

**PART IV – REPRESENTATIONS AND INSTRUCTIONS****SECTION K**  
**REPRESENTATIONS, CERTIFICATIONS AND**  
**OTHER STATEMENTS OF OFFERORS****TABLE OF CONTENTS**

<b><u>Provision</u></b>	<b><u>Title</u></b>	<b><u>Page</u></b>
<a href="#">K-1</a>	<a href="#">FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS (JAN 2006)</a>	326
<a href="#">K-2</a>	<a href="#">FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2000)</a>	327
<a href="#">K-3</a>	<a href="#">DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)</a>	330
<a href="#">K-4</a>	<a href="#">CERTIFICATE PERTAINING TO FOREIGN INTERESTS</a>	334
<a href="#">K-5</a>	<a href="#">DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE-ADVISORY AND ASSISTANCE SERVICES (JUNE 1997) (ALTERNATE I) (DEVIATION)</a>	334
<a href="#">K-6</a>	<a href="#">DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)</a>	335
<a href="#">K-7</a>	<a href="#">DEAR 970.5227-7 ROYALTY INFORMATION (DEC 2000)</a>	335
<a href="#">K-8</a>	<a href="#">DEAR 970.5227-9 NOTICE OF RIGHT TO REQUEST PATENT WAIVER (DEC 2000)</a>	336
<a href="#">K-9</a>	<a href="#">SIGNATURE/CERTIFICATION</a>	337
	<a href="#">ATTACHMENT A – FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) PACKAGE</a>	338
	<a href="#">STANDARD FORM 328 CERTIFICATE PERTAINING TO FOREIGN INTERESTS (REV 7/2004)</a>	340
	<a href="#">INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS</a>	342
	<a href="#">DEFINITIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS</a>	346
	<a href="#">REPRESENTATIVE OF FOREIGN INTEREST STATEMENT/CERTIFICATE</a>	348
	<a href="#">SUMMARY FOCI DATA SHEET</a>	350
	<a href="#">OWNERS, OFFICERS, DIRECTORS, AND EXECUTIVE PERSONNEL (ODEP)</a>	352
	<a href="#">INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS</a>	353

**K-1 FAR 52.204-8 ANNUAL REPRESENTATIONS AND CERTIFICATIONS  
(JAN 2006)**

- (a) (1) The North American Industry classification System (NAICS) code for this acquisition is **561210 Government Base Facilities Operation Support Services**.
- (2) The small business size standard is **\$30,000,000**.
- (3) The small business size standard for a concern which submits an offer in its own name, other than on a construction or service contract, but which proposes to furnish a product which it did not itself manufacture, is 500 employees.
- (b) (1) If the clause at 52.204-7, Central Contractor Registration, is included in this solicitation, paragraph (c) of this provision applies.
- (2) If the clause at 52.204-7 is not included in this solicitation, and the offeror is currently registered in CCR, and has completed the ORCA electronically, the offeror may choose to use paragraph (c) of this provision instead of completing the corresponding individual representations and certification in the solicitation. The offeror shall indicate which option applies by checking one of the following boxes:
- (i) Paragraph (c) applies.
- (ii) Paragraph (c) does not apply and the offeror has completed the individual representations and certifications in the solicitation.
- (c) The offeror has completed the annual representations and certifications electronically via the Online Representations and Certifications Application (ORCA) website at <http://orca.bpn.gov> . After reviewing the ORCA database information, the offeror verifies by submission of the offer that the representations and certifications currently posted electronically have been entered or updated within the last 12 months, are current, accurate, complete, and applicable to this solicitation (including the business size standard applicable to the NAICS code referenced for this solicitation), as of the date of this offer and are incorporated in this offer by reference (see FAR 4.1201); except for the changes identified below *[offeror to insert changes, identifying change by clause number, title, date]*. These amended representation(s) and/or certification(s) are also incorporated in this offer and are current, accurate, and complete as of the date of this offer.

FAR Clause	Title	Date	Change

Any changes provided by the offeror are applicable to this solicitation only, and do not result in an update to the representations and certifications posted on ORCA.

## **K-2 FAR 52.230-1 COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (JUN 2000)**

Note: This notice does not apply to small businesses or foreign governments. This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

### **I. Disclosure Statement-Cost Accounting Practices and Certification**

- (a) Any contract in excess of \$500,000 resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.
- (b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR Chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 48 CFR 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) *Certificate of Concurrent Submission of Disclosure Statement.* The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows:

- (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable; and
- (ii) One copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement: \_\_\_\_\_  
Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) *Certificate of Previously Submitted Disclosure Statement.* The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement: \_\_\_\_\_  
Name and Address of Cognizant ACO or Federal Official Where Filed: \_\_\_\_\_

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) *Certificate of Monetary Exemption.* The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$50 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes

before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

- (4) *Certificate of Interim Exemption.* The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) of this subsection, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 48 CFR 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under paragraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$50 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

## II. Cost Accounting Standards-Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 48 CFR 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

- The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 48 CFR 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$50 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$50 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$50 million or more.

