



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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September 1, 1992

MEMORANDUM FOR: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque

FROM: James M. Taylor
Executive Director
for Operations

SUBJECT: STAFF REQUIREMENTS -- PROCEDURES ENABLING THE CENTER FOR
NUCLEAR WASTE REGULATORY ANALYSES TO PERFORM WORK FOR OTHER
THAN THE NUCLEAR REGULATORY COMMISSION'S HIGH-LEVEL WASTE
MANAGEMENT PROGRAM [REFERENCE STAFF REQUIREMENTS MEMORANDUM
OF JULY 10, 1992]

100-11916

This memorandum responds to the Commission's requests in the Staff Requirements Memorandum (SRM) dated July 10, 1992. Specifically, the Commission asked that the staff:

- Clarify the definitions for the Nuclear Regulatory Commission Program Manager, NRC Program Element Manager, and the NRC Center Program Manager or, if they refer to the same individual, change the references, to be consistent.
- Limit the Center for Nuclear Waste Regulatory Analyses (CNWRA or the Center) total non-NRC work to some percentage of its total effort (e.g., no more than 20 percent), to ensure that the focus of the Center's efforts remains on NRC-related technical matters.
- Provide additional information on the conflict-of-interest issues concerning work for the Environmental Protection Agency (EPA), either before or along with any formal recommendation allowing the Center to perform EPA work.
- Update the Commission regarding the staffing situation, during periodic briefings on the CNWRA; attention continue to be given to reducing the shortfall in professional staffing in the geological areas.

The following paragraphs address the means by which the staff has resolved or plans to resolve these requests.

Clarify Roles of NRC Staff Involved in the Procedures Enabling the Center to Perform Work for Other Than NRC's High-Level Waste Management (HLWM) Program

The "Procedures for Using the Center for Nuclear Waste Regulatory Analyses, for Work for the Nuclear Regulatory Commission and Others, within Its Areas of Special Competency" (Procedures) that were approved by the Commission in its

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memorandum to the Executive Director for Operations (EDO), dated July 10, 1992, have been revised to provide the requested clarification (enclosed). Specifically, descriptions have been added to Section 3., "Definitions," of the Procedures, of the roles of the NRC CNWRA Program Manager (Paragraph 3.4), the individual contractually responsible, among other things, for overall day-to-day program performance of the Center; the NRC CNWRA Deputy Program Manager (Paragraph 3.5), the individual contractually designated to assist/act for the NRC CNWRA Program Manager; and the NRC Program Element Manager (Paragraph 3.6), the Contracting Officer's authorized representative for administering the technical aspects of an entire work element.

Limit the Center's Total Non-NRC Work to a Percentage of Its Total Effort

The Procedures have been revised to establish a limit of approximately 20 percent of total fiscal year funding to the work that the Center can perform for other than NRC's HLWM Program. The Center Review Group (CRG), which must recommend approval of all proposed Center work for others, will approve tasks that would cause the Center to exceed the 20 percent level only in exceptional circumstances. If such approval is recommended, the NRC CNWRA Program Manager will so inform the Commission, before submitting the recommendation to the Contracting Officer, for final review and authorization.

Conflict-of-Interest Issues Concerning Work for EPA

In SECY-92-207, which relates to procedures for allowing the Center to perform work for other than NRC's HLWM Program, the staff addressed the potential for conflict-of-interest in allowing the Center to undertake work for EPA, and noted that it would seek Commission approval for the initial Center work in support of EPA's high-level waste activities at the Waste Isolation Pilot Plant. Further, the Procedures require that the Center's request to perform work for other than NRC be accompanied by a justification that includes a conflict-of-interest review and determination that the conduct of the proposed work would be in accordance with NRC's conflict-of-interest requirements. The NRC Contracting Officer, the CRG, and the Office of the General Counsel have review responsibilities for the Center's conflict-of-interest determinations.

