

SUPPORTING STATEMENT – Part A

Defense Security Services (DSS) “Certificate Pertaining to Foreign Interests” (SF 328) – OMB Control Number: 0704-XXXX

A. Justification

1. Need for Information Collection

The collection of information on the form supports the evaluation of Foreign, Ownership, Control, or Influence (FOCI). The information provides for the review and analysis of FOCI allowing the determination for access to classified information under the National Industrial Security Program (NISP), and the Defense Enhanced Security Program (DESP). Executive Order (EO) 12829, as amended, “National Industrial Security Program (NISP)”, Section 202 (a) directs the Secretary of Defense to serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to, or who store or will store classified information; and for determining eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. In addition subsection 202 (e) of Executive Order 12829, as amended provides the Secretary of Defense the authority to issue standard forms to promote implementation of the NISP. Additional use within the NISP is included in Executive Order 12829 as amended by Executive Order 13691, adding the Secretary of Homeland Security as the fifth Cognizant Security Agency, section 202 (d) of E. O. 12829 as amended, which provides that the Secretary of Homeland Security may determine the eligibility for access to Classified National Security Information of contractors, licensees and grantees and their respective employees under a designated classified critical infrastructure protection program (CCIPP), including parties to agreements with such programs. Revision to the SF 328 also incorporates its usage under the DoD’s Innovation Initiative through the DoD Enhanced Security Program (DESP), pursuant to section 951 of Public Law 114-328 (10 USC 1564 note) The DESP is a DoD only initiative and is not part of the NISP. Companies participating under the DESP do not require a DoD contract, but are required to enter into a Memorandum of Agreement with DoD.

Completion of the SF 328 and submission of supporting documentation (e.g., company or entity charter documents, board meeting minutes, stock or securities information, descriptions of organizational and governance structures, contracts, sales, leases and/or loan agreements and revenue documents, annual reports and income statements, etc.) is part of the eligibility determination for access to classified information under the NISP, CCIPP, and DESP.

The SF 328 was previously approved under Office of Management and Budget (OMB) Control Number 0704-0194 and is being transitioned from a Standard Form to a Common Form. As a Common Form, users outside of DoD (e.g., Department of Homeland Security or Department of Energy) will be able to more easily implement use of the form after they have coordinated with OMB to identify their specific information requirements. OMB 0704-0194 approves SF 328 and Department of Defense (DD) Form 441 and DD Form 441-1. DD Form 441 and DD Form 441-1

will remain approved under OMB 0704-0194; SF 328 will be issued a new OMB control number with an updated expiration schedule.

2. Use of the Information

Contractor, licensee, and grantee business entities (collectively called “contractors” for the purpose of this document) performing on contracts involving access to classified information must have a Facility Clearance (FCL) in accordance with the NISP. A contractor may be sponsored for an FCL by a Government Contracting Activity (GCA) or a cleared contractor per the terms of their contract and NISPOM paragraph 2-100 and 2-102. Separately, companies who have entered into a Memorandum of Agreement with DoD under the DESP (i.e., those with commercial, innovative technologies) must provide business information and documentation used to determine their eligibility for participation in that program.

For DoD (the NISP), after approving the GCA or cleared contractor’s sponsorship request, the DSS Facility Clearance Branch (FCB) registers the contractor in the electronic FCL (e-FCL) database and provides them with a welcome package outlining process and business information and documentation requirements. An e-FCL account is issued to the contractor’s Facility Security Officer (FSO). In order to evaluate a contractor’s eligibility for participation in the NISP, the SF 328 must be completed and submitted by the contractor’s FSO or other representative in e-FCL to certify elements of FOCI as stipulated in NISPOM paragraph 2-302. The Agency Disclosure Notice is located on the SF 328. Completion of the SF 328 and other forms is voluntary; however, the contractor’s eligibility for participation in these programs cannot be assessed if the forms are not completed. For the DESP, a DoD-only program, the company completes the SF 328 which then allows for the applicable DoD Component and DSS to determine if the company is eligible to participate and have certain company personnel cleared for access to classified information.

