

UNITED STATES OF AMERICA  
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
United States Nuclear	)	
Regulatory Commission	)	BEFORE HONORABLE
	)	ADMINISTRATIVE LAW
v	)	JUDGE JERRY M. HERMELE
	)	
PAL CONSULTANTS, INC.	)	Docket No. 01-01-PF
14380 Story Road	)	
San Jose, CA 95127-3818	)	RESPONDENTS' AMENDED ANSWER
	)	TO NRC GENERAL COUNSEL'S
and	)	COMPLAINT UNDER THE PROGRAM
	)	FRAUD CIVIL REMEDIES ACT
NICK PAL	)	CONTRACT NO. NRC 04-91-073
Pal Consultants, Inc.	)	
14380 Story Road	)	
San Jose, CA 95127-3818	)	
	)	
Respondents	)	

RESPONDENTS' ANSWER

This answer amends Pal Consultants, Inc.'s ("PCI") and Dr. Nick Pal's, general denial of any liability under the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) and the NRC's Program Fraud Civil Remedies Regulation (10 C.F.R. Part 13) that was submitted on May 16, 2001. For its answer to the Complaint, Respondents admit, deny and allege as follows:

I. BASIS FOR LIABILITY

1. The allegation contained in Paragraph 1 is a conclusion of law to which no response is required; to the extent it may be deemed an allegation of fact, it is denied.

2. Deny, with the exception of the fact that Dr. Pal was at the time of the performance of the subject contract, and still is the president of Pal Consultants, Inc. with offices at 14380 Story Road, San Jose, California 95127-3818.

3. Deny.

4. Admit. Contract No. NRC 04-91-073 is a cost reimbursement contract, and as amended provides for the recovery of costs in the amount not to exceed \$165,715 plus a \$10,564 fixed fee.

5. Admit that DCAA audited PCI's general ledger. The scope of DCAA's audit also included, but was not necessarily limited to, the review and verification of time cards, payroll records, accounts payable records, cash disbursement records, travel expense reports, payroll tax returns, federal and state corporate tax returns, financial statements, memorandum spread sheets, leases and certain other records.

6. Admit the allegation contained in paragraph 6 to the extent supported by the cited letter, which is the best evidence of its contents. The letter constituted a bilateral agreement on rates and included a schedule of allowable direct costs.

7. With respect to the first sentence, the Respondents are without knowledge or information sufficient to form a belief as to the truth of the averment. To the best of Respondents' knowledge and belief, the DCAA auditor was directed by NRC to change his audit report. With respect to the second sentence, Respondents are without sufficient knowledge to form a belief about the truth of the averment. With respect to the third sentence, Respondents deny that the auditor provided an adequate explanation as to why the earlier agreement was incorrect. Dr. Pal, on behalf of PCI, because he did not fully understand the significant changes and reclassifications, declined to sign the proposed

revised agreement dated December 4, 1991. With respect to the fourth sentence, the cited letter is the best evidence of its contents; otherwise deny the allegations contained in paragraph 7.

8. Admit the existence of the cited letter of April 30, 1998, which is the best evidence of its content. The letter, however, incorrectly states that the amount shown for other direct costs was due to a typographical error. Pursuant to the trial transcript (at page 138), the other direct costs ("ODC") in the amount of \$37,150 shown in the DCAA letter agreement dated September 23, 1997 was derived from workpapers prepared by the DCAA auditor.

9. Admit the allegation contained in paragraph 9 to the extent supported by the cited correspondence, which is the best evidence of its contents; otherwise deny the allegation contained in paragraph 9.

10. With respect to the first sentence, deny that the referenced letter of April 30, 1998 adequately explained that \$37,150 figure was incorrect. Admit that Respondents sent a letter dated July 6, 1998, which is the best evidence of the contents of the letter. With respect to the second sentence, admit that figure of \$37,150 is shown along with many other figures.

