THE Louis Berger Group, INC.

January 24, 2012

Regulatory Policy Division
Bureau of Industry and Security, Room 2099B
U.S. Department of Commerce
Washington D.C. 20230

Subject: **RIN 0694-XA37**
Retrospective Regulatory Review Under E.O. 13563

Thank you for providing The Louis Berger Group (LBG) with the opportunity to submit suggestions for clarifying, streamlining or improving existing U.S. export regulations. This letter proposes specific changes to a key provision of the Export Administration Regulations. We believe that these proposed changes, if implemented, would improve this provision by making it less burdensome and more responsive to the needs of U.S. federal government agencies, contractors and grantees operating outside of the continental United States (OCONUS). Specifically, this provision of the EAR is:

> 740.11 (b)(2)(ii) License Exception GOV –
>
> (ii) Items for official use by personnel and agencies of the U.S. Government. This provision is available for items consigned to and for the official use of any agency of the U.S. Government.

Currently, this license exception only applies to items that are both consigned to ***and*** for the official use of an agency of the U.S. Government. It does not include or explicitly address items exported by a contractor or grantee in support of their performance OCONUS of federal government contracts or other activities officially sanctioned by the Government.

As a prime contractor to several U.S. Government agencies – including among others, the Department of Defense, the United States Agency for International Development, and the Department of Justice - LBG undertakes projects around the world and is frequently required to export, re-export and/or retransfer controlled items, software and/or technology in support of our contracts with these agencies. Many of these projects involve extremely tight delivery requirements to destination countries which, for various reasons, are viewed with certain sensitivities by the U.S. Government. As a result, normal license processing times – even when expedited to the best of our abilities - can lead to delays that jeopardize the timely and successful completion of our contracts and the missions which they support.

LBG proposes that Part 740.11(b)(2)(ii) be modified to expressly extend the license exception to include export, re-export and/or retransfer of controlled items by federal government contractors and grantees to the extent that such transactions are required or intended to further performance

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of a federal government contract, grant, or other officially sanctioned U.S. Government business, subject to the following conditions:

1. The Contractor or Grantee must be able to present, upon request at the time of export/re-export or retransfer, a valid and relevant U.S. Government contract or grant;
2. Records of each transaction must be kept for five years; and
3. No export, re-export or retransfer can be made to a party otherwise individually sanctioned by the U.S. Government [as identified by such screening tools as EPLS].

Proposal:

740.11 (b)(2)(ii) License Exception GOV –

(ii) Items for the conduct of the official business of the United States Government by personnel and agencies of the U.S. Government and its contractors and/or grantees thereof. This provision is available for items consigned to any agency of the U.S. Government or to contractors or grantees for the conduct of official business of the U.S. Government.

Note 1 to 740.11(b)(2)(ii)
Contractors or grantees conducting transactions pursuant to paragraph (ii) of this section must (1) be able to present upon request a valid and relevant U.S. Government contract or grant and (2) maintain records of each transaction for five years.

n.b. Condition No 3 (above) is currently addressed in the main by General Prohibitions 4-7 (Part 736.2 of the EAR)

U.S. Government Precedents:

I. Part 538.531 of OFAC's Sudanese Sanctions Regulations authorizes all transactions that are for the conduct of the official business of the U.S. Government by contractors and grantees thereof, subject to conditions as summarized above.

II. Part 126.4 of DDTC's International Traffic in Arms Regulations (ITAR); Shipments by or for United States Government agencies

(a) Although the construct of 126.4 is somewhat different from OFAC's and is rather complex, it appears similar in intent. Subpart (a) does NOT require a license "for carrying out any foreign assistance, cooperative project or sales program authorized by law and subject to control by the President by other means" when certain conditions are met (namely, when all aspects of the transaction are effected by a U.S. Government agency or when the export is covered by a U.S. Government Bill of Lading). In addition, it exempts the permanent transfer of defense articles from a licensing requirement when the transfer is "pursuant to a grant, sale, lease, or loan or cooperative project under the Foreign Assistance Act of 1961…."

(b) Subpart (c) does NOT require a license for the permanent export of defense articles for end-use by a U.S. Government agency when the export is pursuant to a contract with an agency of the U.S. Government and the end user is a U.S. Government Agency or facility subject to certain additional conditions.

(c) As with our proposal to modify Part 740.11(b)(2)(ii) of the EAR, consideration should also be given to revising Part 126.4 of the ITAR in keeping with both the spirit of Executive Order 13563's retrospective review of export provisions and the current way U.S. Government Agencies conduct business (via contractors).

Adoption by BIS of the OFAC scheme for authorizing official U.S. Government activity will clarify the general intent of 740.11 (b)(2)(ii) which is to facilitate and expedite U.S. Government sponsored business activities. It will streamline U.S. export regulations by harmonizing BIS and OFAC provisions, driving a more consistent approach across export licensing agencies. It will make the GOV License Exception more effective by adding provisions to address the way U.S. Government agencies conduct business in the 21st century - i.e. making more and more use of contractors and grantees. And it will make the regulations less burdensome by doing away with an outmoded control while continuing to protect the national security and advance the foreign policy of the United States through the aegis of having the License Exception tied to an official contract with a U.S. Government agency.

LBG urges BIS to consider this proposal on its merits for the benefit of all U.S. contractors and grantees engaged in furthering the global objectives and missions of the U.S. Government. The undersigned would be happy to discuss this proposal, provide additional information or answer specific questions. Thank you again for your interest and for this opportunity to be heard.

Regards,

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