III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with paragraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

[ ]	[ ]
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**K-3 DEAR 952.204-73 FACILITY CLEARANCE (MAY 2002)**

NOTICES

Section 2536 of title 10, United States Code, prohibits the award of a contract 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 contract unless a waiver is granted by the Secretary of Energy. In addition, a Facility Clearance and foreign ownership, control and influence (FOCI) information are required when the contract or subcontract to be awarded is expected to require employees to have access authorizations.

Offerors who 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, provide your DOE Facility Clearance code or your DOD assigned commercial and government entity (CAGE) code. If uncertain, consult the office which issued this solicitation.

- (a) Use of Certificate Pertaining to Foreign Interests, Standard Form 328.
  - (1) The contract work anticipated by this solicitation will require access to classified information or special nuclear material. Such access will require a Facility Clearance for the Contractor organization and access authorizations (security clearances) for Contractor 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.
  - (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 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 contract award, the Contractor shall immediately submit to the Contracting Officer 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. Following award of a contract, the Contractor must immediately submit to the cognizant security office 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. Notice of changes in ownership or control which are required to be reported to the Securities and Exchange Commission, the Federal Trade Commission, or the Department of Justice must also be furnished concurrently to the cognizant security office.

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

- (c) 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 Contractors or Subcontractors requiring access authorizations be processed for a Facility Clearance at the level appropriate to the activities being performed under the contract. Approval for a Facility Clearance shall be based upon:

- (1) A favorable foreign ownership, control, or influence (FOCI) determination based upon the Contractor's response to the ten questions in Standard Form 328 and any required, supporting data provided by the Contractor;

- (2) A contract or proposed contract containing the appropriate security clauses;
  - (3) Approved safeguards and security plans which describe protective measures appropriate to the activities being performed at the facility;
  - (4) An established Reporting Identification Symbol code for the Nuclear Materials Management and Safeguards Reporting System if access to nuclear materials is involved;
  - (5) A survey conducted no more than 6 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;
  - (6) 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
  - (7) 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.
- (d) A Facility Clearance is required prior to the award of a contract requiring access to classified information and the granting of any access authorizations under a contract. Prior to award of a contract, the DOE must determine that award of the 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 Contracting Officer may require the offeror to submit such additional information as deemed pertinent to this determination.
- (e) A Facility Clearance is required even for contracts that do not require the Contractor'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 Contractor's employees to perform work at a DOE location. This type facility is identified as a non-possessing facility.
- (f) Except as otherwise authorized in writing by the Contracting Officer, the provisions of any resulting contract must require that the contractor insert provisions similar to the foregoing in all subcontracts and purchase orders. Any Subcontractors requiring access authorizations for access to classified information or special nuclear material shall be directed to provide responses to the questions



in Standard Form 328, Certificate Pertaining to Foreign Interests, directly to the prime contractor or the Contracting Officer for the prime contract.

NOTICE TO OFFERORS - CONTENTS REVIEW

(PLEASE REVIEW BEFORE SUBMITTING)

Prior to submitting the Standard Form 328, required by paragraph (a)(1) of this clause, the offeror should review the FOCI submission to ensure that:

- (1) The Standard Form 328 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 most recent proxy statement for its annual meeting of stockholders have been attached; or, if privately owned, the audited, consolidated financial information for the most recently closed accounting year has been attached;
- (3) A copy of the company's articles of incorporation and an attested copy of the company's by-laws, or similar documents filed for the company's existence and management, and all amendments to those documents;
- (4) A list identifying the organization's owners, officers, directors, and executive personnel, including their names, social security numbers, citizenship, titles of all positions they hold within the organization, and what clearances, if any, they possess or are in the process of obtaining, and identification of the government agency(ies) that granted or will be granting those clearances; and
- (5) A summary FOCI data sheet.

NOTE: A FOCI submission must be attached for each tier parent organization (i.e. ultimate parent and any intervening levels of ownership). If any of these documents are missing, award of the contract cannot be completed.

