



INTERNATIONAL BOUNDARY & WATER COMMISSION  
**NONDISCLOSURE AGREEMENT**  
Conditional Access to Sensitive But Unclassified (SBU) Information

Project: \_\_\_\_\_ Contract Number: \_\_\_\_\_

Prime Contractor: \_\_\_\_\_

**Information of Person Completing Form:**

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_ Email: \_\_\_\_\_

*The person completing this form is completing it as a representative of the company stated whether that company is an individual, partnership, joint venture, LLC, or corporation.*

**NOTE:** All references to "Contract" also apply to the associated RFP/Solicitation or Task Order, as appropriate. Agreements signed during the RFP/Solicitation period do not need to be re-signed once Contract is awarded.

1. I hereby consent to the terms in this Agreement in consideration of my being granted conditional access to certain United States (US) Government data or material containing Sensitive But Unclassified (SBU) information.
2. I represent:  
☐ the Prime Contractor      ☐ a subcontractor of the Prime      ☐ a supplier/vendor of the Prime  
☐ a subcontractor, supplier, or vendor of a Prime's subcontractor, supplier, or vendor
3. As used in this Agreement, SBU information is:
  - a. Any information, the loss, misuse, unauthorized access to, or unauthorized disclosure or modification of which could adversely affect the national interest or the conduct of Federal programs including information covered by 18 USC §§1905 and 1906.
  - b. Information not customarily in the public domain and related to the protection of critical infrastructure assets, operations, or resources, whether physical or cyber, as defined in the Homeland Security Act, 6 USC §671(3).
  - c. Certain information relating to the design and construction of buildings, dams, and other facilities.
  - d. Information illustrating or disclosing infrastructure protection vulnerabilities, or threats against persons, systems, operations, or facilities, but not meeting the criteria for classification under Executive Order 13526.
4. I am being granted conditional access contingent upon my execution of this Agreement for the sole purpose performing work under this Contract. This approval will permit me conditional access to certain information, including, but not limited to, documents, memoranda, reports, and/or to attend meetings in which such information is discussed or otherwise made available to me. This Agreement will not allow me access to materials which the USIBWC has predetermined, in its sole discretion, is inappropriate for disclosure pursuant to this Agreement. This may include SBU information provided to the US Section of the International Boundary and Water Commission (USIBWC) by other agencies of the US Government.
5. By being granted conditional access to SBU information, the US Government has placed special confidence and trust in me and I am obligated to protect this information from unauthorized use and/or disclosure.
6. I will never divulge any SBU information which is provided to me pursuant to this Agreement to any person, unless I have been advised in writing by the USIBWC that the individual is authorized to receive it. I agree that I must seek and obtain the prior written approval of the USIBWC for any proposed disclosure or use except as noted in 6.a. SBU information shall only be disclosed to employees, subcontractors, and suppliers/vendors as reasonable required to complete the work under this Contract.
  - a. Contractors may provide SBU data to their subcontractors, suppliers, or vendors (and subcontractors, suppliers, or vendors of these entities) in the performance of work under this Contract as long as a properly completed Nondisclosure Agreement from said subcontractor or supplier/vendor is provided to

the Contracting Officer (CO) or Contracting Officer's Representative (COR) within three (3) calendar days of data release.

