

July 2, 1992

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PDR

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

FROM: Patricia G. Norry, Director
Office of Administration

SUBJECT: PROPOSED REVISION TO NRC ORGANIZATIONAL
CONFLICTS OF INTEREST POLICY

At our May 11, 1992, meeting with you, we made a recommendation to revise NRC's organizational conflicts of interest (COI) policy based upon our analysis of comments received from industry.

As you directed, OGC and ADM developed draft COI language to cover work performed by contractors at licensee or applicant sites. This new COI language requires the contractor to disclose all work at a licensee or applicant site but allows Contracting Officer discretion in determining whether the value of work unrelated to the NRC task constitutes an unacceptable financial tie to the licensee or applicant. A copy of the draft COI language is attached for your information, along with the proposed Statement of Considerations which includes a further explanation of the criteria the Contracting Officer will use in making COI determinations. Our implementation schedule for the final COI rule is also attached.

Please let me know if you require additional information on this subject.

Patricia G. Norry, Director
Office of Administration

Attachments:
As stated

cc w/attachments:
E.S. Beckjord, RES
R.M. Bernero, NMSS
T.E. Murley, NRC
E.L. Jordan, AEOD

DISTRIBUTION:

H.L. Thompson, DEDS	ADM R/F
J.F. Scinto, OGC	DCPM R/F
P.G. Norry, ADM	
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T.F. Hagan, DCPM	
W.H. Foster, DCPM	

*SEE PREVIOUS CONCURRENCES

PB:/DCPM	DCPM:ADM	DCPM:ADM	ADM	OGC	DEDS
WFOSTER	THAGAN	EHALMAN	PNORRY	JSCINTO	HTHOMPSON
6/23/93*	6/23/92*	6/1/92	6/3/92	6/3/92	6/2/92

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Original signed by
Patricia G. Norry

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Office of Administration

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DISTRIBUTION: ADM R/F
HL Thompson DCPM R/F
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OFFICE	PB;DCPM	DCPM;ADM	DCPM;ADM	ADM	DEDS	OGC
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DATE	6 / 92	6 / 23 / 92	6 / 23 / 92	6 / 23 / 92	6 / 92	06 / 92

OFFICIAL RECORD COPY

C(3) and (4) of Work For Other Provision

(3) Work at the Site--Same or Similar Technical area

When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) Other Work at the Site--Financial Ties to Applicant or Licensee

When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site:

- (a) The contractor shall not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.
- (b) The contractor shall not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

Notwithstanding the foregoing, the Contracting Officer may authorize the contractor to solicit or perform such work if the Contracting Officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d)(3) of Disclosure Provision

- (3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise due diligence to discover and disclose any new work at that licensee or applicant site. Such disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must be received by the NRC at least 15 days before the proposed award date, unless a justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the Contracting Officer. The disclosure must include the statement of work, the dollar value of the proposed contract and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when such work violates (c)(2) or (c)(4) above.

"DRAFT STATEMENT OF CONSIDERATIONS FOR PROPOSED COI RULE"

Statement of Considerations

After approval of the revised terms, including the "Work for Others" section, the Commission received objections concerning this provision. The Commission decided to obtain further comments on its policy and published notice in the Federal Register of an open public meeting to receive such comments (57 FR 4652). The nature of the comments received in connection with such meeting varied with respect to how the commenters viewed the restrictiveness of the policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

Giving due consideration of the comments concerning the substantial restriction against performing any work at a NRC licensee's site where the contractor performs on-site work for NRC coupled with the lack of flexibility in applying these restrictions, the Commission agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction so as to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC, provided such work is not in the same technical area as the work performed for NRC, and provided the Contracting Officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making such determination, the Contracting Officer will give due consideration to factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and other factors that may indicate financial ties or competitive advantage.

Another section of this clause which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others falling within the scope of the contract. The specific objection related to the requirement that the NRC be informed of such work at least 15 days in advance of undertaking such work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of such work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that

the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract and to report such information to NRC 15 days in advance of undertaking such work. The Commission has also added a corresponding provision which indicates that the Contracting Officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or justifies the deviation by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

Implementation Schedule for Final COI Rule

Finalize COI language and Statement of Considerations for proposed rule	7/1/92
Publish proposed rule in the <u>Federal Register</u> for public comments	7/22/92
Address public comments as appropriate	8/31/92
Submit final rule for Commission approval	9/18/92