

NISPOM; however, the NISPOM requirements may be designed to accommodate as necessary the unique circumstances of industry. Any issue pertaining to deviation of industry requirements in the NISPOM from the standards applicable to agencies shall be addressed through the NISPOM coordination process.

§ 2004.22 Operational Responsibilities [202(a)].

(a) *Designation of Cognizant Security Authority (CSA)*. The CSA for a contractor shall be determined by the preponderance of classified contract activity per agreement by the CSAs. The responsible CSA shall conduct oversight inspections of contractor security programs and provide other support services to contractors as necessary to ensure compliance with the NISPOM and that contractors are protecting classified information as required. DoD, as Executive Agent, shall serve as the CSA for all Executive Branch departments and agencies that are not a designated CSA. As such, DoD shall:

(1) Provide training to industry to ensure that industry understands the responsibilities associated with protecting classified information.

(2) Validate the need for contractor access to classified information, shall establish a system to request personnel security investigations for contractor personnel, and shall ensure adequate funding for investigations of those contractors under Department of Defense cognizance.

(3) Maintain a system of eligibility and access determinations of contractor personnel.

(b) *General Responsibilities*. Executive Branch departments and agencies that issue contracts requiring industry to have access to classified information and are not a designated CSA shall:

(1) Include the Security Requirements clause, 52.204-2, from the FAR in such contracts;

(2) Incorporate a Contract Security Classification Specification (DD 254) into the contracts in accordance with the FAR subpart 4.4;

(3) Sign agreements with the Department of Defense as the Executive Agent for industrial security services; and,

(4) Ensure applicable department and agency personnel having NISP implementation responsibilities are provided appropriate education and training.

(c) *National Interest Determinations (NIDs)*. Executive branch departments and agencies shall make a National Interest Determination (NID) before authorizing contractors, cleared or in process for clearance under a Special Security Agreement (SSA), to have access to proscribed information. To make a NID, the agency shall assess whether release of the proscribed information is consistent with the national security interests of the United States.

(1) The requirement for a NID applies to new contracts, including pre-contract activities in which access to proscribed information is required, and to existing contracts when contractors are acquired by foreign interests and an SSA is the proposed foreign ownership, control, or influence mitigation method.

(i) If access to proscribed information is required to complete pre-contract award actions or to perform on a new contract, the Government Contracting Activity (GCA) shall determine if release of the information is consistent with national security interests.

(ii) For contractors that have existing contracts that require access to proscribed information, have been or are in the process of being acquired by foreign interests, and have proposed an SSA to mitigate foreign ownership, the Cognizant Security Agency (CSA), or when delegated, the Cognizant Security Office (CSO) shall notify the GCA of the need for a NID.

(iii) The GCA(s) shall determine, within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), whether release of the proscribed information is consistent with national security interests unless the GCA requires additional time for the NID process due to special circumstances. The GCA shall formally advise the CSA, if special circumstances apply.

(2) In accordance with 10 U.S.C. 2536, DoD and the Department of Energy (DOE) cannot award a contract involving access to proscribed information to a contractor effectively owned or controlled by a foreign government unless

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a waiver has been issued by the Secretary of Defense or Secretary of Energy.

(3) NIDs may be program-, project-, or contract-specific. For program and project NIDs, a separate NID is not required for each contract. The CSO may require the GCA to identify all contracts covered by the NID. NID decisions shall be made by officials as specified by CSA policy or as designated by the agency head.

(4) NID decisions shall be made within 30 days.

(i) Where no interagency coordination is required because the department or agency owns or controls all of the proscribed information in question, the GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 30 days of the date of the request for the NID.

(ii) If the proscribed information is owned by, or under the control of, a department or agency other than the GCA (e.g., National Security Agency (NSA) for Communications Security, the Office of the Director of National Intelligence (ODNI) for Sensitive Compartmented Information, and DOE for Restricted Data), the GCA shall provide written notice to that department or agency that its written concurrence is required. Such notice shall be provided within 30 days of being informed by the CSO of the requirement for a NID. The GCA shall provide a final documented decision to the applicable CSO, with a copy to the contractor, within 60 days of the date of the request for the NID.

(iii) If the NID decision is not provided within 30 days, per § 2004.22(c)(4)(i), or 60 days, per § 2004.22(c)(4)(ii), the CSA shall intercede to request the GCA to provide a

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decision. In such instances, the GCA, in addition to formally notifying the CSA of the special circumstances, per § 2004.22(c)(1)(iii), will provide the CSA or its designee with updates at 30-day intervals. The CSA, or its designee, will, in turn, provide the contractor with updates at 30-day intervals until the NID decision is made.

(5) The CSO shall not delay implementation of an SSA pending completion of a GCA's NID processing, provided there is no indication that a NID will be denied either by the GCA or the owner of the information (i.e., NSA, DOE, or ODNI). However, the contractor shall not have access to additional proscribed information under a new contract until the GCA determines that the release of the information is consistent with national security interests and issues a NID.

(6) The CSO shall not upgrade an existing contractor clearance under an SSA to Top Secret unless an approved NID covering the prospective Top Secret access has been issued.

[71 FR 18007, Apr. 10, 2006 as amended at 75 FR 17306, Apr. 6, 2010]

§ 2004.23 Cost Reports [203(d)].

(a) The Executive Branch departments and agencies shall provide information each year to the Director, ISOO, on the costs within the agency associated with implementation of the NISP for the previous year.

(b) The DoD as the Executive Agent shall develop a cost methodology in coordination with industry to collect the costs incurred by contractors of all Executive Branch departments and agencies to implement the NISP, and shall report those costs to the Director, ISOO, on an annual basis.