

APPENDIX C. CONFLICT OF INTERESTS GUIDELINES

1. PURPOSE

This Appendix identifies personal conflicts of interest (PCI), including participation, representation, post-employment, and procurement information restrictions, and organizational conflict of interest (OCI) restrictions relating to the conduct of Office of Management and Budget (OMB) Circular A-76 competitions and associated procurement actions at the Department of Energy (DOE). All persons involved with Competitive Sourcing/A-76 competitions and related procurements at the Department shall follow these guidelines, as well as relevant statutes, regulations, and DOE directives.

2. APPLICABILITY AND SCOPE

The Competitive Sourcing Conflicts of Interest Guidelines are applicable to all DOE organizations and staff responsible for the execution of the Department's Competitive Sourcing Program.

3. CONTACTS FOR FURTHER ADVICE

It is crucial that the Department and its employees ensure that there are no conflicts of interest or even the appearance of a conflict of interest in the execution of DOE's Competitive Sourcing Program and related procurement actions. In a number of precedent setting cases, the U.S. General Accounting Office (GAO) and the U.S. Courts have overturned procurement actions and/or awarded the contract to the private sector when personal and/or organizational conflicts of interests arose during the course of an agency A-76 competition. The information below presents only a guideline; there is no clear rule that will cover every eventuality. Employees who participate on A-76 competition teams and related procurement actions should pay close attention to personal conflict of interest provisions.

Headquarters personnel may direct questions/concerns to the Office of the Assistant General Counsel for General Law (202-586-1522), StandardsofConduct@hq.doe.gov. Field personnel may address questions to their respective field counsel. Officials responsible for the overall conduct/management of the Department's A-76 competitions should also be familiar with the OCI guidance described below. Questions concerning organizational conflicts of interest should be directed to the Contracting Officer for that procurement.

4. PERSONAL CONFLICTS OF INTEREST

A Federal employee who is adversely affected or separated as a result of an award under A-76 may be provided a Right of First Refusal. Federal Acquisition Regulation (FAR) 7.305(c) requires a contractor to provide government employees the Right of First Refusal for employment openings under the contract in positions for which they are qualified, if that employment is consistent with post-government employment restrictions. Whether such employees can assert those rights will depend on what functions they perform with respect to the A-76 program. An employee's Right of First Refusal may be affected by conflict of interest restrictions placed on employees who participate in A-76 related acquisition processes (e.g., source evaluation or selection). These restrictions may affect the employees' ability to seek outside employment opportunities, to serve as the winning contractor's representative, and/or to receive compensation from a winning contractor. However, merely providing information for, or participation in, the development of a Performance Work Statement (PWS) or Most Efficient Organization (MEO) may not in-and-of itself affect an employees' ability to exercise a Right of First Refusal. Each situation is fact specific and will depend, in part, on the extent of the employee's involvement in the decision-making processes.

A. Participation Restrictions:

1. A criminal statute prohibits a Federal employee from participating *personally* and *substantially*¹ in any *particular matter* in which, to his/her knowledge, the employee has a *financial interest* (18 U.S.C. 208). For purposes of this statute, the *financial interests* of the following persons and entities are imputed to the employee: spouse, minor children, general partner, any organization in which (s)he is serving as officer, director, trustee, general partner or employee, and any other person or organization with whom (s)he is negotiating or has any arrangement concerning prospective employment.

2. Even if circumstances do not present a conflict of interest under the above criminal statute, DOE employees may not work on a particular matter if a reasonable person, looking at the circumstances involved, would have grounds to question the employee's ability to be impartial in the matter. (5 C.F.R. 2635.502).

3. Specific Personal Conflict of Interest Issues:

a. *Salary and benefits*. Generally, employees have a financial interest in their own salary and position. However, the Office of Government Ethics (OGE) has established a limited exemption under 18 U.S.C. 208(a) which provides that:

[an] employee may participate in any particular matter [whether of general applicability or involving specific parties] where the disqualifying interest arises from Federal Government . . . salary or benefits, . . . except that an employee may not:

- (i) Make determinations that individually or specifically affect his own salary or benefits; or
- (ii) Make determinations, requests, or recommendations that individually or specially relate to, or affect, the salary or benefits, of any other person specified in section 208 [of title 18, United States Code]. [5 C.F.R. 2640.203(d)].

