



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

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OFFICE OF THE
CHAIRMAN

July 5, 1979

The Honorable Jack Brooks, Chairman
Committee on Government Operations
United States House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

In accordance with Section 236 of the Legislative Reorganization Act of 1970, the U. S. Nuclear Regulatory Commission (NRC) is hereby submitting a statement on the Commission actions being taken with regard to the recommendations made by the U. S. General Accounting Office (GAO) in a report entitled, "Comments on the Nuclear Regulatory Commission's Use of the Department of Energy's Laboratories and of Outside Contractors and Consultants."

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Hendrie".

Joseph M. Hendrie
Chairman

Enclosure:
Response to GAO Report

cc: The Honorable Frank Horton

7907230534

COMMENTS ON THE NUCLEAR REGULATORY COMMISSION'S
USE OF THE DEPARTMENT OF ENERGY'S LABORATORIES
AND OF OUTSIDE CONTRACTORS AND CONSULTANTS

GAO Recommendation

"Require the various NRC program offices to justify their placement of work with DOE laboratories instead of private contractors. This justification should contain the reasons and circumstances surrounding the placement. Where other entities capable of performing independent work have been identified, it should also contain a comparison showing the related cost impact when practicable. Each justification should be reviewed by NRC's Division of Contracts to ensure conformity with sound acquisition principles."

NRC Comment

The NRC obtains research and technical assistance services through two principal means: (1) private contractual arrangements (under the authority of the Atomic Energy Act of 1954 and the Federal Procurement Regulations); and (2) interagency tasking of other Federal agencies (under the authority of the Energy Reorganization Act of 1974). Section 205 of the Energy Reorganization Act mandates that the Department of Energy and other Federal agencies cooperate with the Commission by performing research services for the Commission in their own facilities or by obtaining such services for it through contract. ^{1/} Recognizing that safety research was to be a major function of the NRC, the statute requires such cooperation by other Federal

^{1/} Section 205 of the Energy Reorganization Act of 1974 provides:

- (c) The Administrator of the Administration and the head of every other Federal agency shall--
 - (1) cooperate with respect to the establishment of priorities for the furnishing of such research services as requested by the Commission for the conduct of its functions;

agencies so that the Commission would not find it necessary to build its own research laboratories.^{2/}

1/ Continued from Page 1

- (2) furnish to the Commission, on a reimbursable basis, through their own facilities or by contract or other arrangement, such research services as the Commission deems necessary and requests for the performance of its functions; and
- (3) consult and cooperate with the Commission on research and development matters of mutual interest and provide such information and physical access to its facilities as will assist the Commission in acquiring the expertise necessary to perform its licensing and related regulatory functions.

* * *

- (e) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission and provide such information and research services, on a reimbursable basis, as it may have or be reasonable able to acquire.

2/ "In providing for an Office of Nuclear Regulatory Research, the conferees wish to make it clear that this Office will be responsible for such research as is necessary for the effective performance of the Commission's licensing and related regulatory functions. The research aspect of such functions may be characterized as confirmatory assessment, relating to the safe operation and the protection of commercial reactors, other facilities, and materials subject to regulations, licensing, and inspection by the Commission. This means that the Commission would have an independent capability for developing and analyzing technical information related to reactor safety, safeguards and environmental protection in support of the licensing and regulatory process."

"In keeping with the concept of confirmatory assessment, it is not intended that the Commission build its own laboratories and facilities for research and development or try to duplicate the research and development responsibilities of ERDA. The Commission will draw upon ERDA and other Federal agencies for research findings and such assistance as may be needed in developing capabilities for confirmatory assessment, and as may be needed otherwise in performing its functions." S. Rep. No. 93-1252, 93d Cong. 2d Sess. (1974) (Conference Report)

Program decisions to fulfill research requirements through private contract or the cooperation of other Federal agencies have been based upon several general criteria. As the GAO report points out, NRC has often utilized the DOE National Laboratories because they provide (1) access to outstanding and often unique scientific expertise or research capabilities; (2) independent and technical advice free from conflicts of interest; or (3) a less complex method of obtaining assistance when mission time constraints are severe.

The report, while not expressing disagreement with the validity of these criteria, finds that the application of the criteria to particular situations was not always correct. The main thrust of the report, however, is that the NRC has not documented its rationale on a case-by-case basis for choosing to obtain assistance through other Federal agencies rather than through private sources. We agree with its observation that documents placing work with DOE should contain full justification for such placement. Earlier GAO and internal NRC investigations questioned whether a proper business-like relationship had been established between NRC and DOE. NRC efforts for the past two years have been devoted to formalizing this relationship. The results of this effort have been: (1) the execution of a Memorandum of Understanding between the two agencies; (2) the establishment of an active DOE-NRC Coordination Committee; and (3) approval of NRC Bulletin 1102 which sets forth specific, standardized procedures for placing work with the DOE National Laboratories.

We recognize that NRC must now concentrate on evolving internal procedures for assuring that choices between private and government sources are made on the basis of sound technical, fiscal, and management judgments. Several major actions are currently underway. First, the charter of the existing NRC Safeguards Technical Assistance Research Coordination Group ("STAR Group"), which reviews all program requests for contracting assistance in the safeguards area, has been revised to require it to examine whether the proper contracting source has been identified and the choice properly justified and documented. Another project review group is being established to review all waste management projects in a similar manner as the STAR Group. In addition, we are considering a revision of the charter of the Contract Review Board which now reviews contracts for duplication and user need.

We agree that sound acquisition principles should be followed in the decisions on proper placement of NRC's work and we agree with GAO's recommendation that justification for placing work in laboratories should be strengthened. The recommendation that such justifications should be reviewed by the Division of Contracts will be considered along with a number of other alternatives designed to ensure conformity with sound acquisition principles. To ensure the GAO recommendations are implemented, a list of review criteria has been prepared which will be used to gauge the

propriety of source selections. These criteria are described below:

1. Internal Governmental Function:

Where the project by its inherent nature must be performed by the Federal government, commercial contracting is precluded. Certain projects in the licensing and inspection functional areas fall within this category.

2. Objectivity:

a. Conflict-of-Interest: This factor applies when objectivity demands that we use another government agency to avoid real or apparent conflict-of-interest with commercial sources, or vice versa.

b. Intentional Duplication: Some projects are intentionally duplicated to draw upon independent, impartial expertise to check on the work.

3. Available Facility:

When a unique facility is needed and already exists, appropriate action should be undertaken to make full use of the existing resource.

4. Unique Technical Background:

a. This factor may be cited where the desired technical background or knowledge exists in only one place. It means that to the best of our knowledge, no one else possesses the requisite skills to get the job done in a reasonable manner or time frame.

b. Where a combination of professional skills must be placed on a task, the existence of such a combination may warrant the selection of a particular source.

c. A legitimate rationale for source selection may be provided where earlier, closely associated efforts in a subject area have been performed which yield a necessary, unique background, or prior, closely related work exists from which the present task is a logical extension.

5. Joint Effort:

A rationale for interagency tasking is created when two or more government agencies jointly sponsor and fund a project which will be performed in-house by one of the agencies.

6. Timing:

This factor may be critical if the project results are needed within a time frame which would not permit the solicitation and award of a contract. This supposes that another agency can meet the need date through interagency tasking. When practical, planning for research and technical assistance should be accomplished sufficiently in advance to overcome the time lags associated with the competitive bidding process.

7. Another Agency/Subcontract Involvement:

Where there is need for the involvement of both another agency and a commercial firm, interagency tasking coupled with subcontracting by the other agency may be used. However, "pass through contracting" to avoid competition must be meticulously avoided.

The Division of Contracts will assist in the review of these determinations.

GAO Recommendation

Instruct the Director, Division of Contracts, and heads of program offices to seek greater competition in contract awards for solicited proposals and, when this is not feasible, to fully document the noncompetitive justification. Particular attention needs to be given to awards resulting from unsolicited proposals to ensure that the justifications for such awards are in accordance with applicable Federal criteria.

NRC Comment

The NRC believes that the primary concern of the GAO Report is with award of sole-source contracts based on unsolicited proposals. These awards formed the basis for its conclusion that certain contracts "were awarded on a noncompetitive basis without adequate justification." ^{1/}

In accordance with the policy of the Federal government, NRC has been using unsolicited proposals since formation of the agency. ^{2/}

^{1/} GAO reviewed 33 contracts above \$50,000 in value which NRC awarded on a noncompetitive basis during fiscal year 1978. Of these 33 contracts, 28 resulted from unsolicited proposals and five resulted from solicited proposals. GAO criticized the noncompetitive justification for 13 of the unsolicited proposals and found only one solicited proposal insufficiently justified.

^{2/} In 1972 the Commission on Government Procurement, noting a disturbing reduction in the use of unsolicited proposals in Research and Development procurement, recommended the elimination of "restraints which discourage the generation and acceptance of innovative ideas through unsolicited proposals." 2 Report of the Commission on Government Procurement, 25, 26 (1972)

In 1977 the Federal Procurement Regulations were amended to furnish agencies guidance in the review and award of contracts based on unsolicited proposals.^{3/} These guidelines are general in nature and leave much discretion to agencies in determining whether to award contracts to the proposer without going through the competitive process. Indeed, the GAO notes in this report that the judgment required in justifying a noncompetitive procurement depends upon the agency's perspective and cannot be made in an absolute sense.

It is for this reason that the NRC accepts that aspect of GAO's recommendation which advises the agency to pay particular attention to this method of non-competitive contracting. As part of its review of contracting procedures, close scrutiny will be given to this area. The intra-agency project review groups discussed in the response to the preceding recommendations will also consider the adequacy of documentation and justification in award of all non-competitive contracts with particular concern for those proposed as the result of acceptance of unsolicited proposals. This review will provide a basis for recommendations to the Contracting Officer who will then exercise his normal procurement judgment with respect to the necessity to make a noncompetitive award.

In summary, the NRC agrees that greater use of competition should be sought and has taken steps to do so. A Pre-Procurement Plan program which allows

^{3/} FPR § 1-4.9. In the regulation, the Government states as its policy the encouragement of the submission of unsolicited proposals.

for earlier development of contract requirements and involvement of procurement personnel is being implemented. In addition, we have developed a new, expanded Bidder's Mailing List system so that a greatly increased number of firms are given the opportunity to respond to NRC's contract requirements. This system, along with our systematic use of the Commerce Business Daily for advertising proposed procurements, should assure the widest possible circulation of NRC projects, thereby generating greater competition. Finally, NRC will review its program management procedures to strengthen internal management of projects tasked or contracted to outside sources.

GAO Recommendation

Monitor Division of Contracts' implementation of proposed procedures regarding the approval of contractor cost vouchers and the Division's actions to alleviate the contract close-out backlog, to ensure that efforts are done in a timely manner.

NRC Comment

The NRC is finalizing new procedures for internal review of contractor invoices. The procedures will assure that the contracting staff play a central role in the administration of contracts while continuing to place appropriate reliance upon a technical staff to make judgments regarding the contractors' technical performance. Payment will be made only after both the technical staff and the Division of Contracts agree that the voucher charges are proper.

The Division of Contracts has submitted a plan to the Commission which provides for elimination of the close-out backlog during FY 80 and to remain current with close-out actions thereafter. The Executive Director of Operations will monitor the Division of Contracts' implementation of both of these administration activities.

GAO Recommendation

"Instruct the Division of Organization and Personnel to ensure that consultant appointments are fully justified and the corresponding work descriptions are sufficiently specific."

NRC Comment

This recommendation is accepted and is now being implemented by a revision of the governing NRC manual (NRC Chapter and Appendix 4139, "Employment of Consultants and Members"). The revisions to the manual were issued June 15, 1970 and include:

1. The document which requests and justifies the appointment of a consultant will be approved by the cognizant Office Director. This approval will not be subject to delegation and will focus responsibility for such appointments exclusively on Office Directors.
2. The revision includes explicit instructions requiring a full description of services to be performed and an explanation of the need for the services sufficient to enable a reviewing official to determine the importance of the services in terms of program priorities and the availability of current, full-time staff.
3. The revision provides for a quarterly review by the Executive Director for Operations of consultant utilization throughout the Agency. The GAO Report also finds that 28 of 71 justifications for selection of consultants

did not adequately demonstrate that these contracts should have been awarded noncompetitively. The NRC accepts this finding. We believe the improved procedures discussed in the previous question, for obtaining greater competition generally in NRC contracting activities, will result in more competition for work to be performed by consultants.

GAO Recommendation

"Direct the various NRC divisions and offices to tighten their controls over payments for consultants' services. This can be accomplished through adoption of a standard time and attendance system in use by other Federal agencies, or a system similar to it."

NRC Comment

The proposed revision of Chapter and Appendix 4139 provides more explicit guidance for both consultants and for operating officials regarding the submission of vouchers. This includes the requirement that vouchers shall be submitted no less frequently than once a month. However, the NRC believes that a time and attendance system similar to that used on a daily basis by regular NRC employees is unnecessary in view of the revision of our existing vouchering system. This new system requires consultants to record days and hours worked on a voucher, to sign each voucher and to submit the voucher for certification by the cognizant NRC official. In our view, the objective of providing better control over payments to consultants can best be obtained by requiring that these employees submit vouchers on a regular basis so that certifying officials may better relate time reported with tasks accomplished.