

Work under this contract can be classified at *up to Top Secret, SCI*. S&T will provide specific security compliance guidance via DD Form 254. The Contractor will also adhere to the requirements in the *National Industrial Security Program Operations Manual (NISPOM)*.

The work to be performed under this contract will involve access to, handling of, and generation of classified information up to and including Top Secret (SCI). The contractor shall appoint a Security Officer at contract award, who shall (i) be responsible for all security aspects of the work performed under this contract, (ii) assure compliance with all Security Regulations of the US Government that apply to the Department of Homeland Security (DHS), and (3) assure compliance with any written instructions from the Contracting Officer, or Security Officers of DHS.

### **H.9.1 General Security Requirements**

The Department of Homeland Security (DHS) has determined that performance of this contract requires that the Contractor, subcontractor(s), vendor(s), etc. (herein known as Contractor), requires access to classified National Security Information (herein known as classified information). Classified information is Government information which requires protection in accordance with Executive Order 12958 as amended, Classified National Security Information, and supplementing directives.

Under provisions of U.S. Law, Title 18, U.S. Code section 499 and 701, the Contractor will abide by the requirements set forth in the DD Form 254, Contract Security Classification Specification, included in the contract, and the National Industrial Security Program Operating Manual (NISPOM) for the protection of classified information at its cleared facility, if applicable, as directed by the Defense Security Service. If the Contractor has access to classified information at a DHS or other Government Facility, it will abide by the requirements set by the agency.

The use of Non-U.S. citizens, including Lawful Permanent Residents (LPRs), is not permitted in the performance of this contract for any position that involves access to or development of any DHS IT system. DHS will consider only U.S. Citizens and LPRs for employment on this contract. DHS will not approve LPRs for employment on this contract in any position that requires the LPR to access or assist in the development, operation, management or maintenance of DHS IT systems. By signing this contract, the contractor agrees to this restriction. In those instances where other non-IT requirements contained in the contract can be met by using LPRs, those requirements shall be clearly described.

Under provisions of U.S. Law, Title 18, U.S. Code section 499 and 701, the Contractor will return any expired DHS issued identification cards and building passes, Government owned property or those of terminated employees to the COTR. If an identification card or building pass is not available to be returned, a report must be submitted to the COTR, referencing the pass or card number, name of individual to whom issued, the last known location and disposition of the pass or card.

## **H.9.2 Security Management**

The COTR, DSS, and the DHS S&T Security Office shall have the right to inspect the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this contract. Should the COTR determine that the Contractor is not complying with the security requirements of this contract, the Contractor will be informed in writing by the Contracting Officer of the proper action to be taken in order to effect compliance with such requirements.

## **H.9.3 Information Technology Security Clearance**

When sensitive government information is processed on Department telecommunications and automated information systems, the Contractor agrees to provide for the administrative control of sensitive data being processed. Contractor personnel must have favorably Suitability adjudicated background investigations commensurate with the defined sensitivity level.

If the Contractor fails to comply with DHS security policy are subject to having their access to Department IT systems and facilities terminated, whether or not the failure results in criminal prosecution. Any person who improperly discloses sensitive information is subject to criminal and civil penalties and sanctions under a variety of laws (e.g., Privacy Act).

## **H.9.4 Information Technology Security Training and Oversight**

All Contractor employees using DHS automated systems or processing DHS sensitive data will be required to receive Security Awareness Training. This training will be provided by the appropriate component agency of DHS.

Contractor employees, who are involved with management, use, or operation of any IT systems that handle sensitive information within or under the supervision of the DHS, shall receive periodic training at least annually in security awareness and accepted security practices and systems rules of behavior. DHS contractor employees, with significant security responsibilities, shall receive specialized training specific to their security responsibilities annually. The level of training shall be commensurate with the individual's duties and responsibilities and is intended to promote a consistent understanding of the principles and concepts of telecommunications and IT systems security. All personnel who access DHS information systems will be continually evaluated while performing these duties. Contractor should be aware of any unusual or inappropriate behavior by personnel accessing systems. Any unauthorized access, sharing of passwords, or other questionable security procedures should be reported to the local DSS and DHS Security Office or Information System Security Officer (ISSO).

#### **H.10 CONFLICT OF INTEREST**

The Contractor shall not employ any person who is an employee or a Contractor of the United States Government, if the employment of that person would create or appear as a conflict of interest.

#### **H.11 REPORTING WASTE, FRAUD, ABUSE AND THEFT**

The Contractor shall notify the Contracting Officer and the COTR of any instances of suspected waste, fraud, abuse, loss, or theft of Contractor or Government-furnished property by employees or subcontractors.

#### **H.12 INTERFACE WITH PARTICIPATING ASSOCIATE CONTRACTORS (PAC)**

The Contractor shall establish and maintain working relationships with associate contractors who can impact the performance of this contract.

#### **H.13 FREEDOM OF INFORMATION ACT (FOIA) AND PRIVACY ACT (PA)**

Any FOIA or PA request received by the Contractor shall be forwarded, no later than the next workday after receipt, to the Contracting Officer and COTR. The COTR will deliver the request to the appropriate unit for processing action. The Contractor shall protect the privacy of all information reported by or about contract employees and shall protect against unauthorized disclosure. The Contractor shall ensure personal privacy data is protected to prevent unauthorized disclosure and ensure proper disposal of records subject to the act.

#### **H.14 HANDLING OF DATA**

(a) In the performance of this contract, it is anticipated that the Contractor may have access to, be furnished, or use the following categories of data (which may be technical data, computer software, administrative, management information, or financial, including cost or pricing):

(1) Data of third parties which the Government has agreed to handle under protective arrangements; and

(2) Government data, the use and dissemination of which, the Government intends to control.

(b) In order to protect the interests of the Government and the owners, licensors and licensees of such data, the Contractor agrees, with respect to any such third party or Government data that is either marked with a restrictive legend, specifically identified in this contract, or otherwise identified in writing by the Contracting Officer as being subject to this clause, to:

- (1) Use, disclose, and reproduce such data only to the extent necessary to perform the work required under this contract;
  - (2) Allow access to such data only to those of its employees that require access for their performance under this contract;
  - (3) Preclude access and disclosure of such data outside the Contractor's organization; and
  - (4) Return or dispose of such data, as the Contracting Officer may direct, when the data is no longer needed for contract performance.
- (c) The Contractor agrees to inform and instruct its employees of its and their obligations under this clause and to appropriately bind its employees contractually to comply with the access, use, disclosure, and reproduction provisions of this clause.
- (d) In the event that data includes a legend that the Contractor deems to be ambiguous or unauthorized, the Contractor may inform the Contracting Officer of such condition. Notwithstanding such a legend, as long as such legend provides an indication that a restriction on use or disclosure was intended, the Contractor shall treat such data pursuant to the requirements of this clause unless otherwise directed, in writing, by the Contracting Officer.
- (e) Notwithstanding the above, the Contractor shall not be restricted in use, disclosure, and reproduction of any data that:
- (1) Is or becomes, generally available or public knowledge without breach of this clause by the Contractor;
  - (2) Is known to, in the possession of, or is developed by the Contractor independently of any disclosure of, or without reference to, proprietary, restricted, confidential, or otherwise protectable data under this clause;
  - (3) Is rightfully received by the Contractor from a third party without restriction;
  - (4) Or is required to be produced by the Contractor pursuant to a court order or other Government action.

If the Contractor believes that any of these events or conditions that remove restrictions on the use, disclosure, and reproduction of the data apply, the Contractor shall promptly notify the Contracting Officer of such belief prior to acting on such belief, and, in any event, shall give notice to the Contracting Officer prior to any unrestricted use, disclosure, or reproduction of such data.

**H.15 CONSENT TO SUBCONTRACT**

In accordance with 52.244-2, Subcontracts, the services of the following subcontractors have been identified as necessary for the performance of this contract:

Subcontractor	Labor Category	Total Hours	Estimated Cost
(b)		(4)	

The subcontractor fully loaded hourly rates for the base and option years are specified as follows:

Subcontractor	Base Year	Option Yr. 1	Option Yr. 2	Option Yr. 3	Option Yr. 4
	(b)	(4)			

Subcontractor	Base Year	Option Yr. 1	Option Yr. 2	Option Yr. 3	Option Yr. 4
(b) (4)					

The estimated costs are subject to change based on work performed by each subcontractor not to exceed the total price of (b) (4) for all subcontractors.

The preceding listing shall constitute the written consent of the Contracting Officer required by Paragraphs I, (d) (e) of the clause at FAR 52.244-2 entitled "Subcontracts." The Contracting Officer's written consent to subcontract is required for:

- (i) services acquired under a cost-reimbursement, time-and-materials or labor-hour type subcontract or agreement;
- (ii) fixed-price contracts that exceed the greater of \$100,000 or 5 percent of the total estimated cost of the contract.

This consent is based upon the information submitted by the prime contractor in accordance with FAR 52.244-2(f)(1)(i) through (vii).

**H.16 KEY PERSONNEL OF FACILITIES (HSAR 3052.215-70) (DEC 2003)**

(a) The personnel or facilities specified below are considered essential to the work being performed under this contract and may, with the consent of the contracting parties, be changed from time to time during the course of the contract by adding or deleting personnel or facilities, as appropriate.

(b) Before removing or replacing any of the specified individuals or facilities, the Contractor shall notify the Contracting Officer, in writing, before the change becomes effective. The Contractor shall submit sufficient information to support the proposed action and to enable the Contracting Officer to evaluate the potential impact of the change on this contract. The Contractor shall not remove or replace personnel or facilities until the Contracting Officer approves the change.

The Key Personnel under this Contract are:

(b) (4)
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(End of clause)

### **H.17 NOTIFICATION OF OWNERSHIP CHANGES**

The Contractor shall make the following notifications in writing:

(1) When the Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, the Contractor shall notify the Contracting Officer within 30 days.

