



May 29, 2018

Ms. Mary Thomas
OUSD (A&S) DPAP/PDI
Room 3C958, 3060
Defense Pentagon
Washington DC 20301-3060

Re: DARS-2018-0023

The Council on Governmental Relations is an association of over 185 leading research universities and affiliated academic medical centers and independent research institutes. COGR concerns itself with the impact of federal regulations, policies, and practices on the performance of research conducted at its member institutions.

We are not providing comments on the specific DOD guidance for System Security Plans (SSPs) and the NIST 800-171 Security Requirements. Rather, we have a more basic concern about the compliance implications of the DFARS 252.204—7012 clause, which the SSPs implement. The DOD policy guidance (204.7304(c)) states that the 7012 clause is to be used in all solicitations and contracts (except for COTS items). The clause itself states that it is to be included (“flowed down”) in all subcontracts “for operationally critical support, or for which subcontract performance will involve covered defense information...”(7012 (m)(1)). The clause now is included in all DOD prime contracts. It also is the experience of our member institutions that it typically is included in subcontracts to universities, regardless of whether the subcontract involves operationally critical support or covered defense information (CDI). The result is confusion and uncertainty over the need for SSPs and compliance with the NIST security requirements, even in contracts or subcontracts involving solely fundamental research. The confusion is heightened over uncertainties about the scope of the term “involves,” in DFARS 252.204—7000. Some DOD agencies take an expansive view, which makes it difficult or impossible to obtain the determination in the 204—7000(a)(3) that the project is fundamental research. Without such a determination the project becomes subject to the 7012 requirements for covered defense information, including the preparation and submission of SSPs.

Adding further to the confusion, some DOD technical representatives are requiring researchers to mark their technical reports, submitted via PowerPoint templates, with restrictive markings that are inconsistent with fundamental research. The presence of the restrictive markings can be interpreted as an unintended publication restriction. This occurs despite assurances from DOD contracting officers that the research project is being funded as “fundamental research,” and the technical reports do not otherwise contain any covered defense or other controlled information. The inconsistency between contracting officers’ statements and the presence of a DFARS clause

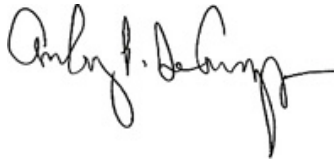
requiring protection of CDI/CUI leads to confusion and ambiguity as to the required security for the activity.

Compliance with the NIST 800-171 requirements is costly and burdensome for our member universities. While necessary and appropriate in instances where contracts involve CDI (or other types of controlled unclassified information), it is not appropriate as a general compliance requirement for DOD contracts, particularly when the contract involves only fundamental research. We have discussed this previously with DOD acquisition personnel, who indicated that this was not the intent. While they expressed the view that the requirement was “self deleting,” this does not appear to have been clearly communicated to all DOD contracting officers (and where universities serve as subcontractors, they do not have the ability to communicate directly with DOD contracting officers on these matters in any event).

We urge DOD to clarify in its guidance that SSPs and NIST compliance is not required in contracts or subcontracts involving solely the performance of fundamental research, and/or which do not involve any covered defense information or other types of controlled unclassified information .

We appreciate the opportunity to comment, and would be happy to discuss these issues further with DOD.

Sincerely,

A handwritten signature in black ink, appearing to read "Anthony DeCrappeo". The signature is fluid and cursive, with a long, sweeping tail on the final letter.

Anthony DeCrappeo
President