PSC PROFESSIONAL SERVICES COUNCIL
The Voice of the
Government Services Industry

February 17, 2017

Mr. William A. Cira, Acting Director
Information Security Oversight Office (ISOO)
National Archives and Records Administration
8601 Adelphi Road
College Park, MD 20740-6001

Dear Mr. Cira:

On behalf of the Professional Services Council (PSC), I am pleased to submit these comments on the proposed revisions to the National Industrial Security Program (NSIP) Directive – **RIN 3095-AB79**. PSC is the voice of the government technology and professional services industry, representing the full range and diversity of the government services sector. As a trusted industry leader on legislative and regulatory issues related to government acquisition, business and technology, PSC helps build consensus between government and industry. Our nearly 400 member companies represent small, medium, and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social, environmental services, and more. Together, the trade association's members employ hundreds of thousands of Americans in all 50 states.

Importance of a single Cognizant Security Agency. We concur with the goal of the NISP to have one responsible Cognizant Security Agency (CSA) for each entity to minimize confusion, disparate requirements and the administrative burdens of having to be responsive to multiple CSAs.

Importance of ensuring that NISP requirements don't impede compliance with other applicable laws and regulations. We concur with the importance of ensuring that FOCI mitigation and negation plans that the CSA approves for an entity do not impede or interfere with the entity's ability to manage and comply with regulatory requirements imposed by other Federal agencies, to include the International Traffic in Arms Regulation. Consistency and clarity in compliance requirements will be crucial to successful implementation of this directive.

Foreign Ownership, Control, or Influence (FOCI); Section (h), National Interest Determination (NID). The NID process is fairly complicated and only applies to a limited number of companies who are cleared under Special Security Agreements (SSAs). The number of SSA companies who work in environments requiring access to proscribed information is, and has historically been, very few at any given time. The proposed rule creates a significant administrative burden for controlling agencies, government contracting activities, the Defense Security Service and the affected contractor companies far beyond any potential benefit to the government. Further, the inability of the government to rapidly complete the NID process results in negative operational impacts to warfighters and the intelligence community.

The proposed revision to the NISP provides an opportunity to re-evaluate what is so unique about the SSA mechanism from all other FOCI arrangements that still requires a NID process. Minimizing the need for multiple government agencies to review and consent and using the right FOCI assessment process should result in a thoughtful FOCI mitigation plan that makes the need for a NID obsolete. Eliminating the NID would avoid the current competitive disadvantage for the small population of companies subject to the NID requirements. We recommend reviewing this situation to determine if the NID process can be discarded. If,

however, a determination is made to continue to require NIDs, then we request that the NID process be revised to address the following concerns:

- Top Secret should be removed from being considered proscribed information. Top secret information can only be accessed by properly cleared employees of a company operating under a top secret facility clearance. FOCI mitigated companies that are awarded contracts requiring access to top secret information already meet this requirement.
- The Director of National Intelligence (DNI) should evaluate specific programs and data to determine prior to any acquisition activity whether that program or data is too sensitive to be accessed by FOCI mitigated companies. The DNI decision should apply to all FOCI mitigated companies, not exclusively SSA cleared companies. The vast majority of Sensitive Compartmented Information (SCI) should be excluded from the NID process based on the availability of the information across industry and government. Information that resides on JWICS, although relevant to sources and methods, does not include information that should be prohibited from access because a properly cleared employee happens to work for a FOCI mitigated company that maintains an entity determination (facility clearance) in good standing.
- Communications Security (COMSEC) determinations should be made prior to any acquisition activities. The vast majority of COMSEC material does not rise to a level of sensitivity that would exclude access, or even require increased vetting of properly cleared FOCI mitigated companies.
- SSA companies should be subject to NID requirements only during the initial access to each category of proscribed information. Once a controlling agency has rendered an initial NID for the company, blanket access to that category of proscribed information should be allowed until a change to the corporate structure requires a new adjudication of the SSA, or the entity determination (facility clearance) is invalidated.
- NIDs should be made prior to, and included in, contract award documents. Requiring NID approval prior to contract award solves several problems for the government and the contractor community.

Thank you for the opportunity to comment on this policy. PSC would be pleased to discuss our recommendations with you and others. In the interim, please feel free to contact me by email at wennergren@pscouncil.org or by phone at 703-778-7557, if you have any questions or need additional information.

Sincerely,

David M. Wennergren
Executive Vice President & Chief Operating Officer