



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20558

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PDR

DCPM Instruction: 91-08
Issued: September 23, 1991
Revised:
Cross Reference:

MEMORANDUM FOR: Headquarters and Regional
Procurement Staff

FROM: William H. Foster, Chief
Policy Branch
Division of Contracts and
Property Management

SUBJECT: ORGANIZATIONAL CONFLICT OF INTEREST

The Commission has approved language which clarifies restrictions imposed by the Nuclear Regulatory Commission's (NRC) conflict statute (Section 170A of the Atomic Energy Act of 1954, as amended). The principle areas of clarification prohibits an NRC contractor from performing any of the following activities for a period of one year upon completion of work at a licensee or applicant site: 1) soliciting work at that site; 2) performing work at that site; and 3) performing work in the same technical area for that licensee or applicant organization, regardless of location. In the case of task order type contracts, these restrictions apply only to term of the individual task order rather than the entire scope of the basic contract. The enclosed clause will be incorporated in the NRC Acquisition Regulation (48 CFR Chapter 20) which is anticipated to be published final in December 1991. Until final publication, the clause will reference 41 CFR Chapter 20.

Revisions: The previous COI clause is revised as follows:

In paragraph (b) (Scope), the sentence that was previously included in the task order alternate stating the provisions apply to the entire subject matter and for the entire period of contract performance etc.... has been deleted.

Paragraph (c) (Work for Others) has been revised to add new paragraphs (2) and (3) to address possible COI situations involving work for an NRC licensee or applicant.

Paragraph (d) (Disclosure After Award) has been revised to add language specific to task order contracts which requires the contractor to disclose all proposed new work involving NRC licensees or applicants which comes with the scope of the underlying contract.

Paragraph (1) follow-on effort has been added to describe the circumstances when a contractor is ineligible from performing additional work under the same contract or a subsequent contract.

Applicability: Previously, the organizational conflict of interest (COI) clause or one of its alternates had been included in all contracts, regardless of purpose. Effective immediately, there will only be one COI clause (the enclosed). This clause shall only be included in solicitations, contracts, and purchase orders where part or all of the work falls into one or more of the following areas:

- (1) Evaluation services or activities;
- (2) Technical consulting and management support services;
- (3) Research; and
- (4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. The above areas are further defined in the "Definitions Section" of 41 CFR Chapter 20.

Accordingly, the COI clause would not normally be included in administrative type contracts and purchase orders such as stenographic reporting services, data entry, commercial facility management, and the purchase of PC hardware or software.

If the solicitation has not been issued, the new COI clause shall be included when applicable. Also, if the solicitation is still open, it shall be amended to include the enclosed COI clause, if warranted. In the case where the solicitation has closed and an award has not been made, the Contracting Officer (CO) will make a determination if the clause should be included during the negotiation process.

Generally, we do not consider requests to modify terms and conditions. However, for active contracts, the CO may make a determination to modify terms and conditions to include the less restrictive COI language when 1) it is in the best interest of the Government and 2) the need for offsetting consideration has been reviewed.

Implementation: The Automated Contracting System (ACS) will be modified to reflect the revised language and use of the clause. There is no change to the certification provision that goes in (Headquarters Employees Only)

Section K. Until the ACS can be updated, the negotiator will have to override the ACS to either exclude the COI clause as well as the certification provision or include the new COI clause in place of the clauses in the ACS for those contracts that are subject to COI.

To exclude the COI clause in Section H and the provision in Section K, the negotiator should use the "Ignore" option. To replace the ACS clause with the new clause in Section H, the negotiator should use the "Fetch" option. This will prevent the system version from being included. Then copy the new COI clause entitled "conflict" in ACSFIX into the folder and rename "conflict" with the appropriate "I" number displayed when the "Fetch" option was used. The revised COI clause will then be included in the printed solicitation.

If you have any questions, please contact me on 27348.

William H. Foster
William H. Foster, Chief
Policy Branch
Division of Contracts and
Property Management

Enclosure:
As stated

CONTRACTOR ORGANIZATIONAL CONFLICTS OF INTEREST(AUG 1991)

(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 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.

(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 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) It is recognized that the scope of work for a task order type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task order type contract, 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 be made prior to the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must 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).

(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 520-1.5402(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 520-1.5411.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 05 1985

MEMORANDUM FOR: Robert B. Minogue, Director
Office of Nuclear Regulatory Research

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

John G. Davis, Director
Office of Nuclear Material Safety & Safeguards

James M. Taylor, Director
Office of Inspection and Enforcement

Patricia G. Norry, Director
Office of Administration

Guy H. Cunningham, III
Executive Legal Director

G. Wayne Kerr, Director
Office of State Programs

Clemens J. Heltemes, Jr., Director
Office for Analysis and Evaluation of Operational Data

James R. Shea, Director
Office of International Programs

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: REGULATORY HISTORY PROCEDURES

In a February 15, 1985 memorandum to Chairman Palladino, issued jointly with the Office of General Counsel, I informed the Chairman that procedures would be developed for the creation of a regulatory history of each proposed and final rulemaking initiated by the offices reporting to the EDO. This memorandum outlines the individual office responsibilities for the implementation of the regulatory history procedures. The objective of the regulatory history is to ensure that all documents of central relevance to a particular rulemaking are identified and accessible. This will facilitate the resolution of any issues that may arise concerning the interpretation of a particular regulation. The following procedures will be applicable to any proposed or final rule submitted to the Federal Register for publication after the date of this memorandum. The Rules and Procedures Branch, Office

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of Administration, will provide further information on these procedures, as necessary, in the periodic revision of the NRC Regulations Handbook, NUREG/BR-0053.

Program Office Responsibilities

Each office that sponsors a proposed or final rulemaking shall ensure that:

1. all documents of central relevance to the factual basis, coverage, meaning, and historical development of the rulemaking are identified, and maintained during the course of the rulemaking. Although the Project Manager's judgment will be necessary in some instances to determine whether specific documents are of "central relevance" to a rulemaking, the following documents should be included:
 - the Office of Nuclear Regulatory Research (RES) Independent Review Package (containing the RES recommendations on whether to proceed with the rulemaking, the sponsoring Office's recommendation to proceed with rulemaking, and the evaluation of the rulemaking proposal against the six criteria required for the RES Independent Review)
 - prior drafts of the rulemaking transmitted for interoffice review
 - formal Office comments on the drafts submitted for interoffice review
 - source documents relied upon in preparing the draft rule (e.g. research studies, consensus standards endorsed in the draft rule)
 - documents which synthesize or organize data in a form relied upon in the draft rule
 - supporting documentation such as the regulatory analysis, the Cost Analysis Group Report, environmental assessment or environmental impact statement, regulatory flexibility analysis, and OMB Clearance Package
 - public comments submitted in response to a Petition for Rulemaking, an Advanced Notice of Proposed Rulemaking, or a Notice of Proposed Rulemaking
 - Committee to Review Generic Requirements (CRGR) minutes and recommendations concerning the draft rule
 - the ACRS comments on the draft rule

*Include
drafts that contain
substantive changes
in comments used
in developing the rule.*

- the Commission Paper transmitting the draft rule to the Commission or the memorandum transmitting the rule to the EDO for approval
- the transcript or summary of the Commission meeting or briefing on consideration of the draft rule
- the Staff Requirements memo containing the Commission recommendations on the draft rule
- the Federal Register Notice for the rule (Petition for Rulemaking, Advanced Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Final Rule, or any other Federal Register notice issued concerning the rule)
- any other documents of central relevance (e.g. interagency correspondence, agreement state correspondence)

Documents that fall within any of the above categories must be typewritten rather than handwritten to permit conversion into microfiche by the Document Control System (DCS). If the only record of substantive office review comments on a draft rule are contained as handwritten annotations on the draft itself, the Project Manager should summarize these comments in a typed note to the file.

