



Science Applications International Corporation
An Employee-Owned Company

AE-34-1
AC01-12
PDR

92 APR 15 PM 3:16

DIVISION OF CONTRACTS &
PROPERTY MANAGEMENT

April 14, 1992

TT-92-25

U.S. Nuclear Regulatory Commission

Washington, DC 20555

Attention: Mr James M. Taylor
Executive Director For Operations

Reference: SAIC letter TT-92-16 dated March 6, 1992

Dear Mr Taylor

Science Applications International Corporation (SAIC) participated in the NRC's public meeting on Organizational Conflicts Of Interest on March 26. We were very pleased at the NRC's responsiveness to contractors' concerns which resulted in this public forum to allow industry the opportunity to further express its views on the new requirements and their implications.

As you are aware, and as documented in the reference letter, SAIC is significantly affected by the new OCI provisions. The most troubling change is the NRC's stated interpretation of the broad scope of the "Work For Others" restrictions in paragraph (c)(3), which prohibits a contractor who performs work at a licensee or applicant site for the NRC from performing any other work for that licensee or applicant in any capacity, even if that work poses no conflict of interest with the NRC work. Since this provision prohibits work even when there is no actual conflict of interest, SAIC has been unable to accept such a clause. This is evidenced by the recent situation in which SAIC had to necessarily decline, because of the Work For Others provision, the acceptance of a large contract from the NRC which SAIC had competed for and was selected for award. SAIC's inability to participate was not because it had or anticipated conflicts, but only because of a provision with the potential of restricting totally unrelated business activities could not be accepted. SAIC lost an important contract and the NRC was deprived of its apparently most qualified firm for this procurement as indicated by our selection for award.

While we hope that input provided by SAIC and others at the public meeting and in correspondence will be favorably considered and will result in some modification to the new OCI provisions which will

224

10260 Campus Point Drive, San Diego, California 92121-1578 (619) 546-6000

9307140224 930608
PDR PR
48C2057FR61152 PDR

50

SAIC

allow SAIC to remain an NRC contractor, we have an important immediate concern. We recognize that the evaluation and decision making process on this OCI issue will take several months; we were informed at the public meeting that a final decision may be reached in the July/August time frame. In the interim, several procurements for which SAIC is highly qualified and eager to compete for, are in process or anticipated. We were advised during this public meeting that pending the final decision concerning clause changes, the NRC will continue to utilize the Revised Policy on Organizational Conflicts of Interest and the OCI contract provisions contained therein. For all the reasons stated at the public meeting and in the reference letter, SAIC, and likely other qualified contractors, will be precluded from accepting contracts with this provision.

The stated purpose of the recent NRC OCI policy change which was "to avoid the serious difficulties recently encountered in obtaining the best qualified organizations to respond to NRC solicitations". Obviously, this never was achieved. The added Work For Others provision virtually eliminates SAIC, and very likely other firms, from competing. We therefore very strongly feel that appropriate action must be taken by the NRC to carefully re-evaluate and adjust requirements so that the NRC may realize its stated objectives of avoiding significant organizational conflicts of interest while maximizing competition.

Accordingly, in recognition of the length of time that is required by the NRC to make changes to this policy, and moreover the serious difficulties that have been recently encountered in making use of this new policy to obtain services of the most qualified firms, SAIC respectfully requests that until such time as final decisions are made concerning possible modification to the OCI provisions, that either of the following alternatives be implemented for all solicitations and awards issued in the interim:

- A. The general contract clause previously approved by the Commission (Contractor Organizational Conflict of Interest Clause 2052.209-73, copy enclosed as Attachment A) or,
- B. The new OCI provisions but with the deletion of the Work For Others provision found at Paragraph (c)(3), or
- C. The new OCI provisions but with modifying language for the Work For Others provision found at Paragraph (c)(3) as indicated in Attachment B to this letter.

If some modification to the work for others provision is not adopted, it will eliminate SAIC and, we believe, other diversified and highly qualified firms from participating on NRC contracts during this interim period. This will lessen competition and most



importantly, will have the effect of denying the NRC technical staff from accessing some of the most capable firms in this industry.

We believe that the NRC has the latitude to exercise judgment in the implementation of OCI clauses which serve their intended purpose, which is to prevent conflicts associated with the introduction of technical bias or providing to a contractor an unfair competitive advantage. FAR Section 9.504 allows for Contracting Officer discretion, with the advice of counsel, in the development of solicitation provisions for its solicitations. We feel that it is to the benefit of the NRC objectives to maintain competition to the maximum practicable extent. An interim clause modification as proposed in A., B., or C. above is therefore in the best interests of the Government and, we believe is fully within the discretion of the NRC. We believe that the NRC is sincere in its attempts to determine the appropriate balance between its efforts to avoid possible conflicts of interest and its mandatory responsibility to promote competition to the maximum practicable extent. It is for this reason that we feel optimistic that some compromise position may be achieved by the NRC's final decision in July or August. It would be unfortunate to have some of the most highly qualified firms precluded from competing for NRC contracts until such a final ruling can be made.