(2) The Contractor shall also notify the Contracting Officer within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

(b) The Contractor shall—

(1) Maintain current, accurate, and complete inventory records of assets and their costs;

(2) Provide the Contracting Officer or designated representative ready access to the records upon request;

(3) Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of the Contractor's ownership changes; and

(4) Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

(c) The Contractor shall include the substance of this clause in all subcontracts under this contract that meet the applicability requirement of FAR 15.408(k).

(End of clause)

### **H.18 CONFIDENTIALITY OF INFORMATION**

(a) To the extent that the work under this contract requires that the Contractor be given access to or be furnished with confidential or proprietary business, technical or financial information or data belonging to other entities which is clearly marked as confidential or proprietary, the Contractor shall, after

receipt thereof, treat such information in confidence and agrees not to appropriate such information to its own use or to disclose such information to third parties unless specifically authorized in writing by the Contracting Officer. The foregoing obligations, however, shall not apply to and the contractor shall have no obligations under this contract to hold information in confidence which, although identified and disclosed as stated herein, has been or is developed by the contractor independently and without benefit of information disclosed hereunder; and:

- (1) Information or data which is in the public domain at the time of receipt by the contractor;
  - (2) Information or data which is published or otherwise subsequently becomes part of the public domain through no fault of the contractor;
  - (3) Information or data which the contractor can demonstrate was already in its possession at the time of receipt thereof ; or
  - (4) Information or data which the contractor can demonstrate was received by it from a third party who did not require the contractor to treat it in confidence.
- (b) The Contractor agrees (1) to enter into an agreement, identical in all material respects to the requirements of paragraph (a) above, with each entity requesting such agreement and that is supplying such confidential or proprietary information or data to the contractor under this contract and (2) to supply a copy of such agreement to the Contracting Officer upon written request.
- (c) This clause shall be included in any subcontract under which there is a requirement or there becomes a requirement that the subcontractor be given access to or be furnished with confidential or proprietary business, technical or financial information or data.

## **H.19 ACCESS RESTRICTION**

The contractor shall restrict access to those individuals with a valid need-to-know who are actually providing services under this contract. Further dissemination to other contractors, subcontractors or other Government agencies and private individuals or organizations is prohibited unless authorized in writing by the Contracting Officer's Technical Representative (COTR).

## **H.20 SPONSORING AGREEMENT**

The Sponsoring Agreement is incorporated herein as Attachment J.1 and made a part of this contract and any resultant task orders.



## **H.21 TRADEMARK**

(a) The Contractor hereby acknowledges that the term Systems Engineering Development Institute™, HS SEDI™, SEDI™ and any other identity of the Federally Funded Research and Development Center established and to be operated under this contract is the intellectual property of the Department of Homeland Security (DHS). It further acknowledges that DHS intends to file for registration of trademark(s) with the U.S. Patent and Trademark Office, using those and any other terms.

(b) The Contractor agrees to follow the direction of DHS in protecting DHS's interest in the intellectual property discussed in paragraph (a) of this clause and agrees to use the ™ symbol in association with the Systems Engineering Development Institute™ FFRDC, recognizing DHS's common law interest in protecting that trademark until registration issues unless otherwise directed by the DHS Contracting Officer.

(c) The Contractor agrees that it shall not seek registration or assert any trademark interest in any product or service first produced under this contract without the prior written approval of the DHS Contracting Officer.

## **H.22 DCAA**

DCAA will have cognizance to negotiated provisional and final indirect rates.

## **H.23 DOCUMENTS INCORPORATED BY REFERENCE**

The following documents are incorporated by reference and made a part of this contract:

- Contractor's Small Business Subcontracting Plan
- DHS Certification and Accreditation Guide, Version 5.0 dated October 1, 2008

**[End of Section H]**

**SECTION I**

**CONTRACT CLAUSES**

**I.1 CONTRACT CLAUSES INCORPORATED BY REFERENCE**

The following contract clauses are incorporated by reference in accordance with the clause at FAR 52.252-2, CLAUSES INCORPORATED BY REFERENCE (FEB 1998) with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. However, the full text clauses may be accessed electronically at [www.acquisition.gov](http://www.acquisition.gov)

<b><u>NUMBER</u></b>	<b><u>TITLE</u></b>	<b><u>DATE</u></b>
52.202-1	DEFINITIONS	JUL 2004
52.203-3	GRATUITIES	APR 1984
52.203-5	COVENANT AGAINST CONTINGENT FEES	APR 1984
52.203-6	RESTRICTIONS ON SUBCONTRACTOR SALES TO THE GOVERNMENT	SEP 2006
52.203-7	ANTI-KICKBACK PROCEDURES	JUL 1995
52.203-8	CANCELLATION, RESCISSION, AND RECOVERY OF FUNDS FOR ILLEGAL OR IMPROPER ACITIVITY	JAN 1997
52.203-10	PRICE OR FEE ADJUSTMENT FOR ILLEGAL OR IMPROPER ACTIVITY	JAN 1997
52.203-12	LIMITATION ON PAYMENTS TO INFLUENCE CERTAIN FEDERAL TRANSACTIONS	SEP 2007
52.203-13	CONTRACTOR CODE OF BUSINESS ETHICS AND CONDUCT	DEC 2008
52.204-2	SECURITY REQUIREMENTS	AUG 1986
52.204-7	CENTRAL CONTRACTOR REGISTRATION	APR 2008
52.204-8	ANNUAL REPRESENTATIONS AND CERTIFICATIONS	JAN 2006
52.204-9	PERSONAL IDENTITY VERIFICATION OF CONTRACTOR PERSONNEL	SEP 2007
52.209-6	PROTECTING THE GOVERNMENT'S INTEREST WHEN SUBCONTRACTING WITH CONTRACTORS DEBARRED, SUSPENDED OR PROPOSED FOR DEBARMENT	SEP 2006
52.215-2	AUDIT AND RECORDS – NEGOTIATION	JUN 1999
52.215-14	INTEGRITY OF UNIT PRICE	OCT 1997
52.215-16	FACILITIES CAPITAL COST OF MONEY	JUN 2003

<u>NUMBER</u>	<u>TITLE</u>	<u>DATE</u>
52.215-21	REQUIREMENTS FOR COST OR PRICING DATA OR INFORMATION OTHER THAN COST OR PRICING DATA – MODIFICATIONS	OCT 1997
52.216-7	ALLOWABLE COST AND PAYMENT	DEC 2002
52.216-8	FIXED FEE	MAR 1997
52.216-18	ORDERING	OCT 1995
52.216-19	ORDER LIMITATIONS	OCT 1995
52.216-22	INDEFINITE QUANTITY	OCT 1995
52.219-9	SMALL BUSINESS SUBCONTRACTING PLAN – ALTERNATE II (OCT 2001)	APR 2008
52.222-3	CONVICT LABOR	JUN 2003
52.222-21	PROHIBITION OF SEGREGATED FACILITIES	FEB 1999
52.222-26	EQUAL OPPORTUNITY	MAR 2007
52.222-35	EQUAL OPPORTUNITY FOR SPECIAL DISABLED VETERANS, VETERANS OF VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	SEP 2006
52.222-36	AFFIRMATIVE ACTION FOR WORKERS WITH DISABILITIES	JUN 1998
52.222-37	EMPLOYMENT REPORTS ON SPECIAL DISABLED VETERANS, VETERANS OF THE VIETNAM ERA, AND OTHER ELIGIBLE VETERANS	SEP 2006
52.222-38	COMPLIANCE WITH VETERANS' EMPLOYMENT REPORTING REQUIREMENTS	DEC 2001
52.222-39	NOTIFICATION OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES	DEC 2004
52.222-50	COMBATING TRAFFICKING IN PERSONS	AUG 2007
52.223-6	DRUG-FREE WORKPLACE	MAY 2001
52.227-1	AUTHORIZATION AND CONSENT-- ALTERNATE 1 (APR 1984)	DEC 2007
52.227-2	NOTICE AND ASSISTANCE REGARDING PATENT AND COPYRIGHT INFRINGEMENT	DEC 2007
52.227-11	PATENT RIGHTS-OWNERSHIP BY THE CONTRACTOR	DEC 2007
52.227-14	RIGHTS IN DATA – GENERAL – ALTERNATES II (DEC 2007, III (DEC 2007), V (DEC 2007)	DEC 2007
52.227-16	ADDITIONAL DATA RIGHTS	DEC 2007
52.227-23	RIGHTS TO PROPOSAL DATA (TECHNICAL)	JUN 1987
52.228-7	INSURANCE – LIABILITY TO THIRD PERSONS	MAR 1996
52.230-2	COST ACCOUNTING STANDARDS	APR 1998
52.230-6	ADMINISTRATION OF COST ACCOUNTING STANDARDS	NOV 1999
52.232-9	LIMITATION ON WITHHOLDING OF PAYMENTS	APR 1984
52.232-17	INTEREST	OCT 2008
52.232-20	LIMITATION OF COST	APR 1984

52.232-22	LIMITATION OF FUNDS	APR 1984
52.232-23	ASSIGNMENT OF CLAIMS	JAN 1986
52.232-25	PROMPT PAYMENT	OCT 2008
52.232-33	PAYMENT BY ELECTRONIC FUNDS TRANSFER - CENTRACCT CONTRACT REGISTRATION	OCT 2003
52.232-35	DESIGNATION OF OFFICE FOR GOVERNMENT RECEIPT OF ELECTRONIC FUNDS TRANSFER INFORMAITON	MAY 1999
52.233-1	DISPUTES	JUL 2002
52.233-2	SERVICE OF PROTEST	SEP 2006
52.233-3	PROTEST AFTER AWARD	AUG 1996
52.233-4	APPLICABLE LAW FOR BREACH OF CONTRACT CLAIM	OCT 2004
52.237-3	CONTINUITY OF SERVICES	JAN 1991
52.242-1	NOTICE OF INTENT TO DISALLOW COST	APR 1984
52.242-3	PENALTIES FOR UNALLOWBLE COSTS	MAY 2001
52.242-4	CERTIFICATION OF FINAL INDIRECT COSTS	JAN 1997
52.242-13	BANKRUPTCY	JUL 1995
52.243-2	CHANGES – COST-REIMBURSEMENT – ALTERNATE V (APR 1984)	AUG 1987
52.243-7	NOTIFICATION OF CHANGES	APR 1984
52.244-2	SUBCONTRACTS	JUN 2007
52.244-5	COMPETITION IN SUBCONTRACTING	DEC 1996
52.244-6	SUBCONTRACTS FOR COMMERCIAL ITEMS	MAR 2007
52.245-1	GOVERNMENT-FURNISHED PROPERTY	JUN 2007
52.246-20	WARRANTY OF SERVICES	MAY 2001
52.246-25	LIMITATION OF LIABILITY – SERVICES	FEB 1997
52.249-6	TERMINATION (COST-REIMBURSEMENT)	MAY 2004
52.249-14	EXCUSABLE DELAYS	APR 1984
52.250-5	SAFETY ACT – EQUITABLE ADJUSTMENT	NOV 2007
52.251-1	GOVERNMENT SUPPLY SOURCES	APR 1984
52.253-1	COMPUTER GENERATED FORMS	JAN 1991

The following Department of Homeland Security Acquisition Regulation clauses are incorporated in full text. All HSAR clauses flow down to all subcontractors on the contract and task order levels as applicable with emphasis given to H.5 and I.4:

**I.2 3052.204-70 SECURITY REQUIREMENTS FOR UNCLASSIFIED INFORMATION TECHNOLOGY RESOURCES (JUN 2006)**

- (a) The Contractor shall be responsible for Information Technology (IT) security for all systems connected to a DHS network or operated by the Contractor for DHS, regardless of location. This clause applies to all or any part of the contract that includes information technology resources or services for which the Contractor must have physical or electronic access to sensitive information contained in DHS unclassified systems that directly support the agency’s mission.

- (b) The Contractor shall provide, implement, and maintain an IT Security Plan. This plan shall describe the processes and procedures that will be followed to ensure appropriate security of IT resources that are developed, processed, or used under this contract.
- (1) Within 45 days after contract award, the contractor shall submit for approval its IT Security Plan, which shall be consistent with and further detail the approach contained in the Offeror's proposal. The plan, as approved by the contracting Officer, shall be incorporated into the contract as a compliance document.
  - (2) The Contractor's IT Security Plan shall comply with Federal laws that include, but are not limited to, the Computer Security Act of 1987 (U.S.C. 1441 et seq.); the Government Information Security Reform Act of 2000; and the Federal Information Security management Act of 2002; and with Federal policies and procedures that include, but are not limited to, OMB Circular A-130.
  - (3) The security plan shall specifically include instructions regarding handling and protecting sensitive information at the Contractor's site (including any information stored, processed, or transmitted using the Contractor's computer systems), and the secure management, operation, maintenance, programming, and system administration of computer systems, networks, and telecommunications systems.
- (c) Examples of tasks that require security provisions include –
- (1) Acquisition, transmission or analysis of data owned by DHS with significant replacement cost should the contractor's copy be corrupted; and
  - (2) Access to DHS networks or computers at a level beyond that granted the general public (e.g., such as bypassing a firewall).
- (d) At the expiration of the contract, the contractor shall return all sensitive DHS information and IT resources provided to the contractor during the contract, and certify that all non-public DHS information has been purged from any contractor-owned system. Organizational elements shall conduct reviews to ensure that the security requirements in the contract are implemented and enforced.
- (3) Within 6 months after contract award, the contractor shall submit written proof of IT Security accreditation to DHS for approval by the DHS Contracting Officer. Accreditation will proceed according to the criteria of the DHS Sensitive System Policy Publication, 4300A (Version 2.1, July 26, 2004) or any replacement publication, which the Contracting Officer will provide upon request. This accreditation will include a final security plan,

risk assessment, security test and evaluation, and disaster recovery plan/continuity of operations plan. This accreditation, when accepted by the Contracting Officer, shall be incorporated into the contract as a compliance document. The contractor shall comply with the approved accreditation documentation.

(End of clause)

**I.3 HSAR 3052.209-70 PROHIBITION ON CONTRACTS WITH CORPORATE EXPATRIATES (JUN 2006)**

(a) Prohibitions.

Section 835 of the Homeland Security Act, 6 U.S.C. 395, prohibits the Department of Homeland Security from entering into any contract with a foreign incorporated entity which is treated as an inverted domestic corporation as defined in this clause, or with any subsidiary of such an entity. The Secretary shall waive the prohibition with respect to any specific contract if the Secretary determines that the waiver is required in the interest of national security.

(b) Definitions. As used in this clause:

*Expanded Affiliated Group* means an affiliated group as defined in section 1504(a) of the Internal Revenue Code of 1986 (without regard to section 1504(b) of such Code), except that section 1504 of such Code shall be applied by substituting 'more than 50 percent' for 'at least 80 percent' each place it appears.

*Foreign Incorporated Entity* means any entity which is, or but for subsection (b) of section 835 of the Homeland Security Act, 6 U.S.C. 395, would be, treated as a foreign corporation for purposes of the Internal Revenue Code of 1986.

*Inverted Domestic Corporation.* A foreign incorporated entity shall be treated as an inverted domestic corporation if, pursuant to a plan (or a series of related transactions)—

(1) The entity completes the direct or indirect acquisition of substantially all of the properties held directly or indirectly by a domestic corporation or substantially all of the properties constituting a trade or business of a domestic partnership;

(2) After the acquisition at least 80 percent of the stock (by vote or value) of the entity is held—

(i) In the case of an acquisition with respect to a domestic corporation, by former shareholders of the domestic corporation by reason of holding stock in the domestic corporation; or

(ii) In the case of an acquisition with respect to a domestic partnership, by former partners of the domestic partnership by reason of holding a capital or profits interest in the domestic partnership; and

(3) The expanded affiliated group which after the acquisition includes the entity does not have substantial business activities in the foreign country in which or under the law of which the entity is created or organized when compared to the total business activities of such expanded affiliated group.

*Person, domestic, and foreign* have the meanings given such terms by paragraphs (1), (4), and (5) of section 7701(a) of the Internal Revenue Code of 1986, respectively.

(c) Special rules. The following definitions and special rules shall apply when determining whether a foreign incorporated entity should be treated as an inverted domestic corporation.

(1) *Certain Stock Disregarded.* For the purpose of treating a foreign incorporated entity as an inverted domestic corporation these shall not be taken into account in determining ownership:

(i) Stock held by members of the expanded affiliated group which includes the foreign incorporated entity; or

(ii) stock of such entity which is sold in a public offering related to the acquisition described in subsection (b)(1) of Section 835 of the Homeland Security Act, 6 U.S.C. 395(b)(1).

(2) *Plan Deemed In Certain Cases.* If a foreign incorporated entity acquires directly or indirectly substantially all of the properties of a domestic corporation or partnership during the 4-year period beginning on the date which is 2 years before the ownership requirements of subsection (b)(2) are met, such actions shall be treated as pursuant to a plan.

(3) *Certain Transfers Disregarded.* The transfer of properties or liabilities (including by contribution or distribution) shall be disregarded if such transfers are part of a plan a principal purpose of which is to avoid the purposes of this section.

(d) *Special Rule for Related Partnerships.* For purposes of applying section 835(b) of the Homeland Security Act, 6 U.S.C. 395(b) to the acquisition of a domestic partnership, except as provided in regulations, all domestic partnerships which are under common control (within the meaning of section 482 of the Internal Revenue Code of 1986) shall be treated as a partnership.

(e) Treatment of Certain Rights.

(1) Certain rights shall be treated as stocks to the extent necessary to reflect the present value of all equitable interests incident to the transaction, as follows:

- (i) warrants;
- (ii) options;
- (iii) contracts to acquire stock;
- (iv) convertible debt instruments; and
- (v) others similar interests.

(2) Rights labeled as stocks shall not be treated as stocks whenever it is deemed appropriate to do so to reflect the present value of the transaction or to disregard transactions whose recognition would defeat the purpose of Section 835.

(f) *Disclosure.* The offeror under this contract represents that [Check one]: X it is not a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73;

    it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it has submitted a request for waiver pursuant to 3009.104-74, which has not been denied; or

    it is a foreign incorporated entity that should be treated as an inverted domestic corporation pursuant to the criteria of (HSAR) 48 CFR 3009.104-70 through 3009.104-73, but it plans to submit a request for waiver pursuant to 3009.104-74.

(g) A copy of the approved waiver, if a waiver has already been granted, or the waiver request, if a waiver has been applied for, shall be attached to the bid or proposal.

(End of provision)

**1.4 3052.209-73 LIMITATION OF FUTURE CONTRACTING (JUN 2006)  
(Applicable at the Task Order Level)**

(a) The Contracting Officer has determined that this acquisition may give rise to a potential organizational conflict of interest. Accordingly, the attention of prospective Offerors is invited to FAR Subpart 9.5--Organizational Conflicts of Interest.



(b) The nature of this conflict are: There are at least three forms of potential organizational conflicts of interest that may arise in the performance of this contract: (1) either the contractor or an affiliate's being able to compete when the contractor (a) had access to procurement sensitive information; or (b) drafted specifications or statements of work or substantially complete statements of work; (2) the contractor's reviewing the work of itself or any affiliates, done on other DHS contracts; or (3) offering advice or planning in areas in which the contractor or any affiliates have financial interests tied to particular technologies.

(c) The restrictions upon future contracting are as follows:

(1) If the Contractor, under the terms of this contract, or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the Contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under an ensuing DHS contract. This restriction shall remain in effect for a reasonable time, as agreed to by the Contracting Officer and the Contractor, sufficient to avoid unfair competitive advantage or potential bias (this time shall in no case be less than the duration of the initial production contract). DHS shall not unilaterally require the Contractor to prepare such specifications or statements of work under this contract.

(2) To the extent that the work under this contract requires access to proprietary, business confidential, or financial data of other companies, and as long as these data remain proprietary or confidential, the Contractor shall protect these data from unauthorized use and disclosure and agrees not to use them to compete with those other companies.