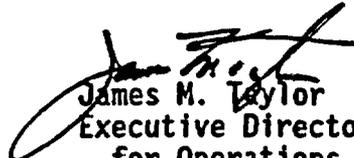
When and if a request is made for the Center to undertake nuclear waste-related work in support of EPA's activities, the staff will:

- Conduct a review of the Center's conflict-of-interest submission, in accordance with its responsibilities.
- Identify and analyze any immediate or potential conflict-of-interest problems that may be encountered.
- Inform the Commission of its conclusions regarding conflict-of-interest and the bases for those conclusions.

- For the initial EPA request for Center support, request Commission approval before authorizing the Center to undertake the work.

Update the Commission Regarding CNWRA Staffing

As requested by the Commission, the staff will provide an update on the staffing situation during periodic briefings on the Center. In the meanwhile, attention will be given to reducing any shortfall in professional staffing in the geological area. The next periodic briefing on the Center program is scheduled for March 1993.


James M. Taylor
Executive Director
for Operations

Enclosure: As stated

cc: OGC
SECY

**PROCEDURES FOR USING THE CENTER FOR NUCLEAR
WASTE REGULATORY ANALYSES, FOR WORK FOR
THE NUCLEAR REGULATORY COMMISSION
AND OTHERS, WITHIN ITS AREAS
OF SPECIAL COMPETENCY**

Rev. 1
July 30, 1992

1. INTRODUCTION

On October 15, 1987, the Nuclear Regulatory Commission (NRC) contracted with Southwest Research Institute (SwRI) to establish the Center for Nuclear Waste Regulatory Analyses (CNWRA or the Center) as a Federally Funded Research and Development Center (FFRDC). The Center was established to provide long-term continuity and conflict-of-interest-free technical assistance and research for NRC, in support of its High-Level Waste Management (HLWM) Program, under the Nuclear Waste Policy Act (NWPA), as amended. The Center is a private, not-for-profit organization. NRC is the sole sponsor of the Center. As the sole sponsor, it is NRC's responsibility to maintain funding continuity, to help ensure Center management and NRC staff goals of achieving and maintaining both a high degree of technical competence and efficient use of technical resources.

It is in the interest of both NRC and the Center to maintain contractual continuity (scope of work/schedules) and funding stability, consistent with program needs, Department of Energy (DOE) schedules for development and operation of a high-level waste (HLW) repository, and budget appropriations. Although contractual continuity and stability of funding are essential, they cannot always be guaranteed. Some year-to-year variation in funding/scope must be anticipated. Center capabilities can make a contribution to entities other than NRC, and to technical areas other than HLW (both within and outside NRC); therefore, to alleviate the impact of year-to-year variations, it is desirable for the Center to perform work for others, within its areas of special competency. Further, it is anticipated that work for others will broaden staff knowledge and experience, provide opportunity to broaden and deepen the Center's core expertise that is used in service to NRC, and provide for more efficient use of Center resources, when NRC's HLWM requirements do not fully use the time and talents of core Center staff.

Work for others must be conducted in accordance with applicable Office of Federal Procurement Policy (OFPP) guidance, Federal Acquisition Regulations (FAR), and other pertinent rules and procedures. Nothing in these implementing procedures is intended to alter the requirements of such rules and procedures.

ENCLOSURE

2. PURPOSE AND SCOPE

The purpose of this document is to establish the responsibilities and procedures whereby the Center may obtain authorization from its sponsor, NRC, to perform work for others that is related to its primary purpose, scope, mission or special competency, and to ensure that:

- (1) Opportunities for the Center to conduct work, within its areas of special competency, for NRC, outside the HLWM Program, or for any non-sponsor organization, are identified;
- (2) The anticipated benefits of such situations are maximized;
- (3) Possible adverse impacts of such use are properly evaluated and either avoided or effectively mitigated;
- (4) Appropriate review of, and decision-making on, requests for such work, are provided in a timely manner; and
- (5) The Center will avoid conflict of interest in performing such work.

