

LESSON 8

Disposition

“**D**isposition" refers primarily to what is done with classified material at the opposite ends of the contracting process, that is, before a classified contract is awarded and when a classified contract is concluded (completed or terminated). In this context, "disposition" includes the following four actions:

- **Return** - dispatching classified material received back to the UA contracting officer,
- **Surrender** - dispatching classified material your firm developed to the UA contracting officer,
- **Destruction**, as discussed in Lesson 7,
- **Retention** - keeping classified material received or developed in connection with a completed contract at your facility for an authorized, specified period. Note that retention includes transfer - shifting the classified material associated with a completed contract to an active contract, such as a follow-on contract.

In this lesson, we'll discuss the nuts and bolts of each of these modes of disposition. We'll also discuss retention of classified material that does not relate to a contract, and what to do if the Security Agreement (DD Form 441) is terminated.

OBJECTIVES

When you have completed this lesson, you should be able to do the following:

- Make proper disposition of SECRET and CONFIDENTIAL documents received as part of a UA solicitation and/or produced in response to a UA solicitation, when your firm is not awarded the contract.
- Make proper disposition of SECRET and CONFIDENTIAL documents provided to your firm or produced by your firm in connection with a UA contract, when the contract is concluded (completed or terminated).
- Apply the rules for disposition of classified material not received under a specific contract, such as material obtained at a classified meeting.
- Make proper disposition of classified material possessed by your firm and of other documents and records when the Security Agreement is terminated.

PROSPECTIVE CONTRACTING THE FOUR CASES

MEANWHILE, AT THE
WALNETTO MODEL AIRPLANE
COMPANY...



"ABOUT THAT AIR FORCE
PROJECT... DO YOU THINK
THEY'LD GO FOR AN 8" VERSION?"

If your firm contracts directly with a UA or plans to do so, it is likely that somewhere along the way it will receive a classified solicitation (Invitation for Bids, Request for Proposals, Request for Quotes) from a UA. A classified solicitation is one that entails access to classified information by the prospective contractor. As with any solicitation, there are four possible cases:

1. Your firm does not submit a response (bid, proposal, quote);
2. Your firm submits a response but later withdraws it;
3. Your firm submits a response but it is not accepted; or
4. Your firm submits a response and is awarded the contract.

Let's take each case and see how you may dispose of the classified information involved.

CASE 1: NO RESPONSE SUBMITTED

There are any number of reasons why your firm may choose not to submit a response to a UA solicitation. Your firm may already be booked solid with other projects. Maybe management doesn't think the firm has enough resources or the right kinds of resources to be competitive. Proposed delivery schedules may seem too rigid. After considering your firm's situation and the options open to it, you must destroy or return/surrender the classified material *within* 180 days after *the opening date of bids, proposals, or quotes*. Actually, with an RFP, this means within 180 days of the closing date; proposals may be opened as soon as received by the contracting officer.

CASE 2: RESPONSE SUBMITTED BUT WITHDRAWN

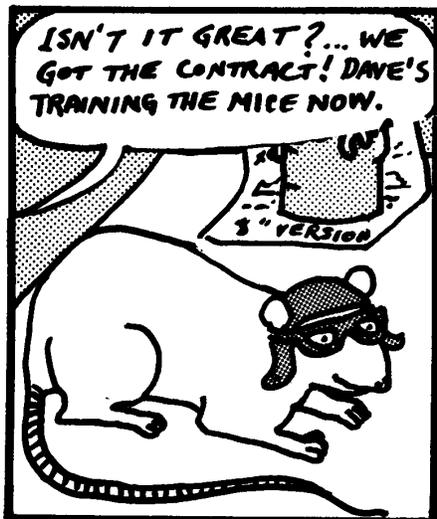
There are also many reasons why your firm's management may have second thoughts about a response once it has been submitted and may have decided to withdraw it. (Withdrawal is usually possible only with proposals, not bids or quotes.) Even though your firm withdraws its response, i.e., stops further consideration of it for the contract, the contracting officer will likely not return to your firm any classified documents that had been submitted. So all you will have on hand to dispose of will probably be the Request for Proposals (RFP) itself, whatever classified documents your firm may have developed in preparing its proposal, and a copy of the proposal itself. As with Case 1, you must destroy or return/surrender the classified material within *180 days after the opening date*.