(End of clause)

**I.5 3052.219-70 THE SMALL BUSINESS SUBCONTRACTING PLAN REPORTING (JUN 2006)**

(a) The Contractor shall enter the information for the Subcontracting Report for Individual Contracts (formally the Standard Form 294 (SF 294)) and the Summary Subcontract Report (formally the Standard Form 295 (SF-295)) into the Electronic Subcontracting Reporting System (eSRS) at [www.esrs.gov](http://www.esrs.gov).

(b) The Contractor shall include this clause in all subcontracts that include the clause at (FAR) 48 CFR 52.2 19-9.

(End of clause)

**I.6 3052.242-71 DISSEMINATION OF CONTRACT INFORMATION  
(DEC 2003)**

The Contractor shall not publish, permit to be published, or distribute for public consumption, any information, oral or written, concerning the results or conclusions made pursuant to the performance of this contract, without the prior written consent of the Contracting Officer. An electronic or printed copy of any material proposed to be published or distributed shall be submitted to the Contracting Officer.

(End of clause)

**I.7 3052.242-72 CONTRACTING OFFICER'S TECHNICAL  
REPRESENTATIVE (DEC 2003)**

(a) The Contracting Officer may designate Government personnel to act as the Contracting Officer's Technical Representative (COTR) to perform functions under the contract such as review or inspection and acceptance of supplies, services, including construction, and other functions of a technical nature. The Contracting Officer will provide a written notice of such designation to the Contractor within five working days after contract award or for construction, not less than five working days prior to giving the contractor the notice to proceed. The designation letter will set forth the authorities and limitations of the COTR under the contract.

(b) The Contracting Officer cannot authorize the COTR or any other representative to sign documents, such as contracts, contract modifications, etc., that require the signature of the Contracting Officer.

(End of clause)

**I.8 3052.228-70 INSURANCE (DEC 2003)**

In accordance with the clause entitled "Insurance – Liability to Third Persons" in Section I, insurance of the following kinds and minimum amounts shall be furnished at any time at the request of the CO and maintained during the period of performance of this contract:

(a) Worker's compensation and employer's liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(a).

(b) General liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2(b).

(c) Automobile liability. The Contractor shall, as a minimum, meet the requirements specified at (FAR) 48 CFR 28.307-2I.

(End of clause)

**I.9 3052.222-71 STRIKES OR PICKETING AFFECTING ACCESS TO A DHS FACILITY (DEC 2003)**

If the Contracting Officer notifies the Contractor in writing that a strike or picketing: (a) is directed at the Contractor or subcontractor or any employee of either; and (b) impedes or threatens to impede access by any person to a DHS facility where the site of the work is located, the Contractor shall take all appropriate action to end such strike or picketing, including, if necessary, the filing of a charge of unfair labor practice with the National Labor Relations Board or the use of other available judicial or administrative remedies.

(End of clause)

**[End of Section I]**

**SECTION J**  
**LIST OF ATTACHMENTS**

J.1 – Sponsoring Agreement

J.2 – DHS Management Directive No. 0143-4

J.3 – Monthly Contractor Financial Report

J.4 – Contract Security Classification Specification, DD Form 254

J.5 – DHS Non-Disclosure Agreement

J.6 – Sample Electronic Invoice Instructions

J.7 – Listing of Labor Categories

**[End of Section J]**

**SECTION K**  
**REPRESENTATIONS AND CERTIFICATIONS**

The contractor's annual representations and certifications electronically filed at [www.orca.gpn.gov](http://www.orca.gpn.gov) are incorporated herein by reference and made a part of this contract.

**[End of Section K]**

5-1

**SPONSORING AGREEMENT**  
**Between**  
**THE DEPARTMENT OF HOMELAND SECURITY**  
**and**  
**THE MITRE CORPORATION**  
**to Operate the**  
**HOMELAND SECURITY SYSTEMS ENGINEERING and DEVELOPMENT INSTITUTE (SEDI)**  
**FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER (FFRDC)**

**1. PURPOSE OF THIS AGREEMENT**

This Sponsoring Agreement (this Agreement) sets forth the policies and requirements for the operation of the Homeland Security Systems Engineering and Development Institute (HS SEDI or SEDI) Federally Funded Research and Development Center (FFRDC) by **THE MITRE CORPORATION**. The Homeland Security Systems Engineering and Development Institute (HS SEDI or SEDI) Federally Funded Research and Development Center (FFRDC) (hereafter referred to as the SEDI) shall be operated by **THE MITRE CORPORATION** as an autonomous organization or an identifiable separate operating unit of a parent organization in support of the Secretary of Homeland Security (DHS), the Under Secretary for Science and Technology (S&T), and the DHS Operating Elements. The Under Secretary for Science and Technology (S&T) is the Primary Sponsor of this Agreement.

This Agreement is in compliance with Federal Acquisition Regulation (FAR) Part 35.017. Additionally, the DHS Management Directive Number 143-04 "Establishing or Contracting with Federally Funded Research and Development Centers (FFRDCs) and National Laboratories" dated April 25, 2007, as amended, is hereby incorporated by this reference into and made a part of this Agreement.

This Agreement will be incorporated by reference into and made a part of the DHS contract with **THE MITRE CORPORATION** for the operation of the SEDI (the Contract). If conflicts exist between this Agreement and the Contract, the Contract will take precedence and will control.

Portions of this Agreement are based on Federal government-wide and DHS policies, and future changes in these policies might necessitate changes to this Agreement. This Agreement may be amended, and its provisions may be modified or waived, by mutual written agreement of the parties. Capitalized terms used within this Agreement shall have the meanings ascribed to them herein or in the Contract.

**2. BACKGROUND OF THE MITRE CORPORATION**

**The Mitre Corporation** is a private, nonprofit corporation, under Section 501(c)(3) of the Internal Revenue Code, originally established in 1958 to provide independent and objective systems engineering and development expertise in the public interest to solve critical problems of national importance. The corporation operates FFRDCs exclusively. The Mitre Corporation is governed by a Board of Trustees that provides an overall strategic direction. The Mitre Corporation is located in McLean, Virginia.

**3. PURPOSE AND MISSION OF THE FFRDC**

The purpose of the homeland Security Systems Engineering and Development Institute (SEDI) is to provide special technical expertise to Department program managers that transforms program-level operational requirements and performance metrics, constrained by cost and schedule, into a preferred documented configuration of sustainable deliverables. Program objectives are generally achieved through the insertion of new technologies, prototypes, commercial off the shelf technologies (COTS), and/or modifications of existing hardware and software, into homeland security enterprise (e.g., federal, state, local, tribal, public and private sector) systems and platforms. The SEDI shall generally work on the most complex homeland security systems that will evolve capabilities through pre-planned spiral developments. The SEDI will promote fair and open competition for the development and delivery of Department capabilities by providing independent and objective technical expertise in the development of technical concepts,

standardized technical data packages, development modeling and simulation, and development testing and lab experiments, in tandem with the government's acquisition process. The SEDI shall ensure a logical optimization of system and sub-system level tradeoffs across the system's lifecycle. Overtime, this FFRDC will help the Department develop a DHS system of systems approach that will promote development process efficiencies and synergies through best practices and standardized documentation. Through its long term relationship with the Department, the SEDI shall promote compatibilities across the various homeland security platforms and equipment to reduce our Nation's risk to terrorism and catastrophic incidents through, among other things, improved interoperability and information sharing within the homeland security enterprise.

The work performed by the SEDI will: (a) be authoritative, objective, and free from conflicts of interest caused by involvement with and benefit from commercial or other interests; (b) ensure confidentiality and protect sensitive homeland security, intelligence, and government planning information; (c) ensure confidentiality and protect proprietary commercial information; and (d) constitute high-quality research and advice.

The work will be responsive to sponsor needs as the SEDI addresses issues of both long-term and immediate homeland security concern. The SEDI research program will be composed of projects of varying length, from quick response analyses to intermediate length studies to multi-year efforts, in areas of established expertise. As implied above, the work will often require privileged access to information, including sensitive Government information and industry proprietary data not normally available to non-Government organizations.

#### 4. SCOPE OF WORK

The Contractor shall be responsible for providing technical and integration expertise to Department of Homeland Security (DHS) program leadership as a trusted agent, particularly in the evolution of the most complex and critical homeland security programs. The purpose of the SEDI FFRDC is to help the Department address "How" to accomplish program goals and objectives by the spiral insertion of new technologies, experimental prototypes, and commercial off-the-shelf (COTS) software and hardware into new and existing operational systems and platforms. The program risk must be carefully managed to tight cost and schedule constraints while maintaining critical performance requirements. The SEDI will provide the government with the necessary expertise to provide best "lifecycle" value while promoting fair and open systems acquisitions and deployments through the following core competencies:

- Development of Acquisition Program Baselines (APB) and Integrated Master Schedules (IMS), development test and evaluation plans, and other milestone decision documentation in accordance with DHS guidelines and directives to support the Departments' most critical and complex programs
- Development of functional analysis models, component tradeoff simulations, and tools and metrics to evaluate system tradeoffs and integration strategies
- Development of unique test-beds, critical lab experiments, and evaluation techniques to support the evolution of system concepts
- Develop homeland security systems software development models, standards, and protocols that are consistent with interoperability and spiral developments
- Develop and promote standardization of program risk, schedule and cost models based on system lifecycle costs
- Develop system technical standards for use by DHS program offices in the management and quality control/assurance of system, integration/development, and sub-system contracts in support of major acquisitions
- Develop and promote standardization of effective and efficient system engineering best practices in homeland security program development to integrate the system with the user community through analysis and planning for: configuration management, deployment logistics, manufacturability, training, operations and maintenance, infrastructure, safety and environment, and disposal
- Development of specific complex integration descriptions for system and sub-system technical data packages, particularly critical functional, physical, logical and operational interface protocols and standards
- Develop and promote standardization of technical data package elements to promote cross-program synergies over time

- Promote the identification of critical capability gap descriptions particularly in areas where technology may be expected to contribute substantially to solutions
- Promote the identification and standardization of technical standards, prototypes, systems engineering, and system/sub-system technical data packages which address the need for solutions to new and evolving systems requirements involving the instantiation within DHS systems and programs of capabilities to provide and promote security, privacy, and the protection of civil rights and civil liberties
- Promote ethics in acquisition through an understanding of: the need for objective development of operational requirements and performance metrics, and operational test and evaluation planning and analysis independent from the development program; promotion of fair and open competition in acquisitions through high quality technical data packages and quality oversight, trusted agent relationships with the government task sponsors and the SEDI program office, establishment of staff and organizational conflict or interest protocols.