Example: An employee may participate in cost comparison activities, including the preparation of a PWS or MEO, provided that the individual does not make any determination that has a special or individual effect on their own salary or benefits. An employee's interest in his federal employment, even if his position may be abolished, is not a disqualifying interest for participation in the PWS or MEO.

Example: Absent an individual waiver under section 18 U.S.C. 208(b)(1), however, an employee may not participate in the implementation of an agency plan to create an employee stock ownership plan (ESOP) that would carry out agency functions under contract to the agency because implementing the plan would not only result in the elimination of the employee's federal position, but also in the creation of a new position to which the employee would be transferred.

¹ *Personal participation* means direct participation or the "direct and active supervision" of a subordinate's participation. *Substantial participation* means that the employee's involvement is of significance to the matter. To be substantial, such participation would require more than official responsibility or knowledge or involvement on an administrative or peripheral issue. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may rise to the level of being substantial. [5 C.F.R. 2635.402(b)(4) and 2640.103(a)(2)].

b. *Right of First Refusal.* FAR 7.305(c) requires contractors to provide Federal employees the Right of First Refusal for employment in all solicitations, which might result in a conversion from an in-house performance to the private sector. This right is speculative in that the contractor is only required to offer employment openings to qualified former government employees where vacancies exist. There is no guarantee of employment under this provision. Only if and when a contractor wins a competition and the company actually needs to hire employees, and that company determines that a particular former government employee is qualified, does an offer of employment truly exist. Thus the contingent right to first refusal of employment with a winning contractor does not give rise to a personal financial interest within the meaning of 18 U.S.C. 208.

c. *Negotiating for Employment.* Three slightly different provisions potentially affect a government employee involved in competitive sourcing competition who seeks employment with an affected bidder or offeror. These include:

(i) 18 U.S.C. 208: Knowing that (s)he may have a financial interest and his/her interests would be directly and predictably affected by the procurement, in order to seek outside employment, an employee may:

- a. not participate personally and substantially in the A-76 procurement; or
- b. determine, in consultation with an ethics counselor, that a regulatory exemption is applicable (5 CFR 2640.203); or
- c. obtain an agency waiver (5 CFR 2640.301).

(ii) 5 CFR 2635, Subpart F: When an employee participates personally and substantially in a procurement, and seeks employment (including negotiations, sending an unsolicited resume to bidders or offerors and deferring employment negotiations) or has an employment arrangement with someone directly and predictably affected by the procurement, the employee must disqualify himself unless he obtains an agency waiver. (5 CFR 2635.605).

(iii) 41 U.S.C. 423 (Procurement Integrity Act): When an employee participates personally and substantially in procurement for a contract *in excess of \$100,000* and contacts, or is contacted by, a bidder or offeror about possible employment:

- a. the employee must report the contact and,
- b. either reject the offer or disqualify himself/herself in writing. If the employee immediately and clearly rejects the possibility of employment with the bidder or offeror, (s)he may continue to work on the procurement. If the employee recuses her/himself from participation in the procurement, (s)he may commence employment discussions. Continued participation in the procurement cannot be authorized until the employee rejects the offer or the bidder or offeror is no longer participating in the procurement.

CAUTION: “Personal and substantial participation,” as defined at 48 C.F.R. 3.104-3 for purposes of the Procurement Integrity Act, excludes “[f]or procurements to be conducted under the procedures of OMB Circular A-76, participation in Agency Tenders, preparation of agency cost estimate, preparation of ‘MEO’ analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.” Such participation, nevertheless, may be “personal and substantial” under the restrictions of 18 U.S.C. 208. Employees should consult with their ethics counselors under these circumstances.

B. Representation Restrictions

There are two statutory prohibitions associated with employee representation activities:

1. 18 U.S.C. 203. This statute provides criminal and civil penalties for government employees who seek, receive, accept, or agree to accept compensation for representation services, as an agent or attorney or otherwise for another party, in relation to a ruling, determination, contract, claim or other particular matter in which the United States is a party or has a direct and substantial interest.
2. 18 U.S.C. 205. This statute provides civil or criminal penalties for government employees who, other than in the proper discharge of their official duties, act as an agent or attorney in the prosecution of a claim against the United States or before any department in connection with any covered matter in which the United States is a party or has a direct or substantial interest. A “covered matter” includes applications, contracts, claims or other particular matters. Example: An employee could not submit a proposal to the government on behalf of a group of employees who are seeking to obtain a contract to perform a privatized Government function through an employee-owned company or ESOP. The restriction would apply whether or not the employee’s position would be eliminated because the function was being privatized. Employees who wish to submit such a proposal would have to retain a non-employee to represent them in the matter (OGE Letter 95 X 10).