Again, I would like to thank you for your responsiveness to industry concerns and the opportunity to participate in the public meeting. Your favorable consideration of this request for a method to maximize competition pending your final ruling on revised clause language will be greatly appreciated. SAIC has had such a long standing and positive association with the NRC and we sincerely want to continue to support the NRC in its important work.

Should you have any questions concerning any of the above, please do not hesitate to call me at (619) 458-2770.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Trevino", is located above the typed name.

Tom Trevino
Corporate Vice President
For Administration
Engineering & Information
Technology Sector

SAIC

cc: Ed Straker
Dave Aldrich
Bahman Atefi
Tom Rodehau
Sally Bryan-Prell
Ivan Selin, Chairman, NRC
Kenneth C Rogers, Commissioner, NRC
James R Curtiss, Commissioner, NRC
Forrest J. Remick, Commissioner, NRC
Gail dePlanque, Commissioner, NRC
William C Parler, General Counsel, NRC
William H Foster, Chief, Policy Branch, NRC
Patricia G Norry, Director, Office of Administration, NRC
Timothy Hagan, Acting Director, Division of Contracts &
Property Management, NRC
Eric S Beckjord, Director, Office of Nuclear Regulatory
Research, NRC
Thomas E Murley, Director, Office of Nuclear Reactor
Regulation, NRC
Robert M Bernero, Director, Office of Nuclear Materials,
Safety & Safeguards, NRC
Edward L Jordan, Director, Office of Analysis & Evaluation
of Operational Data, NRC

§2052.209-73 Contractor organizational conflicts of interest.

As prescribed at §2009.570-5(a) and 2009-570-8, insert the following clause in all applicable solicitations and contracts:

Contractor Organizational Conflicts of Interest

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor: (1) is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract, and (2) does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor as defined in 48 CFR 2009.570-2 in the activities covered by this clause.

(c) Work for others. Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization, the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all of its employees under this contract abide by the provision of this clause. If the contractor has reason to believe with respect to itself or any employee that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer prior to execution of such contractual arrangement.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570-2.

(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(e) Access to and use of information.

(1) If the contractor in the performance of this contract obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or data which has not been released to the public, the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public, or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570-2(g), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in 48 CFR 2009.570-9.

(End of Clause)

ATTACHMENT B

Work For Others - Paragraph (c) (3)

(3) 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 AT THE SITE~~ (1) SHALL NOT ALLOW STAFF WORKING AT THE SITE TO SOLICIT, WHILE ON SITE, WORK FROM THE LICENSEE OR APPLICANT AND (2) SHALL NOT PERFORM WORK AT THE SITE OR WORK ON THE SAME TECHNICAL AREA FOR THAT LICENSEE OR APPLICANT ORGANIZATION (REGARDLESS OF LOCATION) WHICH POSSES A CONFLICT AS DESCRIBED IN (A) ABOVE 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).



Science Applications International Corporation
An Employee-Owned Company

April 14, 1992

U.S. Nuclear Regulatory Commission
Washington, DC 20555

TT-92-25

Attention: Mr James M. Taylor
Executive Director For Operations

Reference: SAIC letter TT-92-16 dated March 6, 1992

Dear Mr Taylor

Science Applications International Corporation (SAIC) participated in the NRC's public meeting on Organizational Conflicts Of Interest on March 26. We were very pleased at the NRC's responsiveness to contractors' concerns which resulted in this public forum to allow industry the opportunity to further express its views on the new requirements and their implications.

As you are aware, and as documented in the reference letter, SAIC is significantly affected by the new OCI provisions. The most troubling change is the NRC's stated interpretation of the broad scope of the "Work For Others" restrictions in paragraph (c)(3), which prohibits a contractor who performs work at a licensee or applicant site for the NRC from performing any other work for that licensee or applicant in any capacity, even if that work poses no conflict of interest with the NRC work. Since this provision prohibits work even when there is no actual conflict of interest, SAIC has been unable to accept such a clause. This is evidenced by the recent situation in which SAIC had to necessarily decline, because of the Work For Others provision, the acceptance of a large contract from the NRC which SAIC had competed for and was selected for award. SAIC's inability to participate was not because it had or anticipated conflicts, but only because of a provision with the potential of restricting totally unrelated business activities could not be accepted. SAIC lost an important contract and the NRC was deprived of its apparently most qualified firm for this procurement as indicated by our selection for award.

While we hope that input provided by SAIC and others at the public meeting and in correspondence will be favorably considered and will result in some modification to the new OCI provisions which will



allow SAIC to remain an NRC contractor, we have an important immediate concern. We recognize that the evaluation and decision making process on this OCI issue will take several months; we were informed at the public meeting that a final decision may be reached in the July/August time frame. In the interim, several procurements for which SAIC is highly qualified and eager to compete for, are in process or anticipated. We were advised during this public meeting that pending the final decision concerning clause changes, the NRC will continue to utilize the Revised Policy on Organizational Conflicts of Interest and the OCI contract provisions contained therein. For all the reasons stated at the public meeting and in the reference letter, SAIC, and likely other qualified contractors, will be precluded from accepting contracts with this provision.

The stated purpose of the recent NRC OCI policy change which was "to avoid the serious difficulties recently encountered in obtaining the best qualified organizations to respond to NRC solicitations". Obviously, this never was achieved. The added Work For Others provision virtually eliminates SAIC, and very likely other firms, from competing. We therefore very strongly feel that appropriate action must be taken by the NRC to carefully re-evaluate and adjust requirements so that the NRC may realize its stated objectives of avoiding significant organizational conflicts of interest while maximizing competition.

Accordingly, in recognition of the length of time that is required by the NRC to make changes to this policy, and moreover the serious difficulties that have been recently encountered in making use of this new policy to obtain services of the most qualified firms, SAIC respectfully requests that until such time as final decisions are made concerning possible modification to the OCI provisions, that either of the following alternatives be implemented for all solicitations and awards issued in the interim:

- A. The general contract clause previously approved by the Commission (Contractor Organizational Conflict Of Interest Clause 2052.209-73, copy enclosed as Attachment A) or,
- B. The new OCI provisions but with the deletion of the Work For Others provision found at Paragraph (c)(3), or
- C. The new OCI provisions but with modifying language for the Work For Others provision found at Paragraph (c)(3) as indicated in Attachment B to this letter.

If some modification to the work for others provision is not adopted, it will eliminate SAIC and, we believe, other diversified and highly qualified firms from participating on NRC contracts during this interim period. This will lessen competition and most

SAIC

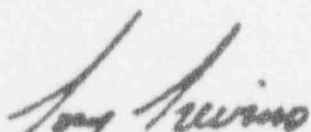
importantly, will have the effect of denying the NRC technical staff from accessing some of the most capable firms in this industry.

We believe that the NRC has the latitude to exercise judgment in the implementation of OCI clauses which serve their intended purpose, which is to prevent conflicts associated with the introduction of technical bias or providing to a contractor an unfair competitive advantage. FAR Section 9.504 allows for Contracting Officer discretion, with the advice of counsel, in the development of solicitation provisions for its solicitations. We feel that it is to the benefit of the NRC objectives to maintain competition to the maximum practicable extent. An interim clause modification as proposed in A., B., or C. above is therefore in the best interests of the Government and, we believe is fully within the discretion of the NRC. We believe that the NRC is sincere in its attempts to determine the appropriate balance between its efforts to avoid possible conflicts of interest and its mandatory responsibility to promote competition to the maximum practicable extent. It is for this reason that we feel optimistic that some compromise position may be achieved by the NRC's final decision in July or August. It would be unfortunate to have some of the most highly qualified firms precluded from competing for NRC contracts until such a final ruling can be made.

Again, I would like to thank you for your responsiveness to industry concerns and the opportunity to participate in the public meeting. Your favorable consideration of this request for a method to maximize competition pending your final ruling on revised clause language will be greatly appreciated. SAIC has had such a long standing and positive association with the NRC and we sincerely want to continue to support the NRC in its important work.

Should you have any questions concerning any of the above, please do not hesitate to call me at (619) 458-2770.

Sincerely,



Tom Travino
Corporate Vice President
For Administration
Engineering & Information
Technology Sector



Science Applications International Corporation
An Employee-Owned Company

April 14, 1992

U.S. Nuclear Regulatory Commission
Washington, DC 20555

TT-92-25

Attention: Mr James M. Taylor
Executive Director For Operations

Reference: SAIC letter TT-92-16 dated March 6, 1992

Dear Mr Taylor

Science Applications International Corporation (SAIC) participated in the NRC's public meeting on Organizational Conflicts Of Interest on March 26. We were very pleased at the NRC's responsiveness to contractors' concerns which resulted in this public forum to allow industry the opportunity to further express its views on the new requirements and their implications.