- b. Contractors are required to keep a list of all companies/individuals to whom data has been released.
  - c. Contractors are responsible for ensuring that subcontractors and suppliers/vendors properly maintain and destroy SBU data.
  - d. The technical requirements of this Contract (Technical Specification 00.73.73, Design-Build Statement of Work (SOW) 00.73.73.01, or A-E SOW Section 1, as appropriate) provide additional guidance and requirements on the use of SBU data in the completion of this project.
7. Data (drawings, specifications, notes, reports, etc.) created by my company, our subcontractors, suppliers, or vendors may be or may become classified as SBU. I shall ensure that data is properly classified, marked, and stored. If I am unsure if data should be classified as SBU, I will contact the CO or COR. Their decision shall be final.
  8. Unless expressly authorized by the USIBWC, I will not use any SBU information for any commercial or other purpose other than that for which access to such information is provided under this Contract.
  9. I will submit to the USIBWC for security review, prior to any submission for publication, any book, article, column, or other written work for general publication that is based upon any knowledge I obtained during the course of my work on this Contract in order for the USIBWC to ensure that no SBU information is disclosed.
  10. I hereby assign to the US Government all royalties, remunerations, and emoluments that have resulted, will result, or may result from any disclosure, publication, or revelation of SBU information not consistent with the terms of this Agreement.
  11. If I violate the terms and conditions of this Agreement, I understand that the unauthorized disclosure of SBU information could compromise the mission and security of the USIBWC.
  12. If I violate the terms and conditions of this Agreement, such violation may result in the cancellation of my conditional access to SBU information which may result in my company's being found unqualified for submitting an offer/bid or even termination of this Contract. Cancellation may also serve as a basis for denying me conditional access to USIBWC SBU information in the future.
  13. If I violate the terms and conditions of this Agreement, the US may institute a civil action for damages or any other appropriate relief. The willful disclosure of information to which I have agreed therein not to divulge may constitute a criminal offense. Since I am signing this form as a company representative, civil and criminal actions may include myself and the company at which I work.
  14. Until I am provided a written release from this Agreement, or any portions of it, all conditions and obligations contained in this Agreement continue indefinitely.
    - a. USIBWC shall release the Prime Contractor from this Agreement.
    - b. The Prime Contractor shall release their subcontractors and suppliers/vendors.
  15. Prime Contractor Only: Upon written release from this Agreement, I shall certify to the CO within seven (7) calendar days that all data marked SBU, whether provided by USIBWC or created under this Contract, has been destroyed in a manner to preclude recognition or reconstruction by myself and all subcontractors and suppliers/vendors to whom the data was issued.
    - a. If the Prime Contractor or one of their subcontractors/suppliers/vendors is required to keep copies of SBU data due to state rules/regulations or due to one of the technical requirements of the Contract (i.e., building code, regulation, etc.), then permission to keep the data shall be requested in writing from the CO. The request shall state what information will be kept, the justification for keeping the data, and the method of data storage that will be applied to ensure requirements of this Agreement are not violated.
    - b. The Prime Contract or any of their subcontractors, suppliers, or vendors may provide SBU that must be retained as records to USIBWC for storage. Such data will be included with the record construction files and stored permanently. A cover letter shall be applied to the data noting the company responsible for the data and the reason for the storage of the data. Please note that the SBU classification may not prevent data stored in US Government records from disclosure via Freedom of Information Act (FOIA).
  16. Each provision of this Agreement is severable. If a court should find any provision of this Agreement to be unenforceable, all other provisions shall remain in full force and effect.
  17. I understand that the US Government may seek any remedy available to it to enforce this Agreement, including, but not limited to, application for a court order prohibiting use or disclosure of information in breach of this Agreement.

18. By granting me conditional access to information in this context, the US Government does not waive any statutory or common law evidentiary privileges or protections that it may assert in any administrative or court proceedings to protect any SBU information to which I have been given conditional access.
19. These restrictions are consistent with and do not supersede, conflict with, nor otherwise alter the obligations, rights, or liabilities created by:
  - a. Executive Order 13526
  - b. 5 USC §7211 (*governing disclosures to Congress*)
  - c. 10 USC §1034, as amended by the Military Whistleblower Protection Act (*governing disclosure to Congress by members of the military*)
  - d. 5 USC §2302(b)(8), as amended by the Whistleblower Protection Act (*governing disclosures of illegality, waste, fraud, abuse or public health and safety threats*)
  - e. Intelligence Identities Protection Act of 1982, 50 USC §421 et seq. (*governing disclosures that could expose confidential Government agents*)
20. These restrictions are consistent with and do not supersede, conflict with, nor otherwise alter the statutes which protect against disclosure that may compromise the national security, including:
  - a. 18 USC Sections 641, 793, 794, 798, and 952
  - b. Section 4(b) of the Subversive Activities Act of 1950, 50 USC §783(b)
21. The definitions, requirements, obligations, rights, sanctions, and liabilities created by the items listed under 19. and 20. are incorporated into this Agreement.
22. My execution of this Agreement shall not nullify nor affect in any manner any other secrecy or nondisclosure Agreement which I have executed or may execute with the USIBWC or the US Government.
23. I make this Agreement in good faith, without mental reservation or purpose of evasion and in good faith that I am authorized to represent and bind my company.
24. With my signature below, I affirm that I have read, understand, and agree to follow the terms and conditions of this Agreement.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date Signed

**Accepting personnel shall list filenames or items provided as part of conditional access:**

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**NOTE:** When Agreement completed by subcontractors or suppliers/vendors, it shall be accepted by a representative of the Prime Contractor. When Agreement completed by Prime Contractor, it shall be accepted by a USIBWC representative.

This Agreement was accepted by the undersigned as a prior condition of conditional access to SBU information.

\_\_\_\_\_  
Signature of Accepting Representative

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Printed Name of Accepting Representative

\_\_\_\_\_  
Representative's Title



INTERNATIONAL BOUNDARY & WATER COMMISSION  
**NONDISCLOSURE AGREEMENT**  
INSTRUCTIONS

One form shall be completed by each company that requires access to SBU data. Access to SBU data will not be granted until signed form is reviewed by accepting Agency/Prime Contractor. A completed form noting acceptance of access will be returned with the SBU data.

Either print the form to pdf or scan the completed form to pdf at no less than 300 dpi.  
Do not submit form with active form fields.

Prime Contractor -- Submit to Government

Subcontractor, Supplier, Or Vendor -- Submit to Prime Contractor

Once access to SBU data is no longer required, request release from accepting Agency/Prime Contractor. IBWC Form 358A is used to release companies from the Nondisclosure Agreement.