

Savannah River Site

SUBCONTRACTOR

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE RESPONSIBILITIES & FACILITY CLEARANCE REPORTING REQUIREMENTS



SUBCONTRACTOR FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (FOCI) RESPONSIBILITIES

- Savannah River Nuclear Solutions, LLC (SRS-M&O contractor), is required to register subcontracts with work to be performed on approved Department of Energy (DOE) facilities and requiring subcontractor-personnel to have access to classified information and/or special nuclear material (SNM) or to be unescorted in security areas utilizing Contract Security Classification Specification (CSCS) form (DOE F 407.1) prior to award. However, business organizations selected as probable awardees must have an active facility clearance (FCL) for SRS-M&O contractor to register such subcontracts.

NOTE: If a business organization's facility clearance (FCL) is under the cognizance of the Defense Counterintelligence Security Agency (DCSA), an industrial security representative of DCSA will facilitate the foreign ownership, control, or influence (FOCI) process. If business organizations do not have an active FCL, SRS-M&O contractor shall initiate requests to business organizations for completion of [FOCI packets](#) through the [e-FOCI submission system](#). In all FOCI activities, business organizations shall provide complete information to enable DOE to ascertain attendant risks, including but not limited to, accurate and complete submission of [Standard Form 328, Certificate Pertaining to Foreign Interests \(SF-328\)](#) and during periodic security reviews and review activities.

- Business organizations shall submit separate FOCI packets for each tier-parent(s) (Parent) located in the United States, Puerto Rico, or a United States (U.S.) possession or territory. Parent(s) shall have FCL at the same, or higher, level as its subsidiary. However, DOE will determine the necessity for Parent(s) to be cleared or excluded from access to classified information.

NOTE: Business organizations holding active U.S. Department of Defense (DoD) FCL through DCSA are not required to complete separate FOCI packets for DOE.

- Business organizations shall maintain all records pertaining to FOCI, including records such as original signatures on SF-328, and make such records available upon request to SRS-M&O contractor or DOE.
- After subcontract awards, business organizations shall adhere to periodic security reviews and certification of information as requested.

SUBCONTRACTOR FACILITY CLEARANCE REPORTING REQUIREMENTS

Significant Changes

Changes, to the extent and nature of FOCI, affecting information in a business organization's most recent FOCI submission(s), a business organization shall immediately provide written notification and supporting documentation, relevant to such changes by completing a significant change package through e-FOCI system and then notifying SRS-M&O contractor via email to srs_mo_foci@srs.gov of such changes.

Note: If DCSA holds the cognizance of the business organization's FCL, business organization shall login to the National Industrial Security System at <https://ncaiss-ps3.dss.mil/dss-cac-login/cert/login> to update FOCI information in the future.

Significant changes warranting processing changed condition, but are not limited to:

- Circumstances changing any answer on SF-328 from “No” to “Yes,”
- Increases of previously reported thresholds or factors, having been favorably adjudicated by DOE CSO, increasing to levels requiring determinations by the Office of Environment, Health, Safety and Security for DOE or the Office of Defense Nuclear Security for NNSA,
 - Increases to previously reported foreign ownership thresholds or factors, having been favorably adjudicated, to the extent increases require a FOCI mitigation method (if none previously existed) or a different FOCI mitigation method,
- Increases equivalent to five percent (5%), or greater, in the beneficial ownership of a business organization’s equity securities or a five percent (5%) increase in the beneficial ownership of a business organization itself, as determined by voting or investment rights, by one or more foreign interests and/or any U.S. person effectively controlled by a foreign interest, for a business organization with five percent (5%), or more, ownership from a foreign interest (Questions 1a and 1b, SF-328);
- Increases equivalent to ten percent (10%), or more, of the tangible net worth of a U.S. business organization owning ten percent (10%) or more of a foreign interest (Question 2, SF-328);
- Appointments of any additional non-U.S. citizen to any position of a U.S. business organization with non-U.S. citizen key management personnel (KMP) required to be cleared in connection with the business organization’s facility clearance or to any position identified in the business organization’s articles of incorporation, by-laws, articles of organization, or equivalent governance documentation, or (Question 3, SF-328);
- Changes in power/authority of a foreign person having power/authority to control selection or tenure of KMP/other decisions except amendments or waivers to governance documentation either to correct manifest errors of a formal, minor, or technical nature and do not change materially change any person’s rights or obligations (Question 4, SF-328),
- Changes expected to result in annual payments, to or from an entity, exceeding twenty percent (20%) of the annual gross revenue of U.S. business organizations with contracts, agreements, understandings, or arrangements with foreign person(s) (Question 5, SF-328),
- Reportable changes of conditions to U.S. business organizations with indebtedness, liabilities, or obligations to foreign persons (Question 6, SF-328):
 - New indebtedness to foreign person(s) resulting in a business organization’s liabilities exceeding ten percent (10%) of its tangible net worth or including instruments creating mortgages, deeds of trust, pledges, liens, security interests, or other charges or encumbrances against
 - Any of a business organization’s property, assets, or leasehold interests exceeding ten percent (10%) of its tangible net worth or
 - A business organization pledging of five percent (5%), or more, of its voting securities as collateral, or

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- Other new foreign indebtedness causing business organizations to exist at a leverage ratio exceeding two to one (2:1) based on its indebtedness to its tangible net worth and calculated based on information set forth in its financial statement.
- Changes expected to result in annual payments, to or from a business organization, exceeding an additional ten percent (10%) of its annual gross revenue for a business organization deriving five percent (5%), or more, of its total revenues/net income from a single foreign person (Question 7a, SF-328),
- Changes expected to result in annual payments, to or from a business organization, exceeding an additional twenty percent (20%) of its annual gross revenue for a business organization deriving thirty percent (30%), or more, of its total revenues/net income from foreign persons (Question 7b, SF-328),
- Changes of five percent (5%), or more, in total number of shares held in “nominee” shares, “street names,” or in some other method not identifying the beneficial owner or any amendment to bylaws of a business organization or its Parent(s), related specifically to voting rights of such nominee holders and requirements regarding notice of matters to be presented by a nominee stockholder at a shareholders meeting, including any amendment affecting the voting and notice rights and obligations of nominee holders, and associated persons failing to make timely disclosures required by the U.S. Securities and Exchange Commission, such as Schedule 13D for business organizations with ten percent (10%), or more, of its voting securities held in a method not identifying the beneficial owner (Question 8, SF-328),
- New positions held by persons required to be cleared in connection with FCL for business organizations with KMP(s) holding positions or serving as consultants for foreign person(s) (Question 9, SF-328),

Note: Excludes positions where KMP is appointed by a business organization’s U.S.-Parent to a seat on the board, or similar governing body, of a foreign subsidiary, provided the business organization promptly gives DOE CSO notice of such appointment.

- Changes having a material effect on the ownership, control, or influence of the business, operations, prospects, conditions (financial or otherwise), or property of a business organization and security measures, contemplated by an agreement with DOE to mitigate FOCI, would not reasonably be expected to remove the possibility of unauthorized access to or adverse effect on the performance of classified contracts for business organizations with any other factors of foreign person control or influence (Question 10, SF-328),
- Changes in ownership or control, including stock transfers, affecting control of a business organization. Notice of changes includes ownership or control events required to be reported to the Securities and Exchange Commission (SEC), the Federal Trade Commission (FTC), or the Department of Justice (DOJ).

Anticipated Changes

Anticipated changes are defined as events, arising from a business organization or any of its Parents entering into formal negotiations toward agreement, and any event entering the parties into a written memorandum of understanding, or, in the case of financing agreements, when written application for financing is made.

Business organizations shall immediately provide written notification of anticipated changes to SRS-M&O contractor via email to srs_mo_foci@srs.gov. Failure to do so may result in suspension or termination of a business organization’s FCL.

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Anticipated actions include, but are not limited to:

- Actions to terminate business or operations of a business organization, or any Parent, for any reason, including but not limited to, entering into transactions of merger, consolidation, or amalgamation with other business organizations; conveying, selling, leasing, transferring, or otherwise disposing of all or substantial part(s) of its business or assets; and/or making material changes potentially having an adverse effect on the business organization's ability to perform its contractual obligations for SRS-M&O contractor or other subcontractors of SRS-M&O contractor.
- Proposed mergers, acquisitions, takeovers, or restructures within a business organization's chain of ownership. Failure to notify SRS-M&O contractor prior to mergers, acquisitions, takeovers, or restructures shall result in the suspension or termination of a business organization's FCL.
- Legal actions taken to initiate bankruptcy proceedings involving a business organization or of its Parent(s).
- Imminent adjudications of, or reorganizations, resulting from bankruptcy actions involving a business organization or Parent(s).
- Entered negotiations with non-U.S. citizens, including but not limited to, of the sale of securities to a non-U.S. citizen(s), by a business organization, or its Parent(s), having reasonable expectations of an SF-328 amendment upon agreement.

Questions? Contact Us:

Savannah River Nuclear Solutions
Subcontractor FOCI
e-mail: [srs mo_foci@srs.gov](mailto:srs_mo_foci@srs.gov)

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