

**THE UH-USN CONTRACT:  
UNCERTAIN DOLLARS,  
CERTAIN CENSORSHIP**

In just 17 days, the UARC has undergone a wondrous transformation. On Sept. 21, Vice Chancellor Ostrander explained to the Manoa Faculty Senate the benefits of a UARC that would bring to UH a maximum of **\$50 million over five-years**. Then, on Oct. 7, his office released the 86-page, UH-U.S. Navy contract that, to be binding, must be approved by the UH Board of Regents and the top brass of the Naval Sea Systems Command.

**UNCERTAIN DOLLARS**

The administration's much-talk-about five-year contract suddenly shrank to three years, with a two-year option that the Navy *unilaterally* decides whether to exercise, based on its needs. And the \$50 million amount shrank even more. **The only guarantee for UH is a minimum of 1,000 staff hours over the guaranteed three years of the contract.** Just how much these 1,000 staff hours will be worth to UH is "TBD"--To Be Determined.

**CERTAIN CENSORSHIP**

But there's no uncertainty about the fate of ALL research produced under the UARC: Both unclassified and classified research must be shipped to Naval Sea Systems Command censors.

The contract states that UH shall not release to anyone outside its organization any unclassified information that may be identified by Navy censors "*as sensitive and inappropriate for disclosure regardless of medium (e.g. film, tape, document), pertaining to this contract or any program related to this contract*" without their prior written approval.

If the censors say no, there's no appeal process offered in the contract. The contract also specifies:

*"In cases where the evidence supporting release or retention of unclassified information is inconclusive, the Contracting Officer has the responsibility and retains the*

authority to make final determinations for such disclosure."

Violates Manoa Faculty Senate Resolution

Such unambiguous censorship violates the Manoa Faculty Senate resolution of March 16, 2005, affirming "that the University of Hawaii at Manoa supports research for which there is a reasonable expectation that timely publication of the results of the research will not be restricted by its sponsor."

Violates Board of Regents Policy

This contract language also seemingly violates Board of Regents Policy as stated in part of Section 5-15(3):

"The University must insure, however, that there are no restrictions in making available the scholarly results of inquiry included in any contract or grant to which the University is formally a party, except for matters normally held in confidence such as those between doctor and patient."

**EXPORT DISCLOSURE REGULATIONS**

Besides Navy censorship, the disclosure of UARC-developed classified research to foreign persons working for the UARC or to foreign visitors must be approved or licensed by the Department of State to prevent illegal transfer of technical information or services.

These regulations are spelled out in six pages copyrighted by "University of Hawaii-UARC" but have not been discussed publicly by Manoa administrators. These pages are included in a 136-page "business and management plan" obtained from UH officials under Hawaii's Freedom of Information Act by the Save UH/Stop UARC coalition of students, faculty and community members. It is far more detailed than the 18-page "business and management plan" posted on the website of the Manoa Chancellor's Office.

I will attach the cover of this previously undisclosed "business and management plan" and the six pages describing these export disclosure regulations described in the Technology Control Plan. - by BEVERLY ANN DEEPE KEEVER.  
For the Manoa Faculty Congress, 10/19/05.



*The University of Hawai'i at Mānoa*  
Applied Research Laboratory  
A U.S. Navy University Affiliated Research Center  
Business and Management Plan

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# Folder 1:

University of Hawaii at Manoa  
**Applied Research Laboratory**  
**UARC**

# Sample Technology Control Plan and Briefing Acknowledgement

## SAMPLE TECHNOLOGY CONTROL PLAN (TCP)

### SCOPE

The procedures contained in this plan apply to all elements of the University of Hawaii at Manoa UARC, 2800 Woodlawn Drive, Honolulu, HI. Disclosure of classified information to foreign persons in a visitor status or in the course of their employment by the UARC is considered an export disclosure under the International Traffic in Arms Regulations (ITAR) and requires a Department of State (DoS) license or DoS approval of either a Technical Assistance Agreement or a Manufacturing License Agreement.

### PURPOSE

To delineate and inform employees and visitors of the UARC the controls necessary to ensure that no transfer of technical information or data or a defense service (as defined in ITAR paragraphs 120.10 & 120.9) occurs unless authorized by DoS's Office of Defense Trade Controls (ODTC).

