

Chapter 4 Revision History as of 9/10/2020:

Revised the entire document.

Chapter 4

Foreign Ownership, Control, or Influence; Facility Clearance; and Classified Contract Registration

This chapter summarizes the process that contractors undergo to be authorized to perform classified work for the U.S. Department of Energy (DOE) Headquarters (HQ). The process involves three-steps: obtaining a Foreign Ownership, Control, or Influence (FOCI) determination, obtaining a Facility Clearance; and registering classified contracts within DOE's Safeguards and Security Information Management System (SSIMS). At HQ, all of these actions are performed within the Office of Information Security (AU-42), within the Office of Headquarters Security Operations (AU-40).

This chapter implements the FOCI, facility clearance, and contract registration requirements established by the following directives:

- DOE Order 470.4B Chg 2, *Safeguards and Security Program*
- *National Industrial Security Program Operating Manual*

HQ Implementation Procedures

HQ FOCI/Facility Clearance and Approval Program Manager:

The Director, AU-40, appoints an individual within AU-42 to serve as both the HQ FOCI Program Manager and the HQ Facility Clearance and Approval Program Manager. The HQ FOCI/Facility Clearance and Approval Program Manager is responsible for receiving, reviewing, and approving FOCI submissions, facility clearance requests, and classified contract registration documentation.

Procurement Request Originators:

Procurement Request Originators (PROs) are officials within each HQ element authorized to initiate a request for goods or services provided through a private contractor. PROs must thoroughly understand the nature of the goods or services they are requesting.

When a PRO initiates a request for services that requires access to classified information, he/she must know the level and category of the classified information to be accessed, whether special accesses are required, what security clearances are needed, and whether the contractor will maintain classified information at its own facility or perform the classified work within HQ facilities.

Contracting Officers:

All HQ Contracting Officers (COs) are part of the Office of Acquisition Management (MA-60). COs are responsible for analyzing procurement requests, developing solicitations, analyzing bids, ensuring the eligibility of bidding companies, letting contracts, and ensuring that the required security clauses are included in the contracts, when appropriate. COs are the official point of contact with the contractors and are ultimately responsible for ensuring that HQ contractors performing classified work comply with DOE security requirements.

Contracting Officer's Representatives:

Contracting Officer Representatives (CORs) are the Federal employees within each HQ element who monitor a contractor's performance on behalf of the CO. CORs work closely with the HQ FOCI/Facility Clearance team concerning DOE requirements for updating FOCI, facility clearance, and contract information. CORs verify the need for contractor employees to obtain a security clearance, provide the information needed to register classified contracts in SSIMS, and notify the HQ FOCI/Facility Clearance and Approval Program Manager when a new classified contract must be registered, or when an existing contract is needed to be renewed, modified, or terminated. CORs should also maintain a list of all cleared individuals under their purview.

Facility Security Officer:

A Facility Security Officer (FSO) is a contractor employee specifically identified to perform security functions on behalf of his/her employer and is considered Key Management Personnel by DOE HQ. The FSO is responsible for understanding DOE security requirements and ensuring that the contractor complies with them. The FSO must notify DOE of any changes in company ownership, changes of address, changes in key company managers, key management personnel, etc. The notification must be sent within a week of that change, by contacting the FOCI/Facility Clearance and Approval Program Manager, and making the appropriate changes within e-FOCI. If the FCL is held with an OGA, a notification must still be sent to DOE, but the update must be submitted to the OGA. When a change in the contracting companies FSO or other cleared Key Management Personnel is expected, the FSO must immediately identify to DOE HQ the individual assuming the responsibility, and ensure that the person(s) is cleared to the same level required of the contract. The FSO must complete the Facility Security Officer Overview Course, available on the DOE Learning Nucleus site. FSO training is required by DOE O 470.4b change 2.

Headquarters Security Officers:

HSOs are involved in reviewing and submitting Q or L security clearance paperwork for contractor employees to include Key Management Personnel (see Section 301, Acquiring New Security Clearances). HSOs ensure that before requests for security clearances are submitted, all the classified contract-related information is entered into SSIMS. When the FOCI/Facility Clearance and Approval Program Manager, identifies KMPs and FSO for the company, the HSO will be notified. The HSO will be in contact with FSO in order to complete clearance paperwork for KMPs and submit the documentation to the Office of Personnel

Security within two weeks of notification. The clearance and adjudication process for the KMPs will take a minimum of 30 days. HSOs are automatically provided copies of DOE F 470.1, *Contract Security Classification Specification (CSCS)*, which is used to register classified contracts in SSIMS. HSOs can also send an e-mail to HQFOCIFACTEAM@hq.doe.gov to verify that the contract in question has been entered into SSIMS.