CASE 3: RESPONSE NOT ACCEPTED

In this case your firm prepared a response, submitted it, did not withdraw it, but was not awarded the contract. Here your firm will have a little more time to decide what it wants to do. It has *180 days after notification that its response was not accepted* to destroy or return/surrender classified material.

CASE 4: AWARDED THE CONTRACT

In this case your firm's response (bid, proposal, or quote) was accepted. Here, disposition comes into play when the contract *is completed* (i.e., upon final delivery of goods and services) or *terminated* (as for the convenience of the Government or for default). A decision will have to be made as to which type of disposition, or combination of types, should be used. Or you may decide to retain the classified material. *Unless the contracting officer advises to the contrary, you may retain the classified material for up to two years after final*



delivery of goods and services, or after completion or termination of the classified contract.

RETENTION FOR MORE THAN TWO YEARS

There may be occasions when you have good reason to retain the documents for more than the two-year period instead of returning, surrendering, or destroying them.

Requesting Retention Authority. On such occasions, you need to request (and receive) written retention authority from the UA contracting officer. In your request you will need to do the following:

1. Identify the SECRET and CONFIDENTIAL documents by subject matter and approximate number of documents.
2. Justify the retention based on one or more of the following:
 - The material is necessary for the maintenance of the contractor's essential records.
 - The material is patentable or proprietary data to which the contractor has title.
 - The material will assist the contractor in independent research and development efforts.
 - The material will benefit the U.S. Government in the performance of other prospective or existing Government contracts.
 - The material is being retained in accordance with the "records retention clause" of the contract.
 - The material will benefit the U.S. Government in the performance of another active contract and will be transferred to that contract (specify contract).

Final DD Form 254. If the UA contracting officer decides that your firm has a continuing need for the material, the UA will issue a *final DD Form 254* for the classified contract. The UA will enter the *authorized retention period* in item 5 of the form. The UA will enter the *final disposition instructions* for the classified material in item 13.

CLASSIFIED MATERIAL NOT RELATED TO A CONTRACT

Your firm must take action to dispose of classified material that does not relate to any of your contracts *within one year of receipt*. Usually this will be classified material obtained at a classified meeting or symposium or from a secondary distribution center. Such material must be duly entered into your receipt and dispatch records, properly stored, and so forth.

TERMINATION OF THE SECURITY AGREEMENT



The Security Agreement (DD Form 441) can be terminated by either party (i.e., your firm or the Government) by giving the other party 30 days' notice. If this should occur, one of your last duties as your firm's FSO would be to dispose of your firm's classified documents. If termination occurs, and if no new Security agreement is executed, then, no matter what documents you may have been authorized to retain, your firm must either

- Return all classified material that it possesses to the UA concerned,
- or
- Dispose of such material as instructed by the Field Office concerned.

You will also need to return your firm's copy of the Notification of Facility Security Clearance (DSS FL 381-R).

The following chart summarizes the disposition periods we have discussed:

DISPOSITION SCHEDULE	
Situation:	Contractor must return, surrender, or, as authorized, destroy the classified material:
Bid, proposal, or quote not submitted	Within 180 days of opening date
Bid, proposal, or quote withdrawn	Within 180 days of opening date
Bid, proposal, or quote not accepted	Within 180 days of notification
Awarded the contract	Two years from final delivery of goods and services, or completion or termination of the contract.
Material not received under contract	One year from receipt

DISPOSITION AT EWC

Returning and surrendering classified material to the UA are both dispatching (transmission) actions, discussed in Lesson 6. In Lesson 7 we went over how EWC destroys classified material. That leaves retention. Let's see EWC might handle retention.

Transfer to a follow-on contract. A common type of retention is Transfer to Follow-On Contract. You will recall that EWC hopes to be awarded a follow-on contract by the Navy for the full-scale production of the laser widget. If this should occur, the documents that EWC developed under its current R & D contract would likely be transferred to the follow-on so that EWC could use them. If so, the transfer would be indicated in item 4 of the DD Form 254 for the follow-on contract. The top of the front of the DD Form 254 might look like this.



