



DoD INSTRUCTION 5205.87

MITIGATING RISKS RELATED TO FOREIGN OWNERSHIP, CONTROL, OR INFLUENCE FOR COVERED DoD CONTRACTORS AND SUBCONTRACTORS

Originating Component:	Office of the Under Secretary of Defense for Intelligence and Security
Effective:	May 13, 2024
Releasability:	Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD/ .
Approved by:	Milancy D. Harris, Acting Under Secretary of Defense for Intelligence and Security

Purpose: In accordance with the authority in DoD Directive (DoDD) 5143.01, and consistent with Section 847 of Public Law 116-92 and Sections 819 and 885 of Public Law 116-283, this issuance:

- Establishes policy and assigns responsibilities to assess and determine if the beneficial ownership of a covered contractor or subcontractor requires mitigating foreign ownership, control, or influence (FOCI), pursuant to Part 117 of Title 32, Code of Federal Regulations (CFR).
- Provides procedures to determine if a covered contractor or subcontractor is under FOCI and whether such FOCI poses a risk to national security or potential risk of compromise.
- Provides procedures to mitigate FOCI risk for a covered contractor or subcontractor, as applicable.

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SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”) that award contracts to covered contractors and subcontractors (hereinafter referred to as “covered contractor”).

1.2. POLICY.

The DoD is committed to protecting its supply chains and defense industrial base from adversarial FOCI. Identifying FOCI concerns early protects national security interests, and where appropriate, enables mitigation in connection with award of a contract or defense research assistance award, as applicable. As such, the DoD:

- a. Requires assessments of beneficial ownership and FOCI of a covered contractor consistent with Section 847 of Public Law 116-92 and Section 4819 of Title 10, United States Code.
- b. Continues to implement and oversee mitigation of all FOCI for contractors awarded contracts requiring access to classified national security information, in accordance with Executive Orders 12829 and 13526 and Parts 117 and 2004 of Title 32, CFR. This process is governed by DoD Instruction (DoDI) 5220.31.
- c. Requires threat assessments for mission critical acquisitions, to include defense research assistance agreements, that incorporate all source, counterintelligence (CI), and other information as appropriate, in accordance with DoDI O-5240.24.

SECTION 2: RESPONSIBILITIES

2.1. UNDER SECRETARY OF DEFENSE FOR INTELLIGENCE AND SECURITY (USD(I&S)).

In addition to the responsibilities in Paragraph 2.6., the USD(I&S):

- a. Oversees the assessment and mitigation of FOCI that presents risk to national security associated with covered contractors doing business with the DoD.
- b. Coordinates with the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)) to ensure that the requirements of this issuance are implemented, as applicable and appropriate, in defense acquisition activities, including contract requirements.
- c. Coordinates with the Under Secretary of Defense for Research and Engineering (USD(R&E)) to ensure that the requirements of this issuance are implemented, as applicable and appropriate, in defense research assistance awards.

2.2. DIRECTOR, DEFENSE COUNTERINTELLIGENCE AND SECURITY AGENCY (DCSA).

Under the authority, direction, and control of the USD(I&S) and in addition to the responsibilities in Paragraph 2.6., the Director, DCSA:

- a. Completes case reviews of beneficial ownership and FOCI, which may incorporate CI information if applicable; provides relevant products to Principal Staff Assistants (PSAs), DoD Components, the Defense Intelligence Agency, and Military Department Counterintelligence Organizations, as applicable, for each covered contractor for which a review is required based on information provided pursuant to Paragraph 2.6.b.
- b. Notifies the applicable contracting officer, designated PSA, or DoD Component official of the FOCI assessment and any recommended FOCI mitigation measures, in accordance with Paragraphs 2.4.b. and 3.1.g. and as defined in Part 2004 of Title 32, CFR.
- c. Recommends if FOCI mitigation measures should be implemented to address the identified FOCI risk for a covered contractor, which should remain in place for the duration of the contract, subcontract, or defense research assistance award while the covered contractor is under FOCI.
- d. Oversees the implementation of, and compliance with, FOCI mitigation measures for a covered contractor determined to be under FOCI.
- e. Notifies the applicable contracting officer, designated PSA, or DoD Component official, through the DCSA established system of records, when changes in beneficial ownership or acts of non-compliance raise questions of whether the covered contractor's FOCI remains effectively mitigated.

