



COMDTINST 5700.1
6 MAY 1997

COMMANDANT INSTRUCTION 5700.1

Subj: COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENTS (CRADAS)

1. PURPOSE. This instruction promulgates procedures for establishing Cooperative Research and Development Agreements (CRADAs) between one or more Coast Guard Laboratories and one or more non-Federal entities. The purpose of CRADAs is to promote transfer of technology to the private sector for commercial use.
2. ACTION. Commanding Officers/Directors of Coast Guard Laboratories shall ensure that CRADAs are established in accordance with this Instruction.
3. DIRECTIVES AFFECTED. None
4. DEFINITIONS.
 - a. Cooperative Research and Development Agreement (CRADA) - Any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory; **except that such term does not include a procurement contract or cooperative agreement as those terms are used in Section 6303, 6304, and 6305 of Title 31, United States Code.** (See Enclosure (1) for a comparison and description of contracts, grants, and cooperative agreements.)
 - b. Laboratory - A facility or group of facilities owned, leased, or otherwise used by a Federal agency, a substantial purpose of which is the performance of research, development, or engineering by employees of the Federal Government. Additional definitions which

apply to Government-owned, contractor operated labs may be found in 1354 Title 15, U.S.C. 3701a, Cooperative research and development agreements.

5. DISCUSSION.

- a. Cooperative Research and Development Agreements (CRADAs) were authorized by the Federal Technology Transfer Act (FTTA) of 1986 (Public Law 99-502) as amended, and are codified in 15 USC 3710a. The purpose of these agreements is to **promote transfer of technology to the private sector for commercial use.** CRADAs may be bi- or multilateral and may be proposed by any of the potential CRADA partners. CRADAs are authorized between a Federal laboratory (including, with limitations, contractor operated labs) and other Federal agencies; units of State or local government; industrial organizations (including corporations, partnerships and limited partnerships, and industrial development organizations); public and private foundations; nonprofit organizations (including universities); or other persons (including licensees of inventions owned by the U.S. Government). At least one of the CRADA partners must be a non-Federal entity.
- b. The FTTA authorizes executive agencies to permit the directors of their laboratories to enter into CRADAs. The Office of the Secretary has delegated this authority to the Commandant, who has further delegated this authority to the Director of Finance and Procurement (G-CFP).
- c. Every CRADA established must be consistent with the mission of the Coast Guard Laboratory involved. Within the terms of a CRADA, the Coast Guard Laboratory may provide one or more of the following: personnel, **services**, facilities, equipment, intellectual property, or other resources EXCEPT FUNDS. The non-Federal CRADA partner may supply any or all of the above and may additionally supply FUNDS which are consistent with the missions of the laboratory.
- d. CRADAs are legal, binding **agreements** between the Federal Laboratory and the CRADA partner. Since CRADAs are legally binding, they must be reviewed by cognizant **procurement** legal staff for legal sufficiency.
- e. CRADAs are NOT procurement contracts. Contracting personnel need not be involved in any step of the CRADA process. However, care must be taken to ensure that CRADAs are not used to circumvent the contracting process. **CRADAs have a specific purpose and should not be confused with other types of agreements such as procurement contracts, grants, and cooperative agreements. Enclosure (1) contains a description of each type of agreement and its purpose.**

- f. **It is strongly recommended that all proposed CRADAs be advertised in the Federal Register.** A sample advertisement is available electronically from G-SIR. This gives all potential CRADA partners an opportunity to participate, removes any appearance of favoritism, and limits the risk of future litigation by non-CRADA partners.
- g. Two issues normally associated with procurement contracts also apply to CRADAs. The first issue concerns conflicts of interest. The FTTA requires that any agency entering into CRADAs review its standards of conduct for its employees for resolving potential conflicts of interest to make sure they adequately establish guidelines for situations likely to arise through the use of CRADAs, including but not limited to cases where present or former employees or their partners negotiate licenses or assignments of titles to inventions or negotiate CRADAs with Federal agencies (including the agency with which the employee involved is or was formerly employed). Commandant Instruction M5370.8A, Standards of Conduct, and 5 CFR Part 2637, Regulations Concerning Post Employment Conflict of Interest apply. The second issue addresses preferential treatment for certain categories of potential CRADA partners. The FTTA requires that when entering into CRADAs, special consideration be given to small business firms/consortia; and that preference be given to business units located in the U.S. which agree that products embodying inventions made under the CRADA or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into account whether or not such foreign government permits U.S. entities to enter into CRADAs and licensing agreements.
- h. The authority to enter into CRADAs is delegated, upon application, by the **Director of Finance and Procurement (G-CFP)** to the director (Commanding Officer) of a Coast Guard Laboratory. **The Director of Finance and Procurement (G-CFP) is the designated disapproval authority for individual CRADAs, and retains the right, in accordance with the terms of the FTTA,** to disapprove or require modification to a CRADA entered into by the director of a laboratory.
- i. **Protections for non-Federal CRADA parties' trade secrets or privileged or confidential commercial or financial information.**
 - (1) **The disclosure of a non-Federal CRADA partner's trade secrets or of privileged or confidential commercial or financial information, which is obtained as a result of research or other activities conducted pursuant to a CRADA, is prohibited.**
 - (2) **With respect to information that is developed as a result of the CRADA process and that would constitute a trade secret or privileged or confidential commercial or financial information if obtained from a non-Federal CRADA partner, a**

