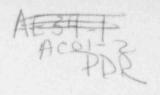
Science Applications International Corporation
An Employee-Owned Company



April 22, 1992

92-TJR.262

U.S. Nuclear Regulatory Commission Division of Contracts and Property Management Mailstop P-1118 Washington, DC 20555

Attention: Mr. William H. Foster

Policy Branch Chief

Subject: Revised Organizational Conflicts of Interest Policy

Reference: SAIC Letter Dated March 6, 1992, Serial No. TT-92-16

Dear Mr. Foster:

Science Applications International Corporation (SAIC) appreciates having had the opportunity, along with other NRC contractors, to participate in the public meeting on the NRC's Revised Organizational Conflicts of Interest Policy. This public forum permitted SAIC and others present at this meeting to further express their views on the changes made to this policy and also provided those in attendance with a greater appreciation and better understanding of the NRC's perspective on this matter.

For over a decade, SAIC has been a major technical assistance contractor to the NRC and we have taken pride in the work performed by our nuclear scientists and engineers who have consistently provided the NRC with high quality and responsive services on a cost effective basis. Our corporation has continuously worked with the NRC on assuring the health and safety of the public by providing the NRC with extensive technical capabilities and comprehensive knowledge of the NRC's regulatory process. In offering the NRC our technical support services, we have responded to NRC solicitations for services that are commensurate with our expertise and we have been awarded numerous contracts by the NRC on a competitive basis. Prior to the adoption of the changes to the NRC's longstanding policy on organizational conflicts of interest, SAIC did not experience any significant difficulties in accepting contracts fully compliant with COI provisions then in effect and we were fully prepared to continue submitting proposals to the NRC to provide technical support.

On a recent procurement for "Technical Assistance in Resolving Generic Safety Issues" SAIC was judged by the NRC, within the competitive procurement process, to be the most qualified to provide the required assistance to the NRC. However, SAIC had to regretfully decline acceptance of this contract not because of any actual conflicts of interest, but rather due to the effect that the NRC's stated interpretation of the "work for others" restrictions contained in paragraph (c)(3) of the COI Contract Clause would have upon totally unrelated business

1710 Goodridge Drive, P.O. Box 1303, McLean, Virginia 22102 (703) 821-4300



Mr. William H. Foster Serial No. 92-TJR.262 April 22, 1992 Page Two

activities within our corporation. As interpreted by the NRC, these restrictions effectively prohibit an NRC contractor that performs work at a licensee or applicant site for the NRC from performing any other work for the licensee or applicant in any capacity, even if that work poses no actual conflict of interest with the work being performed for the NRC. In our judgment, these restrictions are unnecessary and impose an unreasonable restraint on contractor business pursuits and go far beyond what is truly needed to ensure that a contractor does not become exposed to organizational conflicts of interest during the performance of work for the NRC at a licensee or an applicant site.

Due to the implementation of this revised organizational conflicts of interest policy, SAIC and other similarly situated contractors are significantly affected by this latest policy decision. In addition, the technical staff within the NRC have and will continue to experience the adverse affects of this revised policy when contracts, containing these overly restrictive COI provisions can not be accepted by SAIC and other technically competent contractors. As evidenced by the results of the above mentioned procurement, the NRC Office of Nuclear Regulatory Research has in fact been deprived of the services of the firm that was judged by the Government to be the most ideally suited to provide technical support to the NRC in resolving generic safety issues associated with nuclear reactor safety concerns and in the assessment of regulatory actions.

We do not believe that the adoption of the revised policy on organizational conflicts of interest was intended to prevent the NRC from obtaining the services of some of the most highly qualified firms within this industry. On the contrary, the Commissioners approved this revised policy based on the understanding that these changes would enable the NRC to avoid serious difficulties in obtaining the services of the best qualified organizations needed to accomplish the agency's mission. Based on the undesirable outcome of the aforementioned procurement and the likelihood that SAIC and other firms will continue to be unable to accept these contract COI provisions, appropriate action must be taken by the Commission to approve further changes to this policy.

Under the referenced letter, SAIC has provided the NRC with specific recommendations on changes to the revised Contractor Organizational Conflicts of Interest Clause. The comments on this COI provision are focused on concerns with the "work for others" provisions set forth in paragraphs (c)(2) and (c)(3) and the disclosure after award provision in paragraph (d)(3). We strongly encourage the NRC to carefully review and evaluate these recommendations, and we firmly believe that these suggested changes to the revised COI provision will provide the NRC with an adequate level of COI protection. In response to certain statements made by the NRC during the recent public meeting, the following additional comments have been prepared by SAIC to supplement the suggestions contained in our earlier correspondence.



