

**NOT PROTECTIVELY MARKED**

**Office for Civil Nuclear Security**

**Civil Nuclear Security Supplement No 4**

**Classified contracts with an  
international dimension**

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## Classified contracts with an international dimension

### Background

1. As a consequence of European Union Procurement Directives, any public sector contract valued above specified financial threshold levels must be advertised in the Official Journal of the European Union. An exception to this applies if the contract can be shown to be of national security significance. While it is possible that within the civil nuclear industry some contracts might be described as of overriding national security significance, in general this is unlikely to be the case. Most large contracts will have to be administered in compliance with European law.

2. It is recognised that certain contracts in the civil nuclear industry, may involve information attracting a UK protective marking; albeit one no higher than RESTRICTED. In certain cases it is probable that some of this protectively marked information will fall within the definition of “sensitive nuclear information”, as defined in Section 77(7) of the Anti-terrorism, Crime and Security Act 2001 (ATCS Act) (as amended) and stated at paragraph 9 of CNSS No 1. **Sensitive nuclear information is not to be released or moved beyond UK jurisdiction without the prior approval of OCNS.**

3. The compromise is to conform to European Union Procurement Directives while at the same time safeguarding UK sensitive nuclear information. With careful management this can be achieved.

### Basic Principles

4. In order to be able to bid effectively for a classified contract, it is probable that a prospective tendering party, whether a single firm or a consortium, will need to have access to some protectively marked material. If such information may not leave UK jurisdiction it is, therefore, incumbent upon the firm or consortium engaged in the bidding process to have a company base within the UK. It is through this base that the prospective bidder may seek authority to hold the sensitive nuclear information provided by the Contracting Authority.

5. Tendering firms or consortia are to be formally notified of the requirement that none of the sensitive nuclear information supplied by the Contracting Authority is to be passed to any person or organisation not based within the UK. They are to be made aware of the rules for handling protectively marked information (see CNSS No 2) and of the provisions of Section 79 of the ATCS Act.

6. At the end of the tendering process all information supplied to unsuccessful bidders is to be returned to the Contracting Authority.

### Exception

7. The only exception to a tendering firm or consortium having a base within the UK applies

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to a company based in a country with which the UK has a bi-lateral agreement covering the security of protectively marked information. These countries are few in number at the present time and OCNS can provide information on those countries that fall within the category. In the civil nuclear field, agreements made under the auspices of NATO *do not* apply.

### **Computer Systems**

8. Protectively marked information supplied by the Contracting Authority is not to be placed on the corporate computer network of any firm bidding for a classified contract. While it may be acceptable to place such information on a separate, discrete, computer system, such a system must be wholly within the UK and not connected to another system or the Internet. Before loading any sensitive information on to a discrete system the tendering firms or consortia must be in receipt of formal permission to do so from the Contracting Authority. The latter is also to inform OCNS when granting such permission and include details of the IT structure being utilised.

### **Official Journal of the European Union (OJEU)**

9. A company or organisation within the civil nuclear industry proposing to let a contract involving sensitive nuclear information may use the OJEU to invite expressions of interest from competent companies or consortia. It is recognised that the advertisement in the OJEU must contain sufficient detail for interested parties to understand the basic scope of the proposed contract. It is imperative, however, that the entry in the Journal is framed with care, to ensure that UK sensitive nuclear information is not inadvertently divulged. The company or organisation concerned should ensure that an internal peer review of the proposed entry is conducted before submission, to preclude the disclosure of sensitive information. The Principal Inspector (Information Security) at OCNS will provide further advice when necessary.

10. The entry in the OJEU must also make it clear that companies provided with sensitive UK information as part of the tendering process will be required to conform strictly to the UK rules governing the security of protectively marked information. It must also be clear that the successful tenderer will be subject to relevant security regulation in force in the UK during the term of the contract. If the contract involves the management of a nuclear site the successful tenderer will also be required to comply with the provisions of the approved security plan for that site.

11. In response to the entry in the OJEU it is possible that an interested party may ask for further information. The prospective Contracting Authority may provide only information that attracts no protective marking. The indicative costs of providing the approved security regime may be provided but not details of the regime.

### **Short List & Invitation to Tender (ITT)**

12. Once the deadline for responses to the OJEU entry has passed the prospective Contracting Authority will be engaged in evaluating the expressions of interest received, to decide which of the responding firms or consortia may be preferred. From this a short-list will be drawn up by the

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Contracting Authority and listed firms will be invited to tender for the contract.

13. An ITT will be issued to these firms. At this point it is probable that those receiving an ITT, who wish to tender for the contract, will need more detailed information to enable them to prepare a viable bid. In all cases they must be reminded of their obligation to adhere strictly to UK security rules and procedures.

14. While adhering to the principle that UK sensitive nuclear information may not, in general, leave UK jurisdiction, the Contracting Authority will have to make available to those invited to tender as much information as possible. The information may be made available through “information rooms”, through “e-rooms” or by dispatch of requested information to the bidding firm’s UK office. Information made available through information rooms or e-rooms must remain under the direct control of the Contracting Authority. OCNS must be consulted before an e-room containing protectively marked information is constructed.

15. Those invited to tender for a contract to manage a nuclear facility must also be reminded that they are required to abide by the existing approved security plan for the particular facility. Proposals to change the security regime in place are not to form part of the bid. Tendering firms or consortia should not be given a copy of the approved security plan. This should be made available only after the award of the contract and when relevant security checks or clearances are in place. OCNS will only consider proposed changes to a site security plan after the award of contract.

#### **Security Restrictions and Clearances**

16. The Contracting Authority should engage with OCNS as early in the contract negotiations as possible. Advice may be sought about the possible suitability of particular organisations. There may be security limitations that have to be applied to a particular contract; for example access to a particular type of information may be restricted to UK nationals or some sites may have posts which may only be filled by UK nationals.

17. The Contracting Authority will have a list of which posts affected by a contract which will require a UK security clearance. OCNS should be consulted as early as possible to ensure that during the period covering contract award and negotiations areas such as vetting can be considered. To ensure a smooth handover of responsibility between contracting companies, as much preparatory vetting as possible should be conducted on new or additional staff to be deployed by the successful bidder.

18. No protectively marked information is to be released overseas without the prior approval of OCNS.