Commanding Officer/director, for a period of up to 5 years after development of such information, may provide appropriate protections against the dissemination of such information, including exemption under the Freedom of Information Act (FOIA).

- (3) **Commanding Officers/directors shall consult with the Coast Guard Laboratory's servicing legal staff and FOIA officer as appropriate.**
- j. **Questions involving the distribution of royalties (Section 3710c of the FTTA) should be referred to the DOT Office of the General Counsel (C-15) via the chain of command.**

6. **IMPLEMENTATION.**

- a. To obtain authority to enter into CRADAs, Commanding Officers/directors of Coast Guard Laboratories shall:
 - (1) Review the mission statement of the laboratory. Two tests will be applied to the mission statement: first, a substantial purpose of the laboratory must be research, development or engineering; second, transfer of technology from the Federal Government to a non-Federal entity must be an objective.
 - (2) Request, via the chain of command and the **Chief, Office of Procurement Management (G-CPM)**, authority from the **Director of Finance and Procurement (G-CFP)** to enter into CRADAs **on behalf of the Coast Guard.** The letter of request shall include a copy of the mission statement of the laboratory and any amplifying information deemed appropriate by the requesting command **including any examples, if known, of the types of CRADAs expected to be entered into.**
- b. Upon review **and approval**, the **Director of Finance and Procurement (G-CFP)** will delegate, in writing, authority to enter into CRADAs to the Director of the requesting laboratory. **This is a onetime delegation and will remain in effect as long as the conditions of the delegation are met.** The delegation letter will also designate **the Chief, Procurement Management Division as the disapproval authority for individual CRADAs.** (See subparagraphs 6.d.(8)-(10)).
- c. Upon obtaining authority to enter into CRADAs, Commanding Officers/directors of laboratories shall:
 - (1) Develop and promulgate a unit instruction containing unit specific CRADA procedures.

- (2) Commanding Officers/directors of Coast Guard Laboratories shall ensure that those Coast Guard members and civilian employees involved in each and every CRADA entered into comply with Standards of Conduct, COMDTINST M5370.8A, and that former Coast Guard members or civilian employees, working for a non-Federal CRADA partner on a project associated with the CRADA, comply with the post-employment conflict of interest regulations at 5 C.F.R. Part 2637. Commanding Officers/directors shall consult with the Coast Guard Laboratory's servicing deputy ethics official/legal officer as appropriate.
- d. The following steps shall be used in initiating a CRADA:
- (1) The CRADA process may be initiated by the Coast Guard Laboratory or any of the potential CRADA partners (also known as collaborating parties).
 - (2) **It is strongly recommended that the Coast Guard Laboratory announce its intention to enter into a CRADA by publishing a notice in the Federal Register.** A sample announcement is available electronically from G-SIR.
 - (3) The CRADA shall be prepared using the standard CRADA form (available electronically from G-SIR). **The cognizant procurement legal authority should be consulted prior to negotiating any CRADA.** Instructions for the completion of this form and a fictitious example of a completed CRADA form are available electronically from G-SIR. The example is prepared using the R&D Center as the Coast Guard Laboratory.
 - (4) Commanding Officers/directors of Coast Guard Laboratories, in deciding what CRADAs to enter into, shall give (1) special consideration to small business firms and (2) give preference to business units located in the United States which agree that products embodying inventions made under the proposed CRADA or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization (including corporations, partnerships, and limited partnerships and industrial development organizations) or other person subject to the control of a foreign company or government, as appropriate, take into consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into CRADAs and licensing agreements.
 - (5) Deviations from the standard CRADA form, although not prohibited, should be minimized and must be approved by the **cognizant procurement** legal authority.

