

SOLICITATION/CONTRACT/ORDER FOR COMMERCIAL ITEMS OFFEROR TO COMPLETE BLOCKS 12, 17, 23, 24, & 30				1. REQUISITION NO. 11-09-430	PAGE 1 OF 4
2. CONTRACT NO. NRC-11-09-430	3. AWARD/EFFECTIVE DATE APR 19 2010	4. ORDER NO. NRC-T003	5. SOLICITATION NUMBER	6. SOLICITATION ISSUE DATE	
7. FOR SOLICITATION INFORMATION CALL:		a. NAME	b. TELEPHONE NO. (No Collect Calls)		8. OFFER DUE DATE/LOCAL TIME
9. ISSUED BY U.S. Nuclear Regulatory Commission Div. of Contracts, CMB1 Attn: Manon Butt, Cont Spc, 301-492-3629 Mail Stop: TWB-01-B10M Washington, DC 20555		CODE 3100	10. THIS ACQUISITION IS <input type="checkbox"/> UNRESTRICTED OR <input type="checkbox"/> SET ASIDE: % FOR: <input type="checkbox"/> SMALL BUSINESS <input type="checkbox"/> EMERGING SMALL BUSINESS <input type="checkbox"/> HUBZONE SMALL BUSINESS <input type="checkbox"/> SERVICE DISABLED VETERAN-OWNED SMALL BUSINESS <input type="checkbox"/> 8(A) NAICS: 541330 SIZE STANDARD:		
11. DELIVERY FOR FOB DESTINATION UNLESS BLOCK IS MARKED <input type="checkbox"/> SEE SCHEDULE	12. DISCOUNT TERMS Net 30	13a. THIS CONTRACT IS A RATED ORDER UNDER DPAS (15 CFR 700) <input type="checkbox"/>		13b. RATING N/A	
14. METHOD OF SOLICITATION <input type="checkbox"/> RFQ <input type="checkbox"/> IFB <input type="checkbox"/> RFP		15. DELIVER TO U.S. Nuclear Regulatory Commission Attn: Cayetano Santos, ACRS Mail Stop T-2-E26 11545 Rockville Pike Rockville MD 20852			
16. ADMINISTERED BY U.S. Nuclear Regulatory Commission Div. of Contracts Mail Stop: TWB-01-B10M Washington, DC 20555		CODE 3100			
17a. CONTRACTOR/OFFEROR CODE 114937878 FACILITY CODE		18a. PAYMENT WILL BE MADE BY Department of Interior / NBC email: NRCPayments@nbc.gov Attn: Fiscal Services Branch - D2770 7301 W. Mansfield Avenue Denver CO 80235-2230			
REEVES & ASSOCIATES CONSULTING AND TRAINING INC 2296 HENDERSON MILL RD NE STE 205 ATLANTA GA 303452739 TELEPHONE NO. 770-414-7975, fax 770-414-9757		18b. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
17b. CHECK IF REMITTANCE IS DIFFERENT AND PUT SUCH ADDRESS IN OFFER <input type="checkbox"/>		19. SUBMIT INVOICES TO ADDRESS SHOWN IN BLOCK 18a UNLESS BLOCK BELOW IS CHECKED <input type="checkbox"/> SEE ADDENDUM			
19. ITEM NO.	20. SCHEDULE OF SUPPLIES/SERVICES	21. QUANTITY	22. UNIT	23. UNIT PRICE	24. AMOUNT
	Issuance of Task Order No. 3 under Contract NRC-11-09-430. Title: Technical Expertise for Review of ACRS Probabilistic Risk Assessment Activities. Period of Performance: April 19, 2010 through Dec. 31, 2010. See attached pages for description of the task order.  NRC Project Officer: Cayetano Santos, 301-415-7270, cayetano.santos@nrc.gov, or Larniece McKoy Moore, 301-415-1942, larniece.mckoymoore@nrc.gov Note to Accounting: Administratively transfer \$42,906.90, previously obligated under Contract NRC-11-09-430, to NRC-11-09-430-T003, Task Order No. 3 under Contract NRC-11-09-430. Appropriation Data is provided below. (Use Reverse and/or Attach Additional Sheets as Necessary)				
25. ACCOUNTING AND APPROPRIATION DATA Transfer \$42,906.90 from basic contract to Task Order 3: 97R-15-111-386 N7326 251A 31X200 Transfer \$38,644.90 97R-15-171-387 N7331 251A 31X200 Transfer \$4,262.00				26. TOTAL AWARD AMOUNT (For Govt. Use Only) 95,825.00	
27a. SOLICITATION INCORPORATES BY REFERENCE FAR 52.212-1, 52.212-4, FAR 52.212-3 AND 52.212-8 ARE ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
27b. CONTRACT/PURCHASE ORDER INCORPORATES BY REFERENCE FAR 52.212-4, FAR 52.212-6 IS ATTACHED. ADDENDA		<input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT ATTACHED.			
28. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN 1 COPIES TO ISSUING OFFICE. CONTRACTOR AGREES TO FURNISH AND DELIVER ALL ITEMS SET FORTH OR OTHERWISE IDENTIFIED ABOVE AND ON ANY ADDITIONAL SHEETS SUBJECT TO THE TERMS AND CONDITIONS SPECIFIED		29. AWARD OF CONTRACT: REF. _____ OFFER DATED _____ YOUR OFFER ON SOLICITATION (BLOCK 5), INCLUDING ANY ADDITIONS OR CHANGES WHICH ARE SET FORTH HEREIN IS ACCEPTED AS TO ITEMS:			
30a. SIGNATURE OF OFFEROR/CONTRACTOR <i>Rebecca K Reeves</i>		31a. UNITED STATES OF AMERICA (SIGNATURE OF CONTRACTING OFFICER) <i>Alba Sanchez</i>			
30b. NAME AND TITLE OF SIGNER (TYPE OR PRINT) Rebecca K Reeves		30c. DATE SIGNED 4/20/10		31b. NAME OF CONTRACTING OFFICER (TYPE OR PRINT) Alba Sanchez Contracting Officer	
				31c. DATE SIGNED 4-19-2010	

TEMPLATE - ADM001

SUNSI REVIEW COMPLETE

APR 22 2010

ADM002

In accordance with Contract NRC-11-09-430, for engineering and scientific services to support the Advisory Committee on Reactor Safeguards (ACRS), this definitizes Task Order No. 3, titled "Technical Expertise for Review of ACRS Probabilistic Risk Assessment Activities." ACRS requires up to an estimated 280 hours of technical expertise in the areas of resolution of generic safety issues, reliability, risk analysis, and probabilistic safety assessment, and support of ACRS Subcommittee meetings, from April 2010 through December 2010. This effort shall be performed in accordance with the enclosed Statement of Work and the terms and conditions of Contract NRC-11-09-430.

Period of Performance and Cost

Task Order No. 3 shall be in effect from April 19, 2010 through December 31, 2010.

This is a time and materials type task order with a ceiling not to exceed \$95,825.00.

Price Schedule – Task Order No. 3 under NRC-11-09-430:

Item	Estimated Hours	Unit Price	Estimated Cost
Technical Expert/Engineer – Review ACRS package, prepare a report(s), and provide on-site support for the ACRS Subcommittee Meetings, as described in the Statement of Work	[REDACTED]	[REDACTED]	[REDACTED]
Program Manager	[REDACTED]	[REDACTED]	[REDACTED]
Logistician – Arrange logistics to manage project tasks	[REDACTED]	[REDACTED]	[REDACTED]
Subtotal			[REDACTED]
Travel – Long Distance and/or Local (Cost Reimbursement)			
Travel – Airline tickets, per diem lodging and meals for seven multi-day long trips, local mileage at \$0.50 per mile and parking. Travel costs will depend on the location of the expert selected to perform under this task order and the distance required for the expert to travel to NRC headquarters.		Actual Costs Not To Exceed	[REDACTED]
Travel is cost reimbursable. The government will pay up to the rates specified in the Government's Federal Travel Regulations (FTR) for the travel destination. Airline and hotel reservations will be made by the contractor and will be reimbursed for actual costs only, with back-up documentation/ receipts attached to the invoice. No payment will be made without back-up documentation/ receipts.			
Total Estimated Cost			\$95,825.00

Consideration and Obligation – Accounting and Appropriation Data

FY 2009 funding in the amount of \$42,906.90, previously obligated under Contract NRC-11-09-430, will be administratively transferred to partially fund this task order, NRC-11-09-430-T003. This obligated amount may be unilaterally increased from time to time by the Contracting Officer by written modification to this task order. The obligated amount shall, at no time, exceed the task order ceiling specified above. When and if the amount(s) paid and payable to the contractor hereunder shall equal the obligated amount, the contractor shall not be obligated to continue performance of the work unless and until the Contracting Officer shall increase the amount obligated with respect to this task order. Any work undertaken by the contractor in excess of the obligated amount specified above is done so at the contractor's sole risk.

