

Argonne National Laboratory Prime Contract**Part II. Section I. Contract Clauses**

Last revised: September 29, 1999

Clause I.63 – DEAR 952.204-74 (AL 99-03) Foreign Ownership, Control, or Influence Over Contractor (APR 1999)

- (a) For purposes of this clause, subcontractor means any subcontractor at any tier and the term “Contracting Officer” shall mean DOE Contracting Officer. When this clause is included in a subcontract, the term “Contractor” shall mean subcontractor and the term “contract” shall mean subcontract.
- (b) The Contractor shall immediately provide the Contracting Officer written notice of any changes in the extent and nature of FOCI over the Contractor which would affect the information provided in the Certificate Pertaining to Foreign Interests and its supporting data. Further, notice 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 the Contracting Officer.
- (c) In those cases where a Contractor has changes involving FOCI, the DOE must determine whether the changes will pose an undue risk to the common defense and security. In making this determination, the Department shall consider proposals made by the Contractor to avoid or mitigate foreign influences.
- (d) If the Contracting Officer at any time determines that the Contractor is, or is potentially, subject to FOCI, the Contractor shall comply with such instructions as the Contracting Officer shall provide in writing to safeguard any classified information or special nuclear material.
- (e) The Contractor agrees to insert terms that conform substantially to the language of this clause including this paragraph (e) in all subcontracts under this contract that will require access authorizations for access to classified information or special nuclear material. Additionally, the Contractor shall require such subcontractors to submit a completed SF328, to the DOE Office of Safeguards and Security (marked to identify the applicable prime contract). Such subcontracts or purchase orders shall not be awarded until the Contractor is notified that the proposed subcontractors have been cleared. Information to be provided by a subcontractor pursuant to this clause may be submitted directly to the Contracting Officer.
- (f) Information submitted by the Contractor 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.

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- (g) The requirements of this clause are in addition to the requirement that a Contractor obtain and retain the employee security clearances required by the contract. This clause shall not operate as a limitation on DOE's rights, including its rights to terminate this contract.

- (h) The Contracting Officer may terminate this contract for default either if the Contractor fails to meet obligations imposed by this clause, e.g., provide the information required by this clause, comply with the Contracting Officer's instructions about safeguarding classified information, or make this clause applicable to subcontractors, or if, in the Contracting Officer's judgment, the Contractor creates an FOCI situation in order to avoid performance or a termination for default. The Contracting Officer may terminate this contract for convenience if the Contractor becomes subject to FOCI and for reasons other than avoidance of performance of the contract, cannot, or chooses not to, avoid or mitigate the FOCI problem.