



About **Foreign Ownership, Control, or Influence** in Defense Contracting

When you register your company with SAM (the System for Award Management), you will be asked whether you are interested in contracting with the Department of Defense (DoD). When you indicate that you **are** interested in contracting with DoD, you will be asked to complete an additional questionnaire which includes Defense Acquisition Regulation Supplement (DFARS) clauses and provisions, including [DFARS 252.209-7002, DISCLOSURE OF OWNERSHIP OR CONTROL BY A FOREIGN GOVERNMENT](#).

This provision is prescribed in 209.104-70, and DFARS Part 9 supplements FAR Part 9. So, the broader topic is Contractor Qualifications.

The provision states: “The Offeror **shall disclose** any interest a foreign government has in the Offeror when that interest constitutes control by a foreign government as defined in this provision. If the Offeror is a subsidiary, it shall also disclose any reportable interest a foreign government has in any entity that owns or controls the subsidiary, including reportable interest concerning the Offeror’s immediate parent, intermediate parents, and the ultimate parent.”

Breaking that down, your company is an offeror when you submit an offer (bid, quote, or proposal). So, who or what is a ‘foreign government’?

At the core, ‘foreign government’ means any governmental unit outside the United States. DFARS 225.209-7002 says the term ‘foreign government’ includes “the state and the government of any country (other than the United States and its outlying areas) as well as any political subdivision, agency, or instrumentality thereof.”

Why is this important? The Department of Defense policy precludes contracts under a national security program from being awarded to an entity controlled by a foreign government if that entity requires access to “**proscribed information**” to perform the contract unless there is a waiver from the Secretary of Defense or a designee.

The “proscribed information” that DoD is concerned about includes Top Secret information; Communications security (COMSEC) material, excluding controlled cryptographic items when unkeyed or utilized with unclassified keys; Restricted Data as defined in the U.S. Atomic Energy Act of 1954, as amended; Special Access Program (SAP) information; and Sensitive Compartmented Information (SCI).



You must disclose whether a ‘foreign government has an interest in your company that constitutes ‘control.’ Your company is considered an “entity controlled by a foreign government” if it is ***controlled by a foreign government or any individual acting on behalf of a foreign government.***

“Effectively owned or controlled” means that a foreign government or any entity controlled by a foreign government can control the election, appointment, or tenure of the Offeror’s officers or a majority of the Offeror’s board of directors by any means. The power itself is an issue, whether direct or indirect, regardless of whether it is exercised. Power might come from ownership, contract, operation of law, or other means. However, the term “effectively owned and controlled by a foreign government” does not apply to your company if it is **not directly or indirectly controlled by a foreign government and the foreign ownership was effective before October 23, 1992.**

Foreign ownership, Control, or Influence can also be problematic if your company wants to obtain a Facility Clearance.

For more information:

[Project Spectrum](#) - a free online resource for cybersecurity that also offers a FOCI class

[Defense Counterintelligence and Security Agency](#) – website covers FOCI and related topics