2. At the completion of a particular rulemaking action, i.e. publication of the proposed or final rule, the project manager shall compile an index of all documents that comprise the regulatory history file. The Project Manager is responsible for identifying a source of access for each document listed. For internal documents, this will require the Project Manager to ascertain whether each document listed is available in the DCS. The Project Manager must ensure that any internal document not already available in the DCS is placed in the DCS, and that the record's accession number is identified for each document on the index. In the case of published documents (e.g. NUREGS, NTIS publications, books, articles, etc.), it will be sufficient to include the bibliographic citation for that document. The Project Manager shall forward the completed index to the Rules and Procedures Branch, Office of Administration, within sixty days after the completion of the rulemaking. The title of the index, and the file, should be the name of the rule and applicable NRC citation (e.g. 10 CFR Part 50) as it appears in the Federal Register notice, the Federal Register citation and date of publication.

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Office of Administration

The Rules and Procedures Branch, Office of Administration, will be responsible for ensuring that a completed index of the documents comprising the regulatory history has been compiled for each proposed and final rulemaking. The Rules and Procedures Branch is also responsible for retaining the index and for disseminating copies of the index to interested NRC offices.

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

cc: Herzel H.E. Plaine, GC

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NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AC01

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its Nuclear Regulatory Commission Acquisition Regulation (NRCAR) to establish requirements for the procurement of goods and services within the NRC to satisfy the particular needs of the agency. This rule expands the existing NRCAR to implement and supplement the government-wide Federal Acquisition Regulation (FAR). This rule applies to all contracts, including small purchases, where specified, awarded on or after the effective date, and to modifications awarded on or after the effective date which require a justification for other than full and open competition.

EFFECTIVE DATE: The final rule will become effective 30 days after the date of publication.

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347.

SUPPLEMENTARY INFORMATION:

Background

The policies and procedures of the Federal Government regarding the procurement of supplies and services have been developed in a largely independent fashion. Many statutes bearing on Federal contracting have been directed toward specific agencies. Federal agencies traditionally have developed their own contracting procedures with limited attention to uniformity among agencies. The result was a system of procurement policies that varied from agency to agency, causing confusion within the contracting community. As long ago as 1972, the Commission on Government Procurement recommended that there be a standard Government-wide procurement regulatory system. The Office of Federal Procurement Policy, created in 1974, has worked with the agencies and the public to create a uniform procurement regulation known as the Federal Acquisition Regulation (FAR).

The FAR has been promulgated as the uniform, simplified acquisition regulation called for by Executive Order 12352, Federal Procurement Reforms. The FAR, which was issued by the General Services Administration, Department of Defense, and National Aeronautics and Space Administration, superseded the Defense Acquisition Regulation (DAR), the Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR) on April 1, 1984. The FAR was published in the Federal Register on September 19, 1983 (48 FR 42102) with an effective date of April 1, 1984. The FAR is codified as Chapter 1 of Title 48 of the Code of Federal Regulations.

Because of differing statutory authorities among Federal agencies, the FAR authorizes agencies to issue regulations to implement FAR policies and procedures internally and to include additional policies and procedures, solicitation provisions or contract clauses to satisfy the specific needs of the agency. The regulations being published today represent the NRC's necessary implementation and supplementation of the FAR.

Debarment, Suspension and Ineligibility

A single provision of the NRCAR was published as a final rule July 1, 1992 (57 FR 29220). That provision only contained agency debarment, suspension and ineligibility procedures. This rule publishes the NRCAR in its entirety, including the debarment procedures.

Organizational Conflicts of Interest

The proposed rule, which was published for public comments on October 2, 1989 (54 FR 40420), contained organizational conflicts of interest (COI) provisions which prohibited contractors from doing work for others that fell within the broad-scope of the underlying contract.

On August 15, 1991, the Commission approved a revision to its proposed NRCAR modifying the Agency's COI policy. The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC believed that the revised policy would increase competition for NRC technical assistance and research work, additional

restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI policy or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness reflected in the proposed revision to the COI policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

Another section of the proposed COI policy on which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this

provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

The above revision to the Commission's COI policy was published as a proposed rule August 18, 1992 (57 FR 37140). The final draft rule which was not changed from the proposed rule was approved by the Commission November 2, 1992. This final rule incorporates the November 2, 1992, COI language.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for informal rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. OFPP Policy Letter 83-2 states that an agency must provide an opportunity for public comment before adopting procurement regulation if the regulation is "significant."

This regulation is issued principally to create one body of guidance incorporating previously cleared procedures, to exercise delegations established by the FAR and to adopt other procedures that will not have a cost or administrative impact on contractors. The NRC issued its acquisition regulation proposed rule for public comment on October 2, 1989 (54 FR 40420). The section on organizational conflicts of interest was issued for public comment on August 18, 1992 (57 FR 37140).

Public Comments

A proposed rule was published in the Federal Register on October 2, 1989 (54 FR 40420). Three organizations commented and all comments were considered in the development of this final rule. The comments and responses are summarized below, in the order of the NRCAR text with the exception of organizational conflicts of interest which is contained in a separate subsection.

One commenter suggested that NRCAR 2001.402, concerning policies for deviations from the FAR and the NRCAR, is instructional language that should be excluded from the NRCAR and issued through an NRC internal issuance. This policy, as much as any other internal concurrence or approval, affects the flow of the procurement process. Just as the FAR has a parallel Subpart 1.4, and numerous other specified internal concurrences and approvals, this section is an important part of the NRCAR. In addition, the place to specify the policies for deviating from any requirement is in the policy itself. This section remains in the NRCAR.

One commenter suggested that NRCAR 2001.602-3, Ratification of Unauthorized Commitments, is unnecessary. However, this provision specifies which officials within NRC may approve ratifications. It also specifies the information which must be provided to seek approval of a ratification. The contracting community can be profoundly affected by these policies. Therefore, this section remains in the NRCAR.

