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United States General Accounting Office
Washington, DC 20548

April 8, 2002

The Honorable Claude M. Bolton Jr.
Assistant Secretary of the Army for
Acquisition, Logistics and Technology

Subject: Export Control: Army Guidance on Cooperative Research and
Development Agreement Compliance with Export Control Laws and
Regulations

Dear Mr. Secretary:

We recently completed a review of cooperative research and development agreements (CRADA) at two Army laboratories: the Army Research Laboratory located at Adelphi, Maryland, and the Army Medical Research Institute of Infectious Diseases located at Fort Detrick, Maryland.¹ This work was part of a larger review we undertook at the request of the chairman of the Subcommittee on National Security, Veterans Affairs, and International Relations of the House Committee on Government Reform. We examined a sample of CRADAs at various federal laboratories to determine, among other things, whether federal agencies and laboratories were complying with export control laws when entering into CRADAs.

Based on our work at the two Army laboratories, there is a need for the Army to clarify its guidance on technology transfers to ensure compliance with U. S. export control laws during the management review of potential CRADAs. Also, each Army laboratory needs to ensure that the results of such reviews are documented in the CRADA files.

Army Regulation 70-57, "Military-Civilian Technology Transfer," states that at each laboratory, managers at all levels need to ensure that technology transfer activities do not conflict with export control regulations and policies governing militarily critical technology. However, the regulation is not specific on steps needed to ensure compliance with these regulations and policies. Further, it does not reference

¹ A cooperative research and development agreement is a written agreement between a federal laboratory and a non-federal partner to conduct specific research development efforts that are consistent with the laboratory's mission. Under such agreements, the non-federal partner agrees to provide funds, personnel, services, facilities, equipment, or other resources needed to conduct a specific research effort while the federal government agrees to provide similar resources but not funds directly to the partner. The Federal Technology Transfer Act of 1986 authorized government-owned government-operated federal laboratories to enter into such agreements with private industry, and other governmental and educational entities. The National Competitiveness Technology Transfer Act of 1989 extended this authority to government-owned contractor-operated laboratories.

technology control requirements under the Department of State's international traffic in arms regulations or the Department of Commerce's export administration regulations. The former deals with the transfer of defense items and technology; the latter with items or technology that have both military and civilian uses.

The regulation does require that laboratories consult with the Office of the United States Trade Representative when entering into a CRADA with a foreign-owned entity to determine, among other things, the extent to which the foreign country has adopted adequate measures to prevent inappropriate retransfer of technology. However, an official with the Office of the United States Trade Representative has informed federal laboratories that the Trade Representative does not have the expertise to make such a determination and has suggested that the laboratories consult with the State and Commerce Departments, which are the government agencies involved in export control.

At the two Army laboratories we visited, officials involved with technology transfer described certain situations where they might review CRADAs for compliance with export control regulations and policies. However, based on their comments from, we could not determine to what extent these officials routinely reviewed CRADAs for compliance with U. S. export control regulations and policy. Further, we reviewed supporting documentation for 25 CRADAs at the two Army laboratories and found that none of the files reviewed contained documentary evidence that these CRADAs had been reviewed for compliance with export control regulations and policies.

A committee consisting of legal and management officials from various major commands within the Army is in the process of revising Army Regulation 70-57. Because of your responsibility for Army policy related to technology transfer, we recommend that you direct this committee to include in the revised regulation, procedures that laboratory officials should follow to ensure that technology transfer activities do not conflict with U. S. export control regulations and policies. At a minimum, those procedures should require that appropriate laboratory officials determine if the Department of State's international traffic in arms regulations, the Department of Commerce's export administration regulations, or other appropriate Department of Defense guidance require control of the technology to be transferred. Further, the regulation should require that laboratory officials document the results of such determinations in the official CRADA files to assure that appropriate procedures are followed.

To determine whether federal laboratories were complying with U.S. export control laws, we researched relevant laws and regulations, interviewed agency and laboratory officials responsible for oversight of CRADAs, and reviewed CRADA files for a sample of CRADAs that were active in fiscal years 1998 through 2001.

We conducted our work from August 2001 through February 2002 in accordance with generally accepted government auditing standards.

In commenting on a draft of this letter, DOD and Army officials concurred with our findings and recommendations. They pointed out that the current Army regulation contains a statement requiring consultation with the Office of the U.S. Trade Representative on CRADAs with foreign partners and language indicating that action should be taken to ensure compliance with export control regulations, policies governing military critical technology, and DOD's technology transfer control procedures. They also told us that they plan to include appropriate language to ensure compliance with export control laws, regulations, and policies, including the need for documentation, as part of the current revision of the regulation.

We are providing a copy of this letter to the chairman of the Subcommittee on National Security, Veterans Affairs, and International Relations and will provide it to other interested parties on request. This letter will also be available on GAO's homepage at <http://www.gao.gov>. Should you or any of your staff have any questions concerning this letter or its recommendations, please contact me on (202) 512-4841. Major contributors to this letter were Thomas J. Denomme, Carlos M. Garcia, and Noel J. Lance.

Sincerely yours,

A handwritten signature in black ink that reads "Katherine V. Schinasi". The signature is written in a cursive style with a large initial "K" and "S".

Katherine V. Schinasi
Director
Acquisition and Sourcing Management