

March 26, 2002

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Patricia G. Norry */RA/*
Deputy Executive Director for Management Services

SUBJECT: WAIVER OF COMMISSION POLICY ON AVOIDANCE OF
CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST

Attached is an "Organizational Conflicts of Interest" waiver that was developed with the assistance and concurrence of the Office of Nuclear Regulatory Research. The Office of General Counsel has reviewed this waiver and concurs.

The NRC proposes to enter into a contract with the Institute of Nuclear Power Operations (INPO) for on-line access to the Equipment Performance and Information Exchange (EPIX) System, a database containing engineering and failure information for selected components within the scope of the Maintenance Rule (10 CFR 50.65) and for other equipment failures that cause power reductions. INPO developed EPIX to meet current and projected industry needs for component-level information exchange and to replace the Nuclear Plant Reliability Data System (NPRDS). In addition to the component performance information in EPIX, EPIX provides access for retrieval of data reported to NPRDS from January 1973 through December 1996. A five-year contract is proposed as a follow-on to the existing contract which currently expires on April 1, 2002. The attached waiver also covers a one-month extension to the existing contract to allow for the negotiation and award of a new contract. Commission policy would normally preclude award of this contract since INPO received funding from utilities who own nuclear power plants. Since a comparable database is not available from another source and the cost and time required to create a new database would be prohibitive, no alternative action is practical.

I have reviewed the attachment and concur that a waiver is needed in awarding a contract to INPO, and for the one-month extension to the current contract. Therefore, I recommend that you sign the attached waiver.

Attachment: As stated

CONTACT: Mona C. Selden, ADM/DCPM
301-415-7907

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WAIVER OF COMMISSION POLICY ON AVOIDANCE OF CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST

It is the policy of the U.S. Nuclear Regulatory Commission (NRC), in accordance with the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), 48 CFR Section 2009.570, to avoid Organizational Conflicts of Interest (OCI). The NRC normally would not award a contract where the contractor would be placed in a position where its judgment might be biased in relationship to its work under the contract or where the award may provide the contractor an unfair competitive advantage. However, this policy may be waived in situations where the work to be performed is vital to an NRC program; the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and where contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

The Office of Nuclear Regulatory Research (RES) proposes to enter into a contract with the Institute of Nuclear Power Operations (INPO) to obtain NRC on-line access to the Equipment Performance and Information Exchange (EPIX) System, a database containing engineering and failure information for selected nuclear plant components within the scope of the Maintenance Rule (10 CFR 50.65) and for other equipment failures that cause power reductions. The award of a contract to INPO to obtain engineering and failure data which is reported voluntarily from nuclear power plants would normally be precluded under the Commission's policy because of INPO's self-interest as an organization which is funded by utilities who own nuclear power plants. For example, INPO could present the component failure data to NRC in a way which would be beneficial to their utility clients.

At the present time, the database is being used by NRR and RES, as well as the Regions. Unrestricted access to the EPIX database is important to the mission of the NRC because there is no other database that contains comparable data and failure information on key components of major nuclear power plant systems.

The impact of denied access to EPIX would constitute a detriment to the Agency's day-to-day analysis of operational experience data. In particular, a loss of access to the EPIX database would have a serious negative impact on a number of important Commission projects.

In addition, this waiver will cover a one-month extension to NRC-26-97-266, the current contract providing these services, in order to allow time for the negotiation and award of the new contract.

The Justification for Other than Full and Open Competition which provides the Contracting Officer's rationale for entering into noncompetitive negotiations is attached and states that no other alternative other than awarding the contract to INPO is practical because: (a) the EPIX data are needed by the NRC to perform its function, (b) the EPIX database resides only at INPO, (c) no one else has a comparable database, and (d) it would not be cost or time effective to re-create the database within the NRC or through an outside contractor.

Attachment

A number of controls are already established which will preclude the introduction of bias into the proposed contract and which will assure protection of the Government's interest. For example,

all of the EPIX data to be used in measuring and monitoring plant performance in the Reactor Oversight Process will be available to the NRC Resident Inspectors stationed at each nuclear utility. NRC resident inspectors will review and validate that the data are correct and complete. Additionally, the NRC staff is presently a member of the EPIX Ad Hoc Working Group which provides advice on the EPIX to INPO management.

The Director, Division of Contracts and Property Management, has recommended that the Commission's Policy on Avoidance of Contractor Organizational Conflicts of Interest be waived in this instance. Based on the foregoing, and after consultation with the Office of the General Counsel, I make the following determinations:

1. The data to be provided is vital to the NRC program of evaluating operating experience to identify precursors of potentially significant events;
2. The data cannot be satisfactorily provided at the present time except by INPO, whose interests give rise to a question of conflict of interest;
3. Contractual and technical review and supervision methods can and will be employed by the NRC to neutralize the conflict; and
4. It is in the best interest of the NRC to waive the Commission's Policy on Avoidance of Contractor Organizational Conflicts of Interest.

Pursuant to the waiver procedures specified in the NRC Organizational Conflicts of Interest Policy, the current policy of avoiding organizational conflicts of interest as specified herein is waived for the requested extension, noncompetitive solicitation and resultant contract to INPO for on-line access to EPIX.

/RA/

William D. Travers
Executive Director for Operations

March 26, 2002

Date

U.S. Nuclear Regulatory Commission
Division of Contracts and Property Management
Justification for Other Than Full and Open Competition

1. The U.S. Nuclear Regulatory Commission (NRC) proposes to enter into a sole source contract with the Institute of Nuclear Power Operations (INPO) for computer access to INPO's Equipment Performance and Information Exchange (EPIX) System Database, manuals, associated training and support services, and a copy of the EPIX component data on a cost-recovery basis. The period of performance for this requirement is five years at a total estimated cost of \$1,500,000.00.
2. The statutory authority permitting Other Than Full and Open Competition is 41 U.S.C. 253(c)(1), as implemented by FAR 6.302-1(b)(1) which provides for limiting competition in those situations where the services are available from only one responsible source and no other type of services will satisfy NRC's requirements.
3. The NRC requires access to the EPIX system which is a component-level, e.g., valves, pumps, circuit breakers, database containing engineering and failure information for selected nuclear plant components within the scope of the Maintenance Rule (10 CFR 50.65) and for other equipment failures that cause power reductions. It also provides failure rate and reliability information for a limited number of risk-significant plant components. INPO is the sole owner/manager of this database. The NRC requires 100 access codes to the web-based database and a complete set of EPIX reporting manuals and usage guides for each NRC-authorized access code holder, plus five copies for the NRC EPIX Coordinator. The NRC also requires support services from INPO, such as training, technical support, and an electronic copy of the EPIX component database.

In March 1997, the Nuclear Energy Institute (NEI) proposed that the NRC accept EPIX as part of a voluntary industry approach for reporting reliability data in lieu of a proposed NRC rule. In June 1997, the NRC approved the staff recommendation to accept the voluntary approach proposed by the industry in lieu of a proposed rule (10 CFR 50.65). The NRC staff recommendation to the Commission (SECY 97-101) estimated the present value savings of the voluntary approach as compared to rule-making at \$50 million.

In September 2001, INPO released EPIX, version 4.0, a totally web-based system for the entry and retrieval of information. EPIX 4.1, now referred to as Consolidated Data Entry (CDE) 2.0, will serve as the platform for CDE, a nuclear power plant industry-wide effort to consolidate industry reporting requirements for performance indicators and equipment failure information and minimize duplication of effort.

At the present time, the database is being used by NRR and RES, as well as the Regions. Unrestricted access to the EPIX database is important to the mission of the NRC because there is no other database that contains comparable data and failure information on key components of major nuclear power plant systems.