The completion and signing of an SF 328 does not guarantee the award of a contract, issuance of an FCL, or access to classified information in accordance with the NISP or DESP, nor does it obligate the government to provide any type of compensation or benefit to the contractor. Eligibility for participation in these programs may be withdrawn or terminated if the contractor is not actively participating in the program or is found to not be in compliance with program requirements. If eligibility is withdrawn, the contractor may be required to update and resubmit these documents and forms to reapply if a future need arises. Documents and forms must be updated and resubmitted for the duration of the contractor’s active eligibility whenever the contractor has a material change to report.

3. Use of Information Technology

(a) SF 328 is currently available electronically on the World Wide Web through the Defense Technical Information Center (DTIC) as a means of distribution. The blank forms are currently maintained electronically by the DoD Washington Headquarters Service (WHS) and they have adopted Adobe Acrobat software as the format. DSS has also adopted technology that allows for electronic submission of data and/or scanned images pertaining to these forms into the e-FCL database. The contractor is advised in the e-FCL frequently asked questions how to register for

an account and the system access requirements. Contractors require a network connection or an internet service provider connection in order to access the Internet from their computer. E-FCL is compatible with most Internet browser, such as, Microsoft Internet Explorer, and Mozilla Firefox. The most recent version of the browser is recommended. Documents are submitted electronically approximately 99 percent of the time. On occasion there may be technology issues which may require the contractor to receive or send the forms by hand carriage or mail.

(b) The form, however, continue to require hand written signatures prior to electronic submission to DSS. DSS is not in a position, to receive these forms electronically utilizing a digital signature, for the following reasons:

(i). These forms are legally binding documents and must be signed by company officials, witnesses and government representatives. At the time these forms are normally executed (i.e., the beginning of the facility clearance process), company officials and/or witnesses do not have a digital signature authority recognized by DSS (i.e., digital signature authority under the DoD Public Key Infrastructure (PKI) Program). Under DoD Policy, the PKI program requires an individual to have, at a minimum, a government National Agency Check (NAC) in place. Currently under the NISP, there is no requirement to have any kind of background/Agency check, solely for the purpose of executing these forms.

(ii) There is no requirement to re-execute these forms unless there is a material change to the legal entity (e.g., change in ownership/name/structure /significant foreign control or influence).

4. Non-duplication

The Department of Energy (DoE) developed an electronic SF 328 database for their program, which allows contractors to submit their responses electronically. DSS adopted the DoE technology and had an e-FCL database established as referenced in Section 3 above. By contract, the infrastructure for the DSS database resides with DoE. DSS is required to pay its “fair share” of the costs of the operation and maintenance of the system. Industry will continue to certify that the person signing the forms is an authorized representative of the company. Witness(s) to the signature will be required. A new expiration date will be added to the form and their Agency Disclosure Notices (ADN) will be revised to update the address of the Washington Headquarters Service (WHS). The Burden Minutes for the SF 328 is 70 minutes.

5. Burden on Small Business

This collection of information does not have a significant impact on small businesses or other entities.

6. Less Frequent Collection

If the data is not collected at least one time and/or on occasion (e.g., initial facility clearance processing, when the respondent changes: Name; Organizational Structure; address; or

Upon Request), DoD will not be able to evaluate the contractor's continued eligibility to participate in the NISP/DESP or DHS for the CCIPP; ensure the protection of classified information, and maintain current records.

7. Paperwork Reduction Act Guidelines

There are no special circumstances requiring the collection to be conducted in an inconsistent manner.

8. Consultation and Public Comments

Part A: Public Notice: A 60-Day Federal Register Notice appeared on May 17, 2018 (83 FR 22966). No comments were received from the public during the established comment windows.

A 30-Day Federal Register Notice was published on July 27, 2018 (83 FR 35624). No comments were received from the public during the established comment windows.

9. Gifts or Payments

No payments or gifts will be provided to the respondents.

10. Confidentiality

Contractors posting documents in E-FCL are advised of the following:

“This is an Official U.S. Government internet system for authorized use only. Do not discuss, enter, transfer, process, or transmit classified/sensitive national security information of greater sensitivity than that for which this system is authorized. Use of this system constitutes consent to security testing and monitoring. You are further advised that system administrators may provide evidence of possible criminal activity identified during such monitoring to appropriate law enforcement officials. Unauthorized attempts to upload, download or change information on this system is strictly prohibited and may be punishable under the Computer Fraud and Abuse Act of 1987, the National Information Infrastructure Protection Act of 1996, and United States Code Title 18, section 1030. Under the Privacy Act of 1974, you must safeguard personnel information retrieved through this system. Disclosure of information is governed by Title 5, United State Code, Section 552a Public Law 93-579, DoDD 5400.11, DoDR 5400.11-R and the applicable services directives. Information contained herein is exempt from mandatory disclosure under the FOIA. Exemption(s) 6 and 7c apply.”

Responses to some of the questions on the SF 328 may reveal company proprietary or commercial confidential information. When the SF 328 is offered in confidence and so marked by the contractor, the SF 328 advises the contractor under the “Provision” section of the form

that applicable exemptions of the Freedom of Information Act will be invoked to withhold it from public disclosure.

11. Sensitive Questions

There are no sensitive questions asked in this collection.

12. Respondent Burden, and its Labor Costs

(a) Estimation of Respondent Burden (Includes SF 328s for DoD NISP and DESP):

Estimation of Respondent Burden Hours					
	Number of Respondents	Number of Responses per Respondent	Number of Total Annual Responses	Response Time (Amount of time needed to complete the collection instrument)	Respondent Burden Hours (Total Annual Responses multiplied by Response Time) Please compute these into hours)
Collection Instrument: SF 328	2,123	1	2,123	70 minutes	2,476.8
Combined Total	2,123	1	2,123	70 minutes	2,476.8

(b) Estimated Labor Cost of Respondent Burden:

Estimated Labor Cost of Respondent Burden					
	Number of Responses	Response Time per Response	Respondent Wage	Labor Burden per Cost Response (Response Time multiplied by Respondent Hourly Wage)	Total Labor Burden Cost (Number of Respondents multiplied by Response Time multiplied by Respondent Hourly Wage)
Collection Instrument #1: SF 328	2,123	70 minutes	.77 (cents) per minute	\$ 53.9 cost	\$114,430
Combined Total	2,123	70 minutes	.77 (cents) per minute	\$53.9	\$114,430

* Cost to respondent is based on the approximate salary of a GS-13 Step 1 in the Washington, D.C, Maryland, and Virginia metropolitan area (Effective January 2018): \$46.46 (rate per hour)/60 (minutes) = \$.77 (rate per minute)

** Total number of respondents are based on the number of home office or division/branch offices applying for a FCL for the first time and requiring to execute the forms and/or those already in the program having to re-execute one of the forms due to a changed condition.

13. Respondent Cost Other than Burden Hour

Estimated Respondent Capital Start Up Cost				
Item	Cost per Unit	Total Number of Responses (SF 328)	Percentage of cost toward SF 328	Total Capital Start Up Cost = (total Unit Cost X Total Responses X

				Percentage)
Adobe Acrobat	\$300.00	2,123	10%	\$63,690.00
Internet Service Provider Per Year	\$360.00	2,123	10%	\$76,428.00
Computer	\$600.00	2,123	10%	\$127,380.00
Printer/Scanner	\$ 330.00	2,123	10%	\$70,059.00
Total	1,590.00	2,123	10%	\$337,557.00

(a) Total Capital and Start Up Costs:

- (1) Total cost of Adobe Acrobat 6.0 Software: \$63,690.00 = ($\$300 \times 2,123 \times .10$)
- (2) Total cost of Internet Service Provider: \$76,428.00 = ($\$360 \times 2,123 \times .10$)
- (3) Total cost of computer purchase: \$127,380.00 = ($\$600 \times 2,123 \times .10$)
- (4) Printer/Scanner: \$70,059.00 = ($\$330 \times 2,123 \times .10$)
- (5) Total Industry Capital Start Up Cost: \$337,557.00

