



U.S. Department of Justice

National Security Division

Counterintelligence and Export Control Section

Washington, DC 20530

April 12, 2022

Via E-mail

[name]

[address]

Re: [Company]
Request for Advisory Opinion Pursuant to 28 C.F.R. § 5.2

Dear [name]:

We write in response to your letter of [date], received in this office on [date], in which you request an opinion, pursuant to 28 C.F.R. § 5.2(a), with respect to the registration obligation of [company], under the Foreign Agents Registration Act of 1938, as amended, 22 U.S.C. § 611 *et seq.* (“FARA” or the “Act”). You have described [company] as a sole-proprietor research and consulting firm and have provided the FARA Unit with information about your own experience. Included in your submission was a description of three scenarios, two current, and one prospective, as well as draft and executed contracts, in which [company] would be providing services to clients located outside the United States. You have asked us to advise you of your registration obligations based on those scenarios. Based on the representations made in your submission and the attached contracts, our opinion is that [company] is or will be acting as an “agent of a foreign principal,” pursuant to Section 611(c) of the Act in connection with the services you are or will be providing to three foreign principals –[foreign principal 1]; [foreign principal 2]; and, [foreign government].

I. Background

According to your submission, [company] entered into a contract with [foreign principal 1] in [date]. Under that contract, [company] would participate in [foreign principal 1] events. You have described [foreign principal 1] as being a collaboration between [foreign government] and a consortium of six non-governmental partners: [U.S. and foreign-based partners redacted]. You have further described [foreign principal 1] as a policy research collaboration looking at [redacted], and applying the research to [redacted]. According to your submission, you entered into a contract with [foreign principal 1] to participate in their events, author or co-author articles and reports, and participate in partnership meetings. You have represented the value of the contract to be [amount redacted] for the performance period of [redacted].¹ You represent that it is not part of [company’s] contract with [foreign principal 1] that [company] would represent [foreign principal 1] to the United States Government, but that you are now in discussions to hold events with U.S. Government officials, where you would be responsible for arranging the

¹ A signed copy of the contract, dated [redacted], between [company and foreign partner], was included with your submission.

participation of U.S. Government officials. You assert in your submission that you believe [foreign government] to be the sole funder of [foreign principal 1].

Second, [company] has entered into a contract with [foreign principal 2]. You describe [foreign principal 2] as a non-profit [redacted] research and training organization and part of [redacted]. You further describe [foreign principal 2] as being based in [foreign country], and having diverse funders, which include governments, charitable foundations, international organizations, universities, and companies. According to your submission, [U.S. government agency 1] and [U.S. government agency 2] are each funders of [foreign principal 2]. You represent that you have entered into a contract with [foreign principal 2]² for a retainer in the amount of [redacted] that would include [company] facilitating meetings and new partnerships in the United States, particularly with U.S. Government officials. By way of explanation, you offer that [foreign principal 2] has engaged you to help raise their profile with the United States Government, and with [U.S. government agency 1], in particular. This activity would involve helping [foreign principal 2's executive] obtain meetings with key U.S. Government officials. You further represent that you may be asked to attend meetings on [foreign principal 2's] behalf.

Finally, you note in the [date] Letter that [foreign government], has proposed that [company] work with [foreign government official] to write a study on the national security implications of [redacted] for [foreign government departments].³ You assert that this contract does not include meetings with U.S. Government officials or arranging for [foreign] nationals to meet with U.S. Government officials. However, [foreign government] is interested in obtaining insights into how [U.S. Government agency] is organizing on issues of [redacted] and [redacted], and advice on how to partner with U.S. counterparts and organizations. As noted in the [date] Letter, the intention of the study is to help “strengthen the bilateral exchange with the USA and at the same time foster interdisciplinary cooperation.” The value of the contract would be a one-time payment of \$[dollar figure] upon delivery of the paper.

II. FARA Analysis

As a preliminary matter, a party is an “agent of a foreign principal” who must register under FARA if it acts “in any . . . capacity at the order, request, or under the direction or control, of a foreign principal and within the United States, “engages in political activities” or “acts . . . as a political consultant . . . for or in the interests of such foreign principal.” 22 U.S.C. § 611(c)(1)(i) and (ii).

The definition of “foreign principal” contained in FARA includes “a government of a foreign country and a foreign political party,” as well as “a partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country.” 22 U.S.C. § 611(b)(1) and (3).

² A copy of the contract, dated [redacted], between [company] and [foreign principal 2] [redacted], was provided to the FARA Unit on [date].

³ A copy of the proposed contract (“Proposed Contract”) was included with your submission.

Thus, the inquiry to be made under FARA is a two-part inquiry, taking into account: (1) the nature of the relationship between the agent and a foreign principal; and, (2) whether the agent has engaged within the United States in one of the enumerated activities in the Act for or in the interests of such foreign principal. *Id.* In this case, [company] has either entered into or intends to enter into contracts with three foreign principals – a foreign government; a foreign government-private partnership; and an international non-profit.⁴ If both elements of the inquiry are satisfied, then an obligation to register may exist.

Under FARA, “[T]he term ‘political consultant’ means any person who engages in informing or advising any other person with reference to the domestic or foreign policies of the United States or the political or public interest, policies, or relations of a foreign country or foreign political party.” 22 U.S.C. § 611(p). Recognizing the seemingly wide breadth of the statutory definition to include the mere provision of advice or information to a foreign principal about political or policy matters, we follow Congress’s intent as reflected in the legislative history to the 1966 FARA Amendments: “a ‘political consultant’ would not be required to register as an agent unless he engaged in political activities, as defined,⁵ for his foreign principal.” H.R. Rep. No. 89-1470 at 7; S. Rep. No. 89-143 at 9.

Taking into account your descriptions of activities, as well as the terms of engagement provided in the contracts you furnished, we conclude that [company] has engaged or has agreed to engage in political activities on behalf of and for the benefit of each of its foreign principals. In the case of [foreign principal 1], the contract specifically provides that [company] will support outreach activities directed specifically towards “U.S. American” policy makers to include advice on which policy makers to reach out to in the United States and within the defense community more generally.⁶ In the case of [foreign principal 2], [company] has agreed to facilitate “meetings and new partnerships in the United States, particularly with U.S. government officials.”⁷ And, finally, with [foreign government], [company] has agreed to prepare a study and to provide analysis of lessons and conclusions drawn from analyses prepared by [U.S. Government agency]. As noted in the contract, the purpose of the study is not only to provide assistance to [foreign government] in managing [redacted], but also to foster bilateral exchange and cooperation between [foreign government] and the United States on the issue of [redacted].⁸ Furthering bilateral exchange with the United States constitutes political activities in that the

⁴ Under FARA’s implementing regulations, the term “control” includes “the possession or the exercise of the power, directly or indirectly, to determine the policies or the activities of a person, whether . . . through the ownership of voting rights, by contract or otherwise.” 28 C.F.R. § 5.100(b). Because [foreign government] provides sole funding for [foreign principal 1], it may be considered to control [foreign principal 1].

⁵ “Political activities” is defined under FARA as “any activity that the person engaging in believes will, or that the person intends to, in any way influence any agency or official of the Government of the United States or any section of the public within the United States with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” 22 U.S.C. § 611(o).

⁶ [redacted] Contract.

⁷ [redacted] Contract.

⁸ Proposed Contract, pp. 1-2.

[addressee]
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ultimate goal is to “influence any agency or official of the United States or any section of the public within the United States with reference to . . . the domestic or foreign policy of the United States or with reference to the political or public interest, policies, or relations of a government of a foreign country or foreign political party.” 22 U.S.C. § 611(o). In each case, [company’s] role as a political consultant is undertaken with political activities as an objective, thus, requiring [company] to register under FARA.

III. Conclusion

We, therefore, ask that you effect [company’s] registration within 30 days of the date of this letter. Our opinion is based solely on the facts as they have been presented and any change could alter our opinion.

Useful information concerning the Act, as well as the means to effectuate registration through FARA eFile, may each be found at www.fara.gov.

We will treat your submission in accordance with 28 C.F.R. § 5.2(m). If you have any questions, please contact this office by telephone at 202-233-0776, or by e-mail to FARA.Public@usdoj.gov.

Sincerely,

/s/ Jennifer K. Gellie

Jennifer Kennedy Gellie
Chief
FARA Unit