those specified in this Condition in any sub-contract which it in which it has been required to include equivalent provisions to those of DEFCONs 812 and 813.