

Approved: 6-7-2019

**SUBJECT: DEPARTMENT OF ENERGY FOREIGN GOVERNMENT TALENT
RECRUITMENT PROGRAMS**

1. PURPOSE. To ensure the continued flow of scientific and technical information consistent with the Department of Energy's (DOE) broad scientific mission, while also ensuring protection of U.S. competitive and national security interests and DOE program objectives; and limiting unauthorized transfers of scientific and technical information.

DOE will take appropriate actions to prohibit DOE employees and DOE contractor employees, while employed by DOE or performing work under a contract, from the unauthorized transfer of scientific and technical information to foreign government entities through their participation in foreign government talent recruitment programs of countries designated by DOE as a foreign country of risk.

2. CANCELS/SUPERSEDES. None.

3. APPLICABILITY.

- a. Departmental Applicability. This Order applies to all Departmental Elements, including those created after the Order is issued.

- (1) The Administrator of the National Nuclear Security Administration (NNSA) must assure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration-specific policies, unless disapproved by the Secretary.
- (2) In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.

- b. DOE Contractors. This Order applies to contractors. Except for the equivalencies/exemptions in paragraph 3.c., the Contractor Requirements Document (CRD), Attachment 1, sets forth requirements of this Order that will apply to contracts that include the CRD.

Specifically, the CRD must be included in DOE and NNSA Management and Operating (M&O) contracts, with the exception of the M&O contracts listed in

paragraph 3.c.(3), and other contracts as designated by Heads of Departmental Elements in accordance with paragraph 5.m.

- c. Equivalencies/Exemptions for DOE O 486.1. Exemptions and equivalencies to this Order will be processed in accordance with Appendix E of DOE O 251.1D, *Departmental Directives Program*, current version, except that approval for all exemptions or equivalencies to this Order must be obtained from the Deputy Secretary.
- (1) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 USC sections 2406 and 2511 and to ensure consistency throughout the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this Directive for activities under the Director's cognizance, as deemed appropriate.
 - (2) Exemption. This Order currently does not apply to non-DOE contractor employees working under a Cooperative Research and Development Agreement; Strategic Partnership Project; Proprietary or Non-Proprietary User Agreement; Agreement for Commercializing Technology; or financial assistance agreement.
 - (3) Exemption. The following contracts are exempt from the requirements in the CRD of this Order:
 - (a) Waste Isolation Pilot Plant.
 - (b) Strategic Petroleum Reserves.

4. REQUIREMENTS.

- a. DOE federal and contractor employees, as defined by sections 7.c. and 7.a. of this Order respectively, are prohibited from participating in certain foreign government talent recruitment programs.
- b. The Director, Office of Intelligence and Counterintelligence, must develop and maintain a list of foreign government talent recruitment programs that are covered by this Order and are sponsored by a foreign country of risk.
- c. Departmental Elements must ensure that the requirements of the CRD are incorporated into the applicable DOE contracts to be implemented and complied with by DOE contractors.
- d. DOE employees must disclose to their immediate supervisor and DOE's Designated Agency Ethics Official (DAEO) prior to entering into discussions about participating in, or if currently participating in, any foreign government talent recruitment program. If, as of the effective date of this Order, a DOE

employee is already participating in a foreign government talent recruitment program, the employee must report in writing such participation to their immediate supervisor and DOE's DAEO within 30 days of the issuance of this Order. Failure to comply with the terms of this Order will subject the employee to discipline up to and including removal from federal service.

- e. DOE's DAEO must determine if participation in the reported activity is in compliance with legal requirements, including the Emoluments Clause and DOE policies and directives. The decision of DOE's DAEO is not subject to grievance and other alternative dispute resolution procedures.
- f. If DOE's DAEO determines that participation in the reported activity is not in compliance with legal requirements, then:
 - (1) the DOE employee must not enter into discussions to participate in the foreign government talent recruitment program, or
 - (2) the DOE employee must cease their participation in the foreign government talent recruitment program within 30 days of notification, as applicable.
- g. The applicable provisions of the requirements in this Order must be incorporated as terms and conditions of employment for all current and future DOE employees.