**K-4 CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

With regard to the Contract's Section K provision entitled "FACILITY CLEARANCE", the Offeror is required to complete all applicable FOCI disclosure forms provided in ATTACHMENT A of this section entitled "Foreign Ownership, Control or Influence (FOCI) Package", which includes a Standard Form 328 – Certificate Pertaining To Foreign Interests. If the Offeror has an approved facility clearance, the Offeror should identify (1) its DOE Facility Code (or DOE CAGE Code, if applicable), (2) the date the Offeror's completed Standard Form 328 was submitted, and (3) the date of the Contracting Officer's affirmative FOCI determination.

**K-5 DEAR 952.209-8 ORGANIZATIONAL CONFLICTS OF INTEREST  
DISCLOSURE-ADVISORY AND ASSISTANCE SERVICES (JUNE 1997)  
(ALTERNATE I) (DEVIATION)**

- (a) Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the Government, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- (b) *The offeror shall provide the statement described in paragraph (c) of this provision as an Exhibit to this Section K.*
- (c) The statement must contain the following:
  - (1) A statement of any past (within the past twelve months), present, or currently planned financial, contractual, organizational, or other interests relating to the performance of the statement of work. For contractual interests, such statement must include the name, address, telephone number of the client or client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client, if, in the 12 months preceding the date of the statement, services were rendered to the Government or any other client (including a foreign government or person) respecting the same subject matter of the instant solicitation, or directly relating to such subject matter. The agency and contract number under which the services were rendered must also be included, if applicable. For financial interests, the statement must include the nature and extent of the interest and any entity or entities involved in the financial relationship. For these and any other interests enough such information must be provided in the statement to allow a meaningful evaluation of the potential effect of the interest on the performance of the statement of work. *For any actual or significant potential organizational*

*conflict of interest, the offeror shall also submit a plan of actions/activities to avoid, neutralize, or mitigate such conflict.*

- (2) A statement that no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services to be provided in connection with the instant contract or that any actual or potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question has been communicated as part of the statement required by (b) of this provision.
- (d) Failure of the offeror to provide the required statement may result in the offeror being determined ineligible for award. Misrepresentation or failure to report any fact may result in the assessment of penalties associated with false statements or such other provisions provided for by law or regulation.

**K-6 DEAR 970.5223-3 AGREEMENT REGARDING WORKPLACE SUBSTANCE ABUSE PROGRAMS AT DOE SITES (DEC 2000)**

- (a) Any contract awarded as a result of this solicitation will be subject to the policies, criteria, and procedures of 10 CFR part 707, Workplace Substance Abuse Programs at DOE Sites.
- (b) By submission of its offer, the Offeror agrees to provide to the Contracting Officer, within 30 days after notification of selection for award, or award of a contract, whichever occurs first, pursuant to this solicitation, its written workplace substance abuse program consistent with the requirements of 10 CFR part 707.
- (c) Failure of the Offeror to agree to the condition of responsibility set forth in paragraph (b) of this provision, renders the Offeror unqualified and ineligible for award.

**K-7 DEAR 970.5227-7 ROYALTY INFORMATION (DEC 2000)**

- (a) Cost or charges for royalties. If the response to this solicitation contains costs or charges for royalties totaling more than \$250, the following information shall be included in the response relating to each separate item of royalty or license fee:
  - (1) Name and address of licensor;
  - (2) Date of license agreement;
  - (3) Patent numbers, patent application serial numbers, or other basis on which the royalty is payable;

- (4) Brief description, including any part or model numbers of each contract item or component on which the royalty is payable;
  - (5) Percentage or dollar rate of royalty per unit;
  - (6) Unit price of contract item;
  - (7) Number of units; and
  - (8) Total dollar amount of royalties.
- (b) Copies of current licenses. In addition, if specifically requested by the Contracting Officer before execution of the contract, the offeror shall furnish a copy of the current license agreement and an identification of applicable claims of specific patents or other basis upon which the royalty may be payable.

**K-8 DEAR 970.5227-9 NOTICE OF RIGHT TO REQUEST PATENT WAIVER  
(DEC 2000)**

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract, in advance of or within 30 days after the effective date of contracting. If such advance waiver is not requested or the request is denied, the Contractor has a continuing right under the contract to request a waiver of the rights of the Government in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Contractors that are domestic small businesses and domestic nonprofit organizations may not need a waiver and will have included in their contracts a patent clause reflecting their right to elect title to subject inventions pursuant to the Bayh-Dole Act (*35 U.S.C. 200 et seq.*).

**K-9 SIGNATURE/CERTIFICATION**

By signing below, the Offeror certifies, under penalty of law, that the representations and certifications herein are accurate, current, and complete. The Offeror further certifies that it will notify the Contracting Officer of any changes to these representations and certifications. The representations and certification made by the Offeror, as contained herein, concern matters within the jurisdiction of an agency of the United States and the making of a false, fictitious, or fraudulent representation or certification may render the maker subject to prosecution under Title 18, United States Code, Section 1001.

