August 1, 2012

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

Subject: RIN 0694-AF65
Proposed Revisions to the Export Administration Regulations (EAR): Implementation of Export Control Reform; Revisions to License Exceptions After Retrospective Review

Thank you for providing The Louis Berger Group (LBG) with the opportunity to submit comments on both the substantive and structural aspects of the proposed clarifying changes to License Exception Gov (Part 740.11 of the EAR). This letter focuses on specific proposed changes to this section: the new/completely revised (b)(2)(iii) - *Exports, reexports and transfers made for or on behalf of a department or agency of the U.S. Government*.

LBG welcomes the general scope of the newly proposed part (b)(2)(iii). It addresses the key point in our proposal of January 24, 2012 (submitted in response to RIN 0694-XA37 – Retrospective Regulatory Review Under E.O. 13563 - August 5, 2011) to clarify, streamline, and/or otherwise improve the existing License Exception Gov by expanding GOV to authorize items consigned to non-governmental end-users, such as U.S. Government contractors, acting on behalf of the U.S. Government – proposed 740.11(b)(2)(iii)(B). Thank you very much.

However, we take exception to the addition of subpart (b)(2)(iii)(B)(2) – the proposed requirement for prospective users to "obtain a written authorization from the Secretary or agency head of the U.S. Government department or agency" prior to use of this License Exception. We believe that if adopted in the Final Rule, such written authorization requirements would add an unnecessary and time consuming step to the transaction and defeat the goal of the regulatory review initiative (i.e. to make the regulations less burdensome and more responsive to the needs of U.S. federal government agencies and industry). In addition, the delays likely to occur while obtaining such authorizations could jeopardize the timely and successful completion of our U.S. Government contracts and the missions which they support.

In its stead, LBG – which recognizes the importance and usefulness of safeguards –requests BIS to consider adopting the following conditions as set forth in our original proposal of January 24th:

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;[1]

[1] Proposed Condition No. 1 could be augmented by having contractors register their U.S. Government contracts with BIS (if required).

2. Records of each transaction must be kept for five years[2]; 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].

U.S. Government Precedent:

- 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.

While the stated goal of the Proposed Rule is to harmonize EAR and equivalent ITAR authorizations, allowances should be made in the case of License Exception GOV to account for the differences in sensitivity of the controlled items. Adoption by BIS of the OFAC scheme for authorizing official U.S. Government activity will confirm the general intent of 740.11 (b)(2)(iii) which is to facilitate and expedite U.S. Government mandated business activities. It will streamline U.S. export regulations by harmonizing BIS and OFAC provisions, driving a more consistent approach across export licensing agencies. And it will make the regulations less burdensome by doing away with the proposed written authorization requirement while continuing to protect the national security and advance the foreign policy of the United States through the aegis of more appropriate safeguards.

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,

Andrew Parr
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[2] Proposed Condition No. 2 could be augmented by adding specific reporting requirements (if required). See 740.11(b)(2)(iv)(B) - aka 743.1 for precedent.

Revised

From: Parr, Andrew
Sent: Monday, August 06, 2012 5:27 PM
To: publiccomments@bis.doc.gov
Cc: rpd2@bis.doc.goc; Export Compliance
Subject: RIN-0694-AF65 - Public Comment - Copy - Original Uploaded to Regulations.gov

FYI:

Regards,

Andrew Parr

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