



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

COMMISSION  
CORRESPONDENCE

August 20, 1980

The Honorable Abraham Ribicoff, Chairman  
Committee on Governmental Affairs  
3308 Dirksen Senate Office Building  
United States Senate  
Washington, D.C. 20510

Dear Senator Ribicoff:

At your Committee's invitation, the Commission would like to comment on S. 2880, the proposed "Consultant Reform Act of 1980." In general we support the basic thrust of the proposed legislation which is to maximize competition, to consider organizational conflicts of interest, and to provide a documented record of government contracts. More specific comments on particular sections follow.

Section 203(a)(1)(F) requires compilation of a publicly available list of the names of the individual employees who authorize a government contract and administer the program under any given contract. The NRC is concerned that providing this list of individuals will allow potential contractors to easily contact the technical representatives who are involved in a particular program area. Technical representatives, because they are not trained in discerning whether particular information is authorized for public release, could be more likely to release unauthorized information than the contract specialists with whom contractors normally deal. Given this concern, we believe that names of the technical representatives should not be made publicly available absent some compelling need.

Section 203(b) provides that "all contracts shall be considered public information, notwithstanding any other provision of law." It appears that this public disclosure is intended to apply to all aspects of a contract, including personnel-related information such as direct labor rates, overhead costs, general administration rates and a listing of key persons performing the contract. The availability of such information could provide a convenient vehicle for competitors bidding on a contract in the same area to exploit the bidding process by using the financial information provided in a similar contract. The NRC believes that standards for public disclosure of such financial, personnel and proprietary-type information should be consistent with the terms of the FOIA.

The NRC strongly supports the spirit of the organizational Conflict of Interest provision in Section 205 of the bill; however, if adopted the legislation should specifically pre-empt any and all previously published rules in this area, including the NRC's at 41 CFR 20. In addition, the waiver provision of Section 205(d)(3) may be difficult to apply in many circumstances where the NRC may need a waiver of the provision on organizational conflicts of interest. For example, because of the highly specialized and technical nature of some of NRC's research

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contracts, the only company with the equipment or personnel necessary for the contract often has an organizational conflict of interest. The performance of such sole source contracts is necessary for the Commission to carry out its regulatory functions; nonetheless, rarely will "the facts and circumstances surrounding the contract necessitate immediate action..." as required by the waiver provision in S. 2880. Similarly the second condition of Section 205(d)(3), mandating that an agency must show that a contract cannot be performed by anyone other than the offeror who has a conflict of interest, may not be applicable to NRC contracts. In some cases, several offerors may have the qualifications to perform a contract, but because of the specialized nature of the subject matter, each presents similar organizational conflicts of interest. In such a situation, the contract could only be performed by an offeror with a conflict of interest.

In so far as it applies to the NRC, these problems could be cured by using language similar to that used in our existing organizational conflict of interest regulations in 41 CFR 20-1.5410. That provision allows a waiver of the policy where it is in the best interest of the government to do so and in situations in which:

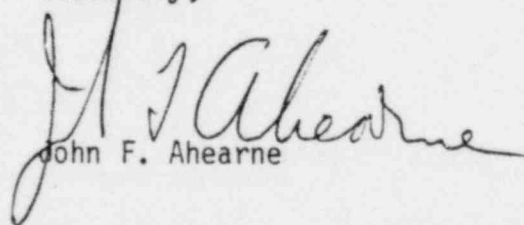
- (1) The work to be performed under contract is vital to the NRC program;
- (2) the work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest; and
- (3) contractual and/or technical review and supervision methods can be employed by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

If a waiver provision of some form is eventually adopted by Congress, a third subsection should be added to Section 205(e)(1) which would allow a grant of a waiver in appropriate circumstances where an organizational conflict of interest exists. This could be accomplished by simply adding a subsection 205(e)(1)(C) to read "or grant a waiver under this section..."

We see a potential problem in Section 205(e)(2)(A) which provides for the termination of a contract with a limited cause of action when an organizational conflict of interest exists. If no hearing on the contract termination is provided, the provision may present a due process problem. We believe some opportunity for a hearing on a contract termination should be provided.

Thank you for the opportunity to comment on this proposed legislation.

Sincerely,

  
John F. Ahearne