C. Post-Employment Restrictions

Restrictions applicable to Federal employees after leaving Federal service are found in the criminal conflict of interest statute (18 U.S.C. 207) and the Procurement Integrity Act (41 U.S.C. 423).

1. **18 U.S.C. 207:** Government personnel who personally and substantially participated in, or were responsible for, a particular matter involving specific parties while employed by the government are prohibited from later “switching sides” and representing any party before the government on the same matter. *The restrictions of this statute do not prohibit employment, but only certain communications to and appearances before the government with the intent to influence an agency action.* 18 U.S.C. 207 contains six substantive provisions, only two of which are likely to have general applicability to employees involved in an A-76 cost comparison².

Specifically,

- a. the “lifetime bar” of 18 U.S.C. 207(a)(1) prohibits former government employees from knowingly making, with the intent to influence, any communication to, or appearance before, a government employee on behalf of any other person(s) (except the United States) in connection with *a particular matter involving a specific party or parties* in which the former employee previously participated personally and substantially as a government employee and in which the United States is a party or has a direct and substantial interest; and,
- b. the “two-year bar” of 18 U.S.C. 207(a)(2) prohibits former governmental employees from knowingly making, with the intent to influence, any communication to, or appearance before, a government employee on behalf of any other person(s) (except the United States) in connection with *a particular matter involving a specific party or parties* that was pending under the employee’s official

² Senior Executive Service, Executive Level, and other employees at equivalent levels should consult their ethics counselors for additional post-employment restrictions that may apply to them.

responsibility during the one-year period of time prior to the employee's separation from government employment and in which the United States is a party or has a direct and substantial interest. The term "official responsibility" means "the direct administration or operating authority, whether intermediate or final, and either exercisable alone or jointly with others, either personally or through subordinates, to approve, disapprove, or otherwise direct government action." [18 U.S.C. 207(b)].

Example: Individuals working on an A-76 competition are not prohibited from working for a winning contractor by 18 U.S.C. 207(a). They may be prohibited from representing their new contractor employer back to the government with regard to the contract, or a work-related issue, if they were either personally and substantially involved in the contract or issue, or if the matter was under their official responsibility.

2. The question of whether government procurements, including those conducted under A-76, *involve specific parties* is determined "... by the degree of interest expressed and contacts made with ... private parties as contractual requirements evolve." (OGE Informal Advisory Letter 80 X 4). For example, while a contract becomes a "particular matter" (for purposes of the participation restrictions described above) when the request for proposal is being formulated, it would not ordinarily become a "particular matter involving a specific party or parties" until the proposal or indications of interest by contractors are first received by the agency. Whether the post-employment restrictions of 18 U.S.C. 207 are triggered may depend upon the degree of contractor input during the development of the PWS. Those restrictions become applicable when specific parties become identified.

3. Procurement Integrity Act: In contrast to the criminal post-employment restrictions, the Procurement Integrity Act would prohibit certain former government officials from accepting compensation from a successful bidder on a contract to privatize government functions for a period of one year after serving in certain governmental capacities. Specifically, such compensation is barred for a period of one year after an employee:

- a. Serves at the time of selection of the contractor or award of the contract in excess of \$10 million as the procuring contacting officer, source selection authority, member of a source selection evaluation board, or chief of a financial or technical evaluation team; or,
- b. Serves as the program manager, deputy program manager, or administrative contracting officer (ACO) for a contract in excess of \$10 million; or,
- c. Personally made decisions on a contract concerning claims, contract modifications or task orders, or the issuance of a contract payment in excess of \$10 million.

The designated date varies depending upon the position held, but is generally the date of selection or award for individuals involved in the source selection process, the date of last service for program managers and ACOs, and the date of decision for all others.

Example: An employee who serves, at the time of the selection of the contractor or the award of the contract, as a member of a Source Selection Board for a procurement of \$10 million resulting from an A-76 competition must (1) report any contact with a bidder concerning negotiations for employment, (2) reject the offer, or disqualify him/herself from participation in the procurement, as appropriate, and (3) may **not** accept employment and receive compensation from the awardee for one year from the award of the contract.

