Cooperative Research and Development Agreements (CRADAs)

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Technology Transfer

• Statutory requirement to make Federal technology available to public
• DON laboratories execute and fund technology transfer
• Primary technology transfer tools
  – Cooperative Research and Development Agreements (CRADAs)
  – Licensing of Navy patents

Primary CRADA Legislation & Regulations

• 10 U.S.C. 3710a - Established CRADA
• Executive Order 12591
• DoD Directive 5535.3, May 21, 1999
• DoD Instruction 5535.8, May 14, 1999
• SECNAV Instruction 5700.16A, March 7, 2000
  - CNR & CTO share Tech Transfer responsibilities
  - CRADA Signature delegated to lab/technical activities
  - Requires annual training of Tech Transfer staff
What is a CRADA?

- Legal agreement between a Government R&D laboratory and interested partners
- Allows partners to collaborate in mutually beneficial R&D in a specific technical area consistent with laboratory mission
- Pre-determines all intellectual property rights
Ground Rules for a CRADA

• Partners can provide facilities, equipment, and personnel in support of the CRADA
• Government laboratories can enter into CRADAs with the private sector, universities, and state and local governments
• The non-Government partner can provide funds to the Government laboratory to perform tasks under the CRADA
• The Government laboratory CANNOT provide funds to their partners
How a CRADA Differs from a Contract

- NO funds can be transferred from the Government laboratory to their partners
- A CRADA is a legal agreement and not a procurement contract
- Therefore, a CRADA does not come under the control of the Federal Acquisition Regulations (FAR)
- CRADAs not required to be competitively announced
Historical Perspective Charts

Navy CRADA History
Number of New CRADAs Signed

Fiscal Year
FY89 FY90 FY91 FY92 FY93 FY94 FY95 FY96 FY97 FY98 FY99 FY00

Navy CRADA Income

Fiscal Year
FY89 FY90 FY91 FY92 FY93 FY94 FY95 FY96 FY97 FY98 FY99 FY00
What is Contained in the CRADA?

- Navy has a “living” Standard, or model, CRADA
- Provisions that do not change
  - Legaleze
    - Definitions
    - Intellectual Property
    - Indemnification/Liability
    - Termination
- Provisions that are specific to each agreement
  - Summary
  - Funding
  - Reporting
  - Statement of Work
Typical CRADA Process

• Navy & non-Navy researchers agree to work together
• Navy researcher works with lab Tech Transfer office
• Draft a CRADA, circulate for review
• Navy lab Commander and authorized non-Navy signatory sign final CRADA
• Distribute signed agreements to signatories and to ONR
• Researchers begin work
Best CRADA Practices

- Tight statement of work
- Keep CRADAs open a reasonable length of time
- Advertising of CRADAs not required, but sometimes a good practice
  - Only one opportunity
  - Establishing a sole source
  - Only known partner is foreign owned or influenced
Potential CRADA Pitfalls

• Using a CRADA inappropriately
  – Jeopardize entire Navy program

• Support contractors, visiting scientists, etc. perform Navy CRADA tasks
  – IP disaster

• Work begins before CRADA is signed
  – Lab risks funding liability
  – Both parties risk invention liability
Partnering with Others

Local
National
International

- Joint programs
- Data exchange agreements
- Hunter-Broker via ONR-EUR

Cooperative Research & Development Agreements

Government

Industry

Academia

Community

Education Partnership Agreements

Community Service
- Educational
- Human Welfare
- Environmental

R&D Partnership
CRADAs with foreign companies: Executive Order 12591

Executive Order 12591 (Apr 1987) requires that when entering a CRADA with a Foreign Owned Controlled or Influenced (FOCI) entity, DoD shall, in consultation with the US Trade Representative, give consideration to the following:

- Whether the foreign government permits U.S. organizations to enter into CRADAs on a comparable basis.
- Whether the foreign government has policies to protect U.S. rights.
- Whether the foreign government has adopted adequate non-proliferation measures (e.g. is a participant in the Wassenaar Arrangement).
Who approves a CRADA with a foreign company?

- USTR “considers” #1 and #2, but not #3.
- Navy Foreign Disclosure Officials (FDO) are concerned with non-proliferation issues, i.e. #3.
- Each SYSCOM has their FDO:
  - NAVSEA: Pam Brant, SEA 09T1, (703) 602-3210
  - NAVAIR: Dan Prasada-Rao, AIR 7.4.1, (301) 757-6339
  - SPAWAR: Helen Bragg, SPAWAR 07X, (619) 524-2398
  - All others: Lori Troutman, IPO-01D, (202) 764-2399
National Disclosure Policy criteria

The FDOs ensure that the NDP is followed. Each CRADA must meet the following NDP criteria:

✓ Consistent with U.S. foreign policy objectives.
✓ Consistent with U.S. military and security objectives.
✓ Recipient will give information the same degree of protection as the U.S. provides.
✓ Benefits to the U.S. are at least equivalent
✓ Information will be limited to that which is necessary for the purpose of the CRADA
Obtaining approval for a CRADA with a foreign company

• Provide all of the following information (in ≤2 pages), along with a copy of the proposed Agreement:
  ✓ Scope and objective of the CRADA
  ✓ Contact info for the foreign partner
  ✓ Will data to be shared or Subject Data be Classified?
  ✓ Is the technology on the MCTL, ITAR, or CCL?
  ✓ Justification for working with a FOCI organization instead of a U.S. company.
    ➢ Name U.S. companies contacted
    ➢ List public presentations at which U.S. company reps were present
    ➢ Give factors that make the foreign company uniquely qualified
    ➢ Identify the benefit to the U.S. Government
CRADA Pitfalls

- SBIR officers have various interpretations of SBIR policy wrt subcontracting funds to a Federal lab.
- NIST’s Advance Technology Program (ATP) agreements require any participating Federal laboratory to forfeit rights to any IP created under the agreement to the small business member(s) of the ATP team.
Typical CRADA

✓ Parties = Navy lab + one company
✓ Company is a large or small U.S. business
✓ Objective is development of a commercial product or service based on technology developed by Navy for military application
✓ Company provides funding that includes Navy researcher(s) salary
✓ There is research being done and both sides “give” and “get”.
Examples of Non-typical CRADAs

✓ Parties = Multiple Navy labs and/or non-Federal entities
  - Navy lab + a consortium or joint venture group
  - Navy lab + other Federal lab + company
  - Navy lab + non-profit org. + company

✓ CRADA party other than a commercial business
  - University
  - Non-profit organization
  - State or local government

✓ Funds are received from a 3rd party sponsor
  - DARPA
  - Other Navy or DoD activity
  - Other Federal agency

✓ Company is Foreign Owned or Controlled
Work for Others w/Appropriated Fund Activity

10 USC 2208 - Working Capital Funded Organization sell excess inventory...

10 USC 2539b - WCFO sell samples, drawings, test services...

10 USC 2553 - WCFO can sell articles & services under certain conditions
Work for Others

w/Appropriated Fund Activity

• 10 USC 2681- Authority to sell test & evaluation services at major range & test facilities

• 10 USC 4543- Authority WCFO to sell articles or services under certain circumstances

• 22 USC 2770- Authority to sell defense articles & services to companies to support manufacture for foreign military sales
Work for Others w/Appropriated Fund Activity

• How do you do work for others if you are:
  - A hospital
  - An appropriated funded laboratory
  - A service academy
  - Naval Post Graduate School or other service school

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Work for Others
w/Appropriated Fund Activity

Giving

Getting

Them

US