DEPARTMENT OF DEFENSE CONTRACT SECURITY CLASSIFICATION SPECIFICATION <i>(The requirements of the DoD Industrial Security Manual apply to all security aspects of this effort.)</i>		1. CLEARANCE AND SAFEGUARDING a. FACILITY CLEARANCE REQUIRED SECRET	
		b. LEVEL OF SAFEGUARDING REQUIRED SECRET	
2. THIS SPECIFICATION IS FOR: (X and complete as applicable)		3. THIS SPECIFICATION IS: (X and complete as applicable)	
a. PRIME CONTRACT NUMBER X N00147-97-C-8951		a. ORIGINAL (Complete date in all cases) X	Date (YYMMDD) 960419
b. SUBCONTRACT NUMBER		b. REVISED (Supersedes all previous specs)	Revision No. Date (YYMMDD)
c. SOLICITATION OR OTHER NUMBER	Due Date (YYMMDD)	c. FINAL (Complete Item 5 in all cases)	Date (YYMMDD)
4. IS THIS A FOLLOW-ON CONTRACT? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO. If Yes, complete the following: Classified material received or generated under <u>N00021-95-C-7834</u> (Preceding Contract Number) is transferred to this follow-on contract.			
5. IS THIS A FINAL DD FORM 2547 <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO. If Yes, complete the following: In response to the contractor's request dated _____, retention of the identified classified material is authorized for the period of _____			

Since the decision to transfer the classified material would have been made by the Navy, EWC would not need to justify and request the transfer. However, Zelda would change the title of the file folder containing the documents to reflect the number of the follow-on contract.

Transfer to Another Active Contract. Lets say that within two years after the completion of the Laser Widget Project with NESC, EWC is performing on a contract with the Army Communications and Electronics Command (CECOM), Fort Monmouth, New Jersey. Let's further suppose that the CECOM contract is scheduled to conclude more than a year after the scheduled completion of the NESC contract. When the NESC contract concludes, Harold can write to NESC and CECOM notifying them that EWC is transferring the documents to the active contract with CECOM since the classified material associated with the NESC contract will benefit the U.S. Government in the performance of the CECOM contract (justification) and identifying the documents. If neither NESC nor CECOM disallows the transfer, EWC can then retain the classified documents for the duration of the CECOM contract, and for two years after its completion. As

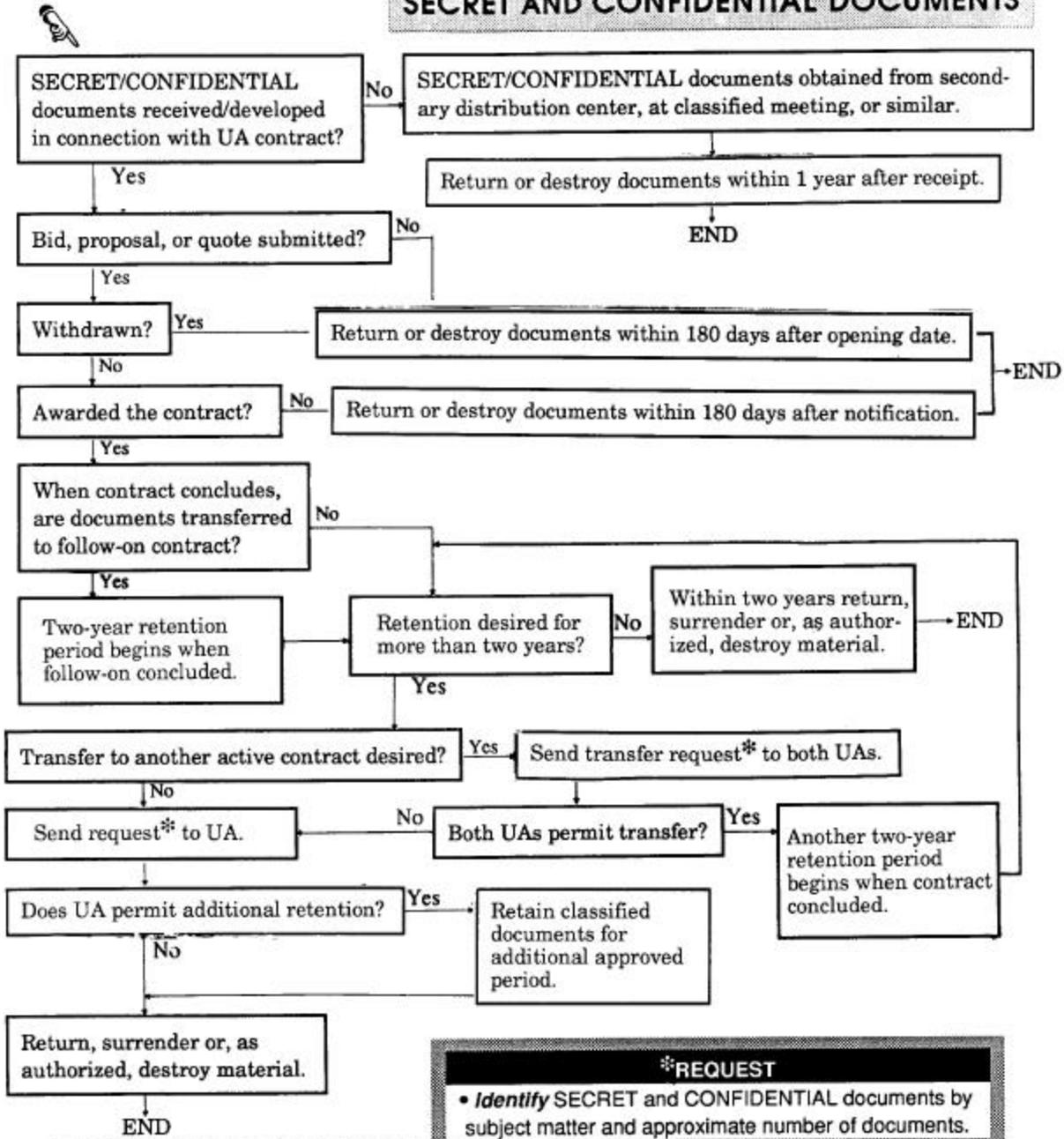
before, Zelda would retitle the file folder for the materials.