HSOs must know what classified contracts and contractors are in place to support their element; therefore, HSOs must maintain copies of DOE F 470.1 and DOE F 470.2, *Facility Data and Approval Record (FDAR)*. AU-42 uses these forms to enter data into SSIMS; HSOs use them to enter the data into their element's Appendix to the HQFMSP.

Process for Requesting and Approving a Classified Contract:

When a PRO determines a need for a private contractor, the PRO must complete DOE F 4200.33, *U.S. Department of Energy Procurement Request - Authorization*. Question 41 of this form asks whether the contract requires security clearances. If it does, the PRO is instructed to attach a DOE F 470.1 to the DOE F 4200.33. The DOE F 470.1 provides the security classification requirements and justifies the contractor's need for a facility clearance. The PRO submits these two forms to his/her servicing CO.

- The CO prepares the solicitation, receives bids, considers the bids, and makes a tentative selection. The CO then contacts the HQ FOCI/Facility Clearance and Approval Program Manager, advises him/her of the tentative selection, and requests confirmation that the contractor has a favorable FOCI determination on file with DOE or another Federal agency. The FOCI determination reveals whether the contractor that was tentatively selected and their subcontractors are owned, controlled, or influenced by a foreign entity and whether there is any potential for undue risk to the common defense and national security of the U.S. If the contractor already has a favorable FOCI determination on file, the HQ FOCI/Facility Clearance and Approval Program Manager informs the CO of that fact so the CO can make the contract award. The FOCI/Facility Clearance and Approval Program Manager will take approximately five days to verify the company's information and notify the CO of their status. The CO must forward the completed DOE F 470.1 to the HQ FOCI/Facility Clearance and Approval Program Manager in AU-42 for subsequent entry into SSIMS. Along with the DOE F 470.1, the CO must submit the first three pages of the signed classified contract that states the last option year for the period of performance. After SSIMS entry, a copy of the DOE F 470.1 is sent by AU-42 to the HSO representing the HQ element requesting the contract, informing the HSO that security clearances can be requested for that contractor. A contractor cannot be granted a security clearance unless the DOE F 470.1 for that contract has been entered into SSIMS.
- If the company tentatively selected to perform the contract does not already have a favorable FOCI determination, the company is required to submit a FOCI package for review by the HQ FOCI/Facility Clearance and Approval Program Manager. For HQ, the FOCI package must be submitted electronically via the e-FOCI website at <https://foci.anl.gov>. The website provides complete information about the e-FOCI

submission system and the required documentation. The length of this process will depend on the company's ownership, structure, and business ventures. Estimated time could be at least 30 days. The HQ FOCI/Facility Clearance and Approval Program Manager renders a FOCI determination after considering all the information submitted by the contractor. The CO is notified by AU-42 of the FOCI determination and requested to forward the completed DOE F 470.1 to the HQ FOCI/Facility Clearance and Approval Program Manager for subsequent entry into SSIMS. After SSIMS entry, a copy of the DOE F 470.1 is sent by AU-42 to the HSO representing the HQ element requesting the contract, informing the HSO that security clearances can be requested for that contractor. A contractor cannot be granted a security clearance unless the DOE F 470.1 for that contract has been entered into SSIMS.

When the FOCI determination is made, the HQ FOCI/Facility Clearance and Approval Program Manager reviews the DOE F 470.1 to identify the appropriate facility clearance. The facility clearance must be granted before the contractor and its employees can access classified matter.

When a contractor is requesting a facility clearance that authorizes storage of classified matter at a company facility, the HQ Survey Team must conduct an initial survey. After the HQ Survey Team verifies that the contractor meets all applicable DOE security requirements, they issue DOE F 470.8, *Survey/Inspection Report Form*, which serves as the basis for issuing a facility clearance based on the Importance Rating of the work assigned to the contractor. The Importance Ratings are:

1. Importance Rating A – Issued to a facility approved to store TS matter
2. Importance Rating B – Issued to a facility approved to store S/RD matter
3. Importance Rating C – Issued to a facility approved to store all other levels and categories of classified matter
4. Importance Rating D – Issued to such facilities as common carriers, commercial carriers, or mail service contractors that are not authorized to store classified matter during nonworking hours
5. Importance Rating E – Issued to Excluded Parents, which is related to the FOCI Program
6. Importance Rating PP – Issued to a facility that stores government property of significant monetary value (more than \$5 million, exclusive of facilities and land values)
7. Importance Rating NP – Issued to a Non Possessing (NP) facility that is not authorized to possess or store classified matter but whose contractor personnel perform classified work at an HQ facility. The NP rating permits contractor employees to apply for a Q or L security clearance. The HQ Survey Team does not

survey NP facilities, but the HQ FOCI/Facility Clearance and Approval Program Manager requires NP facilities to submit a *Plan for Non-Possessing Facilities*.