5. RESPONSIBILITIES.

- a. Deputy Secretary.
 - (1) Establishes Departmental policy with respect to foreign government talent recruitment programs.
 - (2) Approves or denies requests for exemptions or equivalencies from the requirements in this Order.
- b. Under Secretary for Science.
 - (1) Establishes and maintains oversight of the foreign government talent recruitment programs policy, to be implemented through the Office of Science.
 - (2) Consults with and seeks assistance from the Under Secretary of Energy and the Under Secretary for Nuclear Security on the establishment of policies and procedures for implementation of the foreign government talent recruitment programs policy.
- c. Under Secretary of Energy. Consults with and provides assistance to the Under Secretary for Science on the establishment of policies and procedures for implementation of the foreign government talent recruitment programs policy.

d. Under Secretary for Nuclear Security.

- (1) Consults with and provides assistance to the Under Secretary for Science on the establishment of policies and procedures for implementation of the foreign government talent recruitment programs policy.
- (2) Implements and oversees requirements and practices pertaining to this Order for activities under the NNSA Administrator's responsibilities under this Order, consistent with NNSA Administrator's authority under sections 3212(b) and 3220 of Public Law (P.L.) 106-65.

e. Director, Office of Science.

- (1) Manages and maintains the foreign government talent recruitment programs policy as it pertains to applicable DOE contractors, subcontractors, and joint appointees.
- (2) Develops and administers policies, procedures, and safeguards to enable Departmental Elements to comply with the provisions of this Order as it pertains to applicable DOE contractors, subcontractors, and joint appointees.
- (3) Identifies foreign countries of risk in consultation with the Under Secretary for Science; the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence; and informs Departmental Elements, as needed.

f. Director, Office of Intelligence and Counterintelligence.

- (1) Provides counterintelligence and security advice to DOE employees of risk of participation in foreign government talent recruitment programs.
- (2) Develops and maintains a list of foreign government talent recruitment programs of foreign countries of risk covered by this Order.
- (3) Assists Departmental Elements, as applicable, with the assessment of reports, notifications, and other information pertaining to applicable DOE employee, DOE contractor/subcontractor employee, and joint appointee participation in foreign government talent recruitment programs of a foreign country of risk.
- (4) Reviews all quarterly reports and notices submitted to DOE by DOE contractors, in coordination with the cognizant program offices and contracting officers.
- (5) Based on the review of the DOE contractor reports or notices submitted to DOE in accordance with the CRD, determines whether the DOE contractor/subcontractor or any of its applicable employees or joint

appointees are participants in a foreign government talent recruitment program of a foreign country of risk, and provides notice of that determination to the contracting officer, as appropriate.

- g. Chief Human Capital Officer.
 - (1) Advises Departmental Elements on the foreign government talent recruitment programs policy as it pertains to DOE Federal employees, consulting with the Office of Science as needed.
 - (2) Implements the applicable provisions of the requirements in this Order as terms and conditions of employment.
- h. Office of the General Counsel (GC). Provides guidance to Departmental Elements regarding legal compliance with this Order as it relates to DOE employees and any implementing policies and procedures.
- i. Office of the General Counsel, National Nuclear Security Administration. Provides guidance to NNSA regarding legal compliance with this Order as it relates to NNSA employees and any implementing policies and procedures. NNSA GC guidance concerning legal compliance with this Order will be coordinated with the Office of the General Counsel in advance.
- j. Associate Under Secretary for Environment, Health, Safety and Security. Provides yearly security training to DOE employees, including training on identifying and reporting foreign government talent recruitment programs.
- k. Designated Agency Ethics Official (DAEO). Provides legal advice to DOE employees and management concerning the Emoluments Clause and other legal requirements or restrictions concerning participation in any foreign government talent recruitment programs and makes determinations as described in paragraph 4. As part of this process, consults with the Office of Intelligence and Counterintelligence, as appropriate,
- l. Senior Procurement Executives (SPEs). Develop Departmental procurement policies and regulations, and issue procurement guidance to contracting officers regarding their responsibilities under this Order.
- m. Heads of Departmental Elements.
 - (1) Consult with the Office of the Chief Human Capital Officer as they develop and administer internal policies, procedures, and safeguards to enable compliance with the provisions of this Order as they pertain to DOE Federal employees.
 - (2) Determine which contracts under their purview must incorporate the CRD of this Order, and notify Heads of Contracting Activities (HCAs) regarding the CRD's applicability to those contracts.

- n. Heads of Contracting Activity (HCAs). After notification from Head of Departmental Elements, notify contracting officers under their purview to incorporate the CRD of this Order into applicable contracts.
- o. Heads of DOE Field Elements. Develop and implement local procedures for the review and approval of actions taken under this Order.
- p. Contracting Officers.
 - (1) Once notified of contract applicability, ensure the CRD of this Order is incorporated into applicable contracts under their purview.
 - (2) Once notified that a DOE contractor/subcontractor under their purview has not submitted quarterly reports or satisfied the notification requirements in accordance with the CRD, coordinate with their line management to ascertain whether or not to exercise contractual remedies in accordance with federal regulations and the terms of the contract.
 - (3) Once notified that a DOE contractor/subcontractor or any of its employees under their purview are participants in a foreign government talent recruitment program of a foreign country of risk, notify the DOE contractor/subcontractor of the determination. Coordinate with their line management to ascertain whether any additional action is necessary.

6. REFERENCES.

- a. Emoluments Clause of the Constitution, Article I, Section 9, Clause 8.
- b. Intergovernmental Personnel Act, 5 U.S.C. 3371-3375.
- c. “Department of Energy Policy on Foreign Government Talent Recruitment Programs,” Secretarial Memorandum dated January 31, 2019.
- d. DOE O 251.1D, *Departmental Directives Program*, current version.

7. DEFINITIONS.

- a. Contractor Employee. Any DOE or NNSA contractor employee performing work within the scope of a DOE contract which incorporates the CRD regardless of where the work is performed. This term also includes any subcontractor employee or joint appointee from another institution performing work within the scope of such a DOE contract either on-site at the DOE/NNSA site/facility or in DOE/NNSA/contractor leased space.
- b. Demonstration Subcontract. A subcontract, in effect on or after the approval date of this Order, for the performance of work that involves a project designed to determine the technical feasibility and economic potential of a technology on either a pilot or prototype scale.

- c. DOE Employee. Any Federal employee employed by the DOE, including NNSA, and Federal employees on detail from another Federal agency to DOE, and any person on detail or appointment to DOE under the terms of the Intergovernmental Personnel Act. Special Government employees, including those serving on Federal Advisory Committee Act committees, are included in this definition.
- d. Heads of Departmental Elements. Heads of Departmental Elements include DOE's Under Secretaries, Assistant Secretaries, the NNSA Administrator, Program Office Directors, Power Marketing Administrators, or equivalent DOE officials, or any other official(s) the Head of Departmental Element designates to carry out his or her responsibilities under this Order.
- e. Foreign Country of Risk. Any foreign country determined to be of risk by the Office of Science in consultation with the Under Secretary for Science; the Under Secretary of Energy; the Under Secretary for Nuclear Security; and the Office of Intelligence and Counterintelligence.
- f. Foreign Government Entity. Includes country, regional, or local level foreign governments, certain foreign corporations, and foreign public universities.
- g. Foreign Government Talent Recruitment Program. In general, such programs include any foreign-state-sponsored attempt to acquire U.S. scientific-funded research or technology through foreign government-run or funded recruitment programs that target scientists, engineers, academics, researchers, and entrepreneurs of all nationalities working or educated in the United States. These recruitment 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.

Distinguishing features of a foreign government talent recruitment program covered by this Order include:

- (1) Compensation provided by the foreign state to the targeted individual in exchange for the individual transferring their knowledge and expertise to the foreign country. The compensation can take several forms, such as cash, research funding, honorific titles, career advancement opportunities, promised future compensation, or other types of remuneration or consideration.
- (2) Recruitment in this context refers to the foreign-state-sponsor's active engagement in attracting the targeted individual to join the foreign-sponsored program and transfer their knowledge and expertise to the foreign state. The targeted individual may be employed and located in the U.S., or in the foreign state. Recruitment would not necessarily include any invitation for engagement extended by the foreign state, for example, an invitation to attend or present work at an international conference.

