
NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a subcontract under a national security program to an entity controlled by a foreign government if it is necessary for that entity to be given access to information in a proscribed category of information in order to perform the subcontract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control, and influence information are required when the subcontract to be awarded is expected to require employees to have access authorizations.

Offerors that have either a Department of Defense or a Department of Energy Facility Clearance generally need not resubmit the following foreign ownership information unless specifically requested to do so. Instead, they should provide their DOE Facility Clearance code or DOD-assigned commercial and government entity (CAGE) code. If uncertain, consult the office that issued this solicitation.

(a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328. (1) The subcontract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the subcontractor organization and access authorizations (security clearances) for subcontractor personnel working with the classified information or special nuclear material. To obtain a Facility Clearance the offeror must submit a Certificate Pertaining to Foreign Interests, Standard Form 328, and all required supporting documents to form a complete Foreign Ownership, Control or Influence (FOCI) Package. Standard Form 328 and supporting documents are submitted to the Company electronically through the FOCI Electronic Submission and Processing System (e-FOCI) at <https://foci.td.anl.gov>.

(2) Information submitted by the offeror in response to the Standard Form 328 will be used solely for the purposes of evaluating foreign ownership, control, or influence and will be treated by the Company and DOE, to the extent permitted by law, as business or financial information submitted in confidence.

(3) Following submission of a Standard Form 328 and prior to subcontract award, the offeror shall immediately submit to the Company written notification of any changes in the extent and nature of FOCI which could affect the offeror's answers to the questions in Standard Form 328.

(b) Definitions. (1) Foreign Interest means any of the following:

(i) A foreign government, foreign government agency, or representative of a foreign government;

(ii) Any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the United States or its possessions and trust territories; and

(iii) Any person who is not a citizen or national of the United States.

(2) FOCI means the situation where the degree of ownership, control, or influence over a Contractor or subcontractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may result.

(3) Facility Clearance means an administrative determination that a facility is eligible to access, produce, use or store classified information, or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for the activities being performed at the facility. It is DOE policy that all subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the subcontract. Approval for a Facility Clearance is based upon:

(i) A favorable FOCI determination based upon the offeror's response to the ten questions in Standard Form 328 and any required supporting data provided by the offeror;

(ii) A subcontract or proposed subcontract containing the appropriate security clauses;

(iii) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;

(iv) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;

(v) A survey conducted no more than six months before the Facility Clearance date, with a composite facility rating of satisfactory, if the facility is to possess classified matter or special nuclear material at its location;

(vi) Appointment of a Facility Security Officer, who must possess or be in the process of obtaining an access authorization equivalent to the Facility Clearance; and, if applicable, appointment of a Materials Control and Accountability Representative; and

(vii) Access authorizations for key management personnel who will be determined on a case-by-case basis, and must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

(c) A Facility Clearance is required prior to the award of a subcontract requiring access to classified information and the granting of any access authorizations under a subcontract. Prior to award of a subcontract, the DOE must determine that award of the subcontract to the offeror will not pose an undue risk to the common defense and security as a result of its access to classified information or special nuclear material in the performance of the subcontract. The Company may require the offeror to submit such additional information as deemed pertinent to this determination.

(e) A Facility Clearance is required even for subcontracts that do not require the subcontractor's corporate offices to receive, process, reproduce, store, transmit, or handle classified information or special nuclear material, but which require DOE access authorizations for the subcontractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.

(End of provision)