f. Provides an updated review to the contracting officer, designated DoD PSA, or Component official, and the cognizant Military Department Counterintelligence Office, as applicable, whenever:

(1) A covered contractor submits updated beneficial ownership information (e.g., a revised Standard Form 328, “Certificate Pertaining to Foreign Interests”) or other business governance documentation (e.g., shareholder’s agreement or operating agreement); or

(2) DCSA becomes aware of new information from other sources (e.g., FOCI or CI concerns from DoD Components) that may impact the FOCI review or mitigation measures.

g. Establishes and maintains records in a designated DCSA system of records of covered contractor FOCI documentation and supporting mitigation measures, if applicable, which are accessible to contracting officers and designated PSA or DoD Component officials.

2.3. DIRECTOR, DEFENSE INTELLIGENCE AGENCY.

Under the authority, direction, and control of the USD(I&S) and in addition to the responsibilities in Paragraph 2.6., the Director, Defense Intelligence Agency:

a. Provides centralized management of the CI enterprise for CI support to acquisition while serving as the Defense Intelligence Enterprise Manager for CI, in accordance with:

(1) DoDDs 5105.21 and 5240.02.

(2) DoDI 5240.19.

b. Produces an intelligence and CI assessment of the multidisciplinary foreign collection threats to mission critical acquisitions and defense research assistance awards in the DoD supply chain that conforms with the National Intelligence Priorities Framework, the National Threat Identification and Prioritization Assessment in response to requests for information, or as directed by the USD(I&S).

c. Conducts analysis for mission critical acquisitions and defense research assistance awards focusing on identifying foreign-affiliated capabilities or activities that would enable an adversary to exploit vulnerabilities, maliciously modify a provided product or service, sabotage system function, or clandestinely extract data or information.

d. Establishes agreements with other PSAs and DoD Component heads (or officials) for threat analysis of supply chain risk for mission critical acquisitions and defense research assistance awards.

e. Develops and designs threat analysis products to inform and support DoD mission critical acquisitions and defense research assistance awards.

f. Shares threat analysis products, to include threat assessments for mission critical acquisitions and defense research assistance awards, with the DCSA.

2.4. USD(A&S).

In addition to the responsibilities in Paragraph 2.6., the USD(A&S):

- a. Oversees and establishes policy relating to awarding, modifying, or terminating a contract, or the direction to modify or terminate a subcontract, when a DCSA FOCI assessment confirms a covered contractor is under FOCI and poses a risk or potential risk to national security or compromise of sensitive data, systems, or processes.
- b. In accordance with Section 847(c)(1) of Public Law 116-92, delegates decision authority to the DoD Component heads to determine if the requirements under Sections 847(b)(2)(A) and (b)(2)(C) of Public Law 116-92 and any implementing provisions of this issuance apply to specific contracts or subcontracts for commercial products or services or mission essential contracts or subcontracts.
- c. In coordination with the Principal Director, Defense Pricing and Contracting, develops and maintains regulation(s) in the Defense Federal Acquisition Regulation Supplement and its procedures, guidance, and information, as necessary, to implement the requirements of this issuance for defense acquisition activities.
- d. Coordinates with the USD(I&S) and the USD(R&E) to ensure, where practical, that the policies and procedures described in Paragraph 2.4.a. are consistent with those contained in this issuance.
- e. Reports annually to the Office of the USD(I&S) on the number of covered contracts and subcontracts not awarded or terminated based on FOCI.

2.5. USD(R&E).

In addition to the responsibilities in Paragraph 2.6., the USD(R&E):

- a. Develops policies and procedures to implement this issuance, as necessary and applicable, including identifying and, as appropriate, mitigating, FOCI in defense research assistance awards, consistent with the Federal Government requirements in National Security Presidential Memorandum-33, and as described in DoDI 3210.07.
- b. Develops and maintains regulation(s) in the DoD Grant and Agreement Regulations, as necessary, to implement this issuance in defense research assistance awards.
- c. Coordinates with the USD(I&S) and the USD(A&S) to ensure, where practical, that the policies and procedures described in Paragraph 2.5.a. are consistent with those contained in this issuance.
- d. Reports annually to the Office of the USD(I&S) on the number of defense research assistance awards not awarded or terminated based on an assessment of FOCI.

