



# ACQUISITION LETTER

## AUTHORITY

This Acquisition Letter (AL) is issued by the Procurement Executive pursuant to a delegation from the Secretary and under the authority of the Department of Energy Acquisition Regulation (DEAR) Subpart 901.301-70.

\*\*\*\*\*

## FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI)

### CONTENTS

- 904.7003 Disclosure of foreign ownership, control, or influence.
- 952.204-2 Security requirements.
- 952.204-70 Classification.
- 952.204-73 Foreign ownership, control, or influence over contractors.

I. PURPOSE. Acquisition Letter 92-2 simplified the procedure for submitting and approving contractor certifications regarding foreign ownership, control, or influence. This AL revision makes the following changes:

- o A definition is being added for "authorized official" to clarify who may sign an FOCI certification.

- o A submission content review guide is added to assist the offeror in determining that an FOCI submission is complete.

- o The security clause is being updated to reflect the recent issuance of DOE Order 5670.3, COUNTERINTELLIGENCE PROGRAM.

- o The classification clause is being revised to provide that only Government personnel may serve as original classifiers and to provide that the DOE Directives are the source of classification regulations.

PART 904 -- ADMINISTRATIVE MATTERS (AMENDED).

1. The authority citation for Part 904 continues to read as follows:

Authority: 42 U.S.C. 7254, 40 U.S.C. 486(c).

2. Section 904.7003, Disclosure of foreign ownership, control, or influence, is amended by replacing the existing text, at paragraph (d), and by adding new paragraphs (e) and (f) as follows:

904.7003 Disclosure of foreign ownership, control, or influence.

\* \*

(d) When contemplating an award involving access to classified information or special nuclear material where the awardee is a contractor not possessing a current affirmative FOCI clearance determination, the contracting officer shall provide the offeror with current guidelines for completing the FOCI certificate, a list of sensitive foreign nations, and a format for listing the contractor's officers and directors. The contracting officer may obtain the current list and the format from the DOE Safeguards and Security office servicing that contracting activity. Only the apparent successful offeror, in the case of competitive acquisitions, shall be required to submit a representations and certification unless there is insufficient lead time between selection and contract award to allow deferral of the review.

(e) The contracting officer, prior to submitting an FOCI submission from an offeror to the DOE Safeguards and Security office servicing the contracting activity, shall review the submission to ensure that:

- (1) the certificate has been signed and dated by an authorized official of the company;
- (2) if publicly owned, the contractor's most recent annual report and its Securities and Exchange Commission 10K report have been attached;
- (3) a list of the organization's directors and officers has been attached;
- (4) a consolidated financial information report has been attached; and,
- (5) a parent organization certification has been attached if the offeror indicated that it was owned by a parent organization.

If any of these documents are missing, the contracting officer will advise the offeror that award cannot be made until all documents are furnished.

(f) Unless the responsible DOE Safeguards and Security Office makes an

PART 952 -- SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for Part 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. The contract clause at 952.204 is revised to reflect counterintelligence responsibilities. Paragraphs (a) and (b) are revised to read as follows:

952.204-2 Security requirements.

\* \*

SECURITY

(a) Responsibility. It is the contractor's duty to safeguard all classified information, special nuclear material, and other DOE property. The contractor shall, in accordance with DOE security and counterintelligence regulations and requirements, be responsible for safeguarding all classified, unclassified sensitive, and proprietary information and protecting against sabotage, espionage, loss and theft of the classified, unclassified sensitive, and proprietary matter in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to DOE any classified, unclassified sensitive, and proprietary matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified, unclassified sensitive, and proprietary matter in the contractor's possession is required after the completion or termination of the contract and such retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to DOE specifying the classified, unclassified sensitive, and proprietary matter in the contractor's possession are to be retained. The certification shall identify the items and types or categories of matter retained, the conditions governing the retention of the matter, and the period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract shall continue to be applicable to the matter retained. Special nuclear material shall not be retained after the completion or termination of the contract.

(b) Regulations. The contractor agrees to comply with all security and counterintelligence regulations and requirements of DOE in effect at the date of award.

\* \* \* \* \*

( ) I certify that the above entries made by me are accurate, current, and complete to the best of my knowledge and belief and are made in good faith.

Alternate Certification

( ) I need not complete these comprehensive representations because an affirmative FOCI clearance determination has been made based upon previous representations made to:

[insert name of office and date of prior representations]

and I certify that the previous representations remain accurate, current, and complete.

Company Name and Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature<sup>1,2</sup>: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

<sup>1</sup> (Section 904.7003 of the Department of Energy Acquisition Regulation requires signature by an authorized official, that is, an official identified in the organization's Articles of Incorporation or By-Laws as responsible for managing the business affairs of the organization, or any other employee, identified by name, of the organization if designated in writing by such an authorized official as having been delegated authority to execute FOCI representations and certification on behalf of the organization.)

<sup>2</sup> Before signing, please review your submission for completeness.

CONTENTS REVIEW  
Please Review Before Submitting

Prior to submitting an FOCI submission, the offeror should review the FOCI submission to ensure that:

- (1) if the offeror is owned by a parent organization(s), the FOCI representations and certification have been attached for all parents, i.e., ultimate parent and any intervening levels of ownership. Each certification must be signed and dated by an authorized official of the respective organization.
- (2) if the offeror is a publicly traded company or a subsidiary of another corporation, the contractor and all parents have attached the following information in addition to the executed FOCI representations and certification: