



The voice of freelancing

PCG Policy Briefing: Security Clearances

Summary

Some roles within government organisations and projects require security clearance. Freelancers and contractors have found that agencies, prime contractors and government departments can be unwilling to consider for such work contractors who do not already have security clearance.

It is PCG's position that this practice makes no sense and is damaging:

- the available pool of resources for government work is artificially limited to those who have clearance, almost regardless of suitability
- freelance workers cannot bid for government work on a level competitive basis, undermining efforts by the Government to open the market for such work to small businesses
- procedures exist for allowing workers awaiting clearance to commence work while it is secured
- the time needed to obtain clearance is low and falling; there is therefore no justification for the practice of turning away applications on the basis that it would take too long to put contractors through vetting procedures.

This area is currently covered by guidance which the Government revised in 2007 with PCG's assistance, and which forbids the requirement of existing security clearance before a contractor can be considered for a role unless there is exceptional urgency. PCG supports this approach and is monitoring the effectiveness of the new guidance. PCG reserves the right to recommend alternative strategies for dealing with this issue should guidance alone prove not to be effective in the long term.

Introduction

i) the current situation

Currently, Government guidance states that a contractor may not be required to undergo security clearance until they have been offered a role.

The guidance states:

Pre-existing clearances should only be required by departments, prime contractors or agencies when there is an urgent priority requirement that includes the following criteria:

- a. *Clearance is genuinely necessary and proportionate*

And

- b. *The work must be completed within 30 days (SC and CTC) or 100 days (DV) of the contract start, or*
- c. *The role requires immediate and routine unsupervised access:*
 - *to sites or persons at risk of terrorist attack (CTC), or*
 - *to assets protectively marked SECRET or above (SC).*
 - *This is likely to apply to technical roles such as systems administration and telecommunications.*
 - *It is not likely to apply to roles such as commercial programming, analysis or management functions, where supervision pending clearance is straightforward. Pre-clearance should not be required if such supervision is available.¹*

ii) the historical situation

Prior to the publication of the revised guidance early in 2007, guidance was spread across several locations and documents. It included a statement that: "The MOD contracting procedures make sure that there is no competitive advantage in having prior security clearances. [...]. A number of commercial organisations advertise for staff with security clearances. This practice is neither necessary nor desirable, and is strongly discouraged by the MOD."²

¹ http://www.pcg.org.uk/cms/index.php?option=com_docman&task=doc_download&gid=294
PCG wishes to acknowledge the assistance of Alan Watts in developing this briefing.



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In addition, an exception to the “no requirement for existing clearance” rule existed so that applications could be turned down on the basis that the work would have to start in less time than it would take to obtain clearance. This allowed almost any application to be turned away on the basis of time constraints, whether this was justified or not.

iii) Key improvements in the revised guidance

The guidance published in 2007 has several crucial advantages over its predecessor.

- comprehensive guidance is available in one place
- existing clearance may now only be required when the work must be **completed** in less time than it takes to obtain clearance, not when it must **start** in less time
- clearer guidance on when clearance is deemed to have lapsed
- it is now clear that end-clients and agencies must justify a decision not to progress with an application with reference to the guidance.

PCG hopes that this will make it clear to all parties that existing clearance may not be required of candidates other than in exceptional circumstances, and that this practice will cease.

Justifications commonly cited for pre-clearance

Any Government role will almost certainly require one of the four main categories of clearance: BC, CTC, SC and DV. Without the appropriate level of clearance, a worker cannot be admitted to a secure site unaccompanied and cannot have access to classified material: these are the reasons usually cited by agencies for only wanting to take on cleared personnel.

The most common justification cited for not progressing the application of a non-pre-cleared candidate was that of supervision: if a prime contractor was to use uncleared staff, they would have to divert some manpower to provide the necessary escorts; this would have an impact on the programme as a whole.

This is understandable, but misguided. Uncleared staff can remain on site without direct supervision provided they are in a suitable area. This can include a general office when there are cleared personnel present who are aware of the presence of uncleared workers. That then leaves the additional requirements as escorting uncleared staff in to and out of that “safe” area. While still a small burden, this is not a significant daily activity.

Pre-clearance was also justified on the grounds that contractors may also require access to classified material or knowledge. Again, existing practice renders such problems as are presented by this trivial: access can be granted at the discretion of the supervisor who will have assessed the risk of a breach of security and who can provide supervision of the uncleared staff as necessary.

The only situation where this cannot be done safely is where the worker will need immediate and unsupervised access to classified material. That kind of access is mainly limited to technical roles such as system administration and telecommunications. It does not need to extend to commercial programming, nor to analysis and management roles, where informed supervision can be provided.

In practice, the reasons usually given for pre-clearance of staff did not stand up to inspection and, while there are practical problems to overcome, they are not significant ones.

Job Adverts

The previous guidelines aimed at removing the problem of requirements for pre-existing clearance had concentrated on advertisements. Until c. 2002 recruiters had openly advertised for contractors with existing clearance.

² <http://www.mod.uk/DefenceInternet/AboutDefence/WhatWeDo/SecurityandIntelligence/DVA/DefenceVettingAgencyFrequentlyAskedQuestionsContractorsAndConsultants.htm>



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The initial guidelines were successful in stopping this practice: advertisements then began to carry phrases such as “hold current SC or be willing to undergo clearance”, or “You must be willing to undergo DV security clearance prior to commencing this role”. Such phrases began to appear commonly in advertisements for government contracts.

When a contractor applied for one of these roles, the first question asked by the agent would be, “Do you have clearance?” If the answer was “no”, it was almost certain that the application would go no further.

In other words: the malpractice shifted from the advertisements to the next stage in the recruitment process, namely the initial contact between contractor and agent. Although it occurred at a different time, it was essentially the same abuse.

This became such a regular experience for contractors working in this area that it was widely felt that a contractor who lacked clearance would simply not be put forward. This applied even in cases when the advert stated that candidates must be “willing to undergo” clearance: in practice, willing but uncleared candidates would not have their applications progressed.

To be fair to the agencies themselves, they were almost certainly merely acting on the instructions of their clients.

Practices while awaiting clearance

Uncleared staff can be allowed on site, provided they are supervised by suitably cleared personnel or that they remain in an area where they cannot access classified material, such as a dedicated office space or conference room. They remain the responsibility of the person who signed them in, but they do not have to be constantly guarded. It is therefore entirely possible for contractors to start work on-site while waiting for clearance to be confirmed.

Equally, access to classified material can be given, provided that the person allowing it is confident that no material breach of security will arise. In practice, this is how new permanent staff can work until their clearance comes through and supervision is no longer necessary. There is no reason why it should not apply to freelance workers in exactly the same way - arguably if a freelance worker has previously held clearance that has lapsed, there seems even less risk that a breach will occur when compared to a new starter.

In summary, there are effective mechanisms already in place to allow uncleared workers to continue to function with minimal supervision.

Time Constraints

It has for some time been a source of frustration to Government departments that some prime contractors or other departments had developed a practice of turning away applications on the basis that it would take too long to put contractors through vetting procedures.

The Cabinet Office has succeeded in reducing the time needed to obtain clearance to eminently manageable levels:

- for SC and CTC, most clearances can be completed within 30 days
- for the more extensive DV checks, this figure is 100 days.

Not only are there procedures in place to handle contractors who are awaiting clearance, therefore, but the length of time during which such procedures need to be deployed has been reduced and, PCG understands, will be reduced yet more as the Cabinet Office improves procedures further in the future.



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Lapsed Clearance

The matter of lapsed clearance also presented major frustrations for those freelancers who had held high-level clearance, but had been working on a non-secure site for a while and whose clearance had therefore lapsed. Government departments treat lapsed clearance as no clearance at all: as a result freelancers who had held clearance and who might therefore be seen to present little risk still faced the same problems as totally uncleared candidates.

There was, however, some ambiguity around this area in the initial guidance. The revised guidance is much clearer:

Where a contractor has held a clearance in the past but has not worked continuously on jobs where the clearance is required, the clearance may be considered current if the following conditions are met:

- *The contractor's existing clearance is not more than three years old (non-List X) or five years old (List X)*
- *The contractor has worked on a job where the clearance was required in the past 12 months*
- *The contractor has not resided overseas for more than six months since their last cleared post.*³

Conclusions

It is recognised that there are circumstances and environments where only cleared staff can be considered: however these should be in the minority whereas at present almost any call for candidates for HMG work will implicitly demand pre-clearance.

PCG is monitoring the effectiveness of the guidance issued in 2007 and very much hopes that all parties will abide by it. It is not enforceable regulation: PCG argues that this should generally be deployed only as a last resort, and hopes that it will not be necessary in this area. With all parties operating within a clear and common framework, it should be possible to resolve any disagreement with reference to the guidance and without the intervention of any third party.

Should the approach of using guidance alone prove unsuccessful, and should agencies and end-clients continue to require pre-existing clearance, PCG suggests that a range of possible solutions exists:

- a portal, email address or telephone number for reporting malpractice, to be publicised by PCG and other stakeholders
- an arbitration service to be provided by the Cabinet Office or Ministry of Defence in the event of a dispute
- guidance to be turned into regulation, enforceable with penalties against agencies and / or end-users.

³ http://www.pcg.org.uk/cms/index.php?option=com_docman&task=doc_download&gid=294