2.6. PSAS AND DOD COMPONENT HEADS.

The PSAs and DoD Component heads:

- a. Ensure adherence to, and implementation of, all applicable regulations, policies, and procedures that implement this issuance for awarding, amending, or renewing contracts, subcontracts, or defense research assistance awards for covered contractors.
- b. Maintain up to date information on contracts, subcontracts, and defense research assistance awards being performed by covered contractors, including period of performance, in the designated system of records administered by DCSA pursuant to Section 3.
- c. Ensure covered contractors submit beneficial ownership information to identify whether they are under FOCI and any updates to that information in the designated DCSA system of records as required.
- d. Report non-compliance with beneficial ownership reporting and FOCI mitigation requirements by covered contractors to DCSA and the contracting officer through the DCSA system of records in accordance with Paragraph 3.2.f.
- e. Report annually to the Office of the USD(I&S) on the number of covered contracts, subcontracts, and defense research assistance awards not awarded or terminated based on FOCI.
- f. Refer mission critical acquisitions to the DoD Supply Chain Risk Management Threat Analysis Center to complete threat assessments in accordance with:
 - (1) DoDD 5000.01.
 - (2) DoDIs 4140.01, 5000.86, 5200.44, 5240.18, and O-5240.24.
- g. Notify DCSA, the Defense Intelligence Agency, and other relevant components of mission critical acquisitions and defense research assistance awards that require information sharing in support of a threat assessment.
- h. When applicable, share information and FOCI assessments with relevant stakeholders to inform vendor threat mitigation processes, pursuant to DoDD 3000.16.

SECTION 3: PROCEDURES

3.1. PROCESS TO REVIEW BENEFICIAL OWNERSHIP INFORMATION.

a. DoD Components will notify DCSA of covered contractors whose proposals have been evaluated for further consideration before the source selection decision. DCSA will review the covered contractors' FOCI for use in the source selection decision process of a covered contractor that is:

- (1) In consideration for award of a prime contract or subcontract;
- (2) In consideration for defense research assistance awards; or
- (3) Currently performing under a prime contract, subcontract, or defense research assistance award and has submitted updated beneficial ownership information.

b. For each covered contractor subject to review in accordance with Paragraph 3.1.a., the applicable PSA or DoD Component or covered contractor on behalf of its subcontractor will submit a request to DCSA, via the designated system of records. DCSA will review information about the covered contractor (including the prime contractor and all subcontractors) and the relevant acquisition, including:

- (1) Legal business name; address; unique identifier (e.g., commercial and government entity code); and point of contact information.
- (2) Information about the anticipated contract or defense research assistance award, including solicitation number; program name; program point of contact and their information; period of performance; and anticipated performance location(s).

c. DCSA will review the information for completeness. If a case review has been completed in the previous 12 months and there have been no changes in beneficial ownership since the previous submission, DCSA will send a summary notice with the case review materials to the DoD Component or PSA and contracting officer, if applicable.

d. As necessary, DCSA will provide a risk indicator report or a FOCI assessment and proposed risk mitigation strategy to the DoD Component or PSA and contracting officer no later than 25 working days from the DoD Component or PSA's request for DCSA FOCI review in the designated DCSA system of records.

e. Risk indicator reports should include:

- (1) A summary statement indicating whether FOCI risk indicators were found.
- (2) Background information on the contractor and its key personnel.
- (3) A risk mitigation strategy.

f. FOCI assessments should include:

(1) Identification of all risk indicators and triggering events found through a review of a covered contractor's submitted information and other information sources.

(2) A detailed analysis of each identified risk indicator, including references and analytic notes and comments.

g. The risk mitigation strategy should include:

(1) A summary statement indicating whether the covered contractor is under FOCI.

(2) A statement indicating whether the risk indicators identified by the FOCI assessment pose a risk or potential risk to national security or potential compromise of sensitive data, systems, or processes, or could otherwise adversely affect the covered contractor's ability to perform the contract or research assistance award and whether mitigation is appropriate.

(3) When mitigation is appropriate, identification of what mitigation measures are necessary and how those mitigation measures address the risk indicators identified.

