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November 5, 1991

91-TJR.778

U.S. Nuclear Regulatory Commission
Mail Stop 15 B18
Washington, D.C. 20555

Attention: Mr. Joseph F. Scinto, Deputy General Counsel

Subject: NRC's Policy on Organizational Conflicts of Interest

Enclosure: Recommended Changes and Clarifications to the NRC's Organizational
Conflict of Interest Contract Clause (Alternates II & III)

Dear Mr. Scinto:

As a follow up to our meeting of October 23, 1991, SAIC greatly appreciates having had the opportunity to discuss our concerns with the recent changes made to the NRC's Policy on Organizational Conflicts of Interest. We believe this meeting provided you and the other representatives of the NRC present during these discussions with a thorough and complete understanding of our concerns with the additional work for other restrictions imposed upon contractors having access to NRC-regulated activities and the expanded disclosure after award requirements that apply to task order type contracts.

SAIC firmly believes that the above mentioned additions to NRC's Contractor Organizational Conflicts of Interest contract clause will effectively prevent the NRC from achieving its desired objective in avoiding serious difficulties in enabling the best qualified organizations to respond to NRC solicitations. These additional provisions impose unnecessary terms and conditions upon contractors which will severely limit the NRC's ability to foster and promote full and open competition for its contracts. Highly qualified firms, such as SAIC, who in the past have provided superior technical support services to the NRC, will no longer be in a position to accept contracts from the NRC that contain the overly restrictive future contracting prohibitions on possible unrelated business activities, which pose no actual or potential conflicts of interest with work that the NRC requires the contractor to perform. In addition, similarly situated organizations will in all likelihood, under task order type contracts, find themselves unable to comply with the precise time table for making disclosures of proposed new work to the NRC, due to the existence of certain circumstances that are truly beyond the control of these contractors.

To ensure that there are no far-reaching effects on the willingness of SAIC and other technically competent contractors to offer technical assistance to the NRC, it is hoped that you and other members of your staff will thoroughly consider the enclosed recommended changes and clarifications to the above mentioned additions to the NRC's Contractor Organizational Conflicts of Interest contract clause.

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Other SAIC Offices: Albuquerque, Boston, Colorado Springs, Dayton, Huntsville, Las Vegas, Los Angeles, Oak Ridge, Orlando, Palo Alto, San Diego, Seattle, and Tucson



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After these recommendations have been carefully evaluated, I would appreciate discussing with you the response contemplated to SAIC's expressed concerns.

Presently, we are in the process of giving further serious consideration to the possible establishment of a separate subsidiary organization that might also alleviate these concerns. As discussed during our recent meeting, we recognize that this possible solution to these concerns would, in accordance with the NRC's current Policy on Organizational Conflicts of Interest, require a waiver and that this action is strictly limited to certain conditions. The manner in which SAIC intends to establish this subsidiary organization and the very strict controls which would be implemented to prevent SAIC from having the ability to exercise direct or indirect control over this independent subsidiary, we believe would be a very effective method for managing potential conflict situations. We hope that these proposed extreme organizational measures will merit serious consideration as an effective conflict mitigating technique which will allow appropriate changes to NRC policy. We appreciate your invitation to have further discussions on the proposed establishment of this subsidiary with you and we shall keep you apprised of our thoughts and approaches to the possible formation of such an entity.

If you should have any questions with regard to the foregoing, please refer them to the attention of the undersigned at (703) 448-6503.

Very truly yours,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

A handwritten signature in cursive script, reading "Thomas J. Rodehau", is positioned above the typed name.

Thomas J. Rodehau
Senior Contract Representative
Energy Systems Group

TJR:pac

cc: B. Kildee, NRC
T. Hagen, NRC
D. Hassell, NRC
D. Aldrich, SAIC
B. Atefi, SAIC
T. Johnson, Esq.

PROPOSED CHANGES TO NRC's ORGANIZATIONAL
CONFLICTS OF INTEREST CONTRACT CLAUSE
(ALTERNATE II & ALTERNATE III)

(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 41 CFR §20-1.5402(f) in the activities covered by this clause.

(c) Work for others.

(1) 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.

(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 task orders issued under this 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 and as provided for under (c)(3) below.

(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 conflicting work at the site 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).

(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 41 CFR §20-1.5402(a).

(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.

(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 the underlying contract. Such disclosure ~~must~~ shall 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 has plans to issue 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 issued or planned task orders under this contract.

(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 41 CFR §20-1.5402(h), 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 41 CFR §20-1.5411.

(End of Clause)

Additional Alternate Changes to
NRC's Organizational Conflicts of Interest Contract Clause
(Alternate II & III)

1. Possible alternate additions to the general OCI clause for contractors having access to NRC-regulated activities:

In contracts for on-site work where the contractor may have access to a utility site or other facility subject to NRC's regulatory authority or in any contract for technical support of NRC's regulatory activities, it is recommended that paragraph (c)(3) to the "work for others" restrictions be expanded as follows:

"In addition, while the contractor performs such work at any NRC licensee or applicant site, the contractor's employees and its subcontractor's employees and consultants working under this contract shall not engage in any marketing discussions with representatives of the licensee or applicant organization for future work of any type for that particular licensee or applicant."

2. Possible alternate additions to the general OCI contract clause for task order type contracts:

In task order type contracts, it is recommended that the second sentence in paragraph (d)(3) "disclosure after award," be changed to read as follows:

"Such disclosure shall be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and shall be received by the NRC whenever possible at least 15 days prior to the proposed award date in any event."