One commenter asked if NRCAR 2009.1, Responsible Prospective Contractors, provides special treatment to a firm predominantly staffed by former NRC employees, none of whom were employed by the NRC within the last

two years. It does not. NRCAR 2009.1 is designed to prevent preferential treatment under the "revolving door" concept. To extend this restriction beyond two years is not practical in terms of recordkeeping and would be unduly restrictive for individuals whose firms have either survived or formed after a reasonable hiatus from government employment.

One commenter suggested that the NRCAR requirement found at §2009.405-2(a) for a certification of debarment status is inconsistent with FAR clause 52.209.5. FAR clause 52.209-5 was added to the FAR in 1989. Therefore, the NRCAR clause is no longer necessary and has been removed from the final rule.

One commenter suggested that NRCAR 2009.570-3(c) contains instructional language that should be excluded from the NRCAR and promulgated through one of the NRC internal issuances. This section contains examples of conflicts for the information of potential contractors, as well as NRC staff and therefore, belongs in the survey. These examples are formatted to be similar to those in FAR 9.508, Examples, but the examples are specific to the NRC. The guidance provided after each example is used to illustrate, for potential contractors, as well as NRC staff, the possible resolution of each situation. Therefore, this section remains in the NRCAR.

One commenter questioned why §2014.201-670(b)(1) requires that past experience be described in all bids. This requirement has been edited to make it optional to fit circumstances. In some instances there is little or no procurement history available, the information requested concerning bidder qualifications and past experience enables the contacting officer to query the contacts identified and ascertain the offeror's performance record, integrity and business ethics.

One commenter suggested moving paragraphs (d) and (e) of NRCAR 2052.214-72, Bid Evaluations, to a new section NRCAR 2014.404-2. This information on materially unbalanced bids and separate charges remains in the provision because knowledge of this information can affect acceptance of the bid. These situations have occurred enough to merit including this information in the provision.

One commenter expressed concern that the requirement for all proposed work to be considered as stated in NRCAR 2019.705-2, Determining the Need for a Subcontracting Plan, is inconsistent with FAR 19.705-2. Both texts state that all proposed contract actions must be considered when determining whether a subcontracting plan will be required. NRCAR 2019.705-2 is therefore an unnecessary duplication and has been removed from the final rule.

One commenter suggested that NRCAR 2019.705-4, Reviewing the Subcontracting Plan, duplicates the FAR (19.7). However, the NRCAR text provides additionally that subcontracting plans may be requested from all concerns in the competitive range, and clarifies conditions for acceptance of master subcontracting plans. Because these provisions are not in the FAR, the NRCAR text is necessary to provide consistent treatment of proposers.

One commenter suggested that NRCAR 2020.102 duplicates the FAR (20.3). However, the NRCAR text identifies the office that needs to be contacted for labor surplus area set-asides.

A commenter stated that the additional patent reporting requirements stated in NRCAR 2027.305-3 go beyond those required by the FAR. FAR 27.305-3(a) states that Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are identified and

disclosed. The reporting described in the NRCAR simply requires the contractor to certify that no patent or similar activities took place under the contract. This response is necessary to document that the contractor has not generated work to which the Federal government might have technical or economic rights. This requirement remains in the NRCAR.

One commenter suggested that NRCAR 2035.71, Broad Agency Announcements, duplicates FAR 35.016, Broad Agency Announcement. The duplicative text has been removed from the final rule.

One commenter suggested that NRCAR 2042.803(b) be revised to state that audit cost issues will be resolved within 30 days when payment has not already been made to the contractor. The period in other situations would remain at six months. Contractors who have a need to receive payment due to a hardship currently can offer to help expedite the decision making process. Otherwise, six months is a reasonable period of time for receiving and reviewing audit reports, preparing positions and correspondence, and conducting negotiations. Because the process is dependent on a number of inputs, including the contractor's, the language has been clarified to indicate that "within six months" is a goal, not a deadline.

One commenter suggested that a standard for technical performance reports, OMB Circular A-110, Attachment H, Monitoring and Reporting Program Performance, be used, and took exception to monthly reporting requirements in NRCAR clause 2052.212-71, Technical Progress Report. The requirements of OMB Circular A-110 are applicable only to certain financial assistance awards; and are not appropriate for NRC contracts. However, the prescription for the NRCAR clause 2052.212-71 states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency

of reporting is set at whatever frequency is meaningful and productive for each contract, considering the size and complexity of the particular project or program.

One commenter suggested that a standard for financial assistance, OMB Circular A-110, Attachment G.3.a, Financial Status Report, should be used to set the frequency of submission for Financial Status Reports under NRC contracts. The prescription for NRCAR 2052.212-72, Financial Status Report, states that the contracting officer may alter the clause. This prescription has been strengthened to clarify that the frequency of reporting is set at whatever frequency is meaningful and productive for each contract.

Paragraph (a) of NRCAR provision 2052.214-72 is duplicative of FAR clause 52.214-4, False Statements, and has been removed from the final rule.

It was suggested by one commenter that NRCAR clause 2052.215-76 be modified to require that cost related information on proposed subcontracts be included in the cost proposal, rather than the technical and management proposal. This change has been made to the final rule.

The same commenter recommended that paragraph (e)(4) of NRCAR clause 2052.215-76 permit offerors to address the criteria enumerated under paragraphs (e)(4)(i) through (e)(4)(xix) in other than the manner and sequence outlined. This would lead to inconsistencies and difficulties in evaluating proposals. The commenter suggests that the proposed change would provide offerors with flexibility to develop and structure their respective technical and management proposals in a format consistent with the stated evaluation criteria contained in an NRC solicitation. However, NRCAR 2015.407-70 (b)(2) already states that the provision must be tailored to assure that all sections

reflect the evaluation criteria. Therefore, no change has been made to the final rule.

One commenter suggested that the NRCAR clause 2052.215-76 should be expanded to include guidance for completion of the referenced Contractor Spending Plan. NRC's internal instructions provide only a suggested format which must, as the internal guidance states, be modified to meet each situation. The plan format developed for each specific proposed contract will appear in the Request for Proposal. While a Contractor Spending Plan is required for each applicable contract, the degree of flexibility permitted to the contracting officer is such that guidance for completion of each plan is not appropriate in this regulation. No change is made to the provision for this purpose.

Subpart 4.603, Solicitation Provision, which requires in provision §52.204-4 that contractors provide Data Universal Numbering System (DUNS) information, was added to the FAR by Federal Acquisition Circular 84-50. Therefore, NRCAR clause §2052.215-73, Data Universal Numbering System (DUNS), is no longer required and has been removed from the final rule.

A comment was made that Section 24, Pub. L. 100-679, exempts universities from having to comply with the Federal Travel Regulations if they follow their own travel policies in accordance with OMB Circular A-21, Cost Principles for Educational Institutions. Therefore, the commenter stated, NRCAR clause 2052.215-79, (formerly §2052.215-75) Travel Reimbursement, should be modified in accordance with Part 31 of the FAR, and several OMB Circulars, including A-21 (cost principles applicable to universities). A second commenter suggested that the clause be amended to be consistent with

FAR Part 31.205-46. NRCAR clause 2052.215-79 has been modified to make these clarifications. With these changes and the deletion of the word "domestic" from the first sentence of paragraph (c), paragraph (d) is no longer necessary and has been removed from the final rule.