\_\_\_\_\_  
Signature of the Officer or Employee  
Responsible for the Offer

\_\_\_\_\_  
Date of Execution

\_\_\_\_\_  
Typed Name and Title of the Officer or Employee  
Responsible for the Offer

\_\_\_\_\_  
Name of Organization

\_\_\_\_\_  
Address

\_\_\_\_\_  
City, State, ZIP

Solicitation No. DE-RP52-06NA27344

**ATTACHMENT A – FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI)  
PACKAGE**

Standard Form 328 - Certificate Pertaining To Foreign Interests

**CONTENTS REVIEW REQUIRED BY THE OFFEROR**

**Section 836 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102-484) prohibits the award of a Department of Energy contract under the national security program to an entity owned or 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 contract. The Secretary of Energy may determine that a waiver from this requirement is essential to the National Security interests of the United States.**

Prior to forwarding a FOCI submission to DOE, the offeror shall review the FOCI documentation to ensure that:

1. If the offeror is owned by a parent organization(s), the Certificates Pertaining to Foreign Interests Standard Form 328 (REV7/2004) have been attached for all tier 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. [i.e., a person authorized to represent and sign for the organization as officially recorded by the organization (that is, in the document which sets forth the terms & conditions for its operation & management by laws, operating agreement, partnership agreement, etc.)]

In addition to the executed Certificates Pertaining to Foreign Interests Standard Form 328 (REV7/2004), an offeror/bidder and, if applicable, its tier parents shall also submit the following to the Contracting Officer:

1. A copy of the U.S. company's articles of incorporation and an attested copy of the U.S. company's by-laws, or similar documents filed for the U.S. company's existence and management, and all amendments to those documents. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide these documents unless (i) the U.S. company's articles of incorporation and by-laws, or similar documents filed for the U.S. company's existence and management, have been amended; or (ii) the Lead Responsible Office has requested the documents. *Contractors with approved facility clearances should identify their Facility Code or CAGE Code if DOD, the date they submitted their Certificate Pertaining to Foreign Interests, and the FOCI determination date to the Contracting Officer.*
2. Complete and return the attached Summary FOCI Data Sheet. The Summary FOCI Data Sheet will enable the Lead Responsible Office to review and verify the submitted information in a quicker and more thorough manner which will provide a quicker determination. NOTE: A contractor with a DOE approved facility clearance and, if applicable, its tier parents do not need to provide the Summary FOCI Data Sheet unless (i) a change(s) has occurred which would affect the answers to the information in the Summary FOCI Data Sheet previously provided by the contractor and/or its tier parents, if applicable; or (ii) the Lead Responsible Office has requested the contractor and/or its tier parents to complete and return the Summary FOCI Data Sheet.

3. Consolidated information and statements for the organization's most recently closed accounting year.
  - a. Publicly-traded companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit its annual report and Securities and Exchange Commission Form 10-K report for the most recently closed accounting year, as well as its most recent proxy statement for the annual meeting of stockholders.

If the company's stock is not publicly traded but the company has publicly-traded debt, the company shall submit its Securities and Exchange Commission Form 10-K report for the most recently closed accounting year.
  - b. Privately-owned companies (including the ultimate parent, intermediate parent, and subsidiary) shall submit consolidated financial information (i.e., to include the accounts of the company and its subsidiary companies) for the most recently closed accounting year. The financial information shall be prepared and presented in accordance with generally accepted accounting principles as established by the financial accounting standards board, to include accompanying footnote disclosures. If available, audited financial information shall be provided. If audited financial information is not available, unaudited information shall be provided, but only if accompanied by a certification attesting to the unavailability of audited information.
4. Listing of owners, officers, directors, and executive personnel (OODEP)
  - a. The contractor and all tier parents shall submit a list identifying their respective organizations owners, officers, directors, and executive personnel, to include their complete names; social security numbers; date and place of birth; citizenship; titles of all positions they hold within the organization; and what clearances, if any, they possess or are in the process of obtaining and identification of the government agency(ies) that granted or will be granting those clearances. If any position is vacant, so state.
  - b. For sole proprietorships operating in community property states (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington, or Wisconsin), information on the sole proprietor's spouse, if applicable, shall also be provided on the OODEP listing.

NOTE: *If any of these documents are missing the contracting officer cannot complete award of the contract.*

**STANDARD FORM 328 CERTIFICATE PERTAINING TO FOREIGN INTERESTS (REV 7/2004)**

<b>CERTIFICATE PERTAINING TO FOREIGN INTERESTS</b> <i>(Type or print all answers)</i>		<i>Form Approved</i> <i>OMB No. 0704-0194</i> <i>Expires Sep 30, 2007</i>	
<p>The public reporting burden for this collection of information is estimated to average 70 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to Department of Defense, Executive Services and Communications Directorate (0704-0194). Respondents should be aware that notwithstanding any other provision of law, no person shall be subject to any penalty for failing to comply with a collection of information if it does not display a currently valid OMB control number.</p>			
<b>PLEASE DO NOT RETURN YOUR FORM TO THE ABOVE ADDRESS. RETURN COMPLETED FORM TO YOUR RESPECTIVE COGNIZANT SECURITY OFFICE.</b>			
<b>PENALTY NOTICE</b>			
<p>Failure to answer all questions or any misrepresentation (by omission or concealment, or by misleading, false or partial answers) may serve as a basis for denial of clearance for access to classified information. In addition, Title 18 United States Code 1001, makes it a criminal offense, punishable by a maximum of five (5) years imprisonment, \$15,000 fine or both, knowingly to make a false statement or repre-</p>		<p>sentation to any Department or Agency of the United States as to any matter within the jurisdiction of any Department or Agency of the United States. This includes any statement made herein which is knowingly incorrect, incomplete or misleading in any important particular.</p>	
<b>PROVISIONS</b>			
<p>1. This report is authorized by the Secretary of Defense, as Executive Agent for the National Industrial Security Program, pursuant to Executive Order 12829. While you are not required to respond, your eligibility for a facility clearance cannot be determined if you do not complete this form. The retention of a facility security clearance is contingent upon your compliance with the requirements of DoD 5220.22-M for submission of a revised form as appropriate.</p>		<p>2. When this report is submitted in confidence and is so marked, applicable exemptions to the Freedom of Information Act will be invoked to withhold it from public disclosure.</p>	
<p>3. Complete all questions on this form. Mark "Yes" or "No" for each question. If your answer is "Yes" furnish in full the complete information under "Remarks."</p>			
<b>QUESTIONS AND ANSWERS</b>			
1. (Answer 1a. or 1b.)		YES	NO
<p>a. (For entities which issue stock): Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5 percent or more of the outstanding shares of any class of your organization's equity securities?</p>			
<p>b. (For entities which do not issue stock): Has any foreign person directly or indirectly subscribed 5 percent or more of your organization's total capital commitment?</p>			
2. Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10 percent or more of any foreign interest?			
3. Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials?			
4. Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization?			
5. Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)?			
6. Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)?			
7. During your last fiscal year, did your organization derive:			
<p>a. 5 percent or more of its total revenues or net income from any single foreign person?</p>			
<p>b. In the aggregate 30 percent or more of its revenues or net income from foreign persons?</p>			
8. Is 10 percent or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method which does not identify the beneficial owner?			
9. Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)?			
10. Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization?			

STANDARD FORM 328 (Revised 7/2004)

PREVIOUS EDITION IS OBSOLETE



**REMARKS** *(Attach additional sheets, if necessary, for a full detailed statement.)*

**CERTIFICATION**

I CERTIFY that the entries made by me above are true, complete, and correct to the best of my knowledge and belief and are made in good faith.

**WITNESSES:**

\_\_\_\_\_

*(Date Certified)*

By \_\_\_\_\_

*(Signature of Authorized Contractor Representative)*

\_\_\_\_\_

*(Typed Name of Contractor)*

\_\_\_\_\_

*(Title of Authorized Contractor Representative)*

\_\_\_\_\_

*(Address)*

*NOTE: In case of a corporation, a witness is not required but the certificate below must be completed. Type or print names under all signatures.*

*NOTE: Contractor, if a corporation, should cause the following certificate to be executed under its corporate seal, provided that the same officer shall not execute both the Agreement and the Certificate.*

**CERTIFICATE**

I, \_\_\_\_\_, certify that I am the \_\_\_\_\_ of the corporation named as Contractor herein; that \_\_\_\_\_ who signed this certificate on behalf of the Contractor, was then \_\_\_\_\_ of said corporation; that said certificate was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.

*(Corporate Seal)*

\_\_\_\_\_ *(Signature and Date)*

## INSTRUCTIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS

**Note:** Please submit the completed certificate in triplicate (3 original signatures). DOE has an electronic system for offerors/bidders to submit FOCI information, which can be accessed at <https://foci.td.anl.gov>. However, *electronic* signatures cannot be accepted. Thus, a signed SF-328 original, executed in accordance with the form's instructions, must still be submitted with the offeror's offer/proposal to DOE.