(b) Explanation of Total Capital and Start Up Cost to Respondent

- (1) Estimated cost of Adobe Acrobat 6.0 Software: \$300, percentage usage to support forms: 10%
- (2) Internet Service Provider: \$30.00 per month x 12 = \$360.00; percentage of usage to support the forms: 10%.
- (3) Computer purchase estimated at \$600.00; percent of usage to support forms: 10%
- (4) Estimate for printer/Scanner is \$330.00; percentage of usage to support forms: 10%
- (5) Number of annual respondents: 2,123

Operational and Maintenance Costs				
Internet Service Provider	Printing	Postage	Software Licensing Renewals/Updates	Total
\$246,636	\$342.55	\$33.32	\$205,530	\$452,541.87

(c) Operations and Maintenance:

- (1) Internet Service Provider: \$246,636 annually
- (2) Incidental printing and postage based on 1% (.01) of total forms = 68.
 - i. Printing Sf 328: $.01 \times 2,830 = 28$ forms
 - ii. Postage: .49 cents
- (3) Printing for Industry signatures: $1923 \times .06 = \$342.55$

14. Estimates of Cost to Federal Government

	SF 328	Total
Number of Responses	2,123	2,123
Processing Time Per Response (in hours)	.5	05
Hourly Wage of Worker(s) Processing Responses	\$39.04	\$39.04
Cost to Process Each Response (Processing Time Per Response multiplied by Hourly Wage of Worker(s) Processing Responses)	\$19.52	\$19.52
Total Cost to Process Responses (Cost to Process Each Response multiplied by Number of Responses)	\$55,241.6	\$133,731.52

Federal Government Operational and Maintenance Costs						
Equipment/ E-FCL/ Software and Licensing Fair Share	Printing	Postage				Total
\$325,500	\$342.55	\$33.32				\$325,875.87

Labor Cost to the Federal Government	Total Cost to the Federal Government	Total Cost (O&M Costs + Labor Cost)
	Operational and Maintenance Costs	
\$133,731.52	\$325,875.87	\$459,607.39

- (a) e-FCL fair share cost per Fiscal Year: $\$325,500 = (\$651,000 \times .50)$
- (b) Initial Review for Completeness Cost per IS Rep ($\$39.04$ AV salary per hour $\times .5$ initial review time = $\$19.52$)
- (c) Incidental printing and postage based on 1% (.01) of total forms = 68.
- i. Printing Sf 328: $.01 \times 1,923 = 28$ forms
- (d) Printing for government signature: $5,709.17 \times .06$ cents = $\$342.55$
- (e) Explanation of Cost to Government
- (1) Review time costs based on GS 12 Step 3 salary as of January 2015 in the Washington DC metropolitan area: $\$39.04$ per hour.
 - (2) Average initial review time of SF 328 in E-FCL: 30 minutes or .5 hours.
 - (3) Postage cost per stamp is .49.
 - (4) Printing Cost per Form is .06.
- (5) e-FCL fair share costs: Operations and maintenance costs are based on support to the following tasks: (i) System Administration and Operation; (ii) Cyber Security; (iii) Help Desk/User Help; (iv) Documentation; (v) Project Management/Controls; (vi) Travel, Meetings, and Miscellaneous Expenses. Support is provided by multiple individuals and equates to approximately 2.45 full time equivalent (FTE) years. One FTE is equivalent to approximately 2,000 hours. Approximately 50% of the usage of e-FCL supports the DD Form SF 328 processing requirements.

15. Reasons for Change in Burden

We have separated out the SF328 from 0704-0194 and are now presenting it as a new collection so that we obtain a new OMB Control Number. Previous inventory was said to have been zeroed out. Capital/Start up and Annualized Costs to Industry reflect the estimated proportionate cost for the contractor's purchase and/or maintenance of associated software and hardware in order to complete the forms. Costs to the government are related to the estimated cost to receive and initially review the forms.

16. Publication of Results

There are no plans to publish or tabulate the information collected.

17. Non-Display of OMB Expiration Date

Approval is not sought for avoiding display of the expiration date for OMB approval of the information collection.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

There are no exceptions to the Certificate Statement.