

May 23, 2006

ACQUISITION ALERT 06-05

This Acquisition Alert notice is being transmitted to all NOAA Heads of Contracting Offices (HCOs). If you have any questions or comments about the Alert, please contact Don Kraus by email (Don.Kraus@noaa.gov) or by telephone on (301) 713-0833 x140. Please share this message with your acquisition staff.

Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations

Background: NOAA has established policies, procedures, and an implementation plan to control “deemed exports”. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is “deemed” to be an export to the home country of the foreign national.

Each Corporate and Line Office is responsible for adequate controls of physical, verbal, visual, and electronic access to export-controlled information, software, source code and technology within NOAA facilities. Contractors are charged with compliance with EAR requirements during contract performance at non-NOAA facilities.

Prior to issuance of a solicitation for research and development, the Corporate or Line Office shall notify the contracting officer in writing when (1) export-controlled information or technology will be involved. The notification shall identify the specific information or technology that must be controlled, including the applicable references to the Export Administration Regulations (EAR) and/or International Traffic in Arms Regulations (ITAR); or (2) the work is fundamental research only, and export-controlled information or technology will not be involved.

AGO Action: Based upon the notification of the requesting activity, the following provision shall be included in Section H (Special Provisions) in NOAA solicitations and contracts for Research and Development; or where the contractor may gain access to export-controlled information or technology during the performance of this contract. Existing contracts shall be modified to include this provision as appropriate.

H. ## Compliance with U.S. Department of Commerce and other Export Control Regulations (May 2006)

(a) In performing this contract, the contractor may engage in activities -- such as transfers or releases of items, technology, software, or source code -- that are subject to U.S. export controls, including, but not limited to, those contained in the Department of Commerce Export Administration Regulations, 15 C.F.R. Parts 730-774 (EAR), and administered by the Bureau of Industry and Security. The contractor is responsible for compliance with U.S. export controls and associated licensing requirements that may

attach to an export or “deemed export,” as defined in Paragraph (b)(1) of this Section. The contractor shall establish and maintain, throughout the period of contract performance, effective export control compliance procedures covering all contractor employees and all of the contractor’s non-NOAA facilities where the contract shall be performed. Failure to establish, maintain, or adhere to such compliance procedures shall constitute grounds for default termination under this contract as well as a breach of contract by the contractor.

(b) *Definitions.*

(1) Deemed export. The EAR define a deemed export as any release of technology or source code subject to the EAR to a foreign national, in the United States. Such release is “deemed” to be an export to the home country of the foreign national. 15 C.F.R § 734.2(b)(2)(ii).

(2) Export-controlled information and technology. Export-controlled information and technology is information and technology subject to the EAR (15 C.F.R. § 730 et seq.) or the International Traffic in Arms Regulations, 22 C.F.R. §§ 120-130 (ITAR), administered by the Department of State. This category includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software, source code or technical data, as defined in the EAR and ITAR.

(c) The contractor shall prevent unauthorized access by foreign nationals to all export-controlled information and technology that it possesses or that comes into its possession in performance of this contract, to ensure that access by a foreign national is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations. If access to EAR or ITAR controlled technology is required by a foreign national, the contractor must obtain appropriate authorization.

(d) Nothing in the terms of this contract is intended to change, supersede, or waive any of the requirements of applicable Federal laws, Executive Orders or regulations.

(e) The contractor shall include this clause, including this paragraph (e), in all subcontracts under this contract.

[end of clause]

Effective Date: Effective immediately.

This Alert shall remain in effect until this direction is included in the NOAA Acquisition Handbook.