D. Procurement Information Restrictions

In addition to restrictions noted above, the Procurement Integrity Act establishes certain prohibitions and requirements relating to disclosing or obtaining procurement information. Specifically, present and former government officials, and persons who advised the United States regarding a procurement, are prohibited from knowingly disclosing contractor bid or proposal information or source selection information before the award of the contract. All persons are prohibited, except as otherwise authorized by law, from knowingly obtaining contractor bid and proposal information or source selection information before the award of the contract.

All Federal and contractor personnel involved with competitive sourcing/A-76 competition will protect source selection and other procurement sensitive information from unauthorized or inadvertent disclosure until such time as it is made available to the general public. Additionally, proprietary information will be safeguarded and will only be used when required to assist to the government or to aid in technical evaluations of specific offers, products, or services.

In the case of A-76 competitions, procurement sensitive information includes information collected and products developed in the conduct of the competition. The PWS and all working documents pertaining to it are considered procurement sensitive. The Agency Tender and all working documents are considered procurement sensitive until the public review period following the initial performance decision, at which time such information must be made available to all interested parties.

The Agency Tender and relevant working documents are not considered to be proprietary information unless the MEO will be used in a subsequent competition (e.g., at another site as part of a multi-location competition). However it is possible that certain contractor proprietary information could be used in the development of the Agency Tender. This includes contractor-owned data systems (e.g., best practices databases) that might be used in formulating the MEO. It could also include information and/or systems owned by private sector vendors currently providing certain services under contract with the government.

All Federal and contractor staff that require access to A-76 competition and acquisition related procurement sensitive or contractor proprietary information will adhere to the procedures described below:

1. All procurement sensitive and proprietary information will be securely used, maintained, stored, and, transferred.
2. All hard copies of procurement sensitive information will be stored and maintained in an approved secure container with a locking mechanism. This information will be separated from all other support materials. When in use, the sensitive information will be maintained under strict control at all times.
3. Electronic files and systems will be secured and only those persons assigned to the respective A-76 team or official will have downloading and/or read access to such files/systems.
4. Only those persons who have a “need to know” will have access to and may receive specific and relevant procurement sensitive and proprietary information.
5. Each Team will maintain an updated list of individuals granted access rights to procurement/program sensitive information.
6. Teams will ensure that procurement sensitive and proprietary information is kept separate from general public information.

7. Data, analysis, working papers, options/recommendations, decision papers, or any other aspect of procurement sensitive, proprietary information or program sensitive data will not be communicated in any form to anyone outside of the respective PWS Team, Agency Tender Team, Acquisition Team, or any other formal A-76 Team until it has been formally released to the public.

8. The Contracting Officer assigned to a particular competition will determine when and what information will be made available to the general public.

9. All personnel directly involved in an A-76 competition, including prime contractor, subcontractor, and consultant staff supporting an A-76 activity, who require access to procurement sensitive information shall be required to execute a Non-Disclosure Agreement (NDA). This agreement (attached) outlines individual responsibilities with respect to the access and handling of procurement sensitive information. Signed NDAs will be maintained by the Functional Team Official and copies will be provided to the Department's Office of Competitive Sourcing/A-76 (OCS).

10. Procurement sensitive information no longer required will be returned to its origin, or disposed of in accordance with established records management and security procedures.

5. ORGANIZATIONAL CONFLICTS OF INTEREST

The U.S. Code of Federal Regulations (C.F.R.) requires that: "Government business shall be conducted in a manner above reproach and, except as authorized by statute or regulation, with complete impartiality and with preferential treatment for none. Transactions relating to the expenditure of public funds require the highest degree of public trust and an impeccable standard of conduct. The general rule is to avoid strictly any conflict of interest or even the appearance of a conflict of interest in government-contractor relationships." (48 C.F.R 3.101-1)

Conflict of interest rules, among other things, "serve to separate roles that require neutrality (such as drafting the ground rules of a competition) from those where advocacy is permissible (such as assisting one side in the ensuing competition)." (Comptroller General, B-286194.7, 5/29/02). The OMB Circular A-76 (Revised) states "Circular A-76 is not designed to simply contract out. Rather, it is designed to: . . . provide a level playing field between public and private offerors to a competition, and . . . encourage competition and choice in the management and performance of commercial activities."

In an A-76 competition, the PWS provides the ground rules forming the basis of the competition while the Agency Tender, which includes the government's MEO proposal, represents the basis of the agency's cost estimate. Since the MEO is essentially a bid, the GAO has determined that the MEO team "is essentially a competitor" (another bidder) in an A-76 competition.

