

## **CONFIDENTIALITY REQUEST**

### **Application of BAE SYSTEMS Information and Electronic Systems Integration Inc. FILE NO. 0024-EX-PL-2004 - SUBMITTED FEBRUARY 9, 2004**

By the enclosed application ("Application"), BAE SYSTEMS Information and Electronic Systems Integration Inc. ("BAE SYSTEMS") requests that the Commission grant BAE SYSTEMS the authority to operate, under an experimental license, the facilities specified in the attached FCC Form 442.

Pursuant to 47 C.F.R. §0.459, confidential treatment of the Application is requested for Exhibits 1 and 2 to the instant FCC Form 442 submitted by BAE SYSTEMS. Based on discussions with Commission staff, it is understood by BAE SYSTEMS that – based on the scope of this Confidentiality Request - any license, other authorizing document or other correspondence issued by the Commission will not contain or otherwise publicly disclose the information that is contained in Exhibits 1 and 2 to the FCC Form 442.

In accordance with 47 C.F.R. §0.459(b), confidential treatment of the Application is requested for the following reasons:

1. Confidential treatment is requested for Exhibits 1 and 2 to the instant FCC Form 442 submitted by BAE SYSTEMS. Based on discussions with Commission staff, it is understood by BAE SYSTEMS that – based on the scope of this Confidentiality Request - any license, other authorizing document or other correspondence issued by the Commission will not contain or otherwise publicly disclose the information that is contained in Exhibits 1 and 2 to the FCC Form 442.

2. The submission in connection with which the subject information is being submitted is the FCC Form 442 submitted by BAE SYSTEMS on February 9, 2004, for experimental facilities. The FCC File Number is 0024-EX-PL-2004.

3. The information contained in the Application constitutes confidential, proprietary commercial information concerning the services and operations that BAE SYSTEMS provides to the United States military. Disclosure of such information would cause irreparable injury and substantial harm to BAE SYSTEMS' ongoing business operations and competitive position. The information is extremely commercially sensitive and is not available to the public in any substantially similar form. The information in the Application is an integral part of the design, engineering and manufacturing process associated with BAE SYSTEMS' implementation of the military program with which the Application is associated.

4. The information contained herein includes information of a highly confidential and proprietary nature, as the development and creation of invention and technology is the backbone of the defense and government contractor industry. As we seek to achieve an edge over our competitors, it is the development of our proprietary information that will dictate to what extent we may maintain such edge. The industry is a most competitive one, and the inadvertent release of any proprietary information would have a severe negative impact on BAE SYSTEMS' position in the marketplace.

5. BAE SYSTEMS' competitive position could be particularly negatively affected by a disclosure of confidential information to the public, which, of course, includes BAE SYSTEMS' larger competitors. Due to BAE SYSTEMS' relative size and power in the marketplace, disclosure of the information in the Application would cause irreparable injury and substantial harm to BAE SYSTEMS' ongoing business operations and competitive position. At the core of BAE SYSTEMS' operations is its development of proprietary information which it uses as the basis to obtain a competitive edge over other government contractors. Improper disclosure of proprietary information, and the release of such disclosure could have an extremely negative impact on the ability of BAE SYSTEMS and its operations. Also, certain proprietary information developed by BAE SYSTEMS is used as the basis for development of systems and functions used in the defense of the United States. Due to the unique nature of our prime customer, the United States government, confidentiality of our proprietary information must be our priority.

6. The information in the Application is not currently available to the public in any substantially similar form. BAE SYSTEMS takes all commercially necessary steps to prevent this information from being disclosed to the public. BAE SYSTEMS requires, prior to the release of any of its proprietary information, that any such receiving party execute a fully negotiated non-disclosure agreement, as BAE SYSTEMS takes all appropriate steps to ensure that our proprietary information is not released to anyone without their being full restriction on its use and potential redisclosure. All proprietary information release by BAE SYSTEMS, whether it be to a competitor or to the United States government, is appropriately marked as proprietary prior to delivery, along with cautionary statements regarding the use of such information.

7. The information in the Application is not currently available to the public in any substantially similar form. BAE SYSTEMS takes all commercially necessary steps to prevent the information in the Application from being disclosed to the public. As mentioned above, only those person or entities such as subcontractors, joint venturers and the United States government are privy to our proprietary information, and only after any such party has executed a non-disclosure agreement.

8. BAE SYSTEMS requests that the Application be kept confidential indefinitely. Such a time period is justifiable in light of the substantial and continuing competitive concerns inherent in the defense contracting industry that are discussed above in Item 4. As additional rationale for the confidentiality of the information, due to the sensitive nature of the information and the potential for its use in military applications, BAE SYSTEMS requests that the information be kept confidential for an indefinite period.

9. As explained in detail at Exhibit 1 to the Application, grant of the Application is necessary for BAE SYSTEMS to implement its responsibilities under a critical military program that is intended to provide mobile, secure, survivable and seamless telecommunications capabilities to the U.S. Army in the areas of command, control, communications, computers, intelligence, surveillance and reconnaissance support. The performance by BAE SYSTEMS under this military contract is a critical part of the manufacture and delivery of telecommunications systems provided to the Armed Forces in support of Homeland Security as well as war efforts.

Given the substantial public policy reasons provided by BAE SYSTEMS in support of maintaining the confidentiality of the instant Application, and the lack of any compelling reason to make the Application available to the public, BAE SYSTEMS hereby respectfully requests that the Application be withheld from public disclosure pursuant to 47 C.F.R. §0.459.

Pursuant to 47 C.F.R. §0.459(e), BAE SYSTEMS hereby reserves the right– in the unlikely event that the instant Confidentiality Request is denied by the Commission – to withdraw the Application in its entirety prior to the Application being placed in the Commission’s public files.