DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
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IN REPLY REFER TO
NAVSEAINST 4295.1C
Ser 017/58
13 Sep 96

NAVSEA INSTRUCTION 4295.1C

From: Commander, Naval Sea Systems Command

Subj: CONTROL OF CONTRACTOR COST DATA

Ref: (a) SECNAVINST 5720.42E (R
(b) NAVSEAINST 5720.5 (R
(c) NAVSEAINST 5239.1 (R
(d) NAVSEAINST 4200.2B
(e) NAVSEAINST 4200.19 (A

1. Purpose

a. To provide updated instructions for the control of access to and release of contractor submitted cost data.

b. To reidentify the general scope of contractor submitted information subject to control and limited access.

c. To establish uniform guidelines to protect contractor (A
proprietary cost data.

2. Cancellation. NAVSEAINST 4295.1B of 16 September 88

3. Definition. Contractor cost data is business sensitive (R
information submitted by a contractor, the release of which may cause substantial competitive harm to the contractor or impair the government's ability to obtain necessary information in the future. Examples of contractor cost data might include back up (R
data to a total contract price submitted in connection with a contractor bid or proposal, solicited or unsolicited, such as material costs, labor costs, indirect costs, general and administrative expenses and profit. Also included is such information as vendor quotes, projections of business prospects and objectives, cost data concerning contract performance and contractor cost/schedule reports. (D

4. Discussion

a. The Department of Defense and the Department of the Navy continue to emphasize the need for acquisition cost data. This effort results in the collection of considerable quantities of contractor cost information which is sensitive to the business of the submitting contractor. Businesses have a strong and (R
identifiable interest in maintaining the confidentiality of this information. Concern has been expressed about the control and public release by the government of information considered by the

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R) submitting contractor to be business sensitive. The collection
R) and utilization of this type of cost data is essential to provide for effective management and credible acquisition cost estimating. It is also incumbent upon the Naval Sea Systems
R) Command to take appropriate action to protect contractor cost
R) data from possible inappropriate distribution or use.

R) b. To assure protection against possible inappropriate distribution or use requires limiting access to business sensitive data to individuals with a legitimate need to use it in the acquisition process. Additional protection is afforded the submitter of data by statute. The Trade Secrets Act, 18 U.S.C. 1905, prohibits any government employee from disclosing information which concerns or relates to trade secrets, processes, operations, styles of work, or apparatus, or from identifying confidential statistical data, income, profits, or losses of expenditures of any person, firm, partnership, corporation or association unless disclosure is otherwise authorized by law. Violation of the Act may subject the responsible employee to a fine of up to $1,000 or imprisonment for not more than one year or both; and removal from office or employment. The courts can also prohibit the release of trade secrets and commercial or financial information in accordance with the provisions of the Administrative Procedures Act, 5
R) U.S.C. 701, *et seq*. The appropriate standard for making the determination is whether disclosure of the data is likely to
R) cause substantial competitive harm. Restrictions on release of contractor cost information under the Freedom of Information Act as amended, 5 U.S.C. 552, must be controlled in accordance with the provisions of that Act and reference (a). Reference (b),
R) DFAR 224.202(DODD 5400.7 and DOD 5400.7-R) and DFAR Appendix L (DODD 5400.7) offer additional guidance.

c. The practical application of these requirements necessitates the organization of contractor cost data banks and repositories with controlled access and the necessary indexing and procedures to provide for locating, adding, and revising data. Compliance with the requirements of reference (c) are mandatory where automated data systems will be used. The Cost Estimating and Analysis Division (SEA 017) is the central NAVSEA repository for cost data banks. Costs directly related to contracting (e.g., contractor's cost proposal, claims related data, audit reports, etc.) will be contained in the contract
R) files maintained by SEA 02. Procedures for controlling access to NAVSEA official contract files are contained in reference (d).

R) 5. <u>Scope</u>. The intent of this instruction applies to all NAVSEA
R) personnel and support contractors and encompasses all contractor furnished cost and financial information received during the acquisition process. The exception to this policy is financial information contained in or used in conjunction with the official contract files, which has limited access and is under the authority of the responsible SEA 02 Contracting Officer.
A) Reference (e) provides guidance on restrictions and safeguards

needed to keep business sensitive information from NAVSEA support service contractors. It is not intended that the policy and procedures directed herein shall apply to the processing and release of information under the Freedom of Information Act. (A

6. Action

a. General

(1) Contractor cost data shall be treated as privileged information and handled similarly to "Confidential" matter. In case of on-line computer storage, access to the data must be restricted by use of passwords and authorization codes.

