November 4, 1991

MEMORANDUM FOR: Patricia G. Norry, Director
Office of Administration

FROM: Frank P. Gillespie, Director
Program Management Policy Development and Analysis Staff
Office of Nuclear Reactor Regulation

SUBJECT: REVIEW OF FINAL RULE ENTITLED, "NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION"

As requested in your October 2, 1991 memorandum, NRR, has reviewed the proposed final rule entitled "Nuclear Regulatory Commission Acquisition Regulation."

It is very important to recognize that accomplishment of NRC mission reactor related work and satisfying procurement requirements compete for NRR and contractor/subcontractor resources and schedules. Resources necessary to satisfy the requirements of the regulation are not available for safety work. Nevertheless, NRR is very concerned that commercial qualified contractor sources are available in a timely and legitimate manner to support NRR and the regions. With this view in mind, NRR offers the following comments:

Conflict of Interest

This matter continues to be greatly troublesome. Specifically, the Conflict of Interest requirements and guidance as they currently are being interpreted and applied have a high potential for significantly reducing and not attracting qualified competitive sources that are legally and financially able to seek NRC contracts particularly in the reactor area. This may result in no alternative but to increase use of DOE Laboratories. This is contrary to NRR's goal of aggressively seeking qualified sources in the commercial sector.

The most significant change to the rule is the prescription for determining the conflict of interest of a prospective contractor. Section 2009.570-3 "Criteria for Recognizing Contractor Organizational Conflicts of Interest" contains restrictions on the potential contractor that essentially precludes any work for others in the areas of nuclear power. On page 47 of the rule, sections 2009.570-3 (b)(1)(i) and (ii), contain wording that would prevent the prospective contractor from performing any work for the nuclear

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industry if they engage in a contract with the NRC. The operative words are "in the same area to **any** organization regulated by the NRC," for paragraph (i) and "contractor provides advice to the NRC on the same or similar matter in which it is also providing assistance to **any** organization regulated by the NRC," for paragraph (ii). In essence, this rule requires the contractor to only work for the NRC and no others. While this isolation of contractors may be ideally desirable, it is very limiting.

The qualified contractors/subcontractors in the technical fields of interest to NRR obtained most of their expertise by participating in design and analysis work for the nuclear industry. Since the pool of contractors/subcontractors qualified to perform the expert technical assistance sought by the NRR are also providing the nuclear industry with this same expertise, the competition for their services can become acute and the contractors/subcontractors cannot operate a financially successful business on only the work contracted with the NRC. If NRC is to require that NRR contractors/subcontractors refrain from participating in contracts with the regulated reactor industry, then the pool of competent contractors/subcontractors available to NRR will diminish to the point that NRR will no longer be able to obtain qualified commercial technical assistance. The more qualified contractors/subcontractors will perform work for the nuclear industry and the NRC will not be able to obtain the services of these best qualified contractors/subcontractors. This point already has been recently demonstrated by contractors refusing to bid on potential contracts that contain clauses similar to those in section 2009.570-3. This could be the beginning of a long term trend.

NRR suggests that the restrictions on the small pool of qualified contractors/subcontractors be modified to allow work for the nuclear industry but, not allow work in areas where the contractors may be reviewing its own work.

Timely Billing for Contractor Services

It is surprising that this matter has not received substantial attention in the proposed final regulation since, as reported by the OIG, licensee fee billing requires NRC to be more prompt with its billing of licensees for docket related work performed by both NRC and contractors/subcontractors. Further, the EDO committed OC and ADM to improve the timeliness of ascertaining NRC costs (including contractor charges) and appropriately billing such costs to licensees promptly.

Access to Facilities and Fitness for Duty

Given that there is a frequent need for contractors/subcontractors to have unfettered access to NRC, licensee, vendor, and other types of facilities; it is surprising that access authorization and drug testing have not received substantial attention in the proposed final regulation. Failure to address this generically in the regulation could result in protracted specific contractual actions delaying and unnecessarily burdening the NRC, licensees, vendors and contractors/subcontractors.

Reporting Recordkeeping Burden

The proposed final rulemaking package states that, "The public reporting burden for this collection of information is estimated to average 11 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information." This appears to grossly underestimate the reporting/recordkeeping burden associated with complying with the regulation, and its associated guidance.

Questions concerning NRR's comments on the proposed final regulation should be referred to Harold Polk, X21264.

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