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U.S. Nuclear Regulatory Commission
Attn: William H. Foster, Chief Policy Branch
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Gentlemen:

The proposed revision to the Commission's Conflict of Interest (COI) Policy has an important omission which has prompted me to submit these comments solicited during the Public Meeting on Organizational Conflicts of Interest held in Bethesda, Maryland, on 26 March 1992. I strongly urge that the revised policy directly acknowledge and support the use of contractors in particularly sensitive technical areas where freedom from conflict of interest and lack of bias are paramount concerns. The rationale for this recommendation is provided in the following paragraphs.

I fully agree with the objectives of the proposed policy on organizational COI. It is essential that the Commission constantly assure itself and the public that its regulatory process is unbiased and conflict-free. This assurance that the credibility of the Commission is above reproach is particularly important in these times when many critics are working to eliminate debate on the nuclear option in the United States and charging that the NRC favors industry's interest over public safety.

Freedom from bias and actual or potential conflicts of interest on the part of its contractors are essential to the NRC in the preparation of technical and economic evaluations that contribute to the formulation and assessment of regulatory alternatives, and in the development of regulatory guidance on technical matters for use by Commission staff in evaluating submissions by actual or potential licensees. For these regulatory areas, as well as for those involving acquisition of systems by federal agencies and other sensitive areas, the government created Federally Funded Research and Development Centers (FFRDCs). The purpose of the FFRDCs is to ensure that the government has access to a source of contractual support which unquestionably provides objectivity and freedom from conflict of interest on significant problems of national concern. Indeed, when the NRC issued its request for proposals to establish an FFRDC (1 December 1986), statements of need were described. The first statement explained the special circumstances necessitating an FFRDC "...the need to avoid conflict of interest." All of the situations cited on pages 3 and 4 of the handout at the meeting are essential to achieving a sound policy on COI. However, none of these situations would arise in contracting with an FFRDC or an organization with the institutional characteristics of an FFRDC. The Federal Acquisition Regulations (e.g., FAR Section 6.302), recognize special circumstances which allow federal agencies to acquire services from unique organizations and provide for contracting with them on a directed award basis, assuming that the organization has the technical qualifications to perform the work. Such directed awards would eliminate the tedious, time-consuming, and costly application of the policy on a case-by-case basis as proposed.

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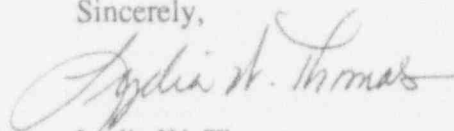
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There was also an assertion at the 26 March meeting that the proposed policy results in limiting competition. This assertion confuses the fundamental procurement issue. It equates the selection of contractors based on qualifications essential to the NRC with restriction of competition. The imposition of technical qualifications essential to perform a given task results in reducing the field of qualified sources and does not "restrict competition." By the same token, imposition of strict COI requirements also results in reducing the field of qualified sources since some companies have a conflict and voluntarily choose not to certify according to the proposed policy as a prudent business decision. It is the NRC's COI requirements which must prevail. While the proposed policy allows the NRC to grant waivers on a case-by-case basis, such a procedure will be costly and time consuming, may result in the Executive Director of Operations spending more time on contractual rather than substantive regulatory issues, and clearly will not result in the NRC's guarantee that its proper COI objectives have been met.

For the reasons cited above, I strongly recommend that the proposed policy explicitly indicate that in areas where organizational COI is an essential requirement to maintain the integrity of the regulatory process, the NRC first consider the use of organizations whose corporate characteristics guarantee that COI objectives will be attained. This approach would uphold the integrity of the agency and the primacy of the public interest while ensuring that the essential services are performed in the most timely and least-cost manner.

I appreciate your consideration of these comments. I am confident that the incorporation of my recommendation maximizes the prospects for attaining conflict-free advice by examining the least costly options first.

Sincerely,

A handwritten signature in cursive script, reading "Lydia W. Thomas".

Lydia W. Thomas

LWT/lm