Mr. William H. Foster Serial No. 92-TJR.262 April 22, 1992 Page Three

During the public meeting, the NRC advised those present that part of the rationale for changing the Work For Others provision was to ensure that a Contractor who performs work at a licensee or applicant site for the NRC is not placed in a conflicting role because of a financial interest associated with other contracts for that licensee or applicant. This assumes that any work will introduce bias simply because a Contractor has a contract with that entity, thereby creating a financial interest, without consideration for the value or nature of the other contract work. Such an interpretation that a financial interest automatically results in the introduction of technical bias is in our judgement far too broad. Certainly a firm may receive a substantial portion of its revenues from contract from a licensee which could pose some potential for a conflict or the appearance of a conflict. However, the financial interest could be so insignificant that no reasonable interpretation of conflict could be made. Under the NRC's stated rationale there would not even be the opportunity to disclose and evaluate the facts, instead, a conflict would be indicated strictly by definition. SAIC derives such a limited percentage of its revenues from utilities that it is not reasonable to automatically assume a conflict of interest. SAIC does not agree with the stated interpretation that a financial interest defined as a contractual relationship with a licensee or applicant should automatically be precluded under an NRC contract.

Based on the foregoing, it is recommended that the "work for others" restrictions set forth in paragraph (c)(3) be revised in accordance with our earlier recommendations and that they be limited to work for licensees or applicants that would pose an actual conflict of interest with the work that a contractor is required to perform for the NRC. This is considered to be a far more reasonable standard that will provide the NRC with level of COI protection that is adequate to ensure that a contractor is not placed in a conflict of interest situation. The acceptance of this recommended change to the "work for others" requirement will resolve SAIC concerns with the most troubling aspect of the revised COI contract clause and with the adoption of the other suggested changes to paragraphs (c)(2) and (d)(3), SAIC and other similarly situated organizations will be in a position to continue offering technical assistance to the NRC, on a competitive basis, in response to various procurements initiated by the NRC.

In addition to the above mentioned recommendations, it is suggested that the NRC undertake a review of the portion of policy that deals with waivers and that consideration be given to possibly restructuring the waiver provisions to promote, to the fullest extent possible, full and open competition for NRC contracts. Presently, the waiver provisions are strictly limited for use with specific contract awards, which must completely satisfy three prerequisite requirements, one of which is for the selected contractor, whose interest give rise to a question of conflict of interest, to be in essence in a sole source position to perform the required work for the NRC. This requirement effectively



Mr. William H. Foster Serial No. 92-TJR.262 April 22, 1992 Page Four

prevents an offeror from seeking a waiver from the NRC for any requested deviation from the NRC's policy on organizational conflicts of interest, in the event the offeror is selected for the award of a competitive procurement and there are other qualified contractors in the competitive range established by the NRC.

If the NRC were to relax this prerequisite requirement, a responsible offeror in a competitive situation, would be in a position of entering into discussions with the NRC, at time of contract negotiations, on possible mutually acceptable OCI avoidance techniques that could be implemented and maintained under a proposed contract to avoid conflicts of interest. In addition, the selected offeror could also make certain justifiable requests for appropriate change(s) to the NRC's policy on organizational conflicts of interest for use with a particular contract. Ultimately any proposed avoidance techniques or changes to the established policy on organizational conflicts of interest would, as provided for in the current policy, continue to be subject to the approval of the Executive Director for Operations prior to contract award.

The change described herein above, would be beneficial to the NRC since some of the most highly qualified firms would be in a position to respond to NRC solicitations and would be given an opportunity, if selected for the award of a resultant contract, to negotiate an COI contract provision that is acceptable to both parties. Such a provision when made part of the contract will adequately ensure that the contractor will not become exposed to any conflicts of interests during its performance of proposed work for the NRC. This change in the waiver provisions is consistent with Section 9.5 of the Federal Acquisition Regulation (FAR), and the guidance contained therein, which advises procurement officials to exercise common sense, good judgment and sound discretion in decisions involving potential conflicts of interest and in developing appropriate means for resolving such potentially conflicting situations, including the negotiation of the final terms and conditions of an COI contract clause, if it is appropriate to do so.

SAIC recognizes that some firms, especially small firms performing work exclusively (or almost exclusively) for the NRC, are supporting these more restrictive COI provisions. This has the effect of excluding firms such as SAIC from the competition. While that may be economically beneficial for these firms, we do not believe that eliminating from the competition some of the most qualified firms is in keeping with the Government's requirements to maximize competition and could deny the NRC's access to the firms that are best equipped to perform some of its required work. SAIC is not trying to obtain any special position with the NRC, we merely want to continue to have the opportunity to provide services to the NRC in support of its important mission.

Mr. William H. Foster Serial No. 92-TJR.262 April 22, 1992 Page Five

. . . .

SAIC truly appreciates the consideration that the NRC will bestow upon the comments and recommendations made by our organization in written correspondence submitted in connection with the NRC's revised policy on organizational conflicts of interest and the oral presentations made by members of our organization during the recent public meeting. We highly value our contractual relationship with the NRC and are hopeful that prior to the establishment of the NRC Acquisition Regulation that there will be an appropriate final set of changes made to the NRC's policy on organizational conflicts of interest.

Please accept our thanks for the opportunity to provide the NRC with these additional comments on this matter of great importance to SAIC. We look forward to the prospect of receiving a copy of the formal reconciliation of all public comments on the NRC's revised organizational conflicts of interest policy and to receiving a copy of any changes made to this policy that are subsequently approved by the Commissioners.

Very truly yours,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

thekan

Thomas J. Rodehau

Deputy Contracts Manager Energy Systems Group

TJR: jmb