The HQ FOCI/Facility Clearance and Approval Program Manager completes DOE F 470.2 to document the issuance of the proper facility clearance and it is entered into SSIMS. Once it is entered into SSIMS a copy is provided to the contractor's FSO.

The FOCI and facility clearance processes ensures that the contractor is eligible for access to DOE classified information. Registration of the classified contract in SSIMS ensures that company employees working on a particular contract are eligible for access to DOE classified information. If these actions are not completed and documented in SSIMS, contractor employees cannot be processed for a Q or L security clearance.

If the contract has an active facility clearance with an OGA under the National Industrial Security Program (NISP), HQ FCL Team will request reciprocity from the OGA. Estimated time for this process will take approximately 3 Months. The FCL Team will ensure the following:

- That a Memorandum of Agreement to the cognizant security agency requesting use of their facility clearance to register the contractor for classified DOE work commitments
- That the FCL granted by the OGA is at the appropriate classification level and category or that cognizance is requested if the DOE facility security level needed exceeds what the OGA has granted
- That KMPs are processed and granted the appropriate access authorization level
- That State, local, tribal, and other similar governmental authorities will not be registered as OGAs and will be handled in accordance with Executive Order 13549, *Classified National Security Information Program for State, Local, Tribal, and Private Sector Entities*
- If contract is cleared under a Voting Trust Agreement, Proxy Agreement, Special Security Agreement, or Security Control Agreement, a copy of the FOCI mitigation plan is obtained from the cognizant OGA
- Assurance is obtained from OGA that the FCL will not be canceled prior to the DOE cognizant security office being notified.

Processing and Approval timeline:

When submitting a new CSCS, the CO or COR must reach out to the FOCI/FCL team and request a cursory review on the company the contract may be awarded to. Submitting the request should be done at least 30 days prior to awarding the contract. This will allow the program to understand the anticipated amount of time the registration process will take for the new CSCS. When the CSCS is submitted to the FOCI/Facility Clearance and Approval Program Manager,

the total process may take one to six months, depending on the FCL status of the company and the clearance level the KMPs. The KMP names are provided to the FOCI/Facility Clearance and Approval Program Manager by the company's FSO, but if the facility clearance is held with an OGA, then the FOCI/Facility Clearance and Approval Program Manager will contact the agency and request that information from their office. The HSO must submit the clearance request for the KMPs within two weeks of being notified by the FOCI/Facility Clearance and Approval Program Manager. The Office of Personnel Security will process the clearance request once the HSO submits the required paperwork. It will take at a minimum of 30 days for the Office of Personnel Security to complete and grant the security clearance, but if there are delays when submitting the required information, this process may take longer. The facility clearance will not be granted, and the CSCS will not be processed, until all required KMPs are cleared at the level that is required for the classified contract.

Recurring Requirements for FSOs:

Annual reviews are required for companies with a FOCI mitigation, companies with parent organizations excluded by formal resolution, or organizations that have filed board resolutions to reduce non-controlling foreign ownership.

Facility clearance requirements state that procedures must be in place to verify changes in KMPs, and to ensure that all KMPs are processed for and granted access authorizations.

Companies that are not required to report annually are subject to random reviews throughout the duration of their facility clearance with DOE HQ. Companies will need to respond within two weeks of notification of review. A delayed response could result in the suspension of the company's facility clearance.

Changes in Contractor Information:

DOE must be informed when certain information about a contractor changes. The contractor's FSO must notify DOE within 30 days of the changes via the e-FOCI website. The following changes are reportable:

- Changes in ownership, including stock transfers that affect control of the company
- Changes in the operating name or address of the company or any of its cleared branch locations
- Any change in KMP by submission of a 'significant change.' If a KMP does not have an active clearance, this can result in the suspension of the company's facility clearance. A Temporary Exclusion may be an option until the KMP is cleared with DOE

- Actions to terminate business or operations for any reason, including involvement in adjudication of or reorganization in bankruptcy
- Written notification of any changes affecting FOCI or the answers to the questions presented in the latest *Certificate Pertaining to Foreign Interests*, or any changes in ownership or control that must be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice

Extension of Classified Contracts:

When the period of performance for a classified contract is extended, the date shown on the DOE F 470.1 must be updated and entered into SSIMS. This may be accomplished by completing a new DOE F 470.1 and providing a signed copy of the modification's first two pages (which includes the new period of performance) to the HQ FOCI/Facility Clearance and Approval Program Manager. The CO and COR are both responsible for the contract and are authorized to sign the new DOE F 470.1 and are the only DOE officials authorized to revise the period of contract performance. The new DOE F 470.1 may not be sent until both DOE and the contractor have signed the modification agreeing to the terms of the extension. Before being sent to the HQ FOCI/Facility Clearance and Approval Program Manager the document must be reviewed and approved by the supporting Classification Officer and if the contractor has access to Special Compartmentalized Information, a signature is required by the Intelligence and Counterintelligence Officer. For bridge contracts that have been issued a new contract number, a new DOE F 470.1 must be completed and signed by the CO, COR, and supporting Classification Officer.

