

		Governance Management System Procedures	
Procedure Number/Name		Original Date:	
Implementation of the Foreign-Government, Talent-Recruitment Program Policy		09/26/2019	
Written by:	Reviewed and Updated By:	Date:	
T.I. Meyer	T.I. Meyer	02/03/2020	

Revision History

Author	Description of Change	Revision Date
T.I. Meyer	First draft	09/26/2019
T.I. Meyer	Incorporate comments from PJE and MO	10/11/2019
T.I. Meyer	Clarified exemption of users	12/23/2019
T.I. Meyer	Clarified retirees, procurement subkt clause	02/03/2020

PURPOSE OF THIS PROCEDURE

To establish a general framework for implementing the Fermi Research Alliance, LLC (FRA) Policy on Foreign-Government Talent-Recruitment Programs (FGTRPs) in a consistent way across the laboratory and its community of workers.

DEFINITIONS

Key definitions are included in the DOE Order. They are reproduced here.

Compensation. Examples of compensation include cash, salary, research funding or equipment (unless under an approved SPP, CRADA, ACT, or user agreement), reimbursed expenses (unless for DOE-approved travel), honorific title/award, honorarium, promised or anticipated future compensation, or other types of remuneration or consideration. “Remuneration or consideration” is language from DOE Order 486.1. That phrase generally refers to anything of value or benefit given in return for services or that persuades someone to enter into an agreement.

Demonstration Subcontract. An FRA subcontract 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.

Foreign Country of Risk. Any foreign country determined to be of risk by DOE communicated through the DOE Fermi Site Office to the Office of the Laboratory Director.

Foreign-Government Talent-Recruitment Program (FGTRP): 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 FGTRP 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.

On-Site Work: Work within the scope of an applicable FRA subcontract, at any level or duration performed by a subcontractor employee under a R&D or Demonstration subcontract or by a joint appointee at the Fermilab site/facility, including DOE-leased space.

R&D Subcontract:

A subcontract 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.

RESPONSIBILITIES

The CHIEF OF STAFF IN THE OFFICE OF THE LABORATORY DIRECTOR has primary responsibility for the policy and this implementing procedure. Changes must be reviewed and approved by the Chief of Staff. The Chief of Staff is responsible for submitting reports to the DOE Fermi Site Office as indicated below.

As a member of the Chief of Staff's office, the FV&A SPECIALIST maintains links with other laboratories to ascertain new or emerging risks related to this policy, to preview upcoming changes to the requirement, and to learn lessons from peer organizations. The FV&A Specialist maintains a channel of communication with Argonne's Counterintelligence unit to assist in evaluation and implementation.

The GENERAL COUNSEL is responsible for advising on design and implementation of the program including modifications to the Outside Employment, Conflict of Interest, and Procurement Subcontract flow-down processes, forms, and templates. When probable participation in FGTRP is reported or believed, the General Counsel advises on reportability in light of Prime Contract requirements.

The HEAD, WORKFORCE DEVELOPMENT & RESOURCES SECTION is responsible for maintaining the Outside Employment and Conflict of Interest programs to regularly educate and monitor FRA employees' participation in an FGTRP. The program includes certifications at on-boarding of new employees and annual updates.

The ACQUISITION OFFICER is responsible for developing and maintaining the required flow downs for relevant subcontracts, for inserting the requirement, and for requesting and collecting the required

quarterly reports. The flow-down clause requires only positive quarterly certification and report by the subcontractor about FGTRP participation by their workers on the FRA subcontract.

FRA MANAGERS AND SUPERVISORS OF SCIENTIFIC, TECHNICAL, AND ENGINEERING STAFF are responsible for being familiar with the policy, this procedure, and the Outside Employment and Conflict of Interest programs.

PROCEDURE AND CONSIDERATIONS

Employees

- FGTRP participation is prohibited and reportable to the DOE.
- The Outside Employment form maintained by WDRS includes questions concerning FGTRP participation. Per the WDRS program, the submittals are reviewed by the manager and the Office of General Counsel for approval.
- The group of FRA personnel at the laboratory required to submit the annual Conflict of Interest disclosure is expanded to include all scientists and engineers as well as those leaders in positions of key, business-decision authority.
- For new-hire employees (after the Policy went into effect), the process is as follows:
 - Receive email with survey link one week after their start date;
 - Email reminders automatically sent if no response after 3 days (max 30 reminders) the reminder/survey is also in notification area of Fermiworks.
 - If no response is recorded HR will follow up with the employees/division except for: Seasonal employees (typically manual labor), Non-Scientific on calls, and Retired Scientist Emeritus or Retired Guests who did respond when they were employees (the response must have been received within one year).
- After on-boarding, all FRA employees are annually prompted with the FGTRP questions as part of the annual Outside Employment process. The expectation is communicated for annual affirmations as well as interim updates when situations change.
- Service on organizing committees for mission-related scientific conferences is permitted.
- Peer review of mission-related scientific publications as part of the accepted, global community of scientific journals is permitted even when a token honorarium is provided.
- Participation in review and advisory committees for domestic and foreign laboratories and research institutions is permitted.
- Providing direct science or technology counsel to a foreign government should be reported although it may not qualify as FGTRP participation.
- Foreign-entity sponsorship of travel. If third-party-funded hotel or airfare is disclosed and approved through the normal lab travel process, such third-party-funded hotel or airfare does not need to be disclosed as a conflict of interest, provided any direct payments to the individual by the third party are turned over to the lab by the individual.

Subcontractors

The set of FRA subcontracts affected by the FGTRP policy are restricted to those involving mission research, development, and/or demonstration work performed on the Fermilab site(s). With the launch of the FRA FGTRP program, the Acquisition Officer will, in concert with the technical lead, ensure that acquisition planning for new subcontracts includes assessment and determination of qualification under these conditions.

If so, the appropriate flow-down clause (see below) will be included in the Terms & Conditions which requires quarterly reporting of FGTRP participation among the subcontractors working on the site(s).

These quarterly reports (see sample at URL <https://directorate-docdb.fnal.gov/cgi->

[bin/sso/ShowDocument?docid=327](#)) will be collected and transmitted to the Chief of Staff at least ten business days before the DOE reporting deadline (the fiscal quarters of each year). The Chief of Staff and General Counsel will review the data to determine reportability to DOE.

Joint Appointees

FRA supports a small number of Joint Appointments, typically scientists who share an academic appointment at a university. Joint Appointments follow FRA policy and procedures. As such, they are considered as Employees or Subcontractors based on which institution is the home institution. The relevant procedures described above fully treat these individuals. Therefore, no additional procedures are required to address this category.

Users

Users of Approved Scientific User Facilities at Fermilab: The DOE Order specifically exempts individuals accessing Fermilab under approved CRADA, SPP, or NPUA agreements.

Fermilab has one Approved Scientific User Facility – the Proton Accelerator Complex. At the request of the DOE Office of High Energy Physics, FRA submitted a package to qualify the LHC Physics Center and the CMS facilities as an Approved Scientific User Facility. FRA has taken the position that CMS is Approved unless DOE's determines otherwise. Additionally, FRA's present practice is to treat NPUAs at the institutional level.

Other Collaborators: Collaborators accessing Fermilab resources (either physically or virtually) outside of the Approved Scientific User Facilities and outside of the set of NPUA institutions are considered a modest risk element and are treated equivalently to Users of Approved Scientific User Facilities.

Positive reports from the new/renewal applications will be transmitted to the Chief of Staff and the Office of General Counsel for investigation and assessment.

REPORTING AND FOLLOW-UP

To comply with FRA policy and DOE O486.1, the following procedures are used.

- The Chief of Staff shall submit a report each fiscal quarter to the Contracting Officer in the DOE Fermi Site Office stating whether any FRA employees, applicable subcontractors, or joint appointees are participants in a FGTRP of a foreign country of risk, or whether FRA has a reasonable basis to report such employees, applicable subcontractors, or joint appointees as a participant in a FGTRP of a foreign country of risk. A template is provided here (see URL <https://directorate-docdb.fnal.gov/cgi-bin/sso/ShowDocument?docid=351>).
- The mix of annual updates, new on-boards, and subcontractor quarterly reports mean that FRA could learn at any time about a relevant person's probable participation. The DOE Order and FRA FGTRP policy require notification to the DOE Office of Intelligence and Counterintelligence within five business days upon believing that an employee, applicable subcontractor or joint appointee is participating in an FGTRP. The Chief of Staff will work with the DOE Fermi Site Office to file such a notification after consultation with the General Counsel and with concurrence of the Laboratory Director.
- The Chief of Staff will also ensure that the Members of FRA, LLC are notified.
- After DOE analysis, the DOE Contracting Officer will inform FRA, via the Chief of Staff and General Counsel, whether the concern is valid.
- If confirmed, the Laboratory Director will then have 30 days to take appropriate action to remedy, among which could include:
 - Termination in the case of employment;

- Revocation of access rights;
- Contractual remedies if a subcontractor; and/or
- Confirmed relinquishment of participant in the FGTRP of concern.