(2) Financial cost data shall be identified as business sensitive when conveyed into viewgraphs, reports, and other formats. All documents prepared using contractor cost information shall contain the following statement: "Business Sensitive Information - Not To Be Released Without Proper Government Approval." (R

(3) Generic use of contractor cost data for purposes such as cost trade-off studies, order of magnitude cost, and like shall have the contractor's name deleted to prevent inadvertent disclosure. In addition, where only relative costs will suffice, values shall be expressed in an arbitrary cost point fashion in lieu of dollars. (R

(4) Person(s) possessing business sensitive information (information believed to be confidential cost or financial business information protected by the Trade Secrets Act) shall inform the submitter if disclosure of the information is being contemplated, and afford ample opportunity for presentation of arguments for nondisclosure. If an agreement cannot be reached on whether the data is releasable, a written determination of the issue will be obtained from the offices designated in paragraph 6c(2) below. If the determination is that the data is protected by statute, it will not be released without the prior written approval of the submitter of the data.

(5) The cognizant Contracts Directorate (SEA 02) Contracting Officer shall ensure that any contract requiring access to or use of business sensitive cost or financial data shall contain a clause designating the use to which the information may be put, along with a statement that the recipient of the information agrees to protect the information against any use other than those designated and against access to any unauthorized person. Whenever business sensitive information is determined to be protected by statute, as provided in paragraph 6a(4) above, and the submitter of the data consents to the use of its information, the clause required by the paragraph will include a statement that the submitter of the data has consented to the use of its data by the recipient party (e.g., other government agents and support service contractors) under the

terms and conditions of the clause. A separate agreement with the same terms and conditions as the clause will be signed by the government, the submitter of the data, and the intended recipient. This agreement will verify: (1) that the submitter consents to the use of its information under the aforementioned conditions, (2) that the recipient agrees to use the information as conditioned, and (3) that the government releases the information with that understanding. Information determined under paragraph 6a(4) not to be protected by statute may be released without the consent of the submitter.

(6) Any items in dispute or question shall be submitted to the Office of Counsel (SEA 00L) for legal review and advice of the legality of releasing the information.

b. Budget Reviews. Special attention should be placed on business sensitive information made available during budget reviews. While information must be made available to permit significant reviews by higher authority, every effort must be made to safeguard cost data against possible compromise and misuse. Necessary review of business sensitive budgetary data within the Department of Defense or the Executive Branch will be permitted without the necessity of the procedures outlined in paragraphs 6a(4) and (5), provided the information is properly authorized for release by SEA 01. In the case of a request for information by the Executive Branch, the cover sheet must contain a statement that the information is business sensitive and is released with the understanding that it will be protected by the recipient in light of 18 U.S.C. 1905 and will not be disclosed to the public. Therefore, the following specific procedures shall apply:

R) (1) Existing Contracts. Where contracts have been awarded, either as base contracts or as priced options, information on contractor performance will be provided to review levels as requested, subject to the guidelines discussed above. Within these guidelines, data to be provided may include:

(a) Manhours at completion.
(b) Labor rates.
(c) Overhead rates.
(d) Material cost.
(e) Projected escalation.
(f) Schedule data.
(g) Target to ceiling percentage.
(h) Contractor's cost data and schedule information.
(i) Explanations of differences between contractor and Project Manager (PM) estimates for any of the above items.

R) (2) Future Contracts. Systems for which contracts have not yet been awarded, excluding priced options, information on estimating assumptions or the prime and major subcontracts will not be provided except for those data elements which are included on the primary budget exhibits.

(a) Data elements currently included in a primary budget exhibit, for example, are as follows: (R

1. Classification of estimate.
2. Request for proposal response date.
3. Assumed award date.
4. Contract type.
5. Base date.
6. Escalation termination date.
7. Escalation requirements.
8. Assumed labor/material split.
9. Allowable overhead rate.

(b) The following data elements will not be provided to higher review levels without the specific approval of SEA 00, SEA 01 and for nuclear programs, SEA 08: (R

1. Projected mandays at completion.
2. Projected overhead rates.
3. Projected labor rates, unless such labor rates are determinable on the basis of a labor contract between the prime contractor and the applicable union.
4. Budgeted profit percentage.
5. Cost estimating relationship which may disclose any of the above.

c. Study Contractors

(1) The fact that a study contractor has a contract with the Navy or the Department of Defense that includes a requirement for cost analysis is not, in itself, justification for NAVSEA personnel to release cost data.

(2) Business sensitive information shall not be released directly to any private study contractor or contractor providing support services without concurrence of the following offices within NAVSEA:

(a) Cognizant Contracts Directorate (SEA 02) Contracting Officer for cost or pricing data submitted in support of a specific proposal or contract.

(b) Cognizant Acquisition Manager for the project cost or financial data.

(c) Cost Estimating and Analysis Division (SEA 017).

(d) Nuclear Propulsion Directorate (SEA 08) for those matters relating to nuclear programs. (R

(D

A) (3) Study contractors who utilize or request proprietary
A) data, must meet the non-disclosure statement requirement prior to
A) release of such data.

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