The Appropriation Data from Contract NRC-11-09-430 is:

The amount of \$38,644.90 under job code N7326 will be transferred from the following previous obligation: B&R: 97R-15-111-386, JCN: N7326, BOC: 251-A, APP NO: 31X200.

The amount of \$4,262.00 under job code N7331 will be transferred from the following previous obligation: B&R: 97R-15-171-387, JCN: N7331, BOC: 251-A, APP NO: 31X200.

Restrictions

This task order restricts former NRC employees from performing on this task order without prior written approval from the NRC Contracting Officer. NRC Management Directive Handbook 11.1, Part 5.5, Contracts Between NRC and Former NRC Employees, and NRC Acquisition Regulation, 48 CFR Subpart 2009.100, Responsible Prospective Contractors - NRC Policy, (see Attachment No. 1) prohibit former NRC employees from performing work under non-competitive task orders within two years of their departure from NRC. By accepting this task order, Reeves & Associates certifies that there are no current/former NRC employees who have been or will be involved in managing, administering, or performing under this task order, who are excluded from doing so under the prohibitions described above.

In addition, regarding Organizational Conflicts of Interest, Reeves & Associates certifies that they represent to the best of their knowledge and belief that the award of this task order does not and will not involve situations or relationships of the type set forth in NRC Acquisition Regulation, 48 CFR Subpart 2009.570-3(b) (see Attachment No. 2).

The issuance of Task Order No. 3 does not change any terms and conditions of Contract NRC-11-09-430.

NRC Contacts during the course of this task order are:

Technical Matters:

Cayetano Santos, Project Officer, ACRS, phone 301-415-7270, Mail Stop T-2-E26, email Cayetano.Santos@nrc.gov.

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Page 4 of 4

Larniece McKoy Moore, ACRS, phone 301-415-1942, Mail Stop T-2-E26, email
Larniece.McKoyMoore@nrc.gov.

Contractual Matters:

Manon L. Butt, Contract Specialist, ADM/DC/CMB1, phone 301-492-3629, Mail Stop TWB-01-
B10M, email manon.butt@nrc.gov.

U.S. Nuclear Regulatory Commission

**STATEMENT OF WORK
for
Expert Needed for Review of ACRS PRA Activities
April 2010**

WORK REQUIREMENTS

The Advisory Committee on Reactor Safeguards (ACRS) is in need of short-term technical expertise in the areas of resolution of generic safety issues, reliability, risk analysis, and probabilistic safety assessment. Probabilistic Risk Assessment (PRA) is applicable to both currently operating reactors and new plant applications. The consultant will be responsible for the following:

- Task 1 Perform a review of Probabilistic Risk Assessment (PRA) issues as related to Economic Simplified Boiling Water Reactor (ESBWR), Advanced Boiling Water Reactor (ABWR), U.S. Advanced Pressurized Water Reactor (US-APWR), Advanced Pressurized Water Reactor (AP-1000) and Evolutionary Power Reactor (EPR) reviews.
- Task 2 Perform a review of PRA issues as related to eight license renewal applications in calendar year 2010.
- Task 3 Perform a review of PRA issues as related to power uprates in calendar year 2010.
- Task 4 Perform a review of new risk metrics for new light-water reactor designs.
- Task 5 Perform a review of Regulatory Guides in the area of PRA.
- Task 6 Provide the review results in a consultant report to ACRS.
- Task 7 Attend and support ACRS Subcommittee meetings and other related technical information meetings at the NRC Headquarters.

The contractor shall provide consultant reports, based on the technical review of ACRS provided documents. The contractor is also requested to provide support to the technical review of the subjects during relevant subcommittee meetings.

Period of Performance:

The expert will provide up to 280 hours @ \$255.00 an hour, from April 2010 through December 2010, as follows:

- 120 hours – Review ACRS provided review package and prepare a consultant report.
- 160 hours - Support the ACRS Subcommittee meetings.

ACRS Furnished Materials

1. NRC Staff's safety evaluation reports, vendor applications, and other technical documents.
2. Government furnished space, work desk, office supplies, and the information technical equipment (computer equipment, printers, fax machine, copier, and telephone).