11. Admit that Respondents received the registered letter dated September 25, 1998, which is the best evidence of its contents; otherwise deny the allegations contained in paragraph 11.

12. Admit the first and second sentences. Deny the third sentence. The \$73,302 represents the difference between what PCI believes it was entitled to receive and the NRC contracting officer's final decision, not the amount NRC paid to PCI under the

contract. With respect to the fourth sentence, the cited document is the best evidence of its contents; otherwise deny the allegations contained in paragraph 12.

13. Admit the first sentence. Deny the second sentence. Dr. Pal offered into evidence timecards supporting work for which he had not submitted a claim. Since the timecards had not been previously submitted as a claim, however, the presiding judge could not accept them into evidence. The preliminary workpapers prepared by the DCAA auditor supported the amount of \$37,150. Deny the third sentence. Dr. Pal withdrew PCI's claim for an amount in excess of \$8,216 with the understanding that PCI would be permitted to submit a separate claim for the hours worked on the contract that were not previously claimed.

14. Deny.

15. Deny.

## II. PENALTIES

16. With respect to the first sentence, the allegation is a conclusion of law to which no response is required; to the extent it may be deemed an allegation of fact, it is denied. Respondents deny that there were two claims. The submission dated July 6, 1998 referred to in paragraph 14 of the Complaint deleted certain costs that were included in PCI's submission of May 15, 1998. The submission dated July 6, 1993 did not claim an additional amount for ODC. Deny the second sentence. With respect to the third and fourth sentences, the allegations are conclusions of law to which no response is required; to the extent it may be deemed an allegation of fact it is denied.

Dr. Pal never made any claims or submissions in his own name. At all times he only acted within the scope of his authority as an officer of the corporation. Therefore, NRC's request that PCI and Dr. Pal be held jointly and severally liable should be denied. With respect to the fifth sentence, the allegation is a conclusion of law to which no specific response is required.

### III. PROCEDURES

17 – 21. These paragraphs outline procedures for which no response is required.

#### RESPONDENTS' AFFIRMATIVE DEFENSES

##### IT WAS REASONABLE FOR DR. PAL TO QUESTION DCAA'S REVISED AUDIT REPORT

22. The DCAA auditor prior to preparing the letter agreement dated September 23, 1991 spent in excess of 200 hours in reviewing the PCI's books and records. Prior to releasing any DCAA audit report, a supervisor is required to review the audit report and supporting workpapers. Dr. Pal is not an accountant. Dr. Pal on several occasions requested copies of DCAA's workpapers in order that his accountant might review same. Dr. Pal was not provided copies of DCAA's workpapers until approximately ten days before the trial that was held on March 7, 2000, approximately 21 months after PCI's original submission dated May 15, 1998 and 19 months after the revised submission dated July 6, 1998. Dr. Pal, without having copies of DCAA's workpapers supporting the other direct costs of \$37,150, had no way of knowing whether the subsequent adjustment of ODC to \$8,216 was justified. Dr. Pal believed that the difference might have been attributable to the fact that the auditor had included the additional hours that he worked on the contract, but had not claimed and/or there was some confusion in recording the costs because the

consultants that had worked on the contract had not been paid in a timely manner because of the delayed payments from NRC. See paragraph 26 below.

A CLAIM FOR SUBMISSION CANNOT BE FALSE WITHIN THE MEANING OF THE ACT WHERE IT CAN BE SHOWN THAT THE GOVERNMENT HAS BEEN TOLD THE TRUTH ABOUT ITS BASIS

23. It would be inequitable to impose liability where the government has been fully and forth rightly informed of the basis for submitting a claim. The Respondents did not conceal or in any manner attempt to mislead the government.

INCHOATE DEMANDS ARE NOT CLAIMS

24. The submission on May 15, 1998 did not subject NRC to immediate demand for payment. The Government is not liable, except under certain circumstances, for costs incurred under a cost type contract that exceed the cost ceiling provided in the contract. (Federal Acquisition Regulation clause 52.232-20(d)(1)). The Respondents first had to establish entitlement in order to claim costs in excess of the limitation of cost amount provided in the contract, which the contracting officer denied.