Within and across these core areas, DHS sponsors' specific needs are expected to evolve over time, and the HS SEDI's capabilities and areas of concentration will evolve accordingly. The SEDI tasks may include quick-response ad-hoc in-depth technical program analysis and review (up to three months in duration); and/or medium-term studies (3-12 months) to provide in-depth technical program support to re-align a program with cost, schedule and performance objectives. However, most HS SEDI tasks are expected to be long-term tasks (more than 1 year) that align with the most complex and critical major acquisition programs.

The Contractor will also implement a broad-based consultative strategy to extend beyond the in-house staff and include perspectives from experts in industry, academia, and the non-profit sector. The Contractor will also be expected to have broad access to facilities that can provide unique test-bed support, lab experiments, and simulation and modeling in support of development program concept evolution and trade-off analysis across all areas of homeland security mission areas, including but not limited to (classified and unclassified): information technology and management, intelligence and information sharing, borders and maritime security (sensor and data networks), chemical and biological detection and protection, transportation system and critical infrastructure protection and security, cyber security and protection, biometric identification, communications interoperability and security, and emergency planning and response..

Other Duties. In addition to those services described in this Section 4 (Scope of Work), DHS may require the SEDI to perform other services within the SEDI core competencies.

## 5. POLICY

a. The SEDI will maintain the capabilities (high-quality research staff, other management and technical capabilities, analytic tools, models and simulations, computing resources, knowledge of sponsor needs, etc.) necessary to address any issue consistent with the FFRDC's purpose, mission, and scope of work. The SEDI will work on many classified and highly sensitive projects and shall strictly comply with the provisions of the National Industrial Security Program – including the provisions dealing with foreign ownership, control or influence (FOCI) – as set forth in DOD Directive 5220.22-M as amended.

b. All DHS components and Operating Elements are potential sponsors of SEDI tasks.

c. SEDI tasks will be undertaken by mutual consent between the SEDI and the sponsors in accordance with procedures instituted by the Primary Sponsor or designee and the SEDI Advisory Group, as appropriate. All tasks must be approved by the SEDI program management office. (Prior to execution, tasks require signature approval of the SEDI Program Manager.) Funding for specific tasks may come from various program elements available to sponsoring offices.

d. Proposals for work to be undertaken by the SEDI may originate with any sponsoring office or with the SEDI itself. Tasks may be initiated at any time during a fiscal year, and may extend over several fiscal years in accordance with the funding appropriation. The SEDI, in conjunction with its Primary Sponsor (or the Primary Sponsor's designee), will prepare an annual research plan representing collectively the research agenda of the sponsoring community. Changes to the plan, consistent with the SEDI's core statement may be made throughout the year. These changes must be approved by the Executive Agent (as defined in Section 6(a)(6)).



e. The sponsoring community as represented by the SEDI Advisory Group will: (1) maintain and strengthen the "special relationship" between the SEDI and its sponsors; (2) serve as a link between the SEDI sponsor community and THE MITRE CORPORATION management, providing feedback on DHS needs, interests, and priorities; and (3) assist and advise the Primary Sponsor in ensuring that the SEDI produces work consistent with this Agreement and the DHS Management Directive 143-04.

f. The Primary Sponsor will assure a reasonable continuity in the level of support to the SEDI, consistent with DHS needs and the terms of this Agreement, and contingent on available funding (as required by the FAR 35.017-2).

g. The SEDI may accept work from non-sponsoring agencies (i.e., organizations not specified in sections 5.b. above), including non-DHS Government entities, state and municipal governments, and public charities, provided that the work is: (1) determined to be consistent with the SEDI core statement; (2) approved by the Executive Agent (using the criteria set forth in Section 7 below and the DHS Management Directive Number 143-04 for determining the feasibility of and appropriateness of FFRDC work) and coordinated with the SEDI Program Manager and Contracting Officer's Representative (COR); and (3) does not interfere with the priority of the work that SEDI is performing for the sponsors (i.e., SEDI has adequate resources to perform work for non-sponsoring agencies and still meet the time frames for its deliverables to the SEDI DHS sponsors).

h. The SEDI's sponsors will provide access to classified and sensitive data, facilities, plans and related information, including proprietary data, as necessary to ensure that the SEDI's work takes full account of the best available information, including that which is not normally available to non-government organizations.

i. Subject to the requirements set forth in Section 5(j) below, the SEDI may augment its in-house research staff with other technical and analytic resources for work on sponsor problems the scope of which requires temporary access to specialized expertise that is not available within the organization. These resources if not included in the research plan will be coordinated with the Executive Agent and/or the Program Manager.

j. The SEDI may utilize subcontractors and consultants (including reach-back employees from the parent organization) for DHS related work subject to the following conditions: (i) SEDI has received the Executive Agent's approval prior to retaining a subcontractor or consultant for DHS related work; (ii) the Contracting Agent may require that SEDI terminate a subcontractor or consultant from performing DHS related work; and (iv) SEDI will require every subcontractor and consultant to sign nondisclosure agreements (containing the terms set forth in Section 9(g) below with the exception of Section 9(g)(2)) and conflict of interest agreements. Both agreements must have been approved by the DHS Office of the General Counsel prior to SEDI allowing a subcontractor or consultant to perform DHS-related work. SEDI will maintain signed copies of every non-disclosure and conflict of interest agreement for a period of at least five (5) years from the signature date on each document.

k. The SEDI's independent research program will be used primarily to assist in building and maintaining research capabilities in support of the SEDI's mission, purpose, and scope of work, consistent with DHS-wide guidelines for independent research and development activities.

l. No member of THE MITRE CORPORATION Board of Trustees who is also serving as a member of a Board of Directors, Trustees, or Overseers or any similar governance board for any other for-profit or non-profit entity that is engaged in providing professional services or research and development in the government services market shall be permitted to serve on panels or committees reasonably related to the SEDI or vote on decisions reasonably related to the SEDI unless such automatic recusal of the Board of Trustees member is waived by the DHS Executive Agent.

## 6. RESPONSIBILITIES AND OVERSIGHT

a. The ultimate sponsor of the SEDI is the Department of Homeland Security. The Under Secretary for Science and Technology acts for DHS as the Primary Sponsor of SEDI. The Primary Sponsor (U/S Science and Technology):

- (1) Ensures that the SEDI is used for its intended purposes.

- (2) Ensures that individual sponsors make appropriate use of the SEDI's work.
- (3) Ensures that the SEDI produces high-quality work of value to sponsors.
- (4) Ensures that the costs of services provided by SEDI are reasonable.
- (5) Determines whether to continue or terminate the sponsorship of the SEDI upon completion of each five-year comprehensive review.
- (6) Designates an Executive Agent (the Executive Agent) to provide DHS oversight of the SEDI, consistent with the terms of this Agreement, the SEDI contract, and any additional policies and procedures established for the SEDI.

b. The Executive Agent:

- (1) Designates membership and chairs the SEDI Advisory Group. Designates replacements for SEDI Advisory Group members.
- (2) Provides oversight through the SEDI program management office which includes the SEDI Program Manager and the Contracting Officer's Representative.
- (3) Reviews and approves DHS-sponsored research plan.
- (5) Reports to the Contracting Officer any organizational conflicts of interest associated with THE MITRE CORPORATION performance under the contract as soon as conflicts are identified (or appear to be identified). The Executive Agent shall provide a recommended disposition of the conflict and solicit advice as needed from the Contracting Officer.
- (6) Designates the Program Manager and replacements for such individual.
- (7) Reviews and approves each non-DHS sponsored research task conducted by THE MITRE CORPORATION (and any affiliate thereof) involving the same core work as the SEDI, as elaborated in Section 4 of this Agreement, subject to the following terms and conditions:
  - a. All work to be performed by THE MITRE CORPORATION for the Department of Homeland Security will be approved in advance by the Executive Agent. The Executive Agent will approve/disapprove all such work requests within four working days following being notified in writing by THE MITRE CORPORATION of its intention to enter into a contract or bid on work with the Department of Homeland Security.
  - b. All work performed by THE MITRE CORPORATION for all other public sector entities and public charities will be reported on a quarterly basis to the Executive Agent. The first such report on non-FFRDC work by THE MITRE CORPORATION will be due at the end of the first quarter following conclusion of this Agreement and each quarter thereafter.
  - c. DHS reserves the right to require pre-approval of all new non-FFRDC work involving the same core work of the SEDI to be conducted by THE MITRE CORPORATION under the notice and approval procedures set forth in subparagraph (a) of this Section 6(b)(7).
- (8) Reviews and approves each non-DHS sponsored research task conducted by the SEDI.
- (9) Reviews and approves the classification, publication, and distribution of SEDI publications prepared for DHS Operating Elements, non-DHS Government entities, state and municipal governments, and public charities.
- (10) Oversees SEDI's use of subcontractors and consultants subject to the restrictions set forth in Section 5(j).

c. The Program Manager

- Executive Agent.
- (1) Administers the day-to-day SEDI relationship with the Government as approved by the Executive Agent.
  - (2) Ensures compliance with DHS and FFRDC policies.
  - (3) Coordinates and works with the staff points of contact for the SEDI Advisory Group members to implement Advisory Group decisions, and assists the Executive Agent in administering the SEDI strategic relationship as required.
  - (4) Establishes procedures for processing task orders.
  - (5) Reviews and approves DHS-sponsored tasks.
  - (6) Provides procurement liaison to the Contracting Officer for tasks placed under the contract for SEDI performance.
  - (7) Acts as the DHS focal point for contact with SEDI. Once tasks are approved, sponsors deal directly with the SEDI on specific technical matters related to SEDI research.
  - (8) Assists sponsoring offices in providing information on the SEDI research to other DHS offices and Government agencies.
  - (9) Ensures SEDI receives access to Government information needed to conduct approved research projects. Ordinarily, sponsors release classified, privileged, no-contractor, and other sensitive material directly to SEDI.
  - (10) Conducts and presents to the Advisory Group the Annual Assessment required by DHS' FFRDC Management Plan.