4. INPO developed EPIX to meet current and projected industry needs for component-level information exchange and to replace the Nuclear Plant Reliability Data System (NPRDS). The EPIX system is a web-based database that provides information on components important to nuclear plant safety and reliability. In addition, EPIX provides access for retrieval of data reported to NPRDS from January 1973 through December 1996.

EPIX contains engineering data and failure information on key components in systems within the scope of the NRC Maintenance Rule for all operating U.S. nuclear generating plants. In addition, reliability data are also collected to support the application of probabilistic safety analysis (PSA) techniques to risk-informed management of equipment performance issues.

5. EPIX is a proprietary database managed by INPO for exclusive use by its member utility organizations. Non-INPO utility member access to EPIX is granted only by written agreement and with the approval of INPO member organizations. Since this database presently resides only at INPO and we are unaware of the existence of a comparable database, it is impossible to obtain the data from any other source.
6. INPO also classifies the EPIX data as proprietary, so no further distribution of the unit-specific data is possible. Any re-creation of the database would be both time consuming and costly, and, thus, not cost-effective.

The EPIX will be used routinely for activities involving research and analysis by the Office of Nuclear Regulatory Research, the Office of Nuclear Reactor Regulation, the Regions, the NRC contractors at Brookhaven National Laboratory, Idaho National Engineering and Environmental Laboratory, and Oak Ridge National Laboratory. The impact of denied access to EPIX would constitute a detriment to the Agency's day-to-day analysis of operational experience data. In particular, a loss of access to the EPIX database would have a serious negative impact on a number of important Commission projects.

This database is presently available and continuously updated at INPO. The NPRDS archive, which is also available to NRC from the EPIX Home Page on the Web, contains data as far back as 1973. It would be very costly, as well as require an enormous amount of time, to re-create this database, either within the NRC or through an outside contractor. Current data are needed by the NRC to perform its function and these data can be supplied only by INPO.

In order to meet NRC's access requirements, EPIX must be made available to the Agency daily, on a twenty-four (24) hour basis.

7. Thus, INPO, as the owner and maintainer of the EPIX database containing proprietary data that are necessary for NRC regulatory programs, is the only source capable of providing these data in the required time frame.
8. Notification of NRC's intent to negotiate a noncompetitive procurement with INPO was posted on the Federal Business Opportunities (FedBizOpps) electronic posting system on March 11, 2002.

9. To ensure that the cost to the Government for these services will be fair and reasonable, a separate cost analysis will be performed for this proposed procurement by the Contract Specialist.
10. This Justification for Other Than Full and Open Competition also covers a one-month extension to NRC-26-97-266, the current contract providing these services, in order to avoid a break in services and allow time for the negotiation and award of the new contract.

Technical Certification

As prescribed in Subpart 6.303-1(b) of the Federal Acquisition Regulation (FAR), this Justification for Other Than Full and Open Competition for the acquisition of computer access to the EPIX system and related support services from INPO is hereby certified as complete and accurate.

March 12, 2002

Date

/RA/

Scott F. Newberry, Director
Division of Risk Analysis and Applications
Office of Nuclear Regulatory Research

Contracting Officer's Certification

In accordance with Subpart 6.303-1(a) of the FAR, the accuracy and completeness of this Justification for Other Than Full and Open Competition is hereby certified.

March 19, 2002

Date

/RA/

Sharon D. Stewart, Contracting Officer
Contract Management Branch 2
Division of Contracts and Property Management

Competition Advocate's Approval

Pursuant to Subpart 6.304(a)(2) of the FAR, and MD 11.1, Section 5.2.1.1, the above described Justification for Other Than Full and Open Competition has been reviewed and (X) approved () disapproved.

March 27, 2002

Date

/RA/

Timothy F. Hagan
Competition Advocate

Note: The Competition Advocate will approve/disapprove this Justification for Other Than Full and Open Competition once the required synopsis period has been fulfilled.