

## Student Guide

# National Interest Determinations Short

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### ***Introduction***

The Defense Industrial Base is made up of thousands of different companies.

For some of those companies who are cleared under the National Industrial Security Program (NISP) and operate under a Special Security Agreement - a national interest determination (NID) may be required.

*When* is such a determination needed? *What* is a NID? And *who* is responsible for identifying the need for and preparing a NID?

### ***When is a NID Needed?***

In order to understand *what* a NID is, it is important to first consider *when* it may be required.

1. The contractor must be determined to be under Foreign Ownership, Control or Influence (FOCI);
2. The mitigation tool to negate the FOCI must be a Special Security Agreement (SSA). The SSA must be proposed or in place; **AND**
3. The contract must require access to proscribed information based on the security requirements contained on the DD Form 254, *DoD Contract Security Classification Specification*.

In order for a NID to be required, *all three* conditions must be met.

**FOCI**

A U.S. company is under FOCI when a foreign interest has the power, direct or indirect, to direct or decide matters affecting the management or operations of the company in a way that may result in unauthorized access to classified information or may adversely affect the performance of classified contracts.

The following factors are considered in the aggregate in determining whether a company is under FOCI:

- Record of economic and government espionage against U.S. targets
- Record of enforcement and/or engagement in unauthorized technology transfer
- Type and sensitivity of information that will be accessed
- The source, nature, and extent of FOCI
- Record of compliance with pertinent U.S. laws, regulations, and contracts
- Nature of bilateral and multilateral security and information exchange agreements
- Ownership or control, in whole or in part, by a foreign government
- Any other factor

You can learn more in the DSS web-based training course Understanding FOCI, available through CDSE's Security, Training, Education and Professionalization Portal (STEPP).

**SSA**

Special Security Agreement (SSA) is the most common method for mitigating foreign ownership, control, or influence in the NISP. The SSA allows the foreign owner to have a voice in the business management while protecting U.S. national interests by putting safeguards in place.

Special Security Agreement (SSA):

- Allows the foreign owner to have a voice in the business management through an Inside Director\*
- Requires:
  - The number of outside directors to exceed the number of inside directors
  - A minimum of three independent directors (Outside Directors), nominated by the foreign owner and approved by DSS, to act on behalf of the U.S. government to ensure the company adheres to the FOCI mitigation agreement

\*Inside Directors represent the foreign investors, are uncleared, and can be non-U.S. citizens. For example, a foreign investor may serve as an Inside Director.

## Proscribed Information

When a contractor requires access to proscribed information, it is marked on their DD Form 254.

Proscribed information includes:

- TOP SECRET (TS)
- COMSEC material, excluding controlled cryptographic items when unkeyed and utilized with unclassified keys
- Restricted Data (RD)\*
- Special Access Program (SAP)
- Sensitive Compartmented Information (SCI)

\*Note: Critical Nuclear Weapon Design Information (CNWDI) is a type of RD; if item 10c (CNWDI) is checked, item 10b must also be marked and a NID is required

Contractors under an SSA may not access proscribed information without the approval of the agency with control jurisdiction. (i.e., National Security Agency (NSA) = COMSEC, Office of the Director of National Intelligence (ODNI) = SCI, Department of Energy (DOE) = RD, Government Contracting Activity = TS and SAP.

## What is a NID?

Now that you understand when it may be needed, what exactly is a NID?

A NID, or a national interest determination, is a written statement by the Government Contracting Activity (GCA) affirming that the release of proscribed information to the company will not harm the national security interests of the United States.

It may be program-, project-, or contract-specific.

A NID does *not* authorize disclosure of classified information to a foreign government, a non-U.S. citizen, or a non-U.S. entity.

## **Who Determines the Need for and Prepares the NID?**

The Defense Security Service, or DSS, and the GCA work together to determine the need for and prepare the NID. It is never the responsibility of the contractor.

### **DSS Responsibilities**

- Receive NID request from GCA
- Validate the need for access to proscribed information
- Provide the proposed NID to GCA
- In the case of a Committee on Foreign Investment in the United States (CFIUS) transaction, obtain interim determination from GCA regarding intent to issue NID
- Receive GCA concurrence on proposed NID within 30 days
- Request the responsible U.S. Government control agency provide a decision within 30 days if access to COMSEC material, SCI (Sensitive Compartmented Information), or Restricted Data (RD) is involved
- Send formal final notification of NID approval to GCA
- Update contractor's facility clearance verification to include release of the proscribed information

### **GCA Responsibilities**

- Send NID request to DSS
- Ensure the request includes:
  - Name of Company
  - Address
  - Cage Code
  - Contract Number, Program Name, or Project Name
  - DD Form 254: Department of Defense Contract Security Classification Specification
  - Unclassified description of the technology to be accessed
  - Access justification
  - Industrial Security and Program Office points of contact
- Provide DSS with a concurrence to NID within 30 days or contact DSS with justification prior to 30 days in the case of a potential denial

## **Review Activities**

*Question 1: How well do you understand the conditions under which a National Interest Determination (NID) may be needed? Which company may require a NID?*

- Company A operates under FOCI and has an SSA in place. Per their DD Form 254, the company requires access to TOP SECRET information.
- Company B operates under FOCI and has an SSA in place. Their DD Form 254 does not indicate access to proscribed information
- Company C is wholly U.S.-owned and controlled. Their DD Form 254 requires access to Special Access Program (SAP) information.

*Question 2: Company A operates under Foreign Ownership, Control, or Influence (FOCI), has a Special Security Agreement (SSA) in place, and per their DD Form 254, requires access to TOP SECRET information. What entity or entities is/are responsible for determining the need and then preparing their National Interest Determination?*

- The government contracting activity (GCA)
- The Defense Security Service (DSS)
- The contractor

## Answer Key

*Question 1: How well do you understand the conditions under which a National Interest Determination (NID) may be needed? Which company may require a NID?*

- Company A operates under FOCI and has an SSA in place. Per their DD Form 254, the company requires access to TOP SECRET information.
- Company B operates under FOCI and has an SSA in place. Their DD Form 254 does not indicate access to proscribed information
- Company C is wholly U.S.-owned and controlled. Their DD Form 254 requires access to Special Access Program (SAP) information.

**Feedback:** *Company A is the only one that meets all three criteria for a NID: Foreign Ownership, Control, or Influence (FOCI), a Special Security Agreement (SSA), and required access to proscribed information.*

*Question 2: Company A operates under Foreign Ownership, Control, or Influence (FOCI), has a Special Security Agreement (SSA) in place, and per their DD Form 254, requires access to TOP SECRET information. What entity or entities is/are responsible for determining the need and then preparing their National Interest Determination?*

- The government contracting activity (GCA)
- The Defense Security Service (DSS)
- The contractor

**Feedback:** *DSS and the GCA work together to determine the need for and prepare the NID. It is never the responsibility of the contractor.*

## Summary

This Short examined national interest determinations. It is important you are aware of what national interest determinations are and when they may be required to protect U.S. national security information.