One commenter states that NRCAR clause 2052.215-80, Travel Approvals, is inconsistent with OMB Circular A-21, when it says that "all domestic travel requires the prior approval of the project officer." OMB Circular A-21, Paragraph J.43.f of A-21, which is applicable to both direct and indirect costs, states that "domestic travel costs are allowable when permitted by the sponsoring agreement." Paragraph C.2 of A-21, Factors Affecting Allowability of Costs, states that in order for costs to be allowable, "they must conform to any limitations or exclusions set forth in these principles or in the sponsored agreement as to types or amounts of cost items." The NRC has reserved to project officers, whose role includes monitoring work and associated costs, the ability to determine that domestic travel costs are necessary and prudent expenditures under the contract. No change to this provision has been made in the final rule.

One commenter suggested that provision §2052.216-74, Task Order Procedures, should specify the task order proposal due date which has been set by mutual agreement. Task ordering contracts are negotiated for needs that are not clearly defined and which will need to be provided for quickly. The NRC contract administrator is responsible for setting a due date which reflects the agency's needs. If circumstances arise which prevent it from meeting the due date, the contractor should alert the contract administrator at the earliest opportunity. Therefore, no change is made to the provision of the final rule.

NRCAR clause 2052.235-70, Publication of Research Results, has been revised to clarify the requirements for the use of NRC Management Directives.

NRCAR clause 2052.245-71, Private Use of Contract Information and Data is deleted, since NRCAR clauses 2052.235-70 and 2052.235-71 provide adequate coverage.

Organizational Conflicts of Interest

Comments on the COI language contained in the proposed rule published on October 2, 1989 (54 FR 40420):

One commenter suggested that NRCAR 2009.570-5 and the additions to the general organizational conflicts of interest clause set forth under contract clauses §§2052.209-76 and 2052.209-77 conflicts restrictions should only be applied to work which is the same or similar to NRC work. The commenter stated that this would protect the NRC against situations which may (a) result in providing an offeror or contractor with an unfair competitive advantage, or (b) impair the offeror's or contractor's objectivity in performing work for the NRC. Paragraph (2) of §2052.209-76, which would have required prior approval of the contracting officer to perform same or similar services; has been deleted and a new paragraph (§2052.209.73(c)(3)) has been added to the final rule. The paragraph prohibits the contractor from performing any of the following activities for a period of one year upon completion of work at a licensee or applicant site: 1) soliciting work at that site; 2) performing work at that site; and 3) performing work in the same technical area for the licensee or applicant organization regardless of location. While the deletion may lead to some situations whereby NRC will not be able to issue some task orders to a contractor because of the contractor's other work for licensees

started after the beginning of the NRC contract, the NRC believes that other alternatives exist to get the work accomplished. The new paragraph will minimize situations of unfair competitive advantage. Language has been added to NRCAR 2052.209-73(d)(3) to limit denial of approval under task order contracts to situations where NRC has issued or plans to issue a task order in the same technical area or at the site.

A commenter suggested that paragraph (d), Disclosure After Award, be deleted in its entirety from NRCAR clause 2052.209-74 (currently §2052.209-73(d)(3)). The commenter states that NRCAR 2052.209-74(c) already requires contractors to make immediate and full disclosure. However, paragraph (d)(1) also requires the contractor to provide a negative response. Paragraph (d)(3) additionally requires that any disclosure must include a description of action taken to avoid or mitigate such conflicts. NRCAR 2052.209-77 (currently §2052.209.73(d)) requires that additional text be added to paragraph (d)(3), to clarify the applicability to task orders. Therefore, paragraph (d) is not deleted.

One commenter proposed that NRCAR clause 2052.209-77 (currently §2052.209.73(d)(3)), Contractor Organizational Conflicts of Interest-Language for Task Order Contracts, imposes a burdensome information reporting requirement. Paragraph (d)(3) provides that the contractor will disclose all proposed new work of any type involving NRC licensees or applicants. The commenter suggested a change in the wording to "the same as, or substantially similar to." The commenter states correctly that this disclosure is necessary regardless of whether the proposed activities represent a potential or actual conflict of interest with work being performed for the NRC. Additionally, circumstances other than the nature of a contractor's work, such as its

financial ties to a licensee could constitute a conflict of interest. Consequently, the disclosure requirements in paragraph (d)(3) remain unchanged in order that the Contracting Officer be provided with all requisite information in reaching a determination on organizational conflicts of interest. Therefore, no change is made to paragraph (d)(3) of this clause.

One commenter suggested that the contracting officer should be permitted to alter any conflict of interest clause. The clauses currently provide for basic policies to be applied in all or designated cases. Waivers or contracting officer decisions would provide flexibility in policy application. Open-ended altering of the basic policies would cause inequities and unnecessary delays to the procurement process. Therefore, the language is not changed for this purpose.

Comments on the COI language on the August 18, 1992 proposed rule (57 FR 37140):

Only one comment was received. It endorsed the proposed rule changes. The commenter also provided certain comments on implementation of the rule change. The commenter indicated that implementation of the rule should permit an NRC contractor to discuss and reach agreement with the NRC contracting officer concerning the application of the proposed restrictions to certain types of work for others which the contractor may wish to solicit in advance of such solicitation. The rule proposed would permit such discussion provided that the contractor can provide the contracting officer with the information, outlined above, to enable the contracting officer to determine that the situation will not pose a potential for technical bias or unfair competitive advantage. The commenter also indicated that it expected that, in instances in which the contractor expresses an interest in pursuing totally unrelated

activities, a determination permitting an exception to the work for others restrictions would be a timely and routine matter. Under the proposed rule, exceptions from the work for others restrictions is a matter of discretion of the contracting officer, provided that contracting officer is able to reach a determination, on the basis of the factors discussed above, that the proposed work for others will not pose a potential for technical bias or unfair competitive advantage. The fact that the proposed work is totally unrelated to work being done for NRC would be an important factor in such a determination, but the other factors outlined above would also need to be considered.

Other Revisions

Since the proposed rule was published (October 2, 1989; 54 FR 40420) other amendments to proposed NRCAR text have been made as a result of internal review, changes in the Federal Acquisition Regulation, and coordination with other agencies. The amended sections are:

Section 2015.604 which incorporates the Procurement Integrity Act.

Section 2015.610 which provides more specific guidance on the conduct of written and oral discussions.

Section 2015.611 which clarifies the Source Evaluation Panel's basic role as one of fact-finding and scoring.

Section 2009.405-2, in which paragraph (a) has been deleted to be consistent with FAR 9.404.

Section 2009.570-8 which exempts supply subcontractors and includes the \$10,000 threshold requiring offerors and contractors to have subcontractor and consultants submit a COI representation.

Section 2012.104-70 which gives the Contracting Officer more discretion in determining the reporting schedule.

Section 2014.201-670(b)(1) which makes the inclusion of this section optional to fit the circumstances.

Section 2052.214-72, in which paragraph (a) has been removed because it duplicated FAR 14.201-6(b)(4) and the clause cite has been changed to "FAR Subpart 1".

Section 2019.705-2 which has been removed because it duplicated FAR.

Section 2035.71 in which paragraphs (a) and (b)(4) and (2) have been removed because they duplicated FAR.

Section 2052.215-73, which has been removed because it duplicated FAR 4.603.

Section 2052.216-70, which segregates professional and clerical staff years.

Section 2052.235-71 which has been removed because it was inconsistent with Executive Order No. 12591.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment is required for this rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget approval number 3150-0169.

The information collection requirements were submitted to OMB at the proposed rule stage. At that time, OMB denied approval. OMB believed that rather than promulgating an NRC regulation, NRC should forward those provisions appropriate for inclusion in the FAR to the FAR Councils for consideration in accordance with FAR 1.304(c). OMB further requested that publication of provisions relating to Conflict of Interest Policies Applicable to Consultants await implementation in the FAR. It is the NRC's position that because we are required by law to have separate procurement regulations implementing the FAR and these provisions only apply to the special circumstances of the NRC, the provisions of the NRCAR are not appropriate for inclusion in the FAR for government wide usage. In addition, in accordance with Sec. 8, Pub. L. 95-601, adding Sec. 170A to Pub. L. 83-703, 68 Stat. 919, as amended (42 U.S.C. 2210a), NRC's organizational conflicts of interest provision takes precedence over the FAR 9.5, Organizational and Consultant Conflicts of Interest. However, where non-conflicting guidance appears in FAR 9.5, the NRC shall follow that guidance. With these considerations, NRC therefore requested OMB approval of the information collection requirements at the final rule stage and OMB subsequently approved these requirements.

The public reporting burden for this collection of information is estimated to average 10.7 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-0169), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This final rule establishes the procedures and requirements necessary to implement and supplement the FAR. The final rule presents the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the particular needs and requirements of the NRC. This final rule constitutes an administrative action governing the procurement activities of the NRC. These provisions would not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the final rule would allow a contractor or potential contractor to understand more easily the regulations to be used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The final rule establishes the procedures and requirements necessary to implement and supplement the FAR which will govern the acquisition of goods and services by the NRC. To the extent that the final rule effects a small entity, it sets out provisions applicable to small business and to small, disadvantaged business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis is not required for this final rule because it does not involve any provision which would impose backfits as defined in 10 CFR Part 50.109(a)(1).

List of Subjects

Parts 2001, 2002, 2003, 2004, and 2005 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Part 2009 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

Parts 2010, 2012, and 2013 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Parts 2014 and 2015 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

Parts 2016 and 2017 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Part 2019 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

Parts 2020, 2022, 2024, and 2025 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Part 2027 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

Parts 2030, 2031, 2032, 2033, 2035, and 2039 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Part 2042 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

Part 2045 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

Part 2052 - Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 552 and 553, and FAR Subpart 1.3, the NRC is revising Chapter 20 to Title 48 of the Code of Federal Regulations.

CHAPTER 20 - NUCLEAR REGULATORY COMMISSION

Part

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2001 Nuclear Regulatory Commission Acquisition Regulation System

2002 Definitions

2003 Improper business practices and personal conflicts of
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2004 Administrative matters

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2013 Small purchase and other simplified purchase procedures

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CHAPTER 20 - NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A - GENERAL

Part 2001 - NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION
SYSTEM

Subpart 2001.1 - Purpose, Authority, Issuance

Sec.

2001.101	Purpose.
2001.102	Authority.
2001.103	Applicability.
2001.104	Issuance.
2001.104-1	Publication and code arrangement.
2001.104-2	Arrangement of the regulations.
2001.104-3	Copies.
2001.105	Information collection requirements: OMB approval.

Subpart 2001.3 - Agency Acquisition Regulations

<u>Sec.</u>	2001.301	Policy.
	2001.303	Public participation.

Subpart 2001.4 - Deviations from the FAR and the NRCAR

<u>Sec.</u>	2001.402	Policy.
	2001.403	Individual deviations.
	2001.404	Class deviations.

Subpart 2001.6 - Contracting Authority and Responsibilities

<u>Sec.</u>	2001.600-70	Scope of subpart.
	2001.601	General.
	2001.602-3	Ratification of unauthorized commitments.
	2001.603	Selection, appointment, and termination of appointment.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201);
Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C.
418(b).

Subpart 2001.1 - Purpose, Authority, Issuance

§2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

§2001.102 Authority.

The NRCAR and the amendments to it are issued by the Director, Office of Administration, under a delegation from the Executive Director for Operations in accordance with the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR Subpart 1.3, and other applicable law.

§2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, except as exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy

Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

§2001.104 Issuance.

§2001.104-1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

- (1) Published in the daily issue of the Federal Register; and
- (2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

§2001.104-2 Arrangement of the regulations.

(a) General. Chapter 20 is divided into parts, subparts, sections subsections, paragraphs, and further subdivisions as necessary.

(b) Numbering. The numbering system and part, subpart and section titles used in this Chapter 20 conform with those used in the FAR as follows:

- (1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that

the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104-1 is shown as §2001.104-1 and the NRC's implementation of FAR 24.1 is shown as §2024.1.

(2) When NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as §2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) Citation. The NRCAR will be cited in accordance with Federal Register Standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as §2001.104-2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104-2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104-2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1-104.

§2001.104-3 Copies.

Copies of the NRCAR in Federal Register and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

§2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

(b) The information collection requirements contained in this part appear in §§2009.570-3(b)(1)&(2), 2009.570-3(c), 2009.570-3(c)(4)(ii), 2009.570-5(b), 2009.570-8, 2014.201-670, 2015.607, 2019.705-4(a), 2027.305-3(a), 2042.803(a)(b), 2052.204-70(b)(j)&(k), 2052.204-71, 2052.204-72, 2052.209-71, 2052.209-72, 2052.209-73(d)(2)&(3)&(f), 2052.210-70(b), 2052.210-71, 2052.212-70, 2052.212-71, 2052.212-72, 2052.213-73, 2052.214-71, 2052.214-72(e), 2052.214-74, 2052.214-75, 2052.215-70, 2052.215-71(f), 2052.215-76, 2052.215-77, 2052.216-74, 2052.235-70, 2052.235-71, and 2052.235-72.

Subpart 2001.3 Agency Acquisition Regulations

§2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives, or Division of Contracts and Property Management Instructions.

§2001.303 Public participation.

FAR 1.301 and Section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking, inviting public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4 - Deviations from the FAR and the NRCAR

§2001.402 Policy.

(a) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A statement as to whether the deviation has been requested previously and, if so, circumstances of the previous request (including the result of that request);

(5) A description of the intended effect of the deviation;

(6) A statement of the period of time for which the deviation is needed; and

(7) Any pertinent background information which will contribute to a full understanding of the desired deviation.

§2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect a necessary acquisition or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

§2001.404 Class deviations.

Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6 - Contracting Authority and Responsibilities

§2001.600-70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

§2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management, who, in turn, makes contracting officer appointments within the Headquarters and the Regional Offices. All of the above delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts and Property Management, establishes contracting policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

§2001.602-3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting

authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications must be approved by the Competition Advocate except that ratifications of procurement actions valued at \$2,500 or less may be approved by the appropriate Regional Administrator or at a level above the appropriate Headquarters Contracting Officer. For any such action approved by the Regional Administrator, all other terms of Subpart 2001.6 are applicable, and a copy of all documentation must be submitted within two working days to the Competition Advocate.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official, responsible for the office request, shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A statement as to why the contracting office was not used including the name of the employee who made the commitment;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work to be performed or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A statement of whether the contractor has commenced performance;

and

(viii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review and forward the written statement of facts for a determination of approval to the Competition Advocate DCPM, with any comments or information which should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

§2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment"; SF 1402.

PART 2002 - DEFINITIONS

Subpart 2002.1 - Definitions

Sec.

2002.100 Definitions

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841, and 41 U.S.C. 418(b).

Subpart 2002.1 - Definitions

§2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or Head of the Agency means the NRC Executive Director for Operations, for the purposes specified in this regulation and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Pub. L. 98-369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Day means calendar day unless otherwise specified. If the last day of the designated period of time is a Saturday, Sunday, or legal holiday under Federal law, the period includes the next business day.

Head of the Contracting Activity (HCA) means the Director, Division of Contracts and Property Management.

Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Director, Office of Administration, has been appointed the NRC Procurement Executive.

PART 2003 - IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1 - Safeguards

Sec.

2003.101 Standards of conduct.

2003.101-3 Agency regulations.

Subpart 2003.2 - Contractor Gratuities to Government Personnel

2003.203 Reporting of suspected violation of the gratuities clause.

AUTHORITY: 42 U.S.C. 2201; Sec. 201, 88 Stat. 1242, as amended; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2003.1 - Safeguards

§2003.101 Standards of conduct.

§2003.101-3 Agency regulations.

NRC standards of conduct for its employees are published in 10 CFR Part 0. The standards of conduct include requirements for financial disclosure (§0.735-28).

Subpart 2003.2 - Contractor Gratuities to Government Personnel

§2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 10 CFR 0.735-42, Gifts, Entertainment and Favors, for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor prior to filing a report are encouraged.

PART 2004 - ADMINISTRATIVE MATTERS

Sec.

Subpart 2004.4 - Safeguarding Classified Information Within Industry

§2004.404 Contract clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2004.4 - Safeguarding Classified Information Within Industry

§2004.404 Contract clauses.

The security clauses used in NRC contracts are found at §2052.204.

They are:

(a) Security, §2052.204-70. This clause will be used in all contracts during the performance of which the contractor may have access to, or contact with classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) Site Access Badge Requirements, §2052.204-71. This clause will be used in all contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B - COMPETITION AND ACQUISITION PLANNING

Part 2005 - PUBLICIZING CONTRACT ACTIONS

Subpart 2005.5 Paid Advertisements

Sec.

2005.502 Authority.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

Subpart 2005.5 Paid Advertisements

§2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

Part 2009 - CONTRACTOR QUALIFICATIONS

Subpart 2009.1 - Responsible Prospective Contractors

Sec.

2009.100 NRC policy.

2009.105-70 Contract provisions.

Subpart 2009.4 - Debarment, Suspension, and Ineligibility

2009.403 Definitions.

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2009.405-1 Continuation of current contracts.

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2009.407-3 Procedures.

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Subpart 2009.5 Organizational Conflicts of Interest

- 2009.500 Scope of subpart.
- 2009.570 NRC organizational conflicts of interest.
- 2009.570-1 Scope of policy.
- 2009.570-2 Definitions.
- 2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.
- 2009.570-4 Representation.
- 2009.570-5 Contract clauses.
- 2009.570-6 Evaluation, findings, and contract award.
- 2009.570-7 Conflicts identified after award.
- 2009.570-8 Subcontracts.
- 2009.570-9 Waiver.
- 2009.570-10 Remedies.

AUTHORITY: 42 U.S.C. 2201; Sec 201, 88 Stat. 1242; as amended; 42 U.S.C. 5841; and 41 U.S.C 418(b).

Subpart 2009.1 - Responsible prospective contractors.

§2009.101- NRC policy.

(a) It is NRC policy that contracts will not normally be placed on a noncompetitive basis with an individual who was employed by the NRC within two years of the date of the request for procurement action. This policy also pertains to any firm in which a former NRC employee is a partner, principal officer, majority stockholder, or which is otherwise controlled or predominantly staffed by former NRC employees and for granting consent of subcontracts. An exception to this policy will be made if it is determined by the agency Procurement Executive to be in the best interest of the Government to do so. This restriction also applies to former NRC employees acting as a principal under a task order type contract or as a principal under a contract

awarded non-competitively under the Small Business Administration's 8(a) Program. This policy is also applied when reviewing subcontracts for the purpose of granting consent under NRC prime contracts.

(b) The term NRC employee includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if --

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(c) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraph (a) of this section on a noncompetitive basis may be approved by the Procurement Executive after consulting with the Executive Director for Operations or his designee. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(d) Nothing in this policy statement shall be construed as relieving former employees from obligations prescribed by law, such as 18 U.S.C. 207, Disqualification of Former Officers and Employees.

§2009.105-70 Contract provisions

The contracting officer shall insert the following provisions in all solicitations:

- (a) 2052.209-70, Qualifications of Contract Employees.
- (b) 2052.209-71, Current/Former Agency Employee Involvement.

Subpart 2009.4 - Debarment, Suspension, and Ineligibility

§2009.403 Definitions.

As used in §2009.4:

Debarring official means the Procurement Executive.

Initiating official means the contracting officer, the Head of the Contracting Activity (HCA), the Procurement Executive, or the Inspector General.

Suspending official means the Procurement Executive.

§2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c)(1)-(3).

§2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted through the HCA to the Procurement Executive.

§2009.405-1 Continuation of current contracts.

The HCA is authorized to make the determinations under FAR 9.405-1.

§2009.405-2 Restrictions on subcontracting.

The HCA is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405-2.

§2009.406 Debarment.

§2009.406-3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts (including a copy of any criminal indictments, if applicable) along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for

any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring to the debarring official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406-3(c) and notify the HCA of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the debarring official may notify the contractor in accordance with FAR 9.406-3(d) that the contractor is debarred.

(c) Fact-finding proceedings. For actions listed under FAR 9.406-3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned, and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

§2009.407 Suspension.