### BACKGROUND

The UARC provides fundamental and applied research, engineering design and development, and technical support to the US Navy in the areas listed below one. Ocean Science and Technology (OST), 2. Astronomy (AST), 3. Advanced electro-Optics and Sensing (AEOS), 4. Sensors, Communications and information Technology (SENCIT). The UARC's main customer is the US Navy.

### U.S. PERSON/FOREIGN PERSON

The ITAR defines a **U.S. person** and a **foreign person** as follows: U.S. person means a person (as defined in section 120.14 of this part) who is a lawful permanent resident as defined by 8 U. S. C. 1101(a)(20) or who is a protected individual as defined by 8 U. S. C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in section 120.16 of this part.

A **foreign person** means any natural person who is not a lawful permanent resident as defined by 8 U. S. C. 1101(a)(20) or who is not a protected individual as defined by 8 U. S. C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that

is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g., diplomatic missions).

## Foreign Persons

No foreign person will be given access to classified material or export controlled materials on any project or program that involves the disclosure of technical data as defined in ITAR paragraph 120.10 until that individual's license authority has been approved by ODTC.

UARC employees who have supervisory responsibilities for foreign persons must receive an export control/licensing briefing that addresses relevant ITAR requirements as they pertain to classified and controlled unclassified information.

## Foreign Person Indoctrination

Foreign persons employed by, assigned to (extended visit) or visiting the UARC shall receive a briefing that addresses the following items:

That prior to the release of classified material or controlled unclassified information to a foreign person an export authorization issued by ODTC needs to be obtained by the UARC.

That they adhered to the UARC's security rules, policies and procedures and in-plant personnel regulations.

That outlines the specific information that has been authorized for release to them.

That addresses the UARC's in-facility regulations for the use of facsimile, automated information systems and reproduction machines.

That any export controlled information they are authorized to have access and need to forward overseas will be submitted to the UARC's security department for transmission through government-to-government channels.

That information received at the UARC for the foreign national and information that the foreign national needs to forward from the UARC shall be prepared in English.

Those violations of security procedures and facility regulations committed by foreign nationals are subject to UARC sanctions. Sanctions may consist of: 1. the immediate termination of access to the UARC facilities, 2. Legal action as deemed appropriate by corporate council, 3. other sanctions as required.

## **ACCESS CONTROLS for FOREIGN NATIONALS**

**Badges:** Long-term foreign nationals (FN) visitors and FN employees of the UARC will be issued security badges, which denote that the person does not possess a security clearance and is a foreign national. The top portion of the badge will have a solid black insert to identify that person as a foreign national. The rear of the badge will also have other distinctive markings so that the badge can be readily identified as being worn by a foreign national. An additional card may be attached to the ID badge, which gives the badge possessor specific instructions as to what offices, areas, or equipment they are restricted from accessing or using.

**Escorts:** Short-term FN visitors will be escorted (shoulder to shoulder) at all times by UARC employees who are U.S. Citizens during visits to UARC facilities. At no time will FN visitors be left alone inside UARC facilities. (Note: UARC supervisors of foreign persons shall ensure that foreign nationals are escorted in accordance with U.S. Government and UARC regulations.

The UARC will establish segregated work area(s), if necessary for long-term FN visitors and FN employees assigned to UARC facilities.

## **EXPORT-CONTROLLED INFORMATION**

Attach here a list of specific elements of export-controlled information, both classified and unclassified, that can be disclosed to foreign nationals and the program(s) the foreign national is supporting.

## **NONDISCLOSURE STATEMENT and ACKNOWLEDGMENT**

All foreign persons shall sign a nondisclosure statement (Attachment A) that acknowledges that classified and controlled unclassified information will not be further disclosed, exported or transmitted by the individual to any foreign national or foreign country unless ODTIC authorizes such a disclosure and the receiving party is appropriately cleared in accordance with its government's personnel security system. (Note: The UARC may also want to address other controlled information such as company proprietary or unclassified information that does not require an export authorization but the contract calls for specific handling procedures.)