d. The SEDI Advisory Group:

- (1) Ensures the proposed research program addresses senior management concerns and priorities.
- (2) Identifies cross-cutting or other issues important to senior management for joint sponsorship and funding.
- (3) Confirms that the research program is appropriate for an FFRDC and consistent with the SEDI's core statement.
- (4) Identifies ways to strengthen the strategic relationship between DHS sponsors and the SEDI.
- (5) Reviews the results of annual performance reviews and takes appropriate action to resolve problems.
- (6) Provides feedback to THE MITRE CORPORATION management on DHS' needs, interests, and priorities for the upcoming year and over the longer term.

e. Sponsoring Offices:

- (1) Identify research and technical topics to be undertaken by SEDI, and formulate these topics into task orders, consulting as appropriate with the executive agent (or designee) and the SEDI.
- (2) Identify project funding and provide documentation necessary to initiate the task, consistent with established procedures. These procedures require signature approval for each task from the SEDI Program

Manager. Before a task can be placed on contract, a written justification showing that the work is appropriate for the SEDI (i.e., satisfies the criteria included in the core statement) must be prepared. This justification can be incorporated in the project's task order.

(3) Monitor the execution of research projects, including the quality and timeliness of the work, and its value to DHS.

(4) Participate as appropriate in meetings of the SEDI Advisory Group and related activities.

(5) Provide SEDI full access to the information necessary to carry out the research tasks.

f. THE MITRE CORPORATION and SEDI Management:

(1) Manages the operations of the SEDI consistent with the provisions of the SEDI contract with the Government, this Agreement, and THE MITRE CORPORATION's corporate charter.

(2) Develops and maintains research capabilities necessary to address any issue consistent with the FFRDC's purpose, mission, and scope of work; with sponsor needs; and with the availability of funds.

(3) Develops, on occasion, proposals for research topics, particularly research on cross-cutting issues of interest to several SEDI sponsors. In conjunction with sponsors and the Executive Agent, prepares and presents an annual research plan to the SEDI Advisory Group.

(4) Executes the research program, maintaining quality control over the research products.

(5) Prepares other materials requested by the Advisory Group, and works with the sponsoring offices and the Advisory Group, if necessary, to resolve any problems related to the SEDI research program.

(6) Maintains a written, rigorous, corporate-wide, organizational and staff conflict of interest regimen in accordance with a conflict of interest policy reviewed and approved in writing by DHS. Any changes made to an SEDI conflict of interest policy, or THE MITRE CORPORATION's conflict of interest policy regarding the SEDI, must be approved in writing by the DHS Executive Agent.

(7) Reports any organizational conflicts of interest and their proposed disposition to the Contracting Officer and to the Executive Agent (and/or designee) as soon as such conflicts are identified.

## 7. DETERMINING SUITABILITY OF WORK FOR SEDI

The task sponsor and the Executive Agent have joint responsibility for determining that a proposed research task is appropriate for the SEDI. Consideration will be given to several criteria related to the nature of the specific project, and the special relationship that the SEDI maintains with its sponsors. The criteria include:

a. Consistency with the SEDI's mission, purpose, and capabilities.

b. Consistency with the SEDI's core competencies, as reflected in the core statement required by DHS' FFRDC Management Plan and summarized in the scope of work statement above. Changes in the details of the core statement can be made by agreement between SEDI and the Executive Agent.

c. Consistency with the SEDI's special relationship with its sponsors, as evidenced by the need for one or more of the following:

(1) Effective performance of objective, high-quality work on subjects integral to the mission and operations of sponsoring offices.

- (2) Freedom from real and perceived conflicts of interest caused by commercial or other involvement.
- (3) Broad access to information, including sensitive Government information, proprietary data from industry, and other information not normally available outside the Government.
- (4) Comprehensive knowledge of sponsor needs, problems, and issues.
- (5) Responsiveness to emerging and evolving needs of sponsors.
- (6) Long-term continuity of knowledge on issues and problems of enduring concern, including both maintaining corporate memory for sponsors when appropriate and responding to quick-response sponsor needs in areas of established expertise.

## 8. ANNUAL ASSESSMENT PROCEDURES

- a. The COR will conduct an annual assessment (which will then be approved and forwarded by the Executive Agent) as specified in DHS' FFRDC Management Plan.
- b. For the annual assessment, a survey of project sponsors will be conducted. The survey will gather data on sponsors' perceptions of the various aspects of the SEDI work (e.g., technical quality, responsiveness, program value, and timeliness).
- c. The Program Manager will report the results of the annual assessment to the Advisory Group and to the SEDI. The Advisory Group will review the assessment with the SEDI, provide feedback, and assist in resolving any real or perceived problems.
- d. In addition, SEDI will describe for the Advisory Group steps taken to ensure cost-effective operations.
- e. SEDI, and its parent corporation, will provide an annual compliance statement in terms of organizational conflicts of interest and staff non-disclosure agreements and conflicts of interest.

## 9. OTHER CONSIDERATIONS AND GENERAL UNDERSTANDINGS

- a. Limitations. The strategic relationship between the SEDI and its sponsors requires that the SEDI accept certain restrictions, namely, that the SEDI:
  - (1) May only perform core work as defined in the core statement and in accordance with the guidelines specified in the DHS Management Directive 143-04.
  - (2) May not compete with any non-FFRDC in response to a Federal request for proposals for other than the operation of an FFRDC.
  - (3) May accept no work developing specific components or component prototypes, without written approval of the Executive Agent; who may approve the work when directly related to a specific critical system program development.
  - (4) May accept no work from commercial firms or foreign governments.
  - (5) Shall not, unless authorized by legislation and the contract, undertake quantity production or manufacturing.
  - (6) And its parent corporation and affiliates, if any, shall not, because of the need to eliminate actual or potential conflicts of interest between the interrelated missions of the DHS FFRDCs, operate another DHS

FFRDC or participate as a substantial partner or sub-contractor to another DHS FFRDC contractor. Employees of the SEDI contractor and its parent corporation and affiliates, if any, may participate as consultants on specific tasks conducted by other DHS FFRDCs providing the procedures for approving the consultants are followed.

b. The limitations enumerated above, except 9.a.(6), apply to the SEDI FFRDC, not **THE MITRE CORPORATION**. **THE MITRE CORPORATION** may perform non-FFRDC work, if such work meets the following criteria specified in the DHS Management Directive 143-04 and any additional criteria mutually agreed to between **THE MITRE CORPORATION** and the Primary Sponsor or designee:

(1) Parent institutions operating DHS-sponsored FFRDC(s) may perform non-FFRDC work subject to US(S&T) or its designee review for compliance with established criteria mutually agreed upon by the US(S&T) and the parent institution.

(2) Non-FFRDC work by parent institutions should be in the national interest, such as addressing economic, social, or governmental issues.

(3) Non-FFRDC work shall not undermine the independence, objectivity, or credibility of the FFRDC by posing an actual or perceived conflict of interest, nor shall it detract from the performance of FFRDC work.

(4) Non-FFRDC work shall not be acquired by taking unfair advantage of the parent institution's operation of its FFRDC(s) or of information that is available to that parent institution only through its FFRDC(s).

(5) Non-FFRDC work may be done for public sector entities and not-for-profit organizations that operate in the public interest; e.g., public charities. Commercial work (i.e., work for for-profit entities) may only be accepted if the primary sponsor, or its designee, grants a specific exception in writing for the commercial work request at issue. If the sponsor grants an exception, such work may not exclusively benefit any individual for-profit entity to avoid the appearance that an FFRDC parent organization is endorsing a particular product, company, or industrial process.

c. Retained Earnings and Fees. The parties acknowledge that fees may be appropriate. They can provide the capital and financial flexibility required to sustain professional expertise, obtain necessary facilities, equipment, and special test equipment, and maintain operations capable of supporting requirements of sponsors of SEDI core tasks under the contract. The guidelines for FFRDC Fees included in the DHS Management Directive 143-04 will serve as the guiding document in determining "need-for-fee" and the amount of the fee.

(1) **THE MITRE CORPORATION** will annually submit a fee justification.

(2) In reviewing the fee justification, the Contracting Officer will apply the methodology and considerations of the FAR and DHS Management Directive 143-04, as applicable. The Contracting Officer will consult, as appropriate, with DHS Contract Audit Personnel or DCAA, and the Executive Agent (or designee) for the SEDI.

(3) Fees received by **THE MITRE CORPORATION** for the operation of the SEDI may be commingled with fees earned on other contracts and/or with other income. Similarly, so long as SEDI is operated within **THE MITRE CORPORATION**, it may use fees received under contracts covered by this Agreement for the benefit of the corporation (e.g., for working capital or facilities acquisition).

d. Cost Elements Requiring Advance Notice. **THE MITRE CORPORATION** will provide the Executive Agent and the Contracting Officer at least 30 days of advance notice prior to:

(1) The acquisition of real property either by purchase or long-term lease that is to be used primarily by the SEDI.