The scope of these procedures extends to all FFRDC work conducted for organizations other than the sponsor and for work for its sponsor, within its areas of special competency, but outside its primary mission (i.e., NRC's HLWM Program, under the NWPA). However, in order to avoid the potential for conflict of interest, the Center shall not undertake any work under these procedures for DOE, contractors under the DOE nuclear waste program, and States and affected Tribes that may participate in the process of siting, developing, designing, licensing, operating, or decommissioning the HLW repository.

3. DEFINITIONS

- 3.1 Charter - The document that established the requirement for the Center and delineates the purpose, mission, general scope of effort, and role of the Center as an FFRDC. The Center is chartered to provide sustained high-quality technical assistance and research in support of NRC's HLWM Program, under the NWPA.
- 3.2 Core Center Staff - All full-time permanent staff members of the CNWRA.
- 3.3 Non-sponsor - Any organization, in or outside of the Federal Government, that funds specific work to be performed by the Center but is not a party to the sponsoring agreement (FAR Subsection 35.017(b)).
- 3.4 NRC CNWRA Program Manager - The individual contractually responsible for: overall day-to-day program performance of the CNWRA's operations; integration of work assigned to the Center; evaluation of the overall performance of the Center; and recommending approval, disapproval, or suspension of costs requested for reimbursement by the Center.

- 3.5 NRC CNWRA Deputy Program Manager - The individual contractually designated to assist/act for the NRC CNWRA Program Manager.
- 3.6 NRC Program Element Manager - The Contracting Officer's authorized representative for administering the technical aspects of an entire element.
- 3.7 Special Competency - A special or unique capability, including qualitative aspects, developed incidental to the primary functions of the Center, to meet some special need.
- 3.8 Sponsor - The executive agency that manages, administers, monitors, funds, and is responsible for the overall use of an FFRDC (see FAR Subsection 35.017(b)). In this case, the sponsor is NRC.
- 3.9 Work for Others - Any work, conducted under applicable policies and procedures of the OFPP and the FAR and the provisions of the NRC contract with SwRI for operation of the Center, other than that conducted: (i) for its sponsor, in accordance with its current Charter, or (ii) within the SwRI Internal Research and Development Program. In accordance with OFPP procedures and the FAR, work for others must satisfy one of two criteria: (i) the work must clearly fall within the purpose, mission, and general scope of effort established for the Center; or (ii) the work must be within one or more areas of special competency of the Center.

4. RESPONSIBILITIES

- 4.1 The President of the Center is responsible for ensuring implementation of these procedures at CNWRA.
- 4.2 Center management is responsible for identifying and evaluating opportunities to conduct work for others, wherein such opportunities achieve the goals delineated in the "Introduction" to these procedures, and is also responsible for assessing and avoiding or mitigating any potential impacts that may result from any assignment of CNWRA personnel to conduct work for others.
- 4.3 Center management will ensure that a proper evaluation is performed of each request to conduct work for others, will assess related impacts and any potential conflict of interest, and will submit to the NRC Contracting Officer and the NRC CNWRA Program Manager, all information and analyses required herein, in accordance with these procedures.
- 4.4 The Center Review Group (CRG), which includes the NRC Contracting Officer, is responsible for evaluating the Center's request for authorization to perform work for others, against the procedures contained herein and against the FAR criteria; for making a recommendation to the Director, Office of Nuclear Material Safety and Safeguards (NMSS), on the disposition of the request; and for assuring that total Center effort for work for others does not exceed approximately 20% of the Center's total fiscal year funding without prior notification to the Commission.