## **SUPERVISORY RESPONSIBILITIES**

Supervisors of cleared personnel and foreign national employees and foreign national visitors shall ensure that the employees and visitors are informed of and cognizant of the following:

that technical data or defense information that requires an export authorization is not transmitted, shipped, mailed, hand carried (or any other means of transmission) unless an export authorization has already been obtained by the UARC and the transmission procedures follows U. S. Government regulations.

Those individuals are cognizant of all regulations concerning the handling and safeguarding of classified information and controlled unclassified information. (Note: UARC propriety and other types of unclassified information that require mandated controls can be addressed here.)

that the individuals execute a Technology Control Plan (TCP) briefing form acknowledging that they have received a copy of the TCP and were briefed on the contents of the plan (Attachment B).

Those U.S. citizen employees are knowledgeable of the information that can be disclosed or accessed by foreign nationals.

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Print Name and Signature of Senior Management Official

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Print Name and Signature of DSS Official

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Print Name and Signature of Facility Security Officer

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Print Name and Signature of Chairman, Government Security Committee<sup>1</sup>

## EMPLOYEE RESPONSIBILITIES

All UARC employees who interface with foreign nationals shall receive a copy of the TCP and a briefing that addresses the following:

that documents under their jurisdiction that contain technical data are not released to or accessed by any employee, visitor, or subcontractor who is a foreign national unless an export authorization has been obtained by the UARC in accordance with the ITAR or the Export Administration Regulations (EAR).

If there is any question as to whether or not an export authorization is required, contact the Facility Security Officer promptly.

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<sup>1</sup> Applicable if company operates under a Special Security Agreement, Proxy Agreement, Voting Trust Agreement or Security Control Agreement.

That technical information or defense information cannot be forwarded or provided to a foreign national regardless of the foreign national's location unless an export authorization has been approved by ODTC and issued to the UARC.

ATTACHMENT A

NONDISCLOSURE STATEMENT

I, \_\_\_\_\_ (insert name of individual) acknowledge and understand that any technical data or defense services related to defense articles on the U.S. Munitions List, to which I have access or which is disclosed to me in the course of my (insert which ever term is applicable: employment, assignment or visit) by/at the UARC is subject to export control under the International Traffic in Arms Regulations (title 22, code of Federal Regulations, Parts 120-130). I hereby certify that such data or services will not be further disclosed, exported, or transferred in any manner to any foreign national or any foreign country without prior written approval of the Office of Defense Trade Controls, U.S. Department of State and in accordance with U.S. Government security (National Industrial Security Program Operating Manual) and customs regulations.

\_\_\_\_\_  
Print name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



ATTACHMENT B

TECHNOLOGY CONTROL PLAN BRIEFING ACKNOWLEDGMENT

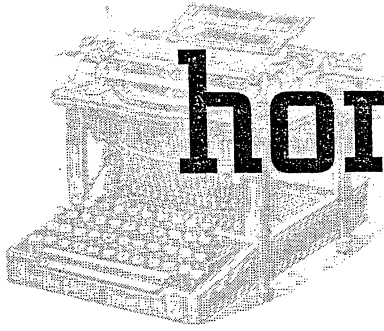
I, \_\_\_\_\_ (insert individual's name), acknowledge that I have received a copy of the Technology Control Plan for (program name here) and a briefing outlining the contents of this TCP. Accordingly, I understand the procedures as contained in this TCP and agree to comply with all UARC and U.S. Government regulations as those regulations pertain to classified information and export-controlled information.

\_\_\_\_\_  
Print Name of Individual and Date

\_\_\_\_\_  
Print Name of Company Briefing Official and Date

\_\_\_\_\_  
Signature of Individual

\_\_\_\_\_  
Signature of Company Briefing Official



# honolulu diary

News from a pacific perspective

edited by ragnar carlson

## UARC contract avoids key questions

**L**ast Friday, the long-awaited draft contract between the University of Hawai'i and the U.S. Navy detailing the contentious proposal to establish a University Affiliated Research Center (UARC) on the Mānoa campus was finally released. Under the terms of the deal, much of Mānoa's work will focus on exploratory and advanced research, advice, testing and evaluation of weapons systems. Consisting of 86 single-spaced pages but missing five attachments, including one on security classification specifications, the contract produces two major surprises—far less money guaranteed for UH and far more ironclad secrecy than had previously been intimated by Mānoa administrators.