- (3) Many, but not all, programs aim to incentivize the targeted individual to physically relocate to the foreign state. Of particular concern are those programs that allow for continued employment at U.S. research facilities or receipt of DOE research funds while concurrently receiving compensation from the foreign state.
- h. On-Site Work. Work within the scope of an applicable DOE contract, with the exception of those contracts listed in section 3.b., at any level or duration performed by a subcontractor employee under a R&D or Demonstration subcontract or a joint appointee at the DOE/NNSA site/facility, including DOE/NNSA/contractor leased space.
- i. R&D Subcontract. A subcontract, in effect on or after the approval date of this Order, for the performance of work that involves efforts and scientific and technological work of scientists, researchers, and engineers involving research activities, both basic and applied, and all development activities. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.
- j. Scientific and Technical Information. Information products deemed by the originator to be useful beyond the originating site (i.e., intended to be published or disseminated), in any format or medium, which contain findings and technological innovations resulting from research and development (R&D) efforts and scientific and technological work of scientists, researchers, and engineers. Scientific findings are communicated through various media – e.g., textual, multimedia, audiovisual, and digital – are produced in a range of products such as technical reports, scientific/technical conference papers, journal articles, workshop reports, program documents, invention reports, patent applications, patents, publicly available scientific research datasets, or other forms of scientific and technical information.
8. CONTACT. For questions or comments concerning this Order, please contact the Office of Science at (202) 586-9747.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 486.1, DEPARTMENT OF ENERGY
FOREIGN GOVERNMENT TALENT RECRUITMENT PROGRAMS

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD, in accordance with the conditions and definitions contained in the Order. The contractor is responsible for flowing down the requirements of this CRD to R&D or Demonstration subcontracts, at any tier, to the extent necessary to ensure the contractor's compliance with the requirements, where the subcontractor's work within the scope of the DOE contract is performed on or at a DOE/NNSA site/facility, including DOE/NNSA/contractor leased space.

1. With respect to the work being performed under this contract, the contractor must utilize due diligence to ensure that neither it nor any of its employees, applicable subcontractor employees or joint appointees, working at any level, participate in a foreign government talent recruitment program of a foreign country of risk while performing work within the scope of the DOE contract. The contractor must file reports with DOE on a quarterly basis stating whether it or any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk, or whether the contractor has a reasonable basis to report such employees or joint appointees as a participant in a foreign government talent recruitment program of a foreign country of risk.
2. The contractor must notify the Office of Intelligence and Counterintelligence within 5 business days upon, at any time during the term of the contract, including options and extensions, learning that it or any of its employees, applicable subcontractor employees, or joint appointees are or are believed to be participants in a foreign government talent recruitment program of a foreign country of risk.
3. Upon filing quarterly reports in accordance with paragraph 1, or providing notifications in accordance with paragraph 2, the contractor will be notified by the contracting officer whether, based on DOE review, it or any of its employees, applicable subcontractor employees or joint appointees, are participants in a foreign government talent recruitment program of a foreign country of risk covered by this CRD. Following notification by the contracting officer, the contractor must take appropriate action to ensure that, within 30 days of notification, neither it nor any such employees or joint appointees are participants in a foreign government talent recruitment program of a foreign country of risk while performing work within the scope of the DOE/NNSA contract.
4. Failure by the contractor to reasonably ensure that neither it nor any of its employees participate in a foreign government talent recruitment program of a foreign country of risk may result in DOE/NNSA exercising contractual remedies in accordance with federal regulations and the terms of the contract.
5. The contractor must flow this provision to R&D or Demonstration subcontracts at any tier where the subcontractor's work within the scope of the DOE contract is performed on or at a DOE/NNSA site/facility or DOE/NNSA/contractor leased space. To the extent corporate resources are made available under the contract or subcontract, the individuals

made available as corporate resources must be included and reported by the contractor. This provision does not apply to ministerial corporate resource support (e.g., HR, legal, travel personnel, timekeeping personnel, benefits, etc.).