



Cooperation in Cooperative Research and Development Agreements FLC - Northeast

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What does it mean to be cooperative?

- Recent case provides instruction on properly dealing with CRADA partners
- **Spectrum Sciences v. U.S., 84 Fed.Cl. 716 (Fed.Cl. Dec 08, 2008) (No. 04-1366C)**
 - **Only case in which a CRADA partner has sued a laboratory for breach of the agreement in 23 years since the CRADA statute was enacted.**
 - **Provides an opportunity for a refresher in “do’s” and “don’ts” concerning CRADAs**
- Proper organizational attitude toward CRADAs will avoid problems.



Spectrum Sciences Background

- Dispute arose from a CRADA between Spectrum Sciences and the USAF Air Armament Center
- The technology being developed was an improved Munitions Assembly Conveyor (MAC)
- MAC is a mobile assembly line for assembling bombs before they are loaded on planes
 - **For safety reasons bombs are shipped in pieces**
 - **Originally designed for 500 lb. bombs**
 - **Today's bombs are 2,800 lbs.**
- Long-felt need for an improved MAC



Spectrum Sciences, the partner

- Spectrum Sciences became aware of the defects in the MAC and began a self-funded improvement effort.
 - **Analyzed defects in the existing system**
 - **Determined that a modified MAC could perform the services.**
 - **Calculated the needed weight limit for efficient production**
 - **Replaced a manual hoist with a modified power hoist to reduce operator fatigue**
 - **Built a prototype system**



Background Intentions for the CRADA

- Spectrum Sciences wanted to show its system to the Air Force with the hope of getting a procurement deal, preferably a sole source procurement deal.
- The Air Force wanted to know the best way to improve the MAC for competitive procurement.



The CRADA

- Included usual language concerning proprietary information
 - **Special procedures for transfer of proprietary information required specific delivery in writing.**
 - Required written agreement of confidentiality by employees and contractors.
 - Marking the information was required
 - Required consultation before publication
 - **Agreement also included a clause specifically identifying Spectrum Sciences previously developed information as proprietary**



CRADA Performance

- CRADA completed satisfactorily according to the statement of work.
- MAC was improved to handle higher loads with lower operator stress
- Lighting was improved.
- MAC passed a required AF load test.
- At the completion of the CRADA, the modified MAC was ready to go into production.



Post CRADA Activity

- Air Force decided to compete improved MAC
- Many of the same AF personnel who worked with Spectrum developed the solicitation.
 - **Performance data was solicited from Spectrum without explaining use.**
 - **Spectrum was not informed about the incipient competition.**
 - **Some competition data was reverse engineered from Spectrum's prototypes.**
- Other AF personnel were available for the procurement.
- In the procurement Spectrum had one other competitor.
- The contract was awarded to the competitor based on a 6% cost difference and minor past performance ratings.
- Spectrum sued.



Findings in the Lawsuit

- Spectrum's specifically identified information was proprietary despite failure to follow other provisions.
- The AF breached the agreement by disclosing Spectrum's approach – modifying the existing MAC, and other aspects of Spectrum's design.
- Damages haven't been determined, but Spectrum is asking for \$3.5 million.



Lessons Learned



A CRADA is cooperative not adverse

- Attitude is that both parties are striving for the same goal instead of a Government/Contractor relationship
- Agreement should be under a different authority – contracting or work for private parties if the relationship isn't cooperative.
- Each party should be encouraged to compromise concerning disputes.
- Even though a CRADA is an enforceable contract, don't treat a CRADA partner like a Government contractor.
- Cooperation requires helping the CRADA partner with its responsibilities
 - **Be paternalistic**
 - **Ask CRADA partner about omitted markings**
 - **Clearly indicate motivations.**



Each CRADA partner should understand the other's objectives

- If the laboratory wants information for a future competitive procurement, it should make this clear.
- Question situations where one party is getting all of the rights.
- Agreement should clearly state what is proprietary and what isn't
- If the laboratory and the collaborator can't agree, maybe a different agreement would be more appropriate.



CRADAs closely related to procurements need special attention

- Laboratory should have up-front agreement with sponsor concerning strategy.
 - **Organizational conflicts of interest can prevent the CRADA partner from bidding on project that it has developed specifications for.**
 - **Unequal access to procurement information by a CRADA partner can result in a protest. (Advertise availability)**
- Firewalling should be considered early in procurement related CRADAs
 - **Avoids sharing of info from CRADA partner**
 - **Avoids Government employee evaluation of his/her own work.**



Guard the CRADA Partner's Proprietary Information

- CRADA should clearly indicate proprietary information
 - Honor specific identification
 - Use “provide” and “develop” in Statement of Work to indicate non-subject data and subject data.
Explain this usage to the CRADA partner
- Educate laboratory employees on proper handling of proprietary information.
- Use acknowledgements of non-disclosure to alert employees.
- Don't disclose CRADA information to those that don't have a need to know under the agreement.



Questions?

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