### **Question #1** -

- a. (*For entities which issue stock*): Do any foreign person(s), directly or indirectly, own or have beneficial ownership of 5% or more of the outstanding shares of any class of your organization's equity securities? If yes:

-Identify the percentage of any class of stock or other securities issued, which are owned by foreign persons, broken down by country. Include indirect ownership through one or more intermediate level(s) of subsidiaries. Indicate voting rights of each class of stock.

-Are there shareholder agreements? If yes, attach a copy(ies), and if none, so state.

-Indicate whether a copy of SEC Schedule 13D/13G report has been received from any investor. If yes, attach a copy(ies).

NOTE: Ownership of less than 5% should be included if the holder is entitled to control the appointment and tenure of any management position.

- b. (*For entities that do not issue stock*): Has any foreign person directly or indirectly subscribed 5% or more of your organization's total capital commitment? If yes:

-Identify the percentage of total capital commitment, which is subscribed by foreign persons.

-Is there an agreement(s) with the subscriber(s)? If yes, attach a copy(ies), and if none, so state.

**Question #2** - Does your organization directly, or indirectly through your subsidiaries and/or affiliates, own 10% or more of any foreign interest? If yes:

-Identify the foreign interest by name, country, percentage owned, and personnel who occupy management positions with the organizations.

-If there are personnel from your organization who occupy management positions with the foreign firm(s), identify the name(s), title, and extent of involvement in the operations of the organizations (to include access to classified information).

**Question #3** - Do any non-U.S. citizens serve as members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials? If yes:

-Identify the foreign person(s) by name, title, citizenship, immigration status and clearance or exclusion status.

-Attach copies of applicable by-laws or articles of incorporation, which describe the affected position(s). However, if you have already provided such copies to the Cognizant Security Agency Industrial Security Representative, so state.

**Question #4** - Does any foreign person(s) have the power, direct or indirect, to control the election, appointment, or tenure of members of your organization's board of directors (or similar governing body) or

other management positions of your organization, or have the power to control or cause the direction of other decisions or activities of your organization? If yes:

-Identify the foreign person(s) by name, title, citizenship, and all details concerning the control or influence.

Note: If any foreign person (s) have such power, this question shall be answered in the affirmative even if such power has not been exercised, and whether or not it is exercisable through ownership of your facility's securities, if such power may be invoked by contractual arrangements or by other means.

**Question #5** - Does your organization have any contracts, agreements, understandings, or arrangements with a foreign person(s)? If yes:

-For each instance, provide the name of the foreign person, country, percentage of gross income derived, and nature of involvement, including:

-whether defense/nuclear related or not

-involvement with classified or export controlled technology

-compliance with export control requirements

-Where the organization has a large number of involvements and where these involvements are not defense/nuclear related and represent a small percentage of gross income, the explanation can be a generalized statement addressing the totals by country.

NOTE: We do not expect and will not require the contractor to ask every customer if he/she falls within the NISPOM definition of a foreign person. We will ask the contractor to provide ongoing security education to those individuals who negotiate and/or administer such agreements regarding their responsibilities to report agreements with a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question to "the best of his/her knowledge" or "through his/her best efforts".

**Question #6** - Does your organization, whether as borrower, surety, guarantor or otherwise have any indebtedness, liabilities or obligations to a foreign person(s)? If yes:

-Provide your overall debt-to-equity ratio (in percentage).

-With respect to indebtedness or liability to a foreign person, indicate to whom indebted or liable, what collateral has been furnished or pledged, and any conditions or covenants of the loan agreement. If stock or assets have been furnished or pledged as collateral, provide a copy of the loan agreement or pertinent extracts thereof (to include procedures to be followed in the event of default).

-If any debentures are convertible, provide specifics.

-If loan payments are in default, provide details.

-This question should be answered in the affirmative if the debt is with a U.S. entity that is owned or controlled either directly or indirectly by a foreign person. If unknown, so state.

NOTE: As stated above, we do not expect and will not require the contractor to ask every lender if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle lending arrangements regarding their responsibilities to report any such arrangements with a foreign person lender, to the best of their knowledge.

The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or through his/her best efforts".

**Question #7** - During your last fiscal year, did your organization derive:

- a. 5% or more of its total revenues or net income from any single foreign person?
- b. In the aggregate 30% or more of its revenues or net income from foreign persons?

If yes to either part of the question:

- Provide overall percentage of income derived from foreign sources by country, nature of involvement, and type of services or products.
- Indicate if any single foreign source represents in excess of 5% of total revenues or net income.
- Indicate whether any classified information is involved.
- State whether facility is in compliance with applicable export control requirements.