Further Retention. Suppose, however, that EWC is not awarded the follow-on contract. Suppose also that EWC would like to retain Buzz's report and other documents that EWC developed under the R & D contract beyond the usual two-year period. In this case, within the two years after the R & D contract concludes, Harold would write a letter to Ellen Travers, the contracting officer for the R & D contract, justifying and requesting further retention of the documents EWC wishes to retain. In this case the justification would be that the retention would assist EWC and benefit the U.S. Government in the performance of future UA contracts. Harold would also indicate the period of time that retention is necessary. Finally, Harold would identify the documents by identifying the subject matter and approximate number of documents for the SECRET and CONFIDENTIAL documents. If Ellen Travers approved the further retention, she would issue a final DD Form

CHART

The following chart depicts most of the main points covered in this lesson.

SECRET AND CONFIDENTIAL DOCUMENTS



*REQUEST

• Identify SECRET and CONFIDENTIAL documents by subject matter and approximate number of documents.

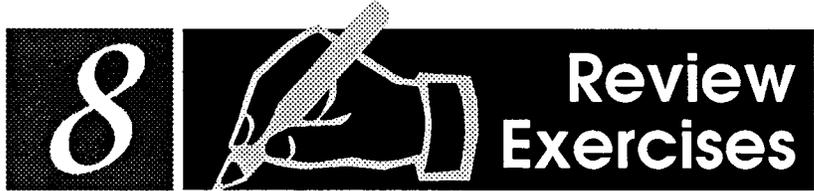
• Justify retention of material based on:

- Needed to maintain essential records
- Patentable or proprietary data; contractor has title
- Will help in independent research and development efforts
- Will benefit U.S. Gov't in performance of prospective/existing contracts
- Retained under records retention clause of contract
- Will benefit U.S. Gov't in performance of another contract (specify) and is being transferred to that contract

SUMMARY

Classified documents received or developed in connection with a UA solicitation or contract must be disposed of properly. When no response is submitted to a solicitation or when a response is submitted and withdrawn, the documents must be destroyed or dispatched to the contracting officer within 180 days of the opening of bids, proposals or quotes. When a response is submitted but not accepted the documents must be destroyed or dispatched to the contracting officer within 180 days of the notification. The successful contractor may retain the classified documents associated with the contract for two years from its completion or termination unless the UA contracting officer notifies the contractor to the contrary. Further retention entails justifying and requesting retention authority and identifying the classified documents to be retained. If the documents will aid in performing on an active contract, they may be transferred to it. Classified material not received under a specific contract, such as material obtained at classified meetings or from a secondary distribution center, may be retained for one year. If the Security Agreement is terminated and a new one is not executed, all classified material is returned to the UA concerned or is disposed of as the FSO instructs.