To maintain a level playing field and ensure that organizational conflicts of interest (OCI) do not arise during a competition, the Department will follow the guidance primarily contained in the GAO decision in the case of Jones/Hill Joint Venture (B-286194.4, B-286194.5, B-286194.6 Dec 5, 2001) and GAO's application of FAR Subpart 9.5, "Organizational and Consultant Conflicts of Interest," to A-76 competitions. As stated by the GAO, FAR 9.5 was written to apply to the conduct of contractors rather than government personnel in that it was written with private-private competitions in mind where only the behavior of contractor personnel is at issue. In the context of an A-76 competition, the government itself becomes a bidder for the services being solicited in the public-private competition, and so these rules of conduct apply to government employees as well.

FAR 9.501 defines "organizational conflict of interest" as a situation where as a result of one's other activities or relationships, that individual or entity is unable or potentially unable to render impartial

assistance or advice to the government, or the individual's objectivity is or might be impaired, or the entity may have an unfair advantage in the procurement competition.

Example: A contractor consultant who has written a statement of work is not usually permitted to bid on performance of that statement of work because of the risk that the statement of work may be designed to benefit the consultant's business interests rather than the interests of the government.

In the A-76 protest case of Jones/Hill Joint Venture (cited above), the GAO reasoned that allowing the same individuals to participate substantially in developing both the PWS (the requirements document) and the Agency Tender (the government's bid) violates OCI restrictions as expressed in the FAR and as established in previous GAO decisions.

The GAO's decision in the Jones/Hill case on OCI rested on three primary points:

1. Unequal access to information,
2. Biased ground rules, and
3. Impaired objectivity.

Under unequal access to information, the GAO argued that allowing the same individuals to develop the PWS and the Agency Tender permits them earlier access to information than that available to private sector competitors in developing their proposals. By having the information sooner, the government offeror would, unfairly, have more time to develop a proposal.

Under biased ground rules, the GAO argued that allowing the same individuals to develop the PWS and the Agency Tender provides the government an unfair competitive advantage in developing its bid and proposal.

Under impaired objectivity, the GAO argued that one's ability to render impartial advice could appear to be undermined if that individual is closely related to the entity receiving the advice. If the same individual develops the PWS and the Agency Tender, there is at least the appearance that the PWS is not an objectively written (bidder-neutral) statement of work.

Lastly, in its decision pursuant to the Navy's request for reconsideration (GAO Decision B-286194.7, dated May 29, 2002), which was subsequently denied, the GAO indicated that "...where a protest establishes facts that constitute a conflict or apparent conflict, we will presume prejudice unless the record affirmatively demonstrates its absence." It is therefore imperative that the guidelines established in this Appendix be used to establish a plan of action that is followed and that sufficient records are maintained (e.g., minutes of meetings) to attest to the fact that competition participants were not allowed access to information in ways that would violate OCI restrictions.

In order to comply with OCI restrictions and to ensure the integrity of its procurements, the Department has established an infrastructure to manage and execute its Competitive Sourcing Program. The guidance provided below describes firewall provisions that will be taken into consideration in the development of team structures and the assignment of employees to work on various aspects of the competitive sourcing process. In summary, these guidelines ensure that DOE employees and contractor personnel who participate substantially in one aspect of the process do not inadvertently participate in or have access to information pertaining to other parts of the process that would otherwise violate OCI restriction. The table at Attachment 2 to this Appendix further describes how involvement in one area is impacted by involvement in another.

6. A-76 FIREWALL PROVISIONS

1. Anyone (Federal or contractor employee) who serves as a member of the PWS team may not serve also as a member of the Agency Tender team.
2. The MEO may not be developed until after the PWS team has either completed the PWS or released a draft PWS to the contracting community for comment.
3. The contracting officer may not assist the MEO team in writing or developing the MEO. However, he or she - or anyone else from the Office of Procurement and Financial Assistance at Headquarters or field procurement offices - may provide guidance regarding acquisition related laws, regulations, policies, and procedures.
4. The PWS Team Leader may not assist the MEO team.
5. The Agency Tender certifying official may not assist the PWS team.
6. Anyone who participates as a source selection official (as a member of the technical evaluation team, as a member of any other source selection team or committee, or as the source selection authority) may not serve on or assist the MEO team.
7. Anyone who will be directly affected by the outcome of the procurement - that is, whose position is subject to being contracted out - may not participate as a source selection official.
8. Anyone who is directly involved in developing, reviewing, or approving the PWS should not have any direct communication with anyone who is a member of the MEO team about any aspect of the commercial activity or the A-76 competition. However, Functional Area specialists who participate on PWS teams may respond to questions from the MEO team in areas of their expertise, but not with respect to matters solely to the responsibilities of the PWS team.
9. The Department will not give the MEO team access to data that the PWS team has collected before providing it to the potential commercial offerors. Consequently, the MEO team should not receive any data except that collected or generated by its members. The MEO team may have access to data that the Department has in its possession that was not developed directly by the PWS team and is not otherwise procurement sensitive.
10. MEO team members may independently obtain data from appropriate agency sources that may also have been used by the PWS team to develop the PWS. Such information should not come directly from the PWS team, but rather from the appropriate agency source. This information may be collected and analyzed by the MEO independent of the PWS process. Such independent efforts by the MEO to collect data for the purpose of submitting a Tender Offer, and the information that it collects, is procurement sensitive.
11. In situations where personnel who are not members of either the PWS or MEO team work together to gather data, and their management subsequently assigns them to work on an associated PWS or MEO teams, contemporaneous documentation will be established indicating that the employees' previous efforts were limited to data gathering and that they had no role in any decision-making. If the employee participated in the decision making process, they should not be assigned to a team.

ORGANIZATIONAL CONFLICTS OF INTEREST CHART

	PWS/QASP Preparation	Agency Tender Development	Quality Control	Source Selection
PWS Team Leader & PWS Team members	OK	Conflict	Conflict	Maybe*
Agency Tender Official & Agency Tender Team	Conflict	OK	Conflict	Conflict
Contracting Officer & Source Selection team	OK	Conflict	Conflict	OK
Quality Control Team	Conflict	Conflict	OK	Conflict

* The person who will serve as the source selection authority may not serve on or assist the PWS team if he or she is a member of, or organizationally affiliated with, the commercial activity

APPENDIX D. NON-DISCLOSURE AGREEMENT**DEPARTMENT OF ENERGY EMPLOYEE NON-DISCLOSURE AGREEMENT FOR PARTICIPATION IN A COMPETITIVE SOURCING/A-76 COMPETITION**

1. In the course of participating either in a direct (i.e., core team member) or in an advisory role (i.e., ad hoc team member) in support of a Competitive Sourcing/A-76 Competition or activity, I may be given access to or entrusted with sensitive government information, such as data identified as Business Sensitive, Procurement Sensitive, Proprietary [e.g., 41 USC section 423, the Procurement Integrity Act restrictive legend per Federal Acquisition Regulation (FAR) 52.215-1)] or Source Selection Information (as defined in FAR 3.104-3) that may be associated with the ongoing Competitive Sourcing/A-76 Cost Competition or activity or future Competitive Sourcing/A-76 Cost Competition or activity. These sensitive data include, but are not limited to, all data, information and software, regardless of the medium, e.g. electronic or paper, and/or format in which the data exist, and includes data that are derived from, Source Selection, Business Sensitive, Procurement Sensitive and/or Proprietary Data (collectively referred to herein as “the data”).

2. As a condition to receiving access to the data, I agree not to discuss with, disclose, release, reproduce or otherwise provide or make available the data, or any portion thereof, to any other government or non-government employee, person, or organization unless that other employee, person, or organization has signed a non-disclosure statement for this Competitive Sourcing/A-76 competition. Furthermore, I agree to adhere to all safeguards established for the data and to use the data solely for the purpose of performing my role in support of the *[INSERT name of Stage/Part of Competition involved in, i.e., PWS, government’s Agency Tender, etc.]*. If I have any questions about the non-disclosure guidance contained herein, I shall present those questions to the *Functional Team Official*.

3. I agree that these obligations not to inappropriately use, discuss, disclose, release, reproduce or otherwise provide or make available the data are binding upon me as required by applicable laws, regulations and Department of Energy directives.

4. I understand that any inappropriate use, disclosure, release or reproduction of the data is unauthorized and may result in criminal, civil and/or administrative penalties and disciplinary actions. I understand that nothing in this nondisclosure agreement changes, alters or, otherwise, is intended to replace the requirements of any applicable laws, regulations and Department of Energy directives. I freely and willingly sign this document, fully understanding its contents.

PRINTED NAME: _____

POSITION/TITLE: _____

SIGNATURE: _____ DATE: _____