

**CLASS DEVIATION
DETERMINATION AND FINDINGS
DEPARTMENT OF ENERGY ACQUISITION REGULATION (DEAR)
952.204-73, FACILITY CLEARANCE**

Findings

1. The Department of Energy (DOE) rules and regulations for obtaining and processing a Facility Clearance are in the Department of Energy Acquisition Regulation (DEAR), within Title 48 Code of Federal Regulations; Part 904, Administrative Matters; Subparts 904.4, Safeguarding Classified Information within Industry and 904.70, Facility Clearance.
2. DEAR 904.70 sets forth the DOE policies and procedures regarding Facility Clearances for contractors and subcontractors that require access to classified information or special nuclear material. A Facility Clearance is based upon a determination that satisfactory safeguards and security measures are carried out for classified activities being performed at the facility and upon a favorable foreign ownership, control, or influence (FOCI) determination.
3. DEAR 904.404 prescribes the solicitation provisions and contract clauses for Safeguarding Classified Information within Industry. Specifically, DEAR 904.404(d)(5) prescribes using the provision at DEAR 952.204-73, Facility Clearance, in all solicitations which require the use of Standard Form 328 (SF-328), Certificate Pertaining to Foreign Interests, for contracts or subcontracts subject to the provisions of 904.70. Furthermore, DEAR 952.204-73 requires a Facility Clearance prior to the award of a contract requiring access to classified information and prior to granting any access authorizations for key management personnel who must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.
4. DEAR 952.204-73 is being revised in this class deviation to provide flexibility to:
 - Use this clause in all solicitations and contracts that require the use of the SF-328 for contracts or subcontracts subject to 904.70.
 - Permit contract award prior to granting a Facility Clearance.
 - Permit contract award prior to granting any Interim Access Authorizations for key management personnel who must possess or be in the process of obtaining access authorizations equivalent to the level of the Facility Clearance.

The above flexibilities may be used subject to the following conditions being satisfied:

- A favorable FOCI determination has been made prior to contract award by the responsible cognizant security office.
- DOE has determined that awarding this contract 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 contract.

- The successful offeror/Contractor may be eligible to obtain a Facility Clearance.
- If the successful offeror/Contractor does not obtain a Facility Clearance before contract award, after contract award the Contractor shall submit the necessary information to obtain a Facility Clearance and to obtain personnel Interim Access Authorizations in accordance with Departmental policies and procedures.

Determination

It is hereby determined that a class deviation to revise DEAR 952.204-73 to provide flexibility to award contracts prior to granting a Facility Clearance or prior to granting any Interim Access Authorizations for key management personnel is appropriate subject to the above conditions being satisfied. This class deviation is effective upon the date of signature and will remain in effect until cancelled or until the DEAR is amended.

John R.
Bashista

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John R. Bashista,
Director
Office of Acquisition Management
Department of Energy

Effective Date: 12-8-2020

Attachment: