

White Paper on NEI's Use of Wackenhut as the Adversary Team in NRC-evaluated Force-on-Force Security Tests

Title 48, "Federal Acquisition Regulations System, of the Code of Federal Regulations contains requirements on organization conflicts of interest. Specifically, Subpart 2009.5, "Organizational Conflicts of Interest," contains this language:

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to work to be performed under an NRC contract which:

- (1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or*
- (2) May result in its being given an unfair competitive advantage. Potential conflict of interest means that an actual conflict of interest may arise from award of a proposed contract.*

Subpart 2009.570-3, "Criteria for recognizing contractor organization conflicts of interest," poses the following question to be answered when determining if an organizational conflict of interest exists:

Are there conflicting roles which may bias an offeror's or contractor's judgment in relation to its work for the NRC?

This legal requirement is incorporated into NRC contracts. For example, NRC Contract No. NRC-04-04-072 dated April 21, 2004, with Advanced Systems Technology & Management contains this clause in Section H.1, "Contractor Organizational Conflicts of Interest (Jan 1993)":

The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection, or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate) except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

Thus, it is abundantly clear that the NRC could be contract with Wackenhut to be the Adversary Team during NRC-evaluated force-on-force security tests at sites with Wackenhut defenders. Federal regulations do not permit it. NEI should not be permitted to skirt this federal regulation.