Travel

Upon request by ACRS, the contractor will need to attend ACRS meetings and other related technical information meetings at the NRC Headquarters. These meetings will require travel to NRC Headquarters (local/external) for approximately 43 days or 7-multi-day long trips during the period of performance. Local travel such as mileage, per diem, and parking will be reimbursed.

- The method of surveillance (how)
- The place or places where the Government reserves the right to perform quality assurance surveillance (where)

These plans should accomplish the following:

- Recognize the responsibility of the contractor (see FAR 46.105) to carry out its quality assurance obligations
- Contain measurable inspection and acceptance criteria corresponding to the performance standards in the SOW
- Focus on the level of performance required by the SOW, rather than the methodology used by the contractor to achieve that level of performance

Government contract quality assurance surveillance shall be performed when necessary to determine that the supplies or services conform to contract requirements.

FAR 46.401 states that the program office receiving the service is responsible for prescribing contract quality requirements for a quality assurance surveillance plan.

(b) Incentives

To the maximum extent, performance incentives, either positive or negative or both, shall be incorporated into the contract to encourage contractors to increase efficiency and maximize performance (see FAR 16.4). These incentives should correspond to specific performance standards in the quality assurance surveillance plan and should be capable of being measured objectively.

(c) For IT services, FAR 39.104 prohibits the use of minimum experience or education requirements for contractor personnel in solicitations for the acquisition of IT services unless the contracting officer first determines that the needs of the agency cannot be met without such a requirement or the needs of the agency require the use of a type of contract other than a performance-based contract. The contractor will tell us how the work will be done and by whom.

5.5 Contracts Between NRC and Former NRC Employees

NRC policy is to place only competitively awarded contracts with an individual who was employed by the NRC within 2 years from the date of the RFP. The policy also applies to the noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, such as partners or majority stockholders; the noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, such as principal officers, or where the organization is predominantly staffed by former NRC employees; and the noncompetitive award of contracts,

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task orders, or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.

The following procurement actions are considered noncompetitive for the purposes of this policy:

- o contracts awarded noncompetitively under the SBA's 8(a) Program
- o individual task orders if the former employee was not identified as "key personnel" in a proposal that was evaluated under competitive procedures
- o unsolicited proposals
- subcontracts that require review for the purpose of granting consent under NRC prime contracts

The term "NRC employee" includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

- * The contract arises directly out of the individual's activity as a special employee.
- o The individual is in a position to influence the award of the contract.
- o The contracting officer determines that another conflict of interest exists.

A justification explaining why it is in the best interest of the Government to contract with an individual or firm described above in this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the EDO. This justification is in addition to any justification and approvals that may be required by the FAR for use of other than full and open competition.

Nothing in this policy statement relieves former employees from obligations prescribed by law. For example, "Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches," 18 U.S.C. 207, restricts officers and employees in the following circumstances:

- o A former employee is forever foreclosed from representing a party in a particular matter in which the former employee participated personally and substantially as a Government employee.
- A former employee is foreclosed for 2 years from representing a party when the particular matter in question had been pending under his or her official responsibility.
- o A former senior-level employee is foreclosed for 1 year from representing any party before the department or agency in which he or she served regardless of his or her prior involvement in the matter.

Further, it is not NRC policy to encourage offerors and contractors to propose current/former NRC employees to perform work under NRC contracts.

5.6 Contracts Expected To Exceed Five Years

FAR 17.204(e) states that the total of the basic and option years shall not exceed 5 years in the case of both services and supplies. Statutes applicable to various classes of contracts may place additional restrictions on the length of contracts. Certain research and development contracts and information technology (IT) contracts may exceed 5 years. If it is known in advance that the term of a contract is required in excess of the provisions in FAR 17.204(e), a written justification must be approved by the Competition Advocate (Deputy Director of ADM). (For information regarding existing 5-year contracts requiring noncompetitive contract extensions, see Section 11.7 of this handbook.) Interagency agreements are not subject to the 5-year performance limitation.

5.7 Security Requirements

When preparing to submit the request for procurement action, the PO needs to consider whether performance of the contract or subcontract may require contractor employees to undergo personnel security screening for unescorted access to the NRC site or buildings; access to sensitive IT systems or information; unescorted access to nuclear power plants; or access to unclassified safeguards information. In addition, the PO needs to consider whether the performance of the contract may require the contractor's facility to be cleared to use, process, store, reproduce, transmit, or otherwise handle NRC classified information. The PO may request guidance and assistance from the Division of Facilities and Security (DFS, ADM), regarding the review of the security considerations for contractor personnel or facility clearances and from the Office of the Chief Information Officer for determining the sensitivity of IT systems and information.