- 4.5 The NRC CNWRA Program Manager is responsible for the timely evaluation of each request from the Center to perform work for others; for conferring about such work with NRC's Technical Sponsors; for obtaining approval from the Director, NMSS to implement the CRG's recommendation; for promptly informing the NRC Contracting Officer of the results of the evaluation; for informing the Commission, after the NRC Contracting Officer has provided authorization to the Center, of approved work; and, for the initial request for Center support of the Environmental Protection Agency's (EPA) HLW regulatory activities at WIPP, for requesting the Commission's approval to proceed.
- 4.6 The NRC Contracting Officer is responsible for: providing all contractual direction to the Center and is the only individual who can provide such direction and who can authorize the Center to perform work for others; for monitoring work for others by fiscal year and alerting the CRG if the combined efforts associated with work for others approaches 20% of the Center's total fiscal year funding; and for ensuring compliance with the constraints and criteria applicable to work placed with the Center, as provided in FAR Subsections 6.303, 17.504(e) and 35.017-3.
- 4.7 The organization proposing work under the Center's areas of special competency is responsible for making the determination required by FAR Subsection 17.504 and for providing, to the NRC Contracting Officer, documentation that the requested work would not place the FFRDC in direct competition with domestic private industry, as required by FAR Subsections 6.303 and 17.504(e).

5. PROCEDURES

The extent of the Center's participation in work for others will depend on the nature of the work and when it is to be performed, capabilities of the Center, and availability of Center resources. A written request for the Center to perform work for others within its areas of special competency may be initiated in one of three ways:

- a. NRC could request Center assistance to perform work that is not directly related to NRC's HLWM Program under the NHPA;
- b. An organization other than NRC could request Center assistance to perform work that is related to the NHPA; or
- c. An organization other than NRC could request Center assistance to perform work that is not directly related to the NHPA.

Work falling within these categories must be covered by one or more of the Center's areas of "special competency," and must be evaluated by NRC, and authorized by the Contracting Officer. The following process provides the mechanism for obtaining NRC's authorization to perform such work.

For the Center to perform work beyond that covered in its contract with

NRC, the requesting organizations outside the NRC must concurrently submit to the NRC Contracting Officer and to the Center, for evaluation, a detailed statement of work, including scope, proposed period of performance, and estimated level of effort. The requesting organization shall also provide, to the NRC Contracting Officer, a justification, as required by FAR Subsection 6.303, for other than full and open competition, and documentation, as required by FAR Subsection 17.504(e), supporting the finding that the work will not place the Center in direct competition with domestic private industry.

Should the requesting organization reside within NRC, the NRC CNWRA Program Manager shall forward the request for assistance, with the approval of the Director, NMSS, to the NRC Contracting Officer. The NRC Contracting Officer will review this request, and prepare the necessary documentation as required by FAR 6.303 and 17.504(e). Upon approval of such documentation by the NRC Competition Advocate, the NRC Contracting Officer will forward NRC's request for assistance to the Center.

In accordance with Section H.12, Other Contracts - Prior Notification, under the contract, the Center will evaluate the request for proposal and, if interested in performing the work, will request written authorization from the NRC Contracting Officer (with a concurrent copy to NRC's CNWRA Program Manager) for acceptance. The Center's written request to perform work for others, either inside or outside of the NRC, must be accompanied by a justification for performing the work, that addresses each of the criteria listed below:

1. The requested work is within the domain of one of the Center's "special competency" areas, consistent with FAR Subsection 35.017-3.
2. The requested work has undergone a conflict of interest review and a determination has been made that the conduct of the proposed work would be in accordance with NRC's conflict of interest requirements. (The NRC staff will conduct the conflict of interest review and make the subsequent determination for work performed for NRC.)
3. The requested work will not negatively impact the long-term stability of staff and funding at the CNWRA and would, preferably, increase that stability. The expertise, including labor hours and other resources required to conduct the work, should be delineated.
4. The requested work would not materially reduce the effectiveness of the CNWRA in carrying out its primary mission to provide support to NRC's HLWM Program (i.e., would not significantly impact costs, scope, or schedule of NWPA work assigned to the Center by NRC).
5. The requested work would augment or help to maintain capabilities, technologies, management methods, and technical expertise of importance to NRC and its HLW mission.

Costs related to justifications for performing work and to the development of proposals in response to NRC requests would be borne by the Center. Non-Waste Fund monies will be provided by NRC for this

purpose. Costs for responding to requests for work from outside NRC will be borne by SwRI and will not be reimbursed by NRC.