NOTE: As previously stated, we do not expect and will not require the contractor to ask every customer if he/she qualifies as a foreign person. We will ask the contractor to provide ongoing security education to those employees who handle information about company revenues regarding their responsibility to report revenues derived from a foreign person(s) to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

**Question #8** - Is 10% or more of any class of your organization's voting securities held in "nominee" shares, in "street names" or in some other method, which does not disclose the beneficial owner? If yes:

- Identify each foreign institutional investor holding 10% or more of the voting stock by name and address and the percentage of stock held.
- Indicate whether any investor has attempted to, or has exerted any control or influence over appointments to management positions or influenced the policies of the organization.
- Include copies of SEC Schedule 13D/13G.

**Question #9** - Do any of the members of your organization's board of directors (or similar governing body), officers, executive personnel, general partners, regents, trustees or senior management officials hold any positions with, or serve as consultants for, any foreign person(s)? If yes:

- Provide the name, title, citizenship, immigration status and clearance or exclusion status on all such persons.
- Identify, by name and address, each foreign organization with which such persons serve and indicate the capacity in which they are serving.
- Include a Statement of Full Disclosure of Foreign Affiliations for every cleared individual who is a representative of a foreign interest.
- For each individual who is cleared or will require clearance and who is representative of a foreign interest, include a statement of Full Disclosure of Foreign Affiliations.

NOTE: We expect the contractor to be able to answer this question fully for those individuals holding such positions with his/her foreign subsidiaries and any foreign interests. However, we do not expect and will not require the contractor to ask every individual to ascertain if he/she is

serving as a director, officer or manager of a foreign person. We will ask the contractor to provide ongoing security education to all key management personnel of their responsibilities to report serving as an interlocking director or in any other type of positions with a foreign person to the best of their knowledge. The contractor will be certifying the response to this question as being to "the best of his/her knowledge" or "through his/her best efforts".

**Question #10** - Is there any other factor(s) that indicates or demonstrates a capability on the part of foreign persons to control or influence the operations or management of your organization? If yes:

-Describe the foreign involvement in detail, including why the involvement would not be reportable in the preceding questions.

## **DEFINITIONS FOR COMPLETION OF THE CERTIFICATE PERTAINING TO FOREIGN INTERESTS**

Affiliate – Any entity effectively owned or controlled by another entity.

Beneficial Owner – The true owner of a security who may, for convenience, be recorded under the name of a nominee. Such ownership entitles the owner to the power to vote or direct the voting of a security or to impose or direct the disposition of a security.

Bond – A certificate which is evidence of a debt in which the issuer promises to repay a specific amount of money to the bondholder, plus a certain amount of interest, within a fixed period of time.

Convertible Debentures – Bonds which the holder can exchange for shares of voting stock.

Covenant – A detailed clause in a lending agreement designed to protect the lender.

Debenture – A general debt unsecured by a pledge of any specific piece of property. Like any other general creditor claims, a debenture is secured by any property not otherwise pledged.

Debt-to-Equity Ratio – Total liabilities divided by total shareholders' equity (total assets minus total liabilities of a corporation; also called stockholders' equity, equity, and net worth). This shows to what extent owners' equity can cushion creditors' claims in the event of liquidation.

Equity Security – An ownership interest in a company, most often taking the form of corporate stock.

Foreign Interest – Any foreign government, agency of a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organized, chartered or incorporated under the laws of any country other than the U.S. or its possessions and trust territories, and any person who is not a citizen or national of the United States.

Foreign Person – Any foreign interest and any U.S. person effectively owned or controlled by a foreign interest.

Guarantor – One who makes the guaranty (an agreement or promise to answer for the debt, default or miscarriage of another).

Immigration Status – Legal basis for a non-U.S. citizen's residence in the United States (e.g., work visa, admission for permanent residence). Note: Immigration and Naturalization Service Form I-9 is an excellent source for this information.

Joint Venture – A partnership or cooperative agreement between two or more persons or firms, usually restricted to a single specific undertaking. Normally the undertaking is of short duration, such as for the design and construction of a dam.

Liability – Claim on the assets of a company or individual.

Licensing Agreement – A permit granted by one business to another which permits duplication of processes and production of similar items.

Management Positions – For the purposes of the questions on this form, management positions shall include owners, officers, directors, partners, regents, trustees, senior management officials, other executive personnel and the facility security.

Nominee Share – A share of stock or registered bond certificate which has been registered in a name other than the actual owner.

Proxy – One who acts for another. Also, the document by which such a representative is authorized to act.

Representative of a Foreign Interest (RFI) – A citizen or national of the U.S., who is acting as a representative of a foreign interest (see Foreign Interest).