The header for the review exercises section. It features a large white number '8' on a black background to the left of a white line-art illustration of a hand holding a pen. To the right of the illustration, the words 'Review Exercises' are written in a bold, white, sans-serif font on a black background.

8 Review Exercises

Complete the following exercises for review and practice.
Multiple-choice questions may have one or more correct choices.

1. Western Widgets received a classified Invitation for Bids (IFB) from the Air Force, but does not want to submit a bid. What two actions are open to the company regarding the classified documents it received?

a. _____

b. _____

How soon does the company have to make disposition?

2. Coherent Communications has completed a classified contract with the U.S. Information Agency (USIA). The firm has been awarded a follow-on contract by the USIA. The DD Form 254 for the follow-on calls for the documents received and produced under the completed contract to be transferred to the follow-on. What should the company do to identify the documents when they are transferred?

3. Bob's Biotech, Inc. (BBI) was performing on a classified contract with the National Science Foundation (NSF). Because of budget cutbacks, the NSF terminated the contract for the convenience of the Government. Under the terms of the contract, certain classified information that BBI developed is also proprietary data in which BBI has title. Is BBI authorized to request retention of the relevant documents for more than the standard two-year period? _____

4. Twenty-three months ago Harriet's Hydrodynamics made final delivery of goods and services under a classified contract with the Army. The company has just received a classified Invitation for Bids from the Navy. Harriett's management thinks that the documents for the Army contract would be of great value in performing on the Navy contract, if Harriet's Hydrodynamics is the successful bidder.

a. Is there anything that Harriet's Hydrodynamics can do to continue to retain the documents? If so, what?

b. How soon would they need to do it? _____

c. Is there anything the Navy would need to do? If so, what? _____

d. Is there anything the Army would need to do? If so, what? _____

5. Daniel Mumper is a cleared engineer with Marine Propulsion Systems (MPS). Ten months ago he attended the Navy's classified Subsurface Sound Suppression Seminar and received two classified documents from the Navy. Daniel has referred to the documents frequently for his work on a classified contract that MPS was awarded by the Army. Daniel would like MPS to retain the documents. Is he authorized to retain them longer than two more months? _____

6. Charlotte Giordano is the FSO at RCOM, Inc. RCOM's management has decided not to seek any more classified contracts and has given notice to its Field Office that it is terminating the Security Agreement. RCOM possesses several SECRET documents that it retained following completion of a classified contract a year ago. What does Charlotte need to do regarding the termination?



1. a. Destroy the documents (and any copies).
b. Return them to the contracting officer for the Air Force. Within 180 days after the opening date for bids. **(p. 8-3)(NISPOM, 5-701)**

2. Coherent Communications would note the transfer from the completed contract to the follow-on contract, e.g., by retitling the contract file. **(p. 8-8)**

3. Yes. Whether the contract was completed or terminated, BBI is entitled to request retention of the documents as provided for in **NISPOM, 5-702b(2)**.
(p. 8-5)((NISPOM, 5-702b(2))

4. a. Harriet's Hydrodynamics needs to request retention authority from the Army-identifying the documents and justifying the retention on the basis that the continued retention will benefit the U.S. Government in the performance of the prospective contract with the Navy **(NISPOM, 5-702b(4))**. The request should indicate how much longer the company will need to retain the documents.

b. Within one month, since the standard two-year retention period will expire in one month.

c. No.

d. Yes. Issue a final DD Form 254, indicating the final retention period and final disposition instructions.
(p. 8-5-6)(NISPOM, 5-702)

5. No. **(pp. 8-6)(NISPOM, 5-701d)**

6. Charlotte will need to see that all of the classified documents that RCOM, Inc. possesses are either returned to the Army or disposed of as the Field Office instructs. She will also need to return RCOM's copy of the DSS FL 381-R to the Field Office. **(p. 8-6)(NISPOM, 5-703)**