(4) When mitigation is not recommended:

(a) Identification of the risk indicators, and a detailed explanation of why these FOCI risk indicators are acceptable and mitigation is not recommended; or

(b) Identification of the risk indicators, and a detailed explanation of why these FOCI risk indicators are not acceptable and why mitigation cannot be accomplished.

h. The following processes will be followed for covered contractors (and their subcontractors) that are assessed to have FOCI:

(1) If the designated PSA or DoD Component official determines mitigation cannot be accomplished because the nature or extent of FOCI poses a risk or potential risk of compromise to national security because of sensitive data, systems, or processes, the contract or defense research assistance award may not be awarded, amended, or extended.

(2) If mitigation is recommended and can be accomplished, the exact mitigation measures should be identified and agreed to by:

(a) The covered contractor and the contracting officer before contract award or defense research assistance award; or

(b) Subcontractors after contract award, but before contract performance.

(3) Mitigation measures should be executed and implemented within 90 calendar days after contract or defense research assistance award or commencement of performance on the subcontract.

i. The designated PSA or DoD Component official or contracting officer will provide DCSA, through the designated system of records, with:

(1) A statement whether the covered contractor was found to be under FOCI.

(2) The identity of covered contractors that were awarded a contract, subcontract, or defense research assistance award.

3.2. ADDRESSING FOCI RISKS.

a. If the designated PSA or DoD Component official determines mitigation is required for contract or defense research assistance award as recommended by DCSA, DCSA will execute final FOCI mitigation measures with the covered contractor within 90 working days of contract or defense research assistance award, which will remain in place for the duration of any contract or defense research assistance award while the covered contractor is under FOCI.

b. DCSA will terminate mitigation measures:

(1) Upon notification from the contracting officer or designated PSA or DoD Component official, through the designated DCSA system of records, that all applicable covered contracts or defense research assistance awards have been completed or terminated; or

(2) When a covered contractor reports a change in beneficial ownership that results in an assessment indicating no remaining FOCI risk indicators exist.

c. DCSA will complete a new case review, as applicable, if a covered contractor submits a change in beneficial ownership in the designated DCSA system of records. Any new case review products will be provided to each applicable designated PSA or DoD Component official and contracting officer via the DCSA system of records.

d. DCSA will comply with records retention requirements for each applicable contract, subcontract, or defense research assistance award.

e. DCSA will annually review covered contractors with FOCI mitigation measures in place for changes to their FOCI status and notify the PSA or DoD Component officials and contracting officer of any acts of non-compliance.

f. Designated PSA or DoD Component officials will alert the contracting officer of acts of non-compliance with mitigation measures by covered contractors.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
CFR	Code of Federal Regulations
CI	counterintelligence
DCSA	Defense Counterintelligence and Security Agency
DoDD	DoD directive
DoDI	DoD instruction
FOCI	foreign ownership, control, or influence
PSA	Principal Staff Assistant
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD(I&S)	Under Secretary of Defense for Intelligence and Security
USD(R&E)	Under Secretary of Defense for Research and Engineering

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
beneficial ownership	Defined in Section 240.13d-3 of Title 17, CFR.
CI	Defined in DoDD 5240.02.
commercial product	Defined in Section 2.101 of the Federal Acquisition Regulation.
commercial service	Defined in Section 2.101 of the Federal Acquisition Regulation.
compromise	The known or potential exposure of national security information, sensitive data, systems, or processes, such as controlled unclassified information (e.g., personal identifiable information), cybersecurity, or national security systems to an unauthorized individual.