§2009.407-3 Procedures.

(a) Investigation and referral. When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the case must be referred through the HCA to the Procurement Executive immediately. The case must be accompanied by a complete statement of the facts along with a recommendation for action. Where the statement of facts indicates the irregularities to be possible criminal offenses, or for any other reason further investigation is considered necessary, the matter must first be referred to the HCA who will consult with the Office of the Inspector General to determine if further investigation is required prior to referring the matter to the suspending official.

(b) Decision-making process. If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407-3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406-3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice, the suspending official may notify the contractor in accordance with 9.407-3(d) that the contractor is suspended.

§2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for

Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official from whose decision the appeal is taken.

Subpart 2009.5 Organizational Conflicts of Interest

§2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with §2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

§2009.570 NRC organizational conflicts of interest.

§2009.570-1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve

all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

§2009.570-2 Definitions.

As used in §2009.570:

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in §2009.570-1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract 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.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term potential conflict of interest is used to signify those situations that--

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

§2009.570-3 Criteria for recognizing contractor organizational conflicts of interest.

(a) General.

(1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) Situations or relationships. The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information, that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement, being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendation to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in §2009.570-5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) Policy application guidance. The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) Example. The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) Guidance. An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a

position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) Example. The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) Guidance. An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) Example. The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR Part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) Guidance. This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with §2009.570-9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) Example. The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) Guidance. A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information,

developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) Example. The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and §2009.570-3(b)(1)(i), AP informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) Guidance. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209-73(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) Example. AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) Guidance. An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable

alternative exists, a waiver of the policy could be sought in accordance with §2009.570-9.

7(i) EXAMPLE The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) GUIDANCE 2052.290-73(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

8(i) EXAMPLE ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of \$5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a \$100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) GUIDANCE The Contracting Officer, would allow the contractor to proceed with the solicitation because 1) it is not in the same technical area as the NRC work and 2) the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

9(i) EXAMPLE The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of \$100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is \$75K.

(ii) GUIDANCE An NRC contract would not normally be awarded to ABC Corp. since these factors create the potential for financial loyalty to the utility that may bias the technical judgement of the contractor.

(d) Other considerations.

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

§2009.570-4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist

which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflict of interest representation provision at §2052.209-72 must be included in solicitations and unsolicited proposals, (including those for task orders and modifications for new work) for:

- (1) Evaluation services or activities;
- (2) Technical consulting and management support services;
- (3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential

or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

§2009.570-5 Contract clauses.

(a) General contract clause. All contracts and small , chases of the types set forth in §2009.570-4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in §2052.209-73.

(b) Other special contract clauses. If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with §2009.570-9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

§2009.570-6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of §2009.570-3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

- (a) Disqualify the offeror from award;
- (b) Avoid or eliminate such conflicts by appropriate measures; or
- (c) Award the contract under the waiver provision of §2009.570-9.

§2009.570-7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the government to terminate the contract, as provided in the clauses required by §2009.570-5, the contracting officer shall take every reasonable action to avoid, eliminate, or, after obtaining a waiver in

accordance with §2009.570-9, neutralize the effects of the identified conflict.

§2009.570-8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of \$10,000 in accordance with §2009.570-4(b). The contracting officer shall require the contractor to include contract clauses in accordance with §2009.570-5 in consultant agreements or subcontracts involving performance of work under a prime contract.

§2009.570-9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program.

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

§2009.570-10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2010 - SPECIFICATIONS, STANDARDS, AND OTHER PURCHASE DESCRIPTIONS

Sec.

2010.004 - Brand name products or equal.

2010.011 - Solicitation provisions and contract clauses.

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841; 41 U.S.C. 418(b)).

§2010.004 - Brand name products or equal.

(a) Acquisitions will generally not be based on a specifically identified product or feature(s) thereof. However, under unusual circumstances this type of approach may be used as described below.

(b) Brand name or equal purchase descriptions must cite all brand name products known to be acceptable and of current manufacture. If the use of a brand name or equal purchase description results in the purchase of an acceptable brand name product which was not listed as an "equal" product, a reference to that brand name product should be included in the purchase description for later acquisitions. If a brand name product is no longer applicable, the reference to that brand name must be deleted from any subsequent purchase description.

(1) It is imperative that brand name or equal purchase descriptions specify each physical or functional characteristic of the product that is essential to the intended use. Failure to do so may result in a defective solicitation and the necessity to resolicit the requirement. Care must be taken to avoid specifying characteristics that cannot be shown to materially affect the intended end use and which unnecessarily restrict competition.

(2) When describing essential characteristics, permissible tolerances should be indicated. A characteristic (e.g., a specific dimension) of a brand name product may not be specified unless it is essential to the Government's need. The contracting officer shall be able to justify the requirement.

(c) The clause found at §2052.210-70 must be inserted in all solicitations citing a brand name or equal, except when samples are requested.

(d) An offer may not be rejected for failure of the offered product to equal a characteristic of a brand name product if it was not specified in the brand name or equal description. However, if it is clearly established that the unspecified characteristic is essential to the intended end use, the

solicitation is defective and no award may be made. In these cases, the contracting officer should resolicit the requirements, using a purchase description that sets forth the essential characteristics.

(e) In small purchases within the open market limitations, brand name policies and procedures are applicable to the extent practicable.

§2010.011 - Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at §2052.210-71, Drawings, Designs, Specifications, and Data, in all contracts in which drawings, designs, specifications, or other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2012 - CONTRACT DELIVERY OR PERFORMANCE

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2012.104 - Contract clauses

§2012.104-70 NRC clauses.

(a) The contracting officer shall insert the clause at §2052.212-70, Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at §2052.212-71, Technical Progress Report, in all solicitations and contracts except--

(1) Firm fixed price; and

(2) Indefinite-delivery contracts to be awarded on a time and materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at §2052.212-72, Financial Status Report, in all solicitations and contracts (except Fixed Price) when detailed assessment of costs is warranted and a Contractor Spending Plan is required; use the clause at §2052.212-73 Financial Status Report - Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter these clauses prior to issuance of the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations, without solicitation amendment.

SUBCHAPTER C - CONTRACTING METHODS AND CONTRACT TYPES

PART 2013 - SMALL PURCHASE AND OTHER SIMPLIFIED PURCHASE PROCEDURES

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2013.5 - Purchase Orders

§2013.505-2 Agency order forms in lieu of Optional Forms 347 and 348.

NRC Form 103, Purchase Order, is prescribed for use by the NRC in lieu of Optional Forms 347 and 348.

PART 2014 - SEALED BIDDING

Subpart 2014.2 Solicitation of Bids

Sec.

2014.201 Preparation of invitation for bids.

2014.201-670 Solicitation provisions.

Subpart 2014.4 Opening of Bids and Award of Contract

2014.406 Mistakes in bids.

2014.406-3 Other mistakes disclosed before award.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2014.2 Solicitation of Bids

§2014.201 Preparation of invitation for bids.