(2) Any material increase in employee benefits chargeable, directly or indirectly, to a contract or contracts covered by this Agreement (except to the extent such increase is mandated by law).

e. Reports. In addition to the reports described in this Agreement, the SEDI will provide the reports described in Appendix C of the DHS Management Directive 143-04 to DHS. An annual report will be provided to the Primary Sponsor on 01 July.

f. Technology Transfer. If the SEDI wishes to participate in a technology transfer program with private industry, SEDI shall adhere to the technology transfer policies established by S&T. Such policies will include adequate safeguards to ensure the SEDI remains free of organizational conflicts of interest and that the conditions for establishing and maintaining the SEDI are not compromised. S&T shall also review and approve any technology transfer work on a case-by-case basis.

g. Non Disclosure of Sensitive Information. The SEDI acknowledges that in the course of performing work for DHS, SEDI and its personnel (which includes dedicated staff, consultants, and subcontractors) may have access to proprietary and privileged information of DHS and other entities and may also produce information that is proprietary and privileged to DHS. Except as otherwise required by applicable law or regulation or a final order of a court of competent jurisdiction (in which event written notice will be given to DHS prior to disclosure or use of the information in order to give DHS a reasonable opportunity to protect its interests), or as expressly authorized in writing by the DHS Executive Agent, the SEDI agrees on behalf of itself and its personnel, that the SEDI and its personnel will not (a) disclose any Privileged Information (as defined below) related to the work performed for or on behalf of DHS, or (b) use any Privileged Information for the benefit of the SEDI, any of the SEDI personnel, or any third party. SEDI will require all of its personnel to execute non-disclosure agreements approved by the DHS Executive Agent prior to performing work for DHS, and shall ensure that such personnel comply with the provisions of such agreements and this paragraph g.

(1) For purposes of this Agreement, "Privileged Information" means any and all information and data (1) relating to the work performed by the SEDI for or on behalf of DHS, including the products of such work and deliverables; or (2) provided by DHS, S&T, or any of the DHS Operating Elements to the SEDI; or (3) provided by corporate entities working on or advising on DHS matters. "Privileged Information" shall include, but not be limited to, all data, pricing information and cost data information, controlled unclassified information (e.g., Protective Critical Infrastructure Information, Sensitive Homeland Security Information, and Law Enforcement Sensitive Information), know-how, written materials, proposals, memoranda, notes, inventions, devices, technology, designs, copyrighted information, trade secrets, confidential business information, analyses, test and evaluation results, manuals, videotapes, contracts, letters, facsimile transmissions, electronic mail and other correspondence, financial information and projections, and business and marketing plans. "Privileged Information" shall not include any information or data that is in the public domain or becomes part of the public domain by any means other than a breach by SEDI or SEDI personnel of the obligations under this Agreement.

(2) The restrictions set forth in this Agreement with regard to Privileged Information are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by Executive Order No. 12958; section 7211 of title 5, United States Code (governing disclosures to Congress); section 1034 of title 10, United States Code, as amended by the Military Whistleblower Protection Act (governing disclosure to Congress by members of the military); section 2302(b)(8) of title 5, United States Code, as amended by the Whistleblower Protection Act (governing disclosures of illegality, waste, fraud, abuse or public health or safety threats); the Intelligence Identities Protection Act of 1982 (50 U.S.C. 421 et seq.) (governing disclosures that could expose confidential Government agents); and the statutes which protect against disclosure that may compromise the national security, including sections 641, 793, 794, 798, and 952 of title 18, United States Code, and section 4(b) of the Subversive Activities Act of 1950 (50 U.S.C. 783(b)). The definitions, requirements, obligations, rights, sanctions, and liabilities created by said Executive order and listed statutes are incorporated into this agreement and are controlling. Signing this Agreement does not bar disclosures to Congress or to an authorized official of an executive agency or the Department of Justice that are essential to reporting a substantial violation of law.

## 10. NON-RENEWAL, TERMINATION, OR DISSOLUTION

a. This Agreement and THE MITRE CORPORATION's operation of the SEDI are based on expectations of a long-term and continuing relationship between the parties. DHS will use its best efforts to inform THE MITRE CORPORATION as far as possible in advance if it concludes that such a long-term relationship is no longer in the best interests of the Government.

b. In the event that the contract for the SEDI is terminated (as that term is defined in FAR Part 49) in whole or in part, termination, disposal of assets, and settlement of liabilities will be in accordance with the DHS contract with **THE MITRE CORPORATION** and FAR 52.249-6. Nothing in this Agreement shall be construed as committing the U.S. Government to termination costs.

c. In the event of such termination or of the expiration or non-renewal of this Agreement and of contract(s) for the SEDI, all items that were furnished by the Government or purchased by **THE MITRE CORPORATION** and charged directly to the contract are the property of the Government and will be managed/disposed of in accordance with FAR 52-245-1.

d. Except as otherwise provided in a contract or advance agreement, all other assets (including equipment and leases on real property) will be the property of **THE MITRE CORPORATION** and all liabilities will be the responsibility of **THE MITRE CORPORATION**

e. In the event of dissolution of **THE MITRE CORPORATION**, the Members of the Corporation will designate the successor corporation or a charitable organization or organizations or the Federal Government or any or all of them to be recipients to which will be paid over any or all property or assets remaining after the winding up of **THE MITRE CORPORATION**'s affairs, in accordance with the Corporation's Certificate of Incorporation and By-Laws.

## 11. TERM OF THIS AGREEMENT

This Agreement will be effective when executed by both parties and shall be made a part of and incorporated by this reference into the Contract. This Agreement will be in force for the duration of the Contract. Subject to a favorable "need determination" resulting from the Comprehensive Review (as described by the FAR Section 35.017 and the DHS Management Directive 143-04) and, if mutually agreed between the Primary Sponsor and **THE MITRE CORPORATION**, this Agreement will continue to be in full force and effect for subsequent renewals of the Contract.

This Agreement obligates no appropriations, and creates no responsibility on the part of DHS to fund work at or provide funds to **THE MITRE CORPORATION**. Funds are obligated and work undertaken only and strictly in accordance with the terms and conditions of the Contract.



Alfred Grasso  
President and Chief Executive Officer  
**THE MITRE CORPORATION**

6 March 2009  
(date)



Bradley I. Buswell  
Under Secretary for Science and Technology (Acting)  
Department of Homeland Security

3/13/09  
(date)



# **ESTABLISHING OR CONTRACTING WITH FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTERS (FFRDCs) AND NATIONAL LABORATORIES**

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## **I. Purpose**

This Management Directive (MD) defines Department of Homeland Security (DHS) policies and procedures regarding the establishment, administration, and use of Federally Funded Research and Development Centers (FFRDCs) and related sponsoring agreements. This MD explains, for any DHS Component that seeks to sponsor an FFRDC task, the required interactions with DHS Science and Technology Directorate (S&T). These interactions do not necessarily represent all legal, financial, or contractual obligations nor do they seek to limit competition or contracting with the private sector. This MD replaces the DHS FFRDC Management Plan dated July 21, 2004.

## **II. Scope**

A. This MD addresses the establishment of new DHS-sponsored FFRDCs; establishment of DHS participation in multiple agency sponsorship agreements for existing FFRDCs; management and administration of FFRDC sponsoring agreements, whether DHS is the primary sponsor or party to a multiple agency sponsorship agreement; and DHS use of other Departments' FFRDCs, regardless of whether DHS is a party to the FFRDC sponsoring agreement.

B. This MD is applicable to all DHS Components. This MD is released in cooperation with the DHS Office of the Chief Procurement Officer and the S&T Office of General Counsel (OGC).

## **III. Authorities**

A. 6 U.S.C. Section 185, Federally funded research and development centers.

B. 6 U.S.C. Section 186(b), Miscellaneous Provisions/Coordination Requirements.

- C. 6 U.S.C. Section 189, Utilization of Department of Energy laboratories and sites in support of homeland security activities.
- D. 31 U.S.C. Section 1535, the Economy Act.
- E. 41 U.S.C. Section 253(c)(3)(B), Procurement procedures.
- F. Federal Acquisition Regulation (FAR) 17.5, Interagency Agreements under the Economy Act.
- G. Federal Acquisition Regulation (FAR) 35.017, Federally funded research and development centers.
- H. DHS Directive 125-02, Interagency Agreements.
- I. DHS Management Directive 10100, Organization of the Office of the Under Secretary for Science and Technology.
- J. Memorandum of Agreement Between the Department of Energy and the Department of Homeland Security, dated February 23, 2003.

## IV. Definitions

- A. **Acquisition Planning**. Acquisition planning means the process by which the efforts of all personnel responsible for an acquisition are coordinated and integrated through a comprehensive plan for fulfilling the agency need in a timely manner and at a reasonable cost. It includes developing the overall strategy for managing the acquisition.
- B. **Contracting Activity**. As referred to in this MD, the DHS contracting activity is the governmental entity that awards a contract or contracts under the authority of 6 U.S.C. § 185 for FFRDCs.
- C. **Core Statement**. The core statement describes the purpose and mission of the FFRDC, the nature of the strategic relationship between the FFRDC and DHS, the general scope of efforts to be performed for DHS, and core competencies the FFRDC must maintain so that it can assist in accomplishing the DHS mission.
- D. **Core Work**. Core work is work appropriate for performance by the FFRDC because it is consistent with the mission, purpose, and competencies of the FFRDC, and draws on or sustains a strategic relationship between the FFRDC and its sponsor.

E. **Federally Funded Research and Development Centers.**

1. FFRDCs can take a variety of forms including, but not limited to those that perform systems engineering, conduct studies and analyses, or operate a national laboratory. FFRDCs provide a unique service to the government and include organizations such as national laboratories associated with federal agencies.
2. An FFRDC meets certain special long-term research or development needs that cannot be met as effectively by existing in-house or contractor resources. In addition to meeting long-term and intermediate-term needs of sponsor(s) and users, FFRDCs enable agencies to use private sector resources to accomplish tasks that are integral to the mission and operations of their sponsor(s).
3. FFRDCs are outside the government to permit the management flexibility necessary to attract and retain high-quality scientific, technical, and analytic expertise and to provide an independent perspective on the critical issues that they address for their sponsor(s) and users.
4. Long-term relationships between the government and FFRDCs are desirable in order to provide the continuity that will attract high-quality personnel to the FFRDC. This relationship should be of a type to encourage the FFRDC to maintain currency in its field(s) of expertise, maintain its objectivity and independence, preserve its familiarity with the need(s) of its sponsor(s), develop institutional DHS memory, and provide a quick response capability.
5. An FFRDC has access, beyond that which is common to the normal contractual relationship, to government and supplier data, including sensitive and proprietary data, and to government employees and facilities. The FFRDC is required to conduct its business in a manner befitting its special relationship with the government, to operate in the public interest with objectivity and independence, to be free from organizational conflicts of interest, and to have full disclosure of its affairs to the sponsoring agency.
6. FFRDCs may be operated, managed or administered by a university or consortium of universities, other not-for-profit or nonprofit organization, an industrial firm as an autonomous organization or as an identifiable separate operating unit of a parent organization under a strict conflict of interest regime to prevent the influence of shareholders of the for-profit board, which could undermine the objectivity of the FFRDC organization.