If okayed—the contract is subject to approval by the UH Board of Regents and by the Naval Sea Systems Command—UH's Navy UARC would be the fifth in the nation and the first in 58 years. Unlike the Navy's four huge research centers elsewhere, however, which operate as distinct institutions, Mānoa's UARC would be interspersed with the existing campus research infrastructure—buildings and personnel financed largely by Hawai'i taxpayers.

The biggest surprise is that the contract fails to specify how much the Navy will pay. UH officials have said that the UARC would bring in a maximum of \$50 million during the five-year contract, but the draft makes no mention of that figure. Also, instead of the five-year guaranteed deal previously touted by UH, the contract now calls for a three-year award with a two-year option—after evaluating its need for the UARC, the Navy will have until April 5, 2008, to extend the contract for an additional two years. Further clouding the picture, changes already underway in U.S. military strategy could divert the Navy into different kinds of research, thus eviscerating the fledgling UARC.

Supplies and services authorized during the first three years of the contract range from a minimum of 1,000 staff hours to a maximum of 317,763 staff hours—the

difference between one staffer working for two months and 53 staffers working for three years. During the two-year option period, maximum supplies and services are 215,078 staff hours—enough to accommodate roughly 50 staffers. The amount of money UH would receive for these supplies and services is labeled "TBD"—To Be Determined.

Besides these uncertainties, an additional one concerns the condition, expressed in the UH management plan, that researchers can refuse to accept any Navy task order. The contract is silent on what would happen should UH researchers decline to work on the most lucrative of the Navy's projects.

Another unwelcome surprise is the extent to which Naval Sea Systems Command censors will serve as gatekeeper for information resulting from all UARC research, not just the classified portion.

The contract states that UH shall not release to anyone outside its organization any unclassified information that may be identified by Navy censors "as sensitive and inappropriate for disclosure regardless of medium (e.g., film, tape, document), pertaining to this contract or any program related to this contract" without prior written approval by Navy censors. Referring to the supervising Navy official, the contract states, "In cases where the evidence supporting release or retention of unclassified information is inconclusive, the Contracting Officer has the responsibility and retains the authority to make final determinations for such disclosure." Such ironclad censorship flies in the face of the Mānoa Faculty Senate resolution reaffirming that research conducted at UH must be made public within a reasonable time period.

These twin surprises—the uncertainty surrounding UH's compensation and the certainty that even unclassified information will be Navy-censored—are likely to stoke rising tensions on UH's flagship campus.

—Beverly Kever

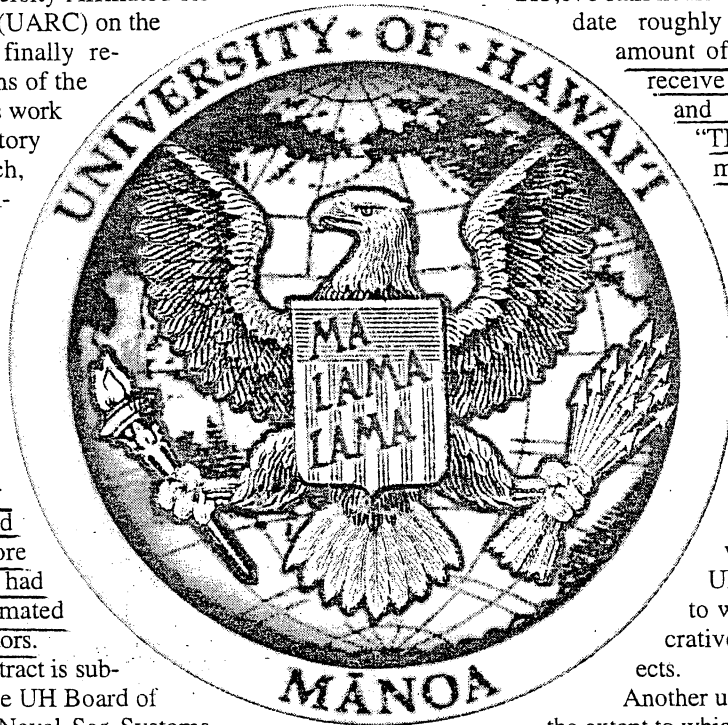


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