

FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE (5-89)

- (a) For purposes of this clause, a foreign interest is defined as any of the following:
- (1) A foreign government or foreign government agency;
 - (2) Any form of business enterprise organized under the laws of any country other than the United States or its possessions;
 - (3) Any form of business enterprise organized or incorporated under the laws of the U.S., or a State or other jurisdiction within the U.S., which is owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or
 - (4) Any person who is not a U.S. citizen.
- (b) Foreign ownership, control, or influence (FOCI) means the situation where the degree of ownership, control or influence over a DOE contractor or subcontractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or significant quantity of special nuclear material as defined in 10 CFR Part 710 may result.
- (c) For purposes of this clause, the term "subcontractor" means any subcontractor at any tier.
- (d) The Seller shall immediately provide DOE written notice of any changes in the extent and nature of FOCI over the Seller which would affect the answers to the questions presented in the DEAR 952.204-73. Further, notices of changes in ownership or control which are required to be reported to the Securities and Exchange commission, the Federal Trade Commission, or the Department of Justice shall also be furnished concurrently to DOE.
- (e) In those cases where the Seller has changes involving FOCI, the DOE shall determine whether the changes will pose an undue risk to the common defense and security. In making this determination, DOE shall consider proposals made by the Seller to avoid or mitigate foreign influences.
- (f) If DOE at any time determines that the Seller is, or is potentially subject to FOCI, the Seller shall comply with such instructions as DOE shall provide in writing to safeguard any classified information or significant quantity of special nuclear material.
- (g) The Seller agrees to insert terms that conform substantially to the language of this clause including this paragraph (g) in all subcontracts under this subcontract that will require access to classified information or a significant quantity of special nuclear material. Additionally, the Seller shall require such subcontractors to submit a completed certification required in DEAR 952.204-73 prior to award of a subcontract. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to DOE.
- (h) Information submitted by the Seller or any affected subcontractor as required pursuant to this clause shall be treated by DOE to the extent permitted by law, as business or financial information submitted in confidence to be used solely for purposes of evaluating FOCI.
- (i) The requirements of this clause are in addition to the requirement that the Seller obtain and retain the security clearances required by this subcontract. This clause shall not operate as a limitation on DOE's or the Company's rights, including its rights to terminate this subcontract.
- (j) The Company may terminate this subcontract for default either if the Seller fails to meet obligations imposed by this clause (e.g., provide the information required by this clause, comply with DOE's instructions about safeguarding classified information, or make this clause applicable to subcontractor) or if, in DOE's judgement, the Seller creates a FOCI situation in order to avoid performance or a termination for default. The Company may terminate this subcontract for convenience if the Seller become subject to FOCI and for reasons other than avoidance of performance of the subcontract, cannot, or chooses not to, avoid or mitigate the FOCI program.