7. An FFRDC may not use its privileged information or access to facilities to compete with the private sector. With few exceptions, FFRDCs may not participate in competitive procurements by the U.S. government.

F. **Multiple Agency Sponsorship Agreement.** A multiple agency sponsorship agreement is a written document between the government (primary sponsor and other sponsors) and the FFRDC's parent institution that contains a core statement for each sponsor as well as other items identified in FAR 35.017-1.

G. **Nonsponsor.** A nonsponsor is any other organization, in or outside of the federal government, which funds specific work to be performed by the FFRDC but is not a party to the sponsoring agreement or multiple agency sponsorship agreement.

H. **Parent Institution.** The parent institution is the entity that contracts with the primary sponsor to operate the FFRDC or a national laboratory. FFRDCs may be operated, managed, or administered by many different types of organizations, as described in paragraph IV.E.6. above. A parent institution may also be called a parent organization.

I. **Primary Sponsor.** The primary sponsor is the lead agency responsible for managing, administering, or monitoring overall use of the FFRDC under a multiple sponsorship agreement on behalf of DHS. The US(S&T) is the primary sponsor for DHS FFRDCs. Multiple agency sponsorship is possible as long as one agency agrees to act as the "primary sponsor."

J. **Sponsor.** A sponsor is an executive agency which manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC, other than the primary sponsor, that is party to a multiple agency sponsorship agreement. The US(S&T) is the DHS sponsor for DHS use of a non-DHS FFRDC under a multiple agency sponsorship agreement.

K. **Sponsoring Agreement.** The sponsoring agreement is a written agreement between the government (primary sponsor) and the FFRDC's parent institution that is prepared when the FFRDC is established. The sponsoring agreement contains the core statement as defined herein, as well as other items identified in FAR 35.017-1.

L. **Strategic Relationship**. The nature of their mission requires that FFRDCs operate in a strategic relationship with their sponsor(s) and other users. Strategic relationships enable FFRDCs to develop and maintain in-depth institutional knowledge of the sponsor's programs and operations; to maintain continuity and currency in their special fields of expertise, and a high degree of competence in their staff and work; to maintain their objectivity and independence; and to respond effectively to the emerging needs of the sponsor(s) and other users.

M. **User**. The user, or tasking activity, is an entity that requires the services of an FFRDC for performance of work.

## V. Responsibilities

Consistent with the provisions of this MD, the US(S&T) is responsible to the Secretary of DHS to:

- A. Oversee the implementation and execution of this MD.
- B. Ensure all DHS work proposed to be placed with any FFRDC is within the purpose, mission, general scope of effort, or special competency of the FFRDC.
- C. Oversee each FFRDC for which DHS is the primary sponsor by:
  - 1. Ensuring that the sponsoring agreement is consistent with FAR 35.017-1 and contains a core statement that is specific enough to differentiate between work that is within the scope of effort for which the FFRDC is intended and work that should be performed elsewhere.
  - 2. Working closely with the contracting activity and potential users early in the acquisition planning process.
  - 3. Serving as the single DHS point of contact to conduct reviews (in consultation with the contracting activity and the S&T OGC) and recommending to the contracting activity authorization of work by DHS FFRDCs via Inter-Agency Agreements. Such reviews will ensure that all work proposed by DHS users to be performed by the FFRDC is suitable for an FFRDC and within the purpose, mission, general scope of effort, or special competency of the FFRDC as delineated in the core statement. Legal review by S&T OGC does not supersede the need for a Component legal sufficiency review.

4. Consulting regularly with the DHS Office of the Chief Procurement Officer to ensure that DHS FFRDC operational practices are consistent with prevailing federal standards on FFRDC management and to ensure that DHS FFRDC interests are properly represented with the FAR Council, with the Office of Federal Procurement Policy (OFPP), and similar groups that establish overarching federal contracting policies.

5. Ensuring, in consultation with S&T OGC, that there are proper mechanisms in place for the DHS FFRDCs to report their development of federally funded intellectual property, track and report on such federally funded intellectual property as required by applicable law and DHS policies, and promote the technology transition of such developments to end users.

6. Assuring the Secretary that the above provisions are being satisfied by making a specific statement in the Annual Review Assessment required in accordance with [Appendix A](#).

D. Oversee DHS use under a multiple agency sponsorship agreement of FFRDCs for which DHS is not the primary sponsor by:

1. Ensuring that the multiple agency sponsorship agreement contains a DHS-specific core statement defining the nature of the strategic relationship between the FFRDC, its primary sponsor, and DHS; the general scope of efforts to be performed for DHS; and core competencies the FFRDC must maintain so that it can assist in accomplishing the DHS mission.

2. Serving as the single DHS point of contact to conduct reviews of proposed actions (in consultation with the contracting activity and S&T OGC) and recommending to the contracting activity authorization of work by such FFRDCs. Such reviews will ensure that all work proposed by DHS users to be performed by the FFRDC is suitable for an FFRDC and within the purpose, mission, general scope of effort, or special competency of the FFRDC as delineated in the DHS-specific core statement.

3. Consulting regularly with the DHS Office of the Chief Procurement Officer to ensure that DHS FFRDC operational practices are consistent with prevailing federal standards on FFRDC management and to ensure that DHS FFRDC interests are properly represented with the FAR Council, with OFPP, and similar groups that establish overarching federal contracting policies.

4. Ensuring, in consultation with S&T OGC, that there are proper mechanisms in place for the FFRDCs to report their development of federally funded intellectual property, track and report on such federally funded intellectual property as required by applicable law and DHS policies, and promote the technology transition of such developments to end users.

5. Ensuring, on behalf of the Secretary and all other FFRDC customers, that the multiple agency FFRDCs to which DHS is a sponsor, but not the primary sponsor, are being continually assessed for quality, cost-effectiveness, conformity with the policies in this MD, and return on investment factors using Annual Review Assessment required in accordance with [Appendix A](#).

E. Oversee DHS use of non-DHS-sponsored FFRDCs (i.e., DHS is neither the primary sponsor nor a party to a multiple agency sponsorship agreement) by:

1. Acting as the primary DHS focal point for work to be performed by non-DHS FFRDCs and reviewing descriptions of work to ensure that the work is within the scope of the non-DHS FFRDC. Such reviews will ensure that work proposed by DHS users to be performed by a non-DHS FFRDC is suitable for that FFRDC and within its purpose, mission, general scope of effort, or special competency of the FFRDC as delineated in the core statement. US(S&T) will further review descriptions of all work to ensure that the work could not be appropriately performed by a DHS-sponsored FFRDC (i.e., DHS is either the primary sponsor or a party to a multiple agency sponsorship agreement) and that the work is (a) appropriate for an FFRDC and (b) consistent with that FFRDC's sponsoring agreement. If the proposed work is within the core statement of a DHS-sponsored FFRDC, the US(S&T) will work with the users to determine whether the proposed use of the non-DHS-sponsored FFRDC is appropriate.

2. Acting as the primary DHS focal point for work to be performed by DOE national laboratories pursuant to a "work for others" arrangement formalized by the Memorandum of Agreement Between Department of Energy and Department of Homeland Security dated February 23, 2003, and in accordance with 6 U.S.C. § 189(a)(1)(c). The DHS Office of National Laboratories (within the US(S&T)) will be the primary point of contact to conduct reviews (in consultation with S&T OGC, as required) and recommend contracting activity approval of work by such DOE national laboratories via an Inter-Agency Agreement. Pursuant to 6 U.S.C. § 189(g), the DHS Office of National Laboratories will review all statements of work issued from DHS and directed to DOE national laboratories prior to preparation of a final procurement requisition package and submission to the DHS contracting activity for processing. Such

reviews will ensure that work proposed by DHS users to be performed by the DOE national laboratories complies with the terms and conditions of the prime contracts between DOE and each of the national laboratory operators.

3. Ensuring, in consultation with S&T OGC, that there are proper mechanisms in place for the non-DHS FFRDCs to report their development of federally funded intellectual property, track and report on such federally funded intellectual property as required by applicable law and DHS policies, and promote the technology transition of such developments to end users.

F. Liaise with other federal agencies that operate FFRDCs to ensure that DHS FFRDC management practices and procedures represent the “best practice” among federal agencies.

The reviews and other requirements of this section are intended to represent a minimally intrusive approach to achieve S&T coordination called for in Title 6 U.S.C. § 186(b).

## VI. Policy & Procedures

Title 6 U.S.C. § 185 authorizes the Secretary, acting through the US(S&T), to establish or contract with one or more FFRDCs to provide independent analysis of homeland security issues, or to carry out other responsibilities assigned under the Act.

A. **Primary Sponsor.** Consistent with the authorizing legislation, the US(S&T) is designated as the primary sponsor for DHS-sponsored FFRDCs. The US(S&T) establishes, manages, and administers the FFRDCs via the sponsoring agreement, which contains the core statement and defines specific policies and procedures relating to the management and administration of the FFRDC. On a case-by-case basis, other Components may be designated as the sponsor of an FFRDC; however, that Component shall closely conduct its management thereof with US(S&T).

B. **DHS Sponsor.** Consistent with the authorizing legislation, the US(S&T) is designated as the DHS Sponsor for establishment and administration of multiple agency sponsorship agreements enabling DHS use of FFRDCs whose primary sponsor is a different government agency.

1. The US(S&T) shall establish and administer the DHS-specific portion of the multiple agency sponsorship agreement which shall contain, at a minimum:

a. The core statement governing DHS use of the FFRDC;