As you are aware, and as documented in the reference letter, SAIC is significantly affected by the new OCI provisions. The most troubling change is the NRC's stated interpretation of the broad scope of the "Work For Others" restrictions in paragraph (c)(3), which prohibits a contractor who performs work at a licensee or applicant site for the NRC from performing any other work for that licensee or applicant in any capacity, even if that work poses no conflict of interest with the NRC work. Since this provision prohibits work even when there is no actual conflict of interest, SAIC has been unable to accept such a clause. This is evidenced by the recent situation in which SAIC had to necessarily decline, because of the Work For Others provision, the acceptance of a large contract from the NRC which SAIC had competed for and was selected for award. SAIC's inability to participate was not because it had or anticipated conflicts, but only because of a provision with the potential of restricting totally unrelated business activities could not be accepted. SAIC lost an important contract and the NRC was deprived of its apparently most qualified firm for this procurement as indicated by our selection for award.

While we hope that input provided by SAIC and others at the public meeting and in correspondence will be favorably considered and will result in some modification to the new OCI provisions which will



allow SAIC to remain an NRC contractor, we have an important immediate concern. We recognize that the evaluation and decision making process on this OCI issue will take several months; we were informed at the public meeting that a final decision may be reached in the July/August time frame. In the interim, several procurements for which SAIC is highly qualified and eager to compete for, are in process or anticipated. We were advised during this public meeting that pending the final decision concerning clause changes, the NRC will continue to utilize the Revised Policy on Organizational Conflicts of Interest and the OCI contract provisions contained therein. For all the reasons stated at the public meeting and in the reference letter, SAIC, and likely other qualified contractors, will be precluded from accepting contracts with this provision.

The stated purpose of the recent NRC OCI policy change which was "to avoid the serious difficulties recently encountered in obtaining the best qualified organizations to respond to NRC solicitations". Obviously, this never was achieved. The added Work For Others provision virtually eliminates SAIC, and very likely other firms, from competing. We therefore very strongly feel that appropriate action must be taken by the NRC to carefully re-evaluate and adjust requirements so that the NRC may realize its stated objectives of avoiding significant organizational conflicts of interest while maximizing competition.

Accordingly, in recognition of the length of time that is required by the NRC to make changes to this policy, and moreover the serious difficulties that have been recently encountered in making use of this new policy to obtain services of the most qualified firms, SAIC respectfully requests that until such time as final decisions are made concerning possible modification to the OCI provisions, that either of the following alternatives be implemented for all solicitations and awards issued in the interim:

- A. The general contract clause previously approved by the Commission (Contractor Organizational Conflict Of Interest Clause 2052.209-73, copy enclosed as Attachment A) or,
- B. The new OCI provisions but with the deletion of the Work For Others provision found at Paragraph (c)(3), or
- C. The new OCI provisions but with modifying language for the Work For Others provision found at Paragraph (c)(3) as indicated in Attachment B to this letter.

If some modification to the work for others provision is not adopted, it will eliminate SAIC and, we believe, other diversified and highly qualified firms from participating on NRC contracts during this interim period. This will lessen competition and most

SAIC

importantly, will have the effect of denying the NRC technical staff from accessing some of the most capable firms in this industry.

We believe that the NRC has the latitude to exercise judgment in the implementation of OCI clauses which serve their intended purpose, which is to prevent conflicts associated with the introduction of technical bias or providing to a contractor an unfair competitive advantage. FAR Section 9.504 allows for Contracting Officer discretion, with the advice of counsel, in the development of solicitation provisions for its solicitations. We feel that it is to the benefit of the NRC objectives to maintain competition to the maximum practicable extent. An interim clause modification as proposed in A., B., or C. above is therefore in the best interests of the Government and, we believe is fully within the discretion of the NRC. We believe that the NRC is sincere in its attempts to determine the appropriate balance between its efforts to avoid possible conflicts of interest and its mandatory responsibility to promote competition to the maximum practicable extent. It is for this reason that we feel optimistic that some compromise position may be achieved by the NRC's final decision in July or August. It would be unfortunate to have some of the most highly qualified firms precluded from competing for NRC contracts until such a final ruling can be made.

Again, I would like to thank you for your responsiveness to industry concerns and the opportunity to participate in the public meeting. Your favorable consideration of this request for a method to maximize competition pending your final ruling on revised clause language will be greatly appreciated. SAIC has had such a long standing and positive association with the NRC and we sincerely want to continue to support the NRC in its important work.

Should you have any questions concerning any of the above, please do not hesitate to call me at (619) 458-2770.

Sincerely,



Tom Trevino
Corporate Vice President
For Administration
Engineering & Information
Technology Sector