TERM	DEFINITION
contracting officer	Defined in Section 2.101 of the Federal Acquisition Regulation.
covered contractor or subcontractor	A company that is an existing or prospective contractor or subcontractor of the DoD on a contract, subcontract, or defense research assistance award with a value exceeding \$5 million. Contractors for commercial products or services are excluded, unless the designated PSA or DoD Component official determines that the contract involves a risk or potential risk to national security or potential compromise of sensitive data, systems, or processes such as personally identifiable information, cybersecurity, or national security system.
defense research assistance award	Grants, cooperative agreements, technology investment agreements, and other assistance or non-procurement transactions entered into to accomplish defense research.
designated PSA or DoD Component official	<p>The official designated by the PSA or DoD Component head concerned as being responsible for:</p> <p>In accordance with Section 847(b)(2)(C)(ii) of Public Law 116-92, approving and taking actions relating to awarding, modifying, or terminating a contract, or direction to modify or terminate a subcontract due to an assessment by DCSA that a covered contractor or subcontractor under FOCI poses a risk to national security or potential risk of compromise; and</p> <p>In accordance with Section 847(c)(1) of Public Law 116-92, requiring, application of Subsections 847(b)(2)(A) and (b)(2)(C) of Public Law 116-92 and the implementing provisions of this issuance to a contract or subcontract for commercial products or services based on a determination that the contract or subcontract involves a risk or potential risk to national security or potential compromise because of sensitive data, systems, or processes, such as personally identifiable information, cybersecurity, or national security systems.</p>
FOCI mitigation measures	Defined in Part 2004 of Title 32, CFR.
foreign collection threat	Defined in DoDI O-5240.24.

TERM	DEFINITION
mission critical acquisition	Those contracts or defense research assistance awards that if fail to perform as designed would result in a total mission failure; a significant or unacceptable level of degradation of the mission, or a mission compromise.
risk	The potential for unauthorized disclosure of national security information or sensitive data, systems, or processes, such as controlled unclassified information (e.g., personally identifiable information), or national security systems.
under FOCI	<p>A covered contractor with a current facility clearance or that is in process for a facility clearance is considered under FOCI when it meets the standards set forth in Subpart 117.11(a)(1) of Title 32, CFR.</p> <p>A covered contractor that has not been granted a facility clearance and is not in process for a facility clearance is considered under FOCI when a foreign interest has the power, direct or indirect, whether or not exercised, and whether or not exercisable through the ownership of the U.S. company's securities, to direct or decide matters affecting the management or operations of that company in a manner which may result in a risk or potential risk to national security or potential compromise of sensitive data, systems, or processes, such as personally identifiable information, or national security systems, or could otherwise control or influence the business or management of the contractor in a manner that could adversely affect its ability to perform on the contract or subcontract.</p>

REFERENCES

- Code of Federal Regulations, Title 17, Section 240.13d-3
- Code of Federal Regulations, Title 32
- Defense Federal Acquisition Regulation Supplement, current edition
- DoD Directive 3000.16, “Vendor Threat Mitigation,” July 6, 2022
- DoD Directive 5000.01, “The Defense Acquisition System,” September 9, 2020, as amended
- DoD Directive 5105.21, “Defense Intelligence Agency,” January 25, 2023
- DoD Directive 5143.01, “Under Secretary of Defense for Intelligence and Security (USD(I&S)),” October 24, 2014, as amended
- DoD Directive 5240.02, “Counterintelligence (CI),” March 17, 2015, as amended
- DoD Grant and Agreement Regulations, current edition
- DoD Instruction 3210.07, “Research Integrity and Misconduct,” May 14, 2004, as amended
- DoD Instruction 4140.01, “DoD Supply Chain Materiel Management Policy,” March 6, 2019
- DoD Instruction 5000.86, “Acquisition Intelligence,” September 11, 2020
- DoD Instruction 5200.44, “Protection of Mission Critical Functions to Achieve Trusted Systems and Networks (TSN),” November 5, 2012, as amended
- DoD Instruction 5220.31, “National Industrial Security Program,” May 9, 2023
- DoD Instruction 5240.18, “Counterintelligence (CI) Analysis and Production,” November 17, 2009, as amended
- DoD Instruction 5240.19, “Counterintelligence Support to the Defense Critical Infrastructure Program (DCIP),” January 31, 2014, as amended
- DoD Instruction O-5240.24, “Counterintelligence (CI) Activities Supporting Research, Development, and Acquisition (RDA),” June 8, 2011, as amended
- Executive Order 12829, “National Industrial Security Program,” January 6, 1993, as amended
- Executive Order 13526, “Classified National Security Information,” December 29, 2009
- Federal Acquisition Regulation, Section 2.101
- National Security Presidential Memorandum–33, “Presidential Memorandum on United States Government-Supported Research and Development National Security Policy,” January 14, 2021
- Public Law 116-92, Section 847, “National Defense Authorization Act for Fiscal Year 2020,” December 20, 2019
- Public Law, 116-283, “William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021,” January 3, 2021
- United States Code, Title 10, Section 4819