

October 1, 2002

MEMORANDUM TO: Lynn Scattolini
Director, Information, Records and Document Division
Office of the Chief Information Officer

FROM: Robin Baum /R/
Senior Attorney

SUBJECT: COI REVIEW; DELIVERY ORDER NRC-33-01-182-001
GSA CONTRACT NUMBER: GS-35F-4524G

This responds to your request for an organizational conflict of interest (COI) review of the subject delivery order for services with OAO Corporation/Lockheed Martin Idaho Technologies Company (LMITCO) under CISSCO-II GSA Contract No. GS-35F-4524G, in light of the proposed principal consultants' prior work engagements for DOE OCRWM, noted on their respective resumes. NRC's Division of Contracts and Property Management (DCPM) requested further information from OAO / LMITCO to facilitate this COI review.

The subject matter of delivery order NRC-33-01-182-001 is information technology (IT) support. The objectives include (1) assessment of scope, characteristics, timing, quantity, and types of documentary materials to be submitted to the NRC related to the proposed high level waste (HLW) repository application that will be submitted to NRC for licensing; (2) analysis of gaps in the current and proposed electronic capability to support the HLW adjudicatory proceedings and proposed solutions; and (3) assistance to the agency in development of an action plan and schedule to implement selected solutions. This will include entering documents into ADAMS, placing documents on the web for the public and facilitation of easy viewing. The subcontractor, KISMET Consulting, shall provide the principal consultants, Mr. Eugene Yang and Mr. Bruce Evans. Mr. Yang's resume indicates significant expertise and experience in data architecture planning and systems analysis and development for a variety of applications in computing and network environments for government agencies. Mr. Evans's resume indicates extensive experience in records management and emerging electronic records management issues. Both resumes indicate prior participation in DOE's OCRWM Yucca Mountain project document control and records management practices and technologies effort.

On September 23, 2002, OAO Corporation informed DCPM that during 1999 through 2001, KISMET Consulting, as a subcontractor to two different prime contractors, performed consulting work for DOE OCRWM in the IT support arena. First, during December 1999 through June 2000, OAO represents that KISMET (subcontractor to GRC International) provided support in the area of records management, document control, and electronic records management for an effort valued at \$ 200,000. Both Mr. Yang and Evans served on the project. Subsequently, during December 2000 through January 2001, OAO represents that KISMET (subcontractor to RSIS Support Services) provided IT support, software quality assurance, and an assessment of technology strategies for the Yucca Mountain Program's participation in the Licensing Support

Network. OAO represents that for both of the above tasks, Mr. Yang and Mr. Bruce provided consulting work for IT support, but did not have involvement with the development of technical data / information.

After a review of the contract materials, organizational COI rules, OAO's response and the facts before us, we are of the view that the placement of this delivery order with OAO/LMITCO would not constitute an organizational conflict of interest.

Under NRC's organizational conflict of interest regulations implementing Section 170A of the Atomic Energy Act of 1954 (AEA), as amended which are reflected in 48 C.F.R. Subpart 2009.5 and generally in Section H of NRC contracts, the NRC avoids entering into any relationship whereby a contractor has present or planned interests related to work to be performed for the Commission that may diminish the contractor's capacity to give impartial, technically sound or objective assistance and advice. Pursuant to Section 170A of the AEA, the Commission requires any person proposing to enter into a contract, agreement or other arrangement for technical and management support services, to provide the Commission, prior to entering into such contract, agreement or arrangement, with all relevant information bearing on potential COIs with respect to "being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons" 42 U.S.C. § 2210a (a)(1) (2002). [Emphasis supplied].

NRC's implementing regulations, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR) provides at section 2009.570-1, "NRC Organizational Conflicts of Interest, Scope of Policy," that it is NRC's policy to avoid organizational COIs and require contractors to submit information describing relationships "with organizations or persons (including those regulated by NRC) which may give rise to actual or potential conflicts of interest" 48 C.F.R. 2009.570-1 (a) (2000).

Neither Delivery Order NRC-33-01-182-001 nor GSA Contract No. GS-35F-4524G contain the NRC organizational COI clause.

Prior to September 23, 1991, the organizational COI clause was included in every contract, regardless of its purpose. Effective September 23, 1991, NRC DCPM Instruction 91-08 was issued, providing that the organizational COI clause shall be included only in contracts for (1) evaluation services or activities; (2) technical consulting and management support services; (3) research; and (4) contractual situations where special organizational COI provisions are noted in advance in the solicitation for inclusion in the final contract. DCPM Instruction 91-08 notes:

Accordingly, the COI clause would not normally be included in administrative type contracts and purchase orders such as stenographic reporting services, data entry, commercial facility management, and the purchase of PC hardware or software. [Emphasis added].

The question then arises as to whether or not the type of IT support contemplated by NRC-33-01-182-001 falls within "administrative type" nature, in order to ensure that execution of this delivery order complies with the statute and that omission of the organizational COI clause from the subject delivery order is proper.

You advised me that although the subject matter of Delivery Order NRC-33-01-182-001 is not specifically one of the four administrative type contracts specified in DCPM Instruction 91-08, the subject matter does not constitute evaluation services/activities, research, technical consulting or management support services that involve any scientific technical positions, conclusions, judgments, analyses, evaluations, interpretations or recommendations. The Statement of Work for CLIN 17 identifies document management, records management, and issues relative to electronic submission, transmission, processing, dissemination, and ability to use HLW documents in the context of the HLW adjudicatory proceeding and as official agency records. Moreover, you advised that the contractor will not provide any hearing testimony for the HLW repository. Furthermore, the "such as" language in DCPM Instruction 91-08 noted above does not preclude additional types of administrative efforts beyond the four noted in the instruction. Therefore, our view is that the IT support planned for NRC-33-01-182-001, CLIN 17 does not involve the type of scientific technical assistance or management support services for the Commission contemplated by NRC's organizational COI clause, but involves IT support tasks that are administrative in nature consistent with DCPM Instruction 91-08 (1991)¹.

Accordingly, based on the above considerations, we are of the view that OAO/LMITCO/KISMET Consulting's performance of IT support for NRC involving documents for the HLW repository (in light of its prior IT support work for DOE OCRWM) does not constitute an organizational COI under NRC-33-01-182-001, as the NRC organizational COI clause does not apply to this administrative type contract. This opinion is based on our understanding that there is no concurrent work being performed by KISMET Consulting for DOE. However, should KISMET Consulting plan to engage in concurrent work for DOE, NRC needs advance notification of any proposed work.

If you have any questions concerning this memorandum, please contact me at 415-2202.

cc: S. Stewart
S. Adams
J. Schaeffer
D. Hassell

¹ DCPM Instruction 91-08 was revised by Rev. 1 on December 19, 1991 and Rev. 2, on March 18, 2000. Neither revision made any change to the section of the September 23, 1991 Instruction which highlights the four types of administrative contracts noted therein.