

OFFICIAL USE ONLY - SENSITIVE INTERNAL INFORMATION

October 25, 2007

The Honorable Edward J. Markey
United States House of Representatives
Washington, D.C. 20515

Dear Congressman Markey:

On behalf of the U.S. Nuclear Regulatory Commission (NRC), I am responding to your letter of September 24, 2007, concerning a recently awarded NRC contract to Information Systems Laboratories, Inc. (ISL) to assist NRC in the review of upcoming applications for new nuclear reactor construction. I want to assure you that the NRC has not delegated its regulatory responsibilities to private contractors nor does the particular contract you cited raise potential organizational conflict-of-interest issues at this time.

I have enclosed for your information documents relating to this technical assistance for new reactor review activities. Please note that some of the enclosures to this letter (Enclosures 1, 2, and 3) contain Official Use Only - Sensitive Internal Information and are not for public disclosure. This request for confidentiality is associated with the need to protect the integrity of the government contracting process and the agency decision-making process. Additionally, the NRC anticipates awarding additional contracts pertaining to the licensing of new reactors and, if released, some of the information could provide a competitive advantage to a potential awardee.

The NRC is utilizing commercial contracts, interagency agreements, and National Laboratory agreements to assist the NRC staff in completing timely reviews for the large number of applications expected to be submitted to the agency beginning in fiscal year 2008 and for succeeding fiscal years. The NRC has determined that these procurements represent the most efficient method of acquiring the substantial technical assistance needed, given the anticipated schedule of submissions and associated timelines for review. These procurements, taken together, constitute one-third of the total level of effort needed to complete new reactor application reviews. All of the procurement packages are task order type agreements under which the contractors will perform only specific tasks identified by the NRC staff.

Enclosures 1-3 transmitted herewith contain
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of Enclosures 1-3, this document is
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ISL is one of the commercial contractors that will be providing technical assistance to the NRC for license application reviews. ISL staff will neither be the sole reviewer of license applications nor be authorized to make final determinations on the acceptability of a license application. On April 20, 2007, NRC Solicitation 03-07-036 was posted seeking, "technical assistance in support of design certification, early site permit, combined license, environmental, and pre-application activities related to new reactor license applications." The solicitation stated clearly that the contractors shall provide support in a wide range of technical and scientific disciplines in accomplishing work-related activities aimed at ensuring the overall safety and adequacy of nuclear power plant design, construction, and operation.

The NRC's decision to award a contract to ISL is consistent with the meaning of "inherently governmental functions" in the Federal Activities Inventory Reform (FAIR) Act (P. L. 105-270); Office of Management and Budget (OMB) Circular A-76 (revised May 29, 2003); and the Federal Acquisition Regulation (FAR) Subpart 7.5. The Fair Act Section 5 (c) defines functions not normally included within the term "inherently governmental functions," including "gathering information for or providing advice, opinions, recommendations or ideas to Government officials." OMB Circular A-76, Attachment B, states that an activity may be provided by contract support (e.g., private sector source) where the contractor does not have the authority to decide on the course of action but is tasked to develop options or implement a course of action, with agency oversight. The FAR Subpart 7.5 list of activities considered not inherently governmental includes services that involve or relate to analyses, feasibility studies, and strategy options to be used by agency personnel in developing policy.

Under the contract with ISL, task orders may be issued for technical support in the areas of pre-application, design certifications, early site permit /environmental impact statement, combined license, and regulatory infrastructure for the Westinghouse AP1000 design. The above task order areas all fall within the FAR Subpart 7.5 listing of activities that focus on expressly allowable analyses and technical support services. Therefore, the NRC does not believe that activities described in the ISL contract statement of work constitute inherently governmental functions.

With respect to your concerns about conflict-of-interest, the NRC is required by statute to avoid organizational conflicts of interest (OCOI) with respect to its contracts, agreements, and arrangements. The NRC complies with its OCOI regulations by requiring prospective contractors/subcontractors (other than a supply subcontractor) and consultants to disclose to the NRC projects being performed in the same or similar technical areas for NRC licensees, vendors, industry groups, or research institutes, and to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) that give rise to potential or actual conflicts of interest both in the event of contract award and during the resulting contract performance. Each contractor, subcontractor, and consultant disclosure submitted to NRC is reviewed and evaluated by the NRC on a case-by-case basis. In this regard, all offers submitted under NRC Solicitation 03-07-036 were reviewed and evaluated for potential or actual OCOI. ISL is under a continuing obligation to disclose, during contract performance, all prospective work for others as defined in 48 C.F.R. 2009.570-2 (2007), that may give rise to an OCOI after award.

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The Commission is closely monitoring all work related to new reactor license applications, including the use of technical support contracts. I have specifically directed the NRC staff to provide progress reports on this work to the Commission. In addition, the staff is also required to inform the Chairman of any significant changes to the ISL or other new reactor contracts during the period of performance for this work.

I note that the potential scope of your document request is quite broad and could require substantial, additional effort to provide all possible information of the types requested. I hope, however, that this reply and the enclosed material are sufficient to address your concerns.

If you have any further questions regarding this matter, please contact me.

Sincerely,

/RA/

Dale E. Klein

Enclosures:

1. SECY-07-0009, Procurement Strategy
for Contracts and DOE Laboratory
Technical Assistance Activities
Supporting Combined License Applications,
dated January 11, 2007
2. Memorandum from L.A. Reyes to Chairman Klein,
Subject: Chairman Approval of an Acquisition for
Technical Assistance In Support of Design Certi-
fication, Early Site Permit, Combined License,
Environmental and Pre-Application Activities
Related to New Reactor License Applications,
dated March 21, 2007
3. Memorandum from Chairman Klein to L.A. Reyes,
Subject: Chairman Approval of an Acquisition for
Technical Assistance In Support of Design Certi-
fication, Early Site Permit, Combined License,
Environmental and Pre-Application Activities
Related to New Reactor License Applications,
dated March 28, 2007
4. Vendors Federal Business Opportunities
Technical Assistance in Support of Design
Certification, Early Site Permit, Combined
Licensee, Environmental, and Pre-Application
Activities Related to New Reactor License
Applications (Solicitation)

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5. Standard Form 26, Award/Contract for Information Systems-Laboratories, Inc., dated September 7, 2007
6. Standard Form 26, Award/Contract for N J Numark Inc., Numark Associates, dated September 7, 2007
7. Standard Form 26, Award/Contract for Energy Research Inc., dated September 7, 2007
8. Standard Form 26, Award/Contract for Energy Research Inc., dated September 13, 2007
9. Official Transcript of New Reactor License Applications Pre-Proposal Conference, Tuesday, May 1, 2007
10. Slides, Pre-Proposal Conference, May 1, 2007
Subject: Technical Assistance in Support of Design Certification, Early Site Permit, Combined License, Environmental, and Pre-Application Activities Related to New Reactor License Applications

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List of documents that should not be released to the public:

- Enclosure 1: SECY-07-0009, Procurement Strategy for Contracts and DOE Laboratory Technical Assistance Activities Supporting Combined License Applications, dated January 11, 2007.
- Enclosure 2: Memorandum from L.A. Reyes to Chairman Klein, Subject: Chairman Approval of an Acquisition for Technical Assistance In Support of Design Certification, Early Site Permit, Combined License, Environmental and Pre-Application Activities Related to New Reactor License Applications, dated March 21, 2007.
- Enclosure 3: Memorandum from Chairman Klein to L.A. Reyes, Subject: Chairman Approval of an Acquisition for Technical Assistance In Support of Design Certification, Early Site Permit, Combined License, Environmental and Pre-Application Activities Related to New Reactor License Applications, dated March 28, 2007.

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