

EXPORT CONTROLS, SANCTIONS & FOREIGN NATIONALS

Case Study # 11: NO FOREIGNERS! Only Citizens & Permanent Residents Need Apply!

Professor Pilgrim submitted a proposal to NASA for the collection and analysis of data to be obtained from a spacecraft that will fly to Jupiter and then spend several months orbiting the planet. NASA is extremely interested in funding Professor Pilgrim's progress, but they are also very concerned about information and information system security. Therefore, NASA decided to add the following requirement to the contract:

"Contractor agrees to employ only American citizens and permanent residents of the United States on this project. Foreign nationals with proper visas may be considered for assignments on this project, but only after receiving approval from NASA's Contracting Officer. In addition, any employees of University regardless of citizenship or residency status who require access to NASA information and/or information systems and/or who will possess NASA information originating from or having passed through NASA information systems shall be subject to detailed background investigations and security clearances prior to Contracting Officers final approval decision."

- *What do you think is the impetus for NASA's security concerns?*
 - NASA is probably not concerned that information about Jupiter may become public. Rather, it is more likely concerned with information about almost any aspect of satellite technology, space propulsion, or guidance systems, as such information is export controlled! It is likely that the scientific information about Jupiter would be considered "fundamental research" that both NASA and Professor Pilgrim expect to be published. However, information about the satellite itself, how Dr. Pilgrim's instrumentation is integrated into the vehicle, launch information, and information about the mission or mission planning is likely to be export controlled.
- *What problems might this pose for Dr. Pilgrim and the University?*
 - Professor Pilgrim may have difficulty staffing this project. Even if he can find U.S. nationals who are willing to work on the project there are a number of problems. For example, students using this contract to support their thesis research may not be able to share information with members of their thesis committee who have not been screened. In addition, university employment policies may not support background checks and screening based on national origin. With the proposed clause, the university would have to treat the project as export controlled and control access to information accordingly; a technology control plan may be required. Certain institutions have policies that would prohibit acceptance of such restrictions, especially contract clauses that prohibit or limit the free dissemination of research results.
- *What if there are no foreign nationals presently scheduled to work on the project but working in the laboratory adjacent to Dr. Pilgrim's?*
 - The institution would have to track and control access to project information regardless of whether foreign nationals are currently employed in order to prevent inadvertent disclosures.
- *What if there are several foreign grad students who are needed for this project and they are from "friendly" countries, e.g., England, France, and Switzerland?*
 - If foreign graduate students are needed regardless of what country they are from, there are several options (however, the number of options may be limited by institutional policy): 1) negotiate different (more appropriate) language; 2) seek approval from NASA for the students and any others who would have access to project information, have tracking and control procedures in place to appropriately manage access to the controlled information and secure the required export control licenses necessary to allow foreign nationals' access to the controlled information; or 3) find other technically qualified staff who are U.S. citizens or permanent residents.

- *How could the language be modified to make it acceptable to the University and also address NASA's concerns?*
 - NASA may consider revising the clause to separate the controlled information from the fundamental research project. Only Dr. Pilgrim may need to have access to information about the satellite and launch vehicle or perhaps, Dr. Pilgrim doesn't really need that information at all! The students may need to participate only in the fundamental research experiments and data analysis and could perform under a subproject that does not give them access to controlled information and which, therefore, would not be subject to this clause.