- (6) A **procurement** legal review of the proposed CRADA is mandatory. The legal review ensures the CRADA does not circumvent the contracting process and that the CRADA is in compliance with the **FTTA**.
 - (7) The CRADA shall be signed by all parties.
 - (8) A copy of the CRADA shall be sent directly (not via the chain of command) to the "disapproval authority", **Commandant (G-CFP), with a copy to the cognizant Headquarters Program office**. A sample forwarding letter is available electronically from G-SIR.
 - (9) The disapproval authority, **Commandant (G-CFP), in consultation with the cognizant Program office**, may disapprove or require modification of any CRADA. A written explanation of disapproval or modification shall be forwarded within a thirty day period from receipt of the CRADA **to the director of the Laboratory with a copy to the cognizant Program office**. Failure to transmit such disapproval or modification within the thirty day period will constitute tacit approval of the CRADA.
 - (10) If the disapproval authority (Commandant (G-CFP)) requires the modification of any CRADA, the CRADA partner(s) shall have thirty days from their receipt of the notification of such modification to ratify the modifications or terminate the CRADA.
 - (11) A copy of the CRADA shall be retained by the Coast Guard Laboratory.
- e. Upon completion or termination of a CRADA, Commanding Officers/directors of laboratories shall:
- (1) Retain records of the CRADA.
 - (2) Inform, in writing, **Commandant (G-CFP) and the cognizant Program office** of the following: that the CRADA has been terminated or completed; the benefits accrued, the contributions of the Government, and the contributions by the CRADA partner.

/s/ J.M. Loy
Chief of Staff

Encl: (1) Summary Comparison of Types of Agreements

SUMMARY COMPARISON OF VARIOUS TYPES OF AGREEMENTS

CONTRACT. The legal instrument reflecting a relationship between the Federal Government and another party whenever the principal purpose of the instrument is the acquisition, by purchase, lease, or barter, of property or services, including construction, for the direct benefit or use of the Federal Government.

Limitation: May only be executed for the government by a warranted contracting officer.

GRANT. The legal instrument reflecting a relationship between the Federal Government and another party whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value from the Federal Government to another party to accomplish a public purpose of support or stimulation authorized by Federal statute, and no substantial involvement is anticipated between the Federal Government and the other party during performance of the contemplated activity.

Limitation: The Coast Guard has only limited specific authorities for grants - 46 USC Section 13103 for boating safety; 33 USC Section 1254(i) for oil pollution control studies; 33 USC section 1254(j) regarding solid waste disposal equipment for vessels, and 33 USC Section 2761(c) for oil pollution research and development.

COOPERATIVE AGREEMENT. The legal instrument reflecting a relationship between the Federal Government and another party whenever the principal purpose of the relationship is the transfer of money, property, services, or anything of value from the Federal Government to another party to accomplish a public purpose of support or stimulation authorized by Federal statute, and substantial involvement is anticipated between the Federal Government and the other party during performance of the contemplated activity.

Limitation: The Coast Guard has only limited specific authorities for cooperative agreements -14 USC Section 93(d) for experiments relating to performance of Coast Guard functions; 14 USC Section 93(t) for maintenance and improvement of natural and historic resources; 14 USC Section 93(u) for cooperative agreements with other Government agencies and the National Academy of Science; and 33 USC Section 2761(c) for oil pollution research and development.

COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT. The legal instrument reflecting a relationship between the Federal Government and another party under which the Federal Government, through its laboratories, provides personnel, services, facilities, equipment, intellectual property, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the mission of the laboratory.

Limitations: Cooperative Research and Development Agreements may only be used by those Coast Guard units meeting the definition of a Federal

Encl. (1) to COMDTINST 5700.1

laboratory as defined in the Federal Technology Transfer Act. Also, while the general intent is to transfer technology for commercial development, the Government must retain a non-exclusive, irrevocable, paid-up license.

CAUTION: CRADAs are not to be used for purposes properly classified under another type of agreement regardless of whether the Coast Guard has authority for such agreements.