S.E.C. Schedule 13D – This schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition with certain other information.

S.E.C. Schedule 13G – This schedule is a much abbreviated version of Schedule 13D that is only available for use by a limited category of "persons" (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business- and not with the purpose or effect of changing or influencing the control of the issuer.

Sales Agreement – An agreement between two parties for the sale of goods or services on a continuing basis.

Stock Option – An option is the right to buy or sell at some point in the future.

Street Name – The common practice of registering publicly traded securities in the name of one or more brokerage firms.

Subordinated Debenture – A bond having a claim on assets only after the senior debt has been paid off in the event of liquidation.

Surety – One who is immediately liable for the debt of another if that other person or entity fails to pay.

Total Capital Commitment – The sum of money and other property an enterprise uses in transacting its business.

U.S. Person – Any form of business enterprise or entity organized, chartered or incorporated under the laws of the United States or its possessions and trust territories and any person who is a citizen or national of the United States.

**REPRESENTATIVE OF FOREIGN INTEREST STATEMENT/CERTIFICATE**  
Statement of Full Disclosure of Foreign Connections

Representative of a Foreign Interest (RFI): A citizen or national of the U.S. or an intending citizen to the U.S. Who possess or is being processed for an access authorization and who is active as a representative of a foreign interest.

Foreign Interest: Any foreign government, agency or a foreign government, or representative of a foreign government; any form of business enterprise or legal entity organization, chartered or incorporated under the laws of any country, other than the U.S. or its possessions and trust territories, and any person who is not a citizen or a national of the U.S.

Name of the foreign interest:

Address of the foreign interest:

Nature of business of foreign interest and the products/services involved. If the products/services are strictly commercial in nature or if there can be military application:

Full details of ownership or affiliation with the foreign interest:

The specific relationship between the foreign interest and the United States organization:

Your job titles and specific duties with the foreign interest:

Percentage of time devoted to foreign interest:

Percentage of U.S. organization's revenues and net income derived from foreign firm during the U.S. organization's most recently closed accounting year:

Name and address of all U.S. facilities where you hold or are in process for an access authorization:

The nature of business of all U.S. organizations and the products/services involved:

Summary of duties with the United States organization. Provide detailed information, as well as position title(s):

Have you ever registered as an Agent of a foreign government as detailed in 18 U.S.C. 219? If so, please provide details:



**CERTIFICATION:**

I recognize my special responsibility to protect classified information and/or special nuclear material from disclosure to any unauthorized person, foreign, or domestic.

TYPE OR PRINT FULL NAME: \_\_\_\_\_

SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_

SOCIAL SECURITY NUMBER: \_\_\_\_\_

LEGAL NAME OF CONTRACTOR FACILITY: \_\_\_\_\_

**SUMMARY FOCI DATA SHEET**

PROVIDE RESPONSES TO THE QUESTIONS IDENTIFIED BELOW: (SUPPLEMENTAL PAGES MAY BE ATTACHED TO PROVIDE COMPLETE AND ACCURATE RESPONSES.)

1. Type of business structure: ( ) corporation; ( ) college/university; ( ) limited liability company; ( ) sole proprietorship; ( ) limited partnership; ( ) general partnership; ( ) other
2. Exact name as specified in charter:  
\_\_\_\_\_
3. All other names used (i.e., dba [doing business as], aka [also known as]):  
\_\_\_\_\_
4. State or other jurisdiction of incorporation or organization:  
\_\_\_\_\_
5. Date of incorporation or organization:  
\_\_\_\_\_
6. Stock ownership: ( ) privately held, ( ) publicly traded.
  - a.) Class(es) of stock:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - b.) Number of shares authorized of each class of stock:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - c.) Number of shares issued of each class of stock?  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - d.) Explain difference(s) between each class of stock, to include voting rights:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
  - e.) Is cumulative voting authorized? ( ) YES ( ) NO
7. Current physical address for the principal executive offices, individual point of contact and phone number for FOCI matters and the organization's facility security officer and phone number.

Physical Address \_\_\_\_\_  
Facility Security Officer \_\_\_\_\_  
Telephone \_\_\_\_\_

8. List all company names and/or address changes, and the date(s) of such change(s), for the principal executive offices during the past 10 years.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

9. Legal name(s) of all tier parent organizations, if applicable.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

10. Provide the current number of members of the company's Board of Directors, to include identification by name of the Chairman of the Board, if applicable.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

11. Will any parent organizations be performing work requiring access authorizations, and if so, identify by legal name the parent organization(s) name.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

12. Does your organization or any parent organization maintain DOD facility clearances? If yes, please provide the DOD cage code(s).

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_