The extension CSCS must be submitted by the CO or COR 30 days prior the expiration date. This is necessary in order for the Office of Personnel Security and the DOE HQ Badging Office, to process all badges and avoid the stop of work for the company's employees.

Registering OGAs and Their Contractors in SSIMS:

OGAs and their contractors must be registered in SSIMS to perform classified work for DOE or receive classified information from DOE. The HQ FOCI/Facility Clearance and Approval Program Manager registers OGAs and their contractors. HSOs should consult with the HQ FOCI/Facility Clearance and Approval Program Manager to initiate and complete the registration process.

If an OGA is not registered in SSIMS, the HQ element must send a *Statement of Security Assurance* (SSA) to the OGA security officer to complete and sign. The SSA must be returned to the HQ element and then forwarded to the HQ FOCI/Facility Clearance and Approval Program Manager. After review by the HQ FOCI/Facility Clearance and Approval Program Manager, the SSA is used to develop the DOE F 470.2 needed to register the OGA in SSIMS. The SSA requires the OGA's security officer to notify the HQ FOCI/Facility Clearance and Approval Program Manager if any changes are made to their information recorded in SSIMS. Every three years, OGAs must complete a new SSA. The HQ FOCI/Facility Clearance and Approval Program Manager handles the re-registration of OGAs.

When an HQ element has established a need-to-know for an OGA contractor without a contractual arrangement with DOE to receive classified matter, the Classified Mailing Address (CMA) for that OGA contractor may be verified by the Defense Counterintelligence Security Agency database, National Industrial Security System (NISS.) The HQ FOCI/Facility Clearance and Approval Program Manager has access to NISS and can provide the CMA and storage capability for the contractor facility.

If an OGA contractor is not registered in SSIMS or NISS, the HQ FOCI/Facility Clearance and Approval Program Manager should be consulted for instructions on how to proceed.

Termination or Transfer of Facility Clearances and Classified Contracts:

Upon completion or termination of a classified contract, the CO or COR must complete a final DOE F 470.1 and submit it to the HQ FOCI/Facility Clearance and Approval Program Manager for entry into SSIMS. The HSO issues a *Security Activity Closeout Certificate* for the prime contractor and each of its subcontractors registered in SSIMS. An HSO's signature is required for completion of the *Certificate*. All required documentations for the termination must be submitted within 30 days from the expiration of the CSCS. At this point, all security clearances associated with that contract must be terminated. If any employees will transfer to another classified contract or be employed by a new contractor, they must be granted new security clearances as permitted by the new classified contract. All security badges issued to contractor employees must be returned to DOE control. (DOE O 470.4B Chg.2, App.B, Sec.1, Ch.9, 1.b)

The HQ Survey Team performs a Termination Survey on possessing facilities to ensure that the contractor has properly disposed of DOE classified information and other security assets. Termination Survey results are documented on DOE F 470.8.

Points of Contact

For the names and contact information for those occupying the positions identified in this section, call (301) 903-9990 or (301) 903-5287.

To verify that a specific classified contract has been entered into SSIMS, send an e-mail to HQFOCIFACTEAM@hq.doe.gov.

Forms/References

DOE F 470.1, *Contract Security Classification Specification* (go to [Contract Security Classification Specification Form](#) for a copy of this form)

DOE F 470.2, *Facility Data and Approval Record* (go to [Facility Data and Approval Record Form](#) for a copy of this form)

DOE F 470.8, *Survey/Inspection Report Form* (go to [Survey/Inspection Report Form](#) for a copy of this form)

DOE F 4200.33, *Procurement Request Authorization* (go to [Procurement Request Authorization Form](#) for a copy of this form)

Security Activity Closeout Certification (Note: the following link is located on the same page where you accessed this chapter; go to [Security Activity Closeout Certification Document](#) for a copy of this document)

Statement of Security Assurance. A fillable version of the *Statement* is available by e-mailing HQFOCIFACTEAM@hq.doe.gov.

Standard Operating Procedure for:

- Facility Clearance and Registration of Safeguards and Security Activities,
- Recording of Security Incidents,
- Equivalences and Exemptions, and
- Foreign Ownership, Control or Influence are Official Use Only, please contact the HQ FOCI/Facility Clearance Team for a copy.