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PDR

DEC 11 1991

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

FROM: Robert M. Bernero, Director  
Office of Nuclear Material  
Safety and Safeguards

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

Distribution:  
DTiktinsky NMSS r/f  
GBeveridge NMSS s/f  
WBrown PMDA r/f  
GARlotto  
RBernero  
CJenkins WITS 9100539  
NMSS Dir. Of. r/f

We have reviewed the final rule entitled "Nuclear Regulatory Commission Acquisition Regulation (NRCAR)" as requested in your October 2, 1991, memorandum. We agree with your statement that the most significant change to the final rule is the revised policy for the application of Organizational Conflict of Interest (COI) restrictions due to the recently revised policy approved by the Commission.

The revised COI policy restricts contractors from a) working on the same technical area for any licensee/applicant for generic task orders; b) working for the same licensee organization at the same site if the task order is site specific and c) work on the same technical area for the same licensee at any site.

We believe that the COI policy stated in the NRCAR is far too restrictive and will effectively eliminate most potentially satisfactory commercial contractors from bidding on or obtaining NRC contracts. Since the COI provisions related to task order contracts were implemented two years ago, NMSS has had considerable difficulty obtaining satisfactory commercial contractors. With the imposition of the new requirements related to COI, as stated in the NRCAR, the universe of potential contractors free of COI will be reduced further. In fact, if the new COI provisions were in place at the time many of our current major commercial projects had been competed within the past two years, we would not have been able to award them to the contractors that were ultimately selected.

Based on the above, we believe that discussions on the interpretation of COI should be reconsidered because of the far reaching and obvious negative repercussions the present interpretation of COI will have on the NRC's ability to obtain qualified contractors to perform work vital to NRC's mission.

Original signed by G. A. [Signature]

Robert M. Bernero, Director  
Office of Nuclear Material  
Safety and Safeguards

OFC : NMSS:PIB	: NMSS:PIB	: NMSS:PMDA	: NMSS	: NMSS	:
NAME : DTiktinsky*	: GBeveridge*	: WBrown*	: GARlotto	: RBernero	:
DATE : 10/ /91	: 10/ /91	: 10/ /91	: 12/11/91	: 12/11/91	:

see previous concurrence OFFICIAL RECORD COPY

Patricia G. Norry

-2-

Had we been given an opportunity to review the final Commission paper, we would have been able to express our concerns related to the new COI interpretation, and would not have concurred in the changes as contained the the July 9, 1991, paper.

Based on the discussions above, we are not able to concur on the final NRC Acquisition Regulation. We also believe that discussions on the interpretation of COI should be reopened for reconsideration because of the far reaching negative repercussions the present interpretation of COI will have on the NRC's ability to obtain qualified contractors to perform work vital to NRC's mission. I would be pleased to discuss this issue with you further at a mutually convenient time.

Robert M. Bernero, Director  
Office of Nuclear Material  
Safety and Safeguards

Distribution:  
DTiktinsky  
GBeveridge  
WBrown  
GARlotto  
RBernero  
NMSS r/f  
File  
WITS 9100539

Debbie:

As you requested

Dave Tiktinsky

5/13/91

C23  
10/15/91  
#3

OFC	:NMSS:PIB	:NMSS:PIB	:NMSS:PIB	:NMSS	:NMSS	:	:
NAME	:DTiktinsky	:GBeveridge	:WBrown	:GARlotto	:RBernero	:	:
DATE	:10/1/91	:10/15/91	:10/15/91	:10/ /91	:10/ /91	:	:

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### 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 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.

*Frank P. Gillespie*

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

cc: I. Murley  
F. Miraglia  
W. Russell  
J. Partlow  
D. Crutchfield

*W. Russell - Please  
V. Russell - Please  
V. Russell - Please  
V. Russell - Please*

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*we did it*

U.S. NUCLEAR REGULATORY COMMISSION  
WASHINGTON, D.C. 20555

## FACSIMILE TRANSMITTAL REQUEST

DATE 11-19-81 RETURN ORIGINAL TO SENDER  
YES NO

MESSAGE TO

Brian Kildee

FACSIMILE PHONE NO.

~~202-611-1111~~

VERIFICATION PHONE NO.

NO. OF PAGES (including Transmittal instructions)

4

OWFN - OGE 443-7725

MESSAGE FROM

Debbie DeMarco

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(301)

492-8110

492-7617

492-4494

VERIFICATION PHONE NO.

(301)

492-7371

PRIORITY

OFFICE PHONE NO.

2-4396

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P-1118

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1 Hour

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TIME/DATE

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91 NOV 19 P2:19

GPO 877 184

Pls. review this proposed NRCIA  
language and make any appropriate  
changes as you see necessary.

Thank you  
Debbie DeMarco

2-4396.

*Technical*

(a) A Source Evaluation Panel (SEP) shall evaluate proposals in accordance with the solicitation technical evaluation criteria, cost, and other terms of the solicitation. The SEP prepares the Competitive Range <sup>and sign</sup> Recommendation Report <sup>with Consulting to SEP's technical findings and scoring for each proposal</sup> for the review and approval of the Designating Official. The contracting officer uses this technical evaluation <sup>in the</sup> in determining the competitive range.

[*Can? - see pg. 74*]

*app's Director or designee*

(b) The Designating Official (appointed by the requesting office) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after proposal evaluation: the Competitive Range Recommendation Report and the Final Evaluation Recommendation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

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2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in fully understanding the proposals and their strengths and weaknesses. <sup>based upon the</sup> Discussions <sup>individual efforts of</sup> <sup>each</sup> <sup>proposer</sup> <sup>in</sup> <sup>in</sup> also assure that the meanings and points of emphasis of solicitation provisions have been <sup>adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.</sup>

*←*

§2015.611 Best and final offers.



with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

§2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with §2015.407-70(b). Indication in the solicitation of the relative importance of evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/no go" evaluation factors.

§2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

2015.608 Proposal evaluation.

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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.

*Technical proposal portion of Technical*

The SEP evaluates the best and final offers. *Technical* Proposals will be recorded and reranked by the SEP, as appropriate, and a Final Evaluation Recommendation Report *with* ~~will be prepared~~ *with the SEP's individual findings and scoring for each* will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of *Technical* proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Recommendation Report and will become part of the official file. *Technical*

§2015.612 Source Evaluation Panel structure.

(a) For all proposed contracts with total estimated values in excess of \$25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a SEP.

(b) The SEP includes (1) at least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors, and (2) a contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC. Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas