April 20, 2001

BY HAND DELIVERY

Dr. Nick Pal
Pal Consultants, Inc.
14380 Story Road
San Jose, CA 95127-3818

Dear Dr. Pal:

Pursuant to regulations of the United States Nuclear Regulatory Commission at 10 C.F.R. § 13.7 and provisions of the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812, I hereby serve notice upon you and Pal Consultants, Inc., of my intention to refer the enclosed complaint, alleging violations of the Program Fraud Civil Remedies Act, to an Administrative Law Judge, not less than 30 days from your receipt of this complaint.

As explained in the complaint and the enclosed regulations (10 C.F.R. Part 13), you and Pal Consultants, Inc., may request a hearing by filing an answer with me within 30 days of your receipt of this complaint. Further information on the contents of the answer is contained in the attached regulations at 10 C.F.R. § 13.9. Failure to file an answer within 30 days of service of the complaint may result in the imposition of the maximum amount of penalties and assessments without right of appeal.

Should you wish to discuss this matter, please contact either of the following attorneys in the Office of the General Counsel: Susan Fonner at 301-415-1629 or John Szabo at 301-415-1610, who are both attorneys in my office.

This replicates the letter and complaint sent to you by certified mail on March 29, 2001, for which we have not received a return receipt.

Sincerely,

/RA/

Stephen G. Burns
NRC Reviewing Official and
Deputy General Counsel

Enclosures: Complaint
PFCRA Regulations

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DATE	04/20/01		04/20/01		04/20/01		04/20/01	

OFFICIAL RECORD COPY

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

In the Matter of	)	
	)	
	)	
PAL CONSULTANTS, INC.	)	
14380 Story Road	)	
San Jose, CA 95127-3818	)	Docket No. 01-01-PF
	)	
and	)	
	)	
NICK PAL	)	
Pal Consultants, Inc.	)	
14380 Story Road	)	
San Jose, CA 95127-3818	)	
	)	
Respondents.	)	

COMPLAINT

As the reviewing official of the United States Nuclear Regulatory Commission (NRC) under the Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812) and the NRC's Program Fraud Civil Remedies regulations (10 C.F.R. Part 13), I have determined that there is adequate evidence to believe that Respondents Pal Consultants, Inc. (PCI), and Nick Pal, President of PCI, submitted false, fictitious, and fraudulent written claims to the NRC and the Department of Energy Board of Contract Appeals in order to obtain monies to which they are not entitled.

I. Basis for Liability

The NRC alleges as follows:

1. The NRC and the NRC reviewing official have the authority to pursue this complaint under the Program Fraud Civil Remedies Act and NRC's Program Fraud Civil Remedies regulations.

2. Respondent Nick Pal, 14380 Story Road, San Jose, California 95127-3818, was the president and majority owner of PCI, also of 14380 Story Road, San Jose, California 95127-3818, at the time of the events relating to the contract and the false, fictitious, and fraudulent written claims described herein, and he continues to be its president.

3. At the time the claims that are the subject of this complaint were asserted, the Respondents knew or had reason to know that such claims were false and fictitious. In the alternative, they acted in deliberate ignorance of the truth or falsity of the claims or in reckless disregard of their truth or falsity.

4. On July 19, 1991, the NRC contracted with PCI and the Small Business Administration for PCI to perform Human Factors research in support of the regulatory function of the NRC (Contract #NRC 04-91-073). The contract was performed within a period of approximately five months, covering portions of Fiscal Years 1991 and 1992. The contract provided that NRC would pay PCI for direct costs, other direct costs, a fixed fee, and indirect costs. Upon completion of the contract, an audit was performed to determine the total incurred costs.

5. During the summer of 1997, pursuant to an arrangement with the NRC, an auditor from the Defense Contractor Audit Agency (DCAA) audited PCI's general ledger to establish the total incurred costs for Contract #NRC 04-91-073.

6. By letter of September 23, 1997, a DCAA branch manager informed Respondent Nick Pal of the final indirect rates for this contract. An attachment to the letter indicated that the amount for "other direct costs" under Contract #NRC 04-91-073 was $37,150 for Fiscal Year 1991.

7. Subsequently, the DCAA auditor determined that an error had been made when preparing the DCAA audit report on which the September 23, 1997 letter to Respondent Nick

Pal had been based, and that the correct figure for “other direct costs” for Fiscal Year 1991 for Contract NRC #04-91-073 was actually $8,216, not $37,150. On or about December 4, 1997, the DCAA auditor hand delivered a letter dated December 4, 1997, to Respondent Pal showing the corrected “other direct costs” figure of $8,216. At that meeting, the auditor talked to Nick Pal and explained to him that the amount in the earlier letter was erroneous. The December 4, 1997, letter specifically stated that it “supersedes” the letter of September 23, 1997, regarding the final indirect rates for the contract.

