

May 26, 2006

Mr. Peter Walier
President
NAC International
3930 East Jones Bridge Road
Suite 200
Norcross, GA 30092

Dear Mr. Walier:

I am responding to your April 14, 2006, letter, wherein you request confirmation that the April 22, 2005, waiver issued by Nuclear Regulatory Commission (NRC) is no longer the controlling basis under which NAC International is performing the Nuclear Materials Management Safeguard and System (NMMSS) contract. NAC's assertion is based, first, on the view that the NRC concluded that any organizational conflict of interest has been mitigated through administrative controls that were implemented in November 2004 and, second, that enactment of Section 639 of the Energy Policy Act of 2005 supercedes the April 22, 2005 waiver.

Respectfully, we do not agree with this position. First, the pivotal segment of the waiver that the NRC approved on April 22, 2005, (and forwarded to Lisa E. Gordon-Hagerty of USEC on the same date) reads as follows:

Since the NMMSS activities being performed by NAC for Department of Energy (DOE) Savannah River and NRC. . . are vitally important to the NRC program of international safeguards, can only be performed without disruption for the short-term by NAC, and the proposed mitigating measures can be taken to mitigate the organizational COI in the short term (through approximately September 2005), the staff recommends that it is in the best interest of the United States for the Commission's policy on avoidance of contractor organizational conflict of interest be waived for NMMSS activities until DOE puts in place a replacement contract to provide the necessary services for the NMMSS. Therefore, the staff requests that a waiver be granted to allow completion of this work in order to assure a smooth transition to a new operator.

Given the importance of the work being performed under this contract, the need to avoid disruption of the work and the implementation of mitigating measures to mitigate the organizational conflict, the NRC approved the waiver to remain in effect until a new operator was in place. Although we contemplated that transition (to a new operator) would occur in the fall of 2005, this was not viewed as critical to the waiver decision. Accordingly, we concurred in the extension of the existing contract for a significant period of additional time and so notified Mr. Podonsky at the Department of Energy (DOE) on July 11, 2005. We had no reason to believe such extension would be viewed by NAC as rendering the existing mitigating measures unnecessary. To the contrary, absent appropriate mitigating measures that have been in effect, it is uncertain whether we would have agreed to extension of the contract.

With respect to Section 639 of the Energy Policy Act of 2005, while we agree that this new statute provides NRC greater flexibility in addressing organizational conflicts of interest associated with contracts with the DOE or operator of a DOE facility, we do not accept the view that the statute resolves past concerns about organizational conflict of interest for the NMMSS contract or vitiates the requirement to consider waiver and mitigating measures. As you have noted, we concluded that the organizational conflict of interest associated with this contract has been mitigated through appropriate controls. These mitigating measures render the new statute inapposite, in our view, since the new statute on its face applies only in a situation when—unlike the NMMSS contract—the organizational conflict of interest cannot be mitigated.

In response to your request for a copy of any written analysis concerning the application of the amended Section 170A to NAC's performance of the NMMSS contract, we have no such documents. In connection with your request for any other written analysis of the authority added by the amendment to Section 170A, the agency is in the process of revising its Management Directive (MD) that governs NRC projects performed by DOE laboratories or operators of a DOE facility. Upon completion, the revised MD will be publicly available.

In closing, we want to re-iterate that consistent with a recent discussion between attorneys for NAC/USEC and NRC's Office of the General Counsel, NAC/USEC is free to submit a proposal in response to any new solicitation associated with the NMMSS system. We would expect that such a proposal would be evaluated fairly, and consistent with applicable law and regulatory authority governing such matters

We thank you for communicating your concerns to us.

Sincerely,

/RA/ by R. W. Borchardt for

Roy P. Zimmerman, Director
Office of Nuclear Security and Incident Response

With respect to Section 639 of the Energy Policy Act of 2005, while we agree that this new statute provides NRC greater flexibility in addressing organizational conflicts of interest associated with contracts with the DOE or operator of a DOE facility, we do not accept the view that the statute resolves past concerns about organizational conflict of interest for the NMMSS contract or vitiates the requirement to consider waiver and mitigating measures. As you have noted, we concluded that the organizational conflict of interest associated with this contract has been mitigated through appropriate controls. These mitigating measures render the new statute inapposite, in our view, since the new statute on its face applies only in a situation when—unlike the NMMSS contract—the organizational conflict of interest cannot be mitigated.

In response to your request for a copy of any written analysis concerning the application of the amended Section 170A to NAC's performance of the NMMSS contract, we have no such documents. In connection with your request for any other written analysis of the authority added by the amendment to Section 170A, the agency is in the process of revising its Management Directive (MD) that governs NRC projects performed by DOE laboratories or operators of a DOE facility. Upon completion, the revised MD will be publicly available.

In closing, we want to re-iterate that consistent with a recent discussion between attorneys for NAC/USEC and NRC's Office of the General Counsel, NAC/USEC is free to submit a proposal in response to any new solicitation associated with the NMMSS system. We would expect that such a proposal would be evaluated fairly, and consistent with applicable law and regulatory authority governing such matters

We thank you for communicating your concerns to us.

Sincerely,
/RA/ by R. W. Borchardt for
Roy P. Zimmerman, Director
Office of Nuclear Security and Incident Response

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* See previous concurrence

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