REPORTING

Anyone suspecting an individual's participation in an FGTRP of a foreign country of risk may register their concerns by telephoning +1-630-840-4000 or by contacting FRA's Office of General Counsel via e-mail at ogc@fnal.gov.

INITIAL IMPLEMENTATION

To launch the FGTRP program in Sep 2019, FRA pushed out a survey using its Human Capital Management System (FermiWorks) requiring all FRA employees to answer the FGTRP questions and to update their Outside Employment forms. A second survey was distributed to subcontractors electronically registered with the laboratory. This established an affirmative baseline for the monitoring and reporting processes described above.

REFERENCES

- [DOE Order 486.1](#)
- [FRA Policy on Foreign-Government Talent-Recruitment Programs](#)
- [FRA Policy on Outside Employment](#)
- FRA Policy on Conflicts of Interest

SAMPLE

R&D and Demonstration Subcontracts for Work on DOE Owned or Leased Sites

Pursuant to Department of Energy (DOE) Order 486.1, approved June 7, 2019, FRA is required to flow down the "Contractor Requirements Document" (CRD) relating to Foreign Government Talent Recruitment Programs to all Subcontractors, at any tier, under Research & Development (R&D) or Demonstration subcontracts where work within the scope of the Subcontract is performed on or at a DOE site or facility or in DOE leased space.

DOE Order 486.1 can be found here: <https://www.directives.doe.gov/directives-documents/400-series/0486-1-border/@images/file>. The CRD, which imposes the flow down requirement and is incorporated into this Subcontract, is Attachment 1 to DOE Order 486.1.

I. Definitions for Subcontracts, at Any Level, Subject to the CRD of DOE Order 486.1

A. "Subcontractor Employee" means any employee performing work within the scope of a subcontract which incorporates the CRD either on-site at a DOE site/facility or in DOE leased space. The requirements of this clause apply only to applicable "Subcontractor Employees" as defined in this paragraph.

B. “Demonstration Subcontract” means a subcontract, in effect on or after the approval date of DOE Order 486.1, 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. “Foreign Country of Risk” means 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. [DOE has not published a list of such countries.]

D. “Foreign Government Entity” Includes country, regional, or local level foreign governments, certain foreign corporations, and foreign public universities.

E. “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 DOE Order 486.1 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.

F. “On-Site Work” means work within the scope of a subcontract, with the exception of Cooperative Research and Development Agreements, Strategic Partnership Project

Agreements, Proprietary or Non-Proprietary User Agreements, Agreements for Commercializing Technology, or financial assistance agreements listed in section 3.b. of DOE Order 486.1, at any level or duration performed by an applicable Subcontractor Employee under an R&D or Demonstration subcontract at a DOE site/facility, including DOE leased space.

G. “R&D Subcontract” means a subcontract, in effect on or after the approval date of DOE Order 486.1, 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.

H. “Scientific and Technical Information” means 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.

II. Requirements for Subcontracts, at Any Level, Subject to the CRD of DOE Order 486.1

1. With respect to the work being performed under this Subcontract, the Subcontractor must utilize due diligence to ensure that none of its applicable Subcontractor Employees, 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 this Subcontract.

2. The Subcontractor must file reports with FRA on a quarterly basis (as directed by FRA in terms of timing and method) stating whether it or any applicable Subcontractor Employees are participants in a foreign government talent recruitment program of a foreign country, or whether the Subcontractor has a reasonable basis to report any applicable Subcontractor Employee as a participant in a foreign government talent recruitment program.

3. The Subcontractor will be notified whether, based on DOE review, any of its 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, the Subcontractor must take appropriate action to ensure that, within 30 days of notification, none of its applicable Subcontractor Employees are participants in a foreign government talent recruitment program of a foreign country of risk while performing work within the scope of this Subcontract.

4. Failure by the Subcontractor to reasonably ensure that none of its applicable Subcontractor Employees participate in a foreign government talent recruitment program of a foreign country of risk may result in DOE or FRA exercising contractual remedies in accordance with federal regulations and the terms of the Subcontract.

5. The Subcontractor must flow this provision to its R&D or Demonstration subcontracts at any tier where the sub-subcontractor's work within the scope of the lower tier subcontract is performed on or at a DOE site/facility or DOE leased space. To the extent corporate resources are made available under a Subcontract at any level, the individuals made available as corporate resources must be included and reported by the Subcontractor. This provision does not apply to ministerial corporate resource support (e.g., HR, legal, travel personnel, timekeeping personnel, benefits, etc.).