8. After the NRC contracting officer under whose responsibility this contract fell reviewed the DCAA audit report, she informed PCI and Respondent Nick Pal, by a demand letter dated April 30, 1998, that she had concluded that the NRC overpaid PCI $10,412.39 on Contract NRC #04-91-073.

9. After the NRC contracting officer’s letter of April 30, 1998, was sent to Respondent Nick Pal, he sent her a letter dated May 15, 1998, with an attached spreadsheet he had created, that asserted the $37,150 figure for other direct costs.

10. Even though the NRC contracting officer’s letter of April 30, 1998, had made clear that the $37,150 figure for other direct costs was incorrect, Respondent Nick Pal also sent her a letter dated July 6, 1998 (which he referred to as a “counterclaim”), asserting a certified claim for $109,450 in excess of the amount that NRC had paid PCI under the contract. A constituent part of the $109,450 was the $37,150 figure for “other direct costs.”

11. The NRC contracting officer sent Respondent Nick Pal a registered letter dated September 25, 1998, that clarified her letter of April 30, 1998, by stating that the amount PCI was overpaid by the NRC was in fact $10,612.39, not $10,412.39.

12. On behalf of PCI, Respondent Nick Pal appealed the NRC’s denial of his claims to the Department of Energy Board of Contract Appeals (the Board) on December 26, 1998. In

furtherance of his appeal, Respondent Pal filed a complaint with the Board on July 21, 1999, covering the claims that had been denied under Contract NRC #04-91-073. In the complaint, Respondent Nick Pal reduced the amount of his claim from $109,450 to $73,302 in excess of the amount NRC paid to PCI under the contract. Respondent Nick Pal continued to assert that he had incurred, in Fiscal Year 1991, $37,150 in "other direct costs" in carrying out the contract. This asserted amount formed part of his claim for $73,302.

13. The Board held a hearing on Respondent Nick Pal's complaint on March 7-8, 2000. Other than preliminary working papers that were prepared by the DCAA auditor in the audit process, at no time during the hearing did Respondent Pal submit any supporting documentation for the difference between the $8,216 the NRC had found to be the correct figure for other direct costs for Fiscal Year 1991 and the $37,150 for "other direct costs" claimed by Respondents. Respondent Nick Pal withdrew his claim for $37,150 in the Board proceeding after it became apparent that he could not substantiate his assertion that PCI was owed the difference between the $37,150 he had been claiming in "other direct costs" and the $8,216 supported by PCI's ledger. The Administrative Law Judge who held the hearing dismissed that portion of the claim with prejudice on April 21, 2000.

14. Respondents' submissions of May 15, 1998, and July 6, 1998, to the NRC for $37,150 for other direct costs constituted a false claim under 31 U.S.C. § 3802(a).

15. Respondents' complaint of July 21, 1999, before the Board also constituted a false claim under 31 U.S.C. § 3802(a).

II. Penalties

16. Based on the false claims to which reference is made in paragraphs 14 and 15, the maximum amount of penalties for which the Respondents may be held liable under the Program Fraud Civil Remedies Act and the NRC's Program Fraud Civil Remedies regulations in

effect at that time is $11,000, or $5,500 for each of the two false claims. The NRC, therefore, requests judgment in the amount of $11,000. In addition, where more than one person is liable for making such a false claim, each person may be held liable for a civil penalty. Therefore, the NRC requests that Respondents be held jointly and severally liable for the amount awarded. No proof of specific intent to defraud is required to establish such liability.

III. Procedures

17. Respondents have the right to request a hearing by filing a written answer to the allegations and proposed penalties and assessments in this complaint within 30 days of the service of the complaint.

18. An answer to the complaint must be filed with the reviewing official, Stephen G. Burns, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

19. Respondents have the right to be represented at the hearing by an attorney or other representative.

20. A copy of the NRC regulations on procedures governing hearings under the Program Fraud Civil Remedies Act (10 C.F.R. Part 13) is provided with this complaint.

21. Failure to file an answer within 30 days of Respondents' receipt of this complaint may result in the imposition of the proposed penalties without right to appeal as provided in 10 C.F.R. § 13.10.

FOR THE NUCLEAR REGULATORY COMMISSION,

/RA/

_____
STEPHEN G. BURNS
Deputy General Counsel &
NRC Reviewing Official
Office of the General Counsel
U.S. Nuclear Regulatory Commission
Washington, DC 20555

Dated at Rockville, Maryland
this 20th day of April 2001.