

## Department of Energy

## 904.7004

owned, controlled, or influenced by a foreign government, agency, firm, corporation, or person; or

(4) Any person who is not a U.S. citizen.

*Foreign ownership, control, or influence* means the situation where the degree of ownership, control, or influence over an offeror(s) or a contractor by a foreign interest is such that a reasonable basis exists for concluding that compromise of classified information or special nuclear material may possibly result.

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 67 FR 14876, Mar. 28, 2002; 74 FR 36361, July 22, 2009]

### **904.7003 Disclosure of foreign ownership, control, or influence.**

(a) If a contract requires a contractor to have a Facility Clearance, DOE must determine whether the contractor is or may be subject to foreign ownership, control or influence before a contract can be awarded.

(b) If, during the performance of a contract, the contractor comes under FOCI, then the DOE must determine whether a continuation of the Facility Clearance may pose an undue risk to the common defense and security through the possible compromise of that information or material. If the DOE determines that such a threat or potential threat exists, the contracting officer shall consider the alternatives of negotiating an acceptable method of isolating the foreign interest which owns, controls, or influences the contractor or terminating the contract.

(c) It is essential for the DOE to obtain information about FOCI which is sufficient to help the Department determine whether award of a contract to a person or firm, or the continued performance of a contract by a person or firm, may pose undue risk to the common defense and security. Therefore, the provision specified at 952.204-73 Facility Clearance, shall be included in solicitations that involve offeror(s) or contractors that are subject to 904.7001.

(d) The contracting officer shall not award or extend any contract subject to this subpart, exercise any options under a contract, modify any contracts subject to this subpart, or approve or

consent to a subcontract subject to this subpart unless—

(1) The contractor provides the information required by the solicitation provision at 952.204-73 Facility Clearance, and

(2) The contracting officer has made a positive determination in accordance with 904.7004.

[49 FR 11941, Mar. 28, 1984, as amended at 59 FR 9104, Feb. 25, 1994; 62 FR 42073, Aug. 5, 1997; 67 FR 14876, Mar. 28, 2002; 74 FR 36362, July 22, 2009]

### **904.7004 Findings, determination, and contract award or termination.**

(a) Based on the information disclosed by the offeror(s) or contractor, and after consulting with the DOE Office of Safeguards and Security, the contracting officer must determine that award of a contract to an offeror(s) or continued performance of a contract by a contractor will not pose an undue risk to the common defense and security. The contracting officer need not prepare a separate finding and determination addressing FOCI; however, the memorandum of negotiation shall include a discussion of the applicability of this subpart and the resulting determination.

(b) In those cases where FOCI does exist, and the DOE determines that an undue risk to the common defense and security may exist, the offeror(s) or contractor shall be requested to propose within a prescribed period of time a plan of action to avoid or mitigate the foreign influences by isolation of the foreign interest.

(c) The types of plans that a contractor can propose are: measures which provide for physical or organizational separation of the facility or organizational component containing the classified information or special nuclear material; modification or termination of agreements with foreign interests; diversification or reduction of foreign source income; assignment of specific security duties and responsibilities to board members or special executive level committees; or any other actions to negate or reduce FOCI to acceptable levels. The plan of action may vary with the type of foreign interest involved, degree of ownership, and information involved so that each plan