PCI NEVER SUBMITTED AN INVOICE FOR THE ODC AMOUNT THAT IS IN DISPUTE

25. The final DCAA report allowed \$56,105 for ODC. The Respondents cumulative amount invoiced for ODC through invoice number 7 was only \$49,889. The government was not overbilled for ODC, nor was PCI paid for ODC in excess of the amounts approved by DCAA.

PCI WAS NOT PAID IN A TIMELY MANNER

26. NRC's late payments created a serious cash flow problem for PCI, a small business concern, which affected PCI's ability to meet its financial obligations and caused PCO to incur certain legal costs for which it has not been reimbursed. A summary of the amounts and dates invoiced by PCI and the amounts and dates paid are as follows:

<u>Amounts Invoiced *</u>			<u>Amounts Paid *</u>		
<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>	<u>Date</u>	<u>Amount</u>	<u>Number of Days</u>
1	07/31/91	\$15,900	11/27/91	\$15,900	119
2	08/31/91	15,282	11/27/91	15,282	88
3	09/30/91	25,496	01/17/92	25,496	109
4	10/31/91	24,267	01/17/92	24,267	78
5	11/30/91	27,252	01/17/92	27,095	48
6	12/31/91	63,160	03/31/92	34,793**	90
7	02/11/92	5,958	07/21/92	17,233**	202
			09/30/92	14,628**	263

(rounded to nearest \$1)

\* includes fixed fee

\*\* Payments applied to invoice Nos. 6 and 7

PCI was not paid any interest on NRC's delinquent payments. It is simply wrong for NRC to demand payment of any penalties or assessments on ODC amounts that were never invoiced by PCI nor paid by NRC. Any penalties or assessments should be applied against NRC, for late payments, not the Respondents.

#### IV. PENALTIES AND ASSESSMENTS

27. The submissions referred to in paragraph 14 of the Complaint should not be considered separate claims for the reasons stated in paragraph 16 above. Based on the Respondents' averments and affirmative defenses asserted above, it is unreasonable and unjust for NRC to assert any penalties or assessments.

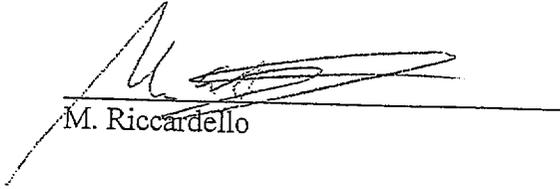
#### PRAYER FOR RELIEF

Respondents requests that the Court dismiss the Complaint with prejudice and award Respondents whatever other relief may be just and proper.

CERTIFICATE OF SERVICE

I certify under penalty of perjury that on this 14 day of June 2001, I caused to be placed in United States mail (first-class mail, postage prepaid) copies of "RESPONDENT'S ANSWER" addressed as follows:

Stephen G. Burns  
Deputy General Counsel & NRC Reviewing Official  
Office of the General Counsel  
U.S. Nuclear Regulatory Commission  
Washington, D.C. 20555

  
M. Riccardello

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June 14, 2001

VIA FEDERAL EXPRESS

Judge Jerry M. Hermele  
Administrative Law Judge  
United States Government  
National Labor Relations Board  
1099 14<sup>th</sup> Street, N.W.  
Washington, D.C. 20570-0001

Re: In the matter of United States Nuclear Regulatory Commission v.  
Pal Consultants, Inc.  
Docket No. 01-01-PF

Dear Honorable Judge Hermele:

Enclosed please find an original and two copies of the Respondents' Answer to NRC's Complaint concerning the referenced matter. A copy has been forward directly to NRC's legal counsel.

Should you have any questions with respect to the Answer, please do not hesitate to call.

Very respectfully submitted,



Leonard G. Birnbaum  
Birnbaum & Umeda, LLP

Encl.

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