

Prohibition Against Participation in Foreign Government Sponsored or Affiliated Activities (DOE O 486.1A)
(December 10, 2020)

Seller employees who are assigned to perform work under this Agreement, whether at the outset or at any subsequent point, are prohibited from participating in Foreign Government Sponsored or Affiliated Activities (FGS/AA), as determined by the Department of Energy (DOE). Each assigned employee is required to prepare and sign Company Form BSD-CS-2252 entitled "Foreign Government Sponsored or Affiliated Activities (FGS/AA) Acknowledgment Form Subcontractor Employee". The Seller shall submit Forms with positive responses, or any subsequent notification of changes in facts or circumstances as described in the Form, to the Procurement Officer within 5 (five) business days. Forms that contain only negative responses shall be retained by the Seller for the entire period of this Agreement, including options and extensions. The Procurement Officer may require submittal of all Forms at any time during the period of performance of this Agreement. The Seller is required to flow down this provision to all sub-tier contracts or purchase orders at any level. To the extent corporate resources are made available under this Agreement, the individual(s) made available as corporate resources must be included and, if applicable, reported by the Seller to the Company. This provision does not apply to ministerial corporate resources support (e.g., HR, legal, travel personnel, timekeeping personnel, benefits).

Foreign Government Sponsored or Affiliated Activities (FGS/AA) have the below definitions:

(a) Foreign Country of Risk: Any foreign country determined to be of risk, following consideration of, but not limited to, the Office of the Director of National Intelligence WorldWide Threat Assessment and The National Counterintelligence Strategy of the United States of America, by the Under Secretary for Science in consultation with the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence.

(b) Foreign Country of Risk Sponsored or Affiliated Activity: Any foreign government-sponsored talent recruitment program or other foreign government sponsored or affiliated activity, as defined below, of a Foreign Country of Risk.

1.) Foreign Government-Sponsored Talent Recruitment Program: An effort directly or indirectly organized, managed, or funded by a foreign government to recruit science and technology professionals or students (regardless of citizenship or national origin, and whether having a full-time or part-time position). Some foreign government-sponsored talent recruitment programs operate with the intent to import or otherwise acquire from abroad, sometimes through illicit means, proprietary technology or software, unpublished data and methods, and intellectual property to further the military modernization goals and/or economic goals of a foreign government. Many, but not all, programs aim to incentivize the targeted individual to physically relocate to the foreign state for the above purpose. Some programs allow for or encourage continued employment at U.S. research facilities or receipt of Federal research funds while concurrently working at and/or receiving compensation from a foreign institution, and some direct participants not to disclose their participation to U.S. entities. Compensation could take many forms including cash, research funding, complimentary foreign travel, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration, including in-kind compensation.

2.) Other Foreign Government Sponsored or Affiliated Activity: Includes the following activities directly or indirectly involving a foreign country of risk entity, as defined below:

i.) Employment.

ii.) Other support, contractual or otherwise, direct and indirect, including current and pending private and public sources of funding or income, both foreign and domestic. For researchers, other support includes all foreign country of risk entity resources made available, directly or indirectly, to a researcher in support of and/or related to all of their professional R&D efforts, including resources provided directly to the individual rather than through the research institution, and regardless of whether or not they have monetary value (e.g., even if the support received is only in-kind, such as office/laboratory space, equipment, supplies, or employees). This includes resource and/or financial support from all foreign and domestic entities, including but not limited to, gifts, financial support for laboratory personnel, and participation of student and visiting researchers supported by other sources of funding. This further includes compensation, for example, current or promises of future: grants, awards, funding, scholarship, appointment, sabbatical, travel, university directed funding, and honoraria.

iii.) Current or pending participation in, or applications to programs, e.g., grant programs, sponsored by foreign governments, instrumentalities, or entities, if not a Foreign Government-Sponsored Talent Recruitment Program, as defined. Associated contracts, upon request by DOE, must be disclosed, in addition to the fact of participation.

iv.) Positions and appointments, both domestic and foreign, including affiliations with foreign entities or governments. This includes titled academic, professional, or institutional appointments whether or not remuneration is received, and whether full-time, part-time, or voluntary (including adjunct, visiting, or honorary).

v.) The following, considered alone, are not included in this definition:

(1.) In-kind support under a fundamental research collaboration for the sole purpose of co-authorship to be made publicly available; and

(2.) Support related specifically to implementing a DOE program-sponsored international collaboration project and within the scope of a DOE-level or U.S. Government-level bilateral or multilateral international agreement.

These programs are often part of broader whole-of-government strategies to reduce costs associated with basic research while focusing investment on military development or dominance in emerging technology sectors. For purposes of this definition, a foreign country of risk entity includes the following:

(i) any foreign government or foreign government agency or instrumentality thereof of a Foreign Country of Risk;

(ii) any form of business enterprise or legal entity organized, chartered, or incorporated under the laws of a Foreign Country of Risk; and

(iii) any form of business enterprise or legal entity which is owned, controlled, or influenced¹ by an entity described in paragraphs (i) or (ii) above, or by any foreign national of a Foreign Country of Risk.

Company reserves the right to direct Seller to remove any employee participating in a FGS/AA from performing any work under this Agreement, including removing such employee from any facility at Oak Ridge National Laboratory (ORNL) or from any other DOE/NNSA site/facility (including DOE/NNSA/UT-Battelle, LLC leased facilities). To the extent DOE requires Seller's employee(s) participating in a FGS/AA to be removed from performing any further work under this Agreement with Seller, Seller shall do so unless Seller provides documentation acceptable to Company in its sole discretion which conclusively demonstrates that such employee(s) has discontinued his/her/their participation in such FGS/AA. Seller agrees that it shall not submit any request for a claim or request for equitable adjustment against Company as a result of direction by Company (and/or DOE) under this paragraph.

Notwithstanding the foregoing, failure of the Seller to reasonably ensure that neither it nor any of its employees participate in a FGS/AA as determined by DOE, may result in Company exercising all available remedies (contractual or otherwise), up to and including terminating this Agreement for default.