If any type of clearance is needed for contract performance, the requesting office will forward the original of NRC Form 187, "Security/Classification Requirements" (see Management Directive [MD] 12.1, "NRC Facility Security Program"), to DC as part of its **RFPA package**. This form provides the necessary classification or security specifications and furnishes the basis for providing security and classification requirements to contractors who will have access to Government or power reactor facilities, classified information, sensitive IT information, power reactor access or access to safeguards information. DC forwards the NRC Form 187 and a detailed SOW to the Director of DFS for approval.

The signed NRC Form 187 is included in the solicitation, as appropriate. However, solicitations will not be issued until DC has received an approved NRC Form 187, unless the Director of DC approves an exception to this policy. DFS approval of NRC Form 187 does not constitute any security approval to begin work; it does, however, indicate the following:

- DFS anticipates no fundamental security or classification problems in the recommended procurement action, on the basis of the information provided on NRC Form 187.

Electronic Code of Federal Regulations



e-CFR Data is current as of April 9, 2010

Title 48: Federal Acquisition Regulations System

PART 2009—CONTRACTOR QUALIFICATIONS

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Subpart 2009.1—Responsible Prospective Contractors

2009.100 NRC policy.

(a) It is NRC policy that only competitively awarded contracts shall be placed with an individual who was employed by the NRC within two years from the date of the Request for Procurement Action. This policy also applies to:

(1) The noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, such as partners or majority stockholders;

(2) The noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, such as principal officers, or where the organization is predominantly staffed by former NRC employees; and

(3) The noncompetitive award of contracts, task orders or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.

(b) The following procurement actions are considered noncompetitive for the purposes of this policy:

(1) Contracts awarded noncompetitively under the Small Business Administration's 8(a) Program;

(2) Individual task orders if the former employee was not identified as "key personnel" in a proposal which was evaluated under competitive procedures;

(3) Unsolicited proposals;

(4) Subcontracts that require review for the purpose of granting consent under NRC prime contracts.

(c) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(d) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraphs (a) and (b) of this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the Executive Director for Operations. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(e) Nothing in this policy statement relieves former employees from obligations prescribed by law, such as 18 U.S.C. 207, Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.

2009.105-70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) Section 2052.209--70 Current/Former Agency Employee Involvement.

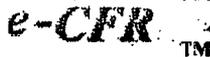
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For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.

[Section 508 / Accessibility](#)

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PART 2009—CONTRACTOR QUALIFICATIONS

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Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570-1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations that might arise. However, examples are provided in the regulations in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by the regulations in this chapter. This rule does not apply to the acquisition of consulting services through the personnel appointment process. NRC agreements with other Government agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570-2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in 2009.570-1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Attachment No. 2

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the 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 a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

- (1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or
- (2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding \$10,000.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

- (i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?
- (ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

- (i) Where the offeror or contractor provides advice and recommendations to the NRC in the same

technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in 2009.570-5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with 2009.570-9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and 2009.570-3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209-72(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with 2009.570-9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* Section 2052.290-72(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of \$5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a \$100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer would allow the contractor to proceed with the solicitation because it is not in the same technical area as the NRC work; and the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of \$100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is \$75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. because these factors

create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.* (1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

2009.570-4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflicts of interest representation provision at 2052.209-71 must be included in solicitations and contracts resulting from unsolicited proposals. The contracting officer must also include this provision for task orders and contract modifications for new work for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

2009.570-5 Contract clauses.

(a) *General contract clause.* All contracts and simplified acquisitions of the types set forth in 2009.570-4 (b) must include the clause entitled, "Contractor Organizational Conflicts of interest," set forth in 2052.209-72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with 2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of 2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

- (a) Disqualify the offeror from award;
- (b) Avoid or eliminate such conflicts by appropriate measures; or
- (c) Award the contract under the waiver provision of 2009.570-9.

2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the Government to terminate the contract, as provided in the clauses required by 2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with 2009.570-9, neutralize the effects of the identified conflict.

2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of \$10,000 in accordance with 2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with 2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract.

2009.570-9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

- (1) The work to be performed under contract is vital to the NRC program;
- (2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.
- (3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) The justification and approval documents for any waivers must be placed in the NRC Public Document Room.

2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

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