Upon receipt of the Center's request for authorization to perform the work, the NRC CNWRA Program Manager will distribute copies of the request and the justification to members of the CRG and schedule a meeting to discuss the request, to be held within 15 calendar days from the date of receipt. All justifications will be evaluated and authorized, based on the requirements in the FAR, restrictions in NRC's contract with SwRI for operation of the Center, these procedures, and the priorities of the currently approved program and the proposed work.

Assuming that the justification package, as submitted, is complete, the CRG will arrive at a decision at that meeting as to whether to recommend approval of authorization to the Center to accept the work. The NRC CNWRA Program Manager will submit the CRG's recommendation, with the approval of the Director, NMSS, to NRC's Contracting Officer. The NRC Contracting Officer will determine whether the requested action is in compliance with the FAR and the contract terms and conditions, and will seek resolution of any contractual issues raised by the Center's request. After resolution, the NRC Contracting Officer will inform the Center of NRC's decision. The NRC CNWRA Program Manager, after the Contracting Officer has provided authorization to the Center, will inform the Commission of all work for others, approved for placement at the Center.

For work for others, authorized by the NRC Contracting Officer, the Center will establish individual financial and manpower tracking accounts. Center management, the NRC Contracting Officer, and the NRC CNWRA Program Manager will ensure overhead and management costs are properly distributed. Proposals for NRC work, that include the technical scope, schedules, and required resources, once accepted by the NRC Division requesting the work, will be incorporated into NRC's contract with SwRI and will become contractually binding.

In addition to management of the Center's NWPA work for NRC, the NRC staff will provide technical and direct management oversight of NRC work not performed under the NWPA, and to the extent practical (under Management and Staffing Award Fee Evaluation Criteria, e.g., the Center's ability to manage work for others without impacting NRC's HLWM Program), will consider Center performance on such work during the CRG's semi-annual award fee determination. Technical and direct management oversight of non-NRC work will be provided by the requesting organization, and will not be considered by the CRG as part of the Center's award fee evaluation.

Day-to-day technical management of approved programs/projects will be performed by the Center and the requesting organization. If, in the performance of work for others, a potential impact on currently approved NRC HLW Operations/Project Plans appears probable, an assessment shall be conducted by the Center in accordance with Center Administration Procedure AP-009, "Work Authorization and Control." Such assessment will be consistent with the Center's process for modifying approved tasks in

progress, based on the significance of the impact that is anticipated, as provided for in AP-009, namely:

- o Class 1 Modifications (i.e., those that require changes in cost, schedule, or work scope) to NRC's HLWM Program, under NWPA, necessitate submission of an impact assessment, and recommended modifications to the plans, to the NRC CNWRA Deputy Program Manager and NRC Contracting Officer, for review. Approval must be obtained from the NRC Contracting Officer before commencement of work.
- o Class 2 Modifications (i.e., those that do not require changes to cost, schedule, or work scope) are essentially administrative in nature and may be implemented with the mutual consent of the affected NRC Program Element Manager and the acknowledgment of the NRC CNWRA Deputy Program Manager.

Potential or actual impacts on HLWM Program work at the Center will be noted in the MAJOR PROBLEMS section of the Center's Program Managers Periodic Report. At the NRC/CNWRA Semiannual Program Reviews, the President of the Center will advise NRC on the extent of ongoing work for others. A brief assessment of potential adverse impacts, if any, on the NRC HLWM Program, will be provided.

The NRC Contracting Officer will monitor the funding provided to the Center to perform work for others and will inform the CRG if the total fiscal year funding for such efforts approaches 20% of the Center's total fiscal year funding. The CRG will recommend approval of requests to perform work for others that would cause total fiscal year funding for such work at the Center to exceed 20% only in exceptional circumstances. If such approval is recommended, the NRC CNWRA Program Manager will so inform the Commission, prior to submitting the recommendation to the Contracting Officer for review and authorization.

6. RECORDS

The results of evaluations conducted in accordance with this procedure, as well as the evaluation material supporting the results, shall be documented and retained in the project files at the Center and NRC.