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March 6, 1992

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U.S. Nuclear Regulatory Commission
ATTN: William H. Foster, Chief, Policy Branch
Division of Contracts and Property Management
Mailstop P-1118
Washington, DC 20555

Dear Mr Foster:

Science Applications International Corporation (SAIC) sincerely appreciates the invitation to present written questions and comments and to attend the public meeting concerning the NRC's proposed new Organizational Conflict Of Interest provisions.

SAIC has been a contractor to the NRC for well over ten years and we regard the NRC as a significant customer and their work as highly important to the country. We believe that SAIC is one of the most experienced and highly qualified contractors to provide services in many of the technical areas of expertise required by the NRC. We therefore are quite concerned that overly restrictive interpretations of the Conflict of Interest provisions will, for all intents and purposes, preclude SAIC from competing for NRC contracts.

In the February 24, 1992 issue of Inside NRC you were quoted as saying that it was too early to tell whether contractors objections were "just business posturing or legitimate contract concerns". While I cannot speak for other contractors, I can assure you that SAIC considers these issues "legitimate concerns". This is evidenced by our actions on the recent procurement to provide "Technical Assistance For Resolving Generic Safety Issues" (RFP# RES-91-051). On this procurement SAIC won the competition and was selected for contract award. However, we had to regretfully decline acceptance of the contract (with an award value of approximately \$1 Million) solely because the broad interpretation of the new OCI clause provided by the NRC was not acceptable to SAIC. While it was very difficult for SAIC to decline a contract which we worked so hard to win and which we believe we were the best qualified firm in the country to perform, we could not accept it for the following reasons:

- o The NRC OCI clause interpretation (which will be discussed in detail below), in our judgment, significantly exceeds the actions necessary to ensure an avoidance of any real conflicts of interest.

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- o That interpretation restricts, unnecessarily, the types of business activities that other segments of the corporation are permitted to pursue.

- o The organization within SAIC which was selected for the NRC contract award could not preclude other segments of our corporation from competing for other potential work which poses no actual conflicts of interest.

We believe that NRC's OCI clause interpretation, as stated to us in various correspondence, is overly restrictive for its intended purpose. We have always supported the objectives of the OCI provisions and we have always agreed to take all reasonable conflict avoidance actions and to refrain from knowingly entering into any situation which will pose actual conflicts of interest of the types described in the regulations. However, we cannot agree to accept overly restrictive interpretations which prevent business activities which do not pose conflicts of interest.

SAIC strongly believes that many other contractors and subcontractors working for the NRC are experiencing similar difficulties in accepting the new NRC OCI language and its interpretation of that language. While we totally support those aspects of OCI provisions that are designed to prevent a contractor from being put in a situation where its technical judgement is biased or where it may have an unfair competitive advantage on another procurement, to unnecessarily restrict contractors will only mean that SAIC, and firms similarly qualified, will be forced to make conscious decisions not to participate. This will result in a lessening of competition and the higher prices which will eventually follow. The NRC's own report indicates that the response rate to solicitations is declining because of industries problems with OCI provisions which are too far reaching. But even more important than impacts on competitiveness and price, the NRC will be deprived of the participation of the nations most knowledgeable, experienced scientists and engineers who are working daily in the real-life environment of the nuclear industry. It is, after all, highly successful firms, such as SAIC, which generally have staff with the greatest credentials and breadth of experience to apply to the solution of NRC technical problems. We do not believe it to be in the NRC's best interest to limit its contracting to only those firms which have no other interests or technical experience merely to be positive of no potential for conflicts of interest. We believe that a reasonable, less restrictive approach, such as will be proposed below, will provide sufficient mechanism for the NRC to manage conflict issues for its contractors, even large diversified and highly experienced contractors such as SAIC.

SAIC's specific comments on the language of the new CONTRACTOR ORGANIZATIONAL CONFLICT OF INTEREST clause are generally limited to two areas, 1) the Work For Others provisions (c)(2) and (c)(3) and 2) the Disclosure After Award provision (d)(3). Following are some comments and some suggestions:

Work For Others - Paragraph (c)(2)

Paragraph (c)(2) is acceptable to SAIC in view of the stated interpretation provided in the February 6, 1992 FEDERAL REGISTER NOTICE of the upcoming public meeting and the POLICY ISSUE (dated July 9, 1991) as transmitted in the NRC Memorandum dated August 15, 1991. These documents make it clear that the NRC interprets the OCI provision to be applicable to the "relatively narrow scope and shorter duration of individual task orders rather than the entire scope and term of the basic contract". However, to prevent any possibility for misunderstanding, it is suggested that (c)(2) be revised to state this clearly in the clause paragraph. Following is a restatement of (c)(2) in its entirety showing the proposed additional language underlined and striking out the language to be deleted. I trust you will agree that this change merely makes absolutely clear the interpretation as presented in other NRC documents.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection or review are the same as or substantially similar to the services within the scope of this contract, (or the scope of individual task orders if this is a task order contract) ~~(or task order as appropriate)~~ except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

Work For Others - Paragraph (c)(3)

The NRC Acquisition Regulations, Subpart 2009.5, Organizational Conflicts Of Interest, defines conflicts of interest as contractor situations which "(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product; or (2) May result in its being given an unfair competitive advantage". SAIC is well versed in situations which could pose conflicts as defined above and commits to take actions necessary to avoid such conflicts. When the new (c)(3) language was first reviewed we initially had no concerns with the language which states "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 or work in the same technical area for the licensee or applicant for a period". We read that to mean that we could not perform work which could pose a conflict as defined in the regulations and also specifically, work in the same technical area. Such an interpretation was acceptable to SAIC since work in the same technical area could pose conflicts and, of course, we know we cannot perform any other conflicting work. When we requested confirmation of our understanding of this language we were surprised at the NRC response; we were advised that we could not perform any work at the site, even if that work was not

conflicting. Following is an excerpt from an NRC letter dated September 6, 1991 on that subject:

"SAIC's interpretation of the provision in (c)(3) concerning the prohibition on soliciting or performing work at the site is erroneous.

Clause (c)(3) is intended to prohibit the contractor from soliciting work at the site; performing work at the site in any capacity for the licensee; and performing work on the same technical area for that licensee or applicant organization, regardless of location. Each of these prohibitions is effective for a one-year period after completion of the NRC work."

It is this language which poses the greatest problem to SAIC. Other elements of SAIC could indeed be performing or may be interested in performing work at licensee or applicant sites which is not in the same technical area or which does not otherwise result in any conflicts of interest. SAIC cannot agree to refrain, on behalf of other organizations within SAIC, from performing work which does not conflict with the NRC work. It is this provision which prevented SAIC from accepting the "Generic Safety Issues" contract discussed above.

Following is a restatement of (c)(3) in its entirety showing the proposed additional language underlined.

(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 which poses a conflict as described in (a) above or work on the same 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).

Disclosure After Award - Paragraph (d)(3)

This provision is generally acceptable, however, some clarification would be useful. As was discussed for Paragraph (c)(2) above, it is clear that under task order contracts the OCI provision is applicable to the scope and duration of individual task orders rather than the scope and term of the entire basic contract. Misinterpretation can be avoided by making this clear in this paragraph. We also had some concern about the mandatory timing of the disclosure after award requirement. In a diverse and geographically dispersed firm such as SAIC which is organized in a manner where business sectors operate semi-autonomously, the assembly of data requires special effort and we do have systems in place to accomplish this. Additionally, requests for bids, bid response times and anticipated award dates could in some cases be

only a matter of weeks or days making notification 15 days prior to an anticipated award date impossible. Our concern is not reporting to the NRC, we can and will do that, our concern is being in technical violation of a disclosure requirement due to the nature of the business which we must disclose. We believe that this paragraph should reflect a "best efforts" requirement. Finally, SAIC wants to ensure that the NRC may only deny approval of disclosed work in those situations where that disclosed work will pose a conflict with the contract work that is being performed for the NRC. Following is a restatement of (d)(3) in its entirety showing the proposed additional language underlined and striking out the language deleted.

(3) Recognizing that the scope of work of this task order type contract necessarily encompasses a broad spectrum of activities, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of all tasks orders issued or planned under the contract ~~the underlying contract~~. Such disclosure must be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must the contractor shall make its best efforts for such disclosure to be received by the NRC at least 15 days prior to the proposed award date in any event. The disclosure must include the statement of work 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 when such work violates (c)(3); and provided that such disclosed work would pose a conflict of interest with the scope of individual task orders issued or planned under the contract.

There is an additional issue not reflected in the clause language which we know to be of significant concern to the NRC and which we believe we can contribute to its resolution. In various discussions with the NRC we have been advised that other NRC contractors have engaged in inappropriate marketing activities while performing work at licensee and applicant sites for the NRC. We have had a long standing policy of forbidding members of our technical staff working at a licensee or applicant site for the NRC from engaging in such inappropriate conduct. If you believe it would be of some comfort or benefit to NRC, SAIC will accept contract language which would specifically preclude members of a technical staff participating in the performance of on-site work for the NRC from soliciting business of any sort from these licensees and/or applicants.

We at SAIC believe that the above suggested changes will provide for conflict provisions that will meet the intended purpose of the regulations and will allow SAIC, and other similarly situated firms, to remain active participants in the NRC procurement process.

SAIC highly values its association with the NRC and wants to do everything possible to remain a contractor and technical contributor to the NRC's important mission. We have, since March 23, 1990, when the NRC published its proposed rule to establish the NRC Acquisition Regulations, been in serious discussions with the NRC, we have had several meetings with NRC contracts and legal staff, and have prepared several letters on this subject. We hope that our summarizing comments and suggestions in this letter will be seriously considered and that some compromise can be reached. I want to again state that SAIC understands and accepts the requirements of conflict of interest provisions and we will continue to make every effort to live up to the letter and the spirit of those provisions. Our concern is that the NRC, in its attempt to prevent conflict situations, will so narrowly interpret and therefore augment the provisions to unnecessarily restrict other potential business operations of the corporation which will pose no actual conflicts of interest with the NRC work.

Again, thank you for the opportunity to submit these comments. We look forward to the opportunity to attend and participate in the public meeting and we are optimistic that these issues can be satisfactorily resolved.

Sincerely,



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

cc: Ed Straker
Dave Aldrich
Bahman Atefi
Tom Rodehau
Sally Bryan-Prell