§2014.201-670 Solicitation provisions.

(a) The contracting officer shall insert the provision at §2052.214-70, Prebid Conference, in Invitations for Bids (IFB) where there will be a

prebid conference. This provision may be altered by the contracting officer to fit circumstances.

(b) The cognizant contracting officer shall insert in all invitations for bids, except as noted, the provisions at:

(1) Section 2052.214-71, Bidder Qualifications and Past Experiences.
(optional, to fit circumstances)

(2) Section 2052.214-72, Bid Evaluation (paragraph f. is optional).

(3) Section 2052.214-73, Timely Receipt of Bids.

(4) Section 2052.214-74, Disposition of Bids.

Subpart 2014.4 Opening of Bids and Award of Contract

§2014.406 Mistakes in bids.

§2014.406-3 Other mistakes disclosed before award.

(a) The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

(b) The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.406-4.

Part 2015 - CONTRACTING BY NEGOTIATION

Subpart 2015.4 - Solicitation and Receipt of Proposals and Quotations

Sec.

2015.407-70 Solicitation provisions and contract clauses.

2015.413 Disclosure and use of information before award.

2015.413-2 Alternate II.

Subpart 2015.5 - Unsolicited Proposals

2015.506 Agency procedures.

2015.506-1 Receipt and initial review.

2015.506-2 Evaluation.

2015.507 Contracting methods.

Subpart 2015.6 - Source Selection

2015.602 Applicability.

2015.604 Responsibilities.

2015.605 Evaluation factors.

2015.607 Disclosure of mistakes before award.

2015.608 Proposal evaluation.

2015.610 Written or oral discussions.

2015.611 Best and final offers.

2015.612 Source Evaluation Panel structure.

2015.670 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.4 - Solicitation and Receipt of Proposals and
Quotations

§2015.407-70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert in Requests for Proposals (RFPs) the provisions at:

(1) Section 2052.215-70, Key Personnel;

(2)(i) Section 2052.215-71, Project Officer Authority (for solicitations for cost reimbursement, cost plus fixed fee, cost plus award fee, cost sharing labor hour or time and materials, including task order contracts);

(ii) Section 2052.215-72, Project Officer Authority - Alternate 1 (for solicitations for issuance of delivery orders for specific products/services).

(iii) Section 2052.215-72, Project Officer Authority - Alternate 2 with paragraph (b)(1) deleted and the remainder of the clause renumbered (for solicitations for firm fixed price contracts);

(iv) This provision §2052.215-70 and Alternate 1 are intended for experienced, trained project officers, and may be altered to delete duties where appropriate.

(3) Section 2052.215-73, Timely Receipt of Proposals;

(4) Section 2052.215-74, Award Notification and Commitment of Public Funds; and

(5) Section 2052.215-75, Disposition of Proposals.

(b) The contracting officer shall insert in all solicitations for negotiated procurements for cost type contracts that do not provide for task orders or delivery orders, the provision at §2052.215-76, Proposal Presentation and Format except that:

(1) For all solicitations for negotiated task order contracts, paragraphs (e)(4)(xi) and (xii) must be deleted (and the remainder renumbered), and the paragraph found at §2052.215-77 must be substituted for paragraph (d)(2).

(2) For all negotiated procurements for a fixed price, labor hour, or time and materials contract, paragraph (d)(2) shall be deleted from the provision §2052.215-76.

The provision must be tailored to assure that all sections, but in particular paragraph (e), Technical and Management Proposal, reflect a one-to-one relationship to the evaluation criteria.

(c) The contracting officer shall insert the provision at §2052.215-78, Preproposal Conference, in RFPs where there will be a preproposal

conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the clauses at §2052.215-79, Travel Reimbursement, §2052-215-79, Travel Reimbursement - Alternate 1 with paragraph (a) deleted and the remainder of the clause renumbered (for contracts when there is no ceiling amount on domestic travel), and 2052-215-80, Travel Approvals, in RFPs where there will be travel.

§2015.413 - Disclosure and use of information before award.

§2015.413-2 Alternate II.

The procedures discussed at FAR 15.413-2 may be used if approved at a level above the contracting officer.

Subpart 2015.5 - Unsolicited Proposals

§2015.506 Agency procedures.

(a) The Division of Contracts and Property Management, Policy Branch (PB), is the point of contact for the receipt, acknowledgement, and handling of unsolicited proposals.

(b) Unsolicited proposals in original and two copies, and requests for additional information regarding their preparation must be submitted to:

Chief, Policy Branch

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

This will ensure that the proposal is logged into the unsolicited proposal tracking system.

§2015.506-1 Receipt and initial review.

(a) PB shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) PB shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by the PB, providing an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.503 and 15.505.

§2015.506-2 Evaluation.

Directors of NRC offices shall conduct comprehensive technical evaluations of proposals submitted to them by the PB, in accordance with the criteria discussed in FAR 15.506-2(a).

§2015.507 Contracting methods.

If a noncompetitive contract is recommended, the Director of the recommending NRC office shall submit to the Division of Contracts and Property Management a written evaluation, Request for Procurement Action (RFPA) and Justification for Other Than Full and Open Competition in accordance with FAR 15.507(b)(5).

Subpart 2015.6 – Source Selection

§2015.602 Applicability.

This subpart does not apply to contracts awarded to the Small Business Administration under Section 8(a) of the Small Business Act.

§2015.604 Responsibilities.

(a) All persons participating in the evaluation process may not discuss or reveal information concerning the evaluations except to an individual participating in the same evaluation proceeding, and then only to the extent that the information is required in connection with the proceeding. Divulging information during evaluation, selection, and negotiation phases of the acquisition to offerors or to other persons not having a need to know could jeopardize the resultant award and violates the information-disclosure

provisions of FAR 3.104, Procurement Integrity. These provisions carry criminal as well as civil and administrative penalties. Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may release source selection information to others during the selection process. The contracting officer (or authorized representative) shall instruct all participants in the evaluations to observe the prohibitions of the Procurement Integrity Act. A procurement official certification must be signed for each agency employee personally and substantially involved in preparing or approving the advance procurement plans, statement of work and participating in the source evaluation process [i.e. serving as a member of the Source Evaluation Panel (SEP)].

(b) All persons participating in the evaluation process shall declare any financial or other relationships which may create conflict of interest problems with their evaluation duties. A form for this purpose must be signed prior to receipt of any proposals or participation in discussion of proposals.

(c) Only the contracting officer (or authorized representative within the Division of Contracts and Property Management) may conduct discussions with offerors relative to any aspect of the acquisition. The contracting officer may include other personnel in discussions, as necessary.

§2015.605 Evaluation factors.

The evaluation criteria included in the solicitation serve as the standard against which all proposals are evaluated, and are the basis for the development of proposal preparation instructions, in accordance with §2015.407-70(b). Indication in the solicitation of the relative importance of

evaluation factors and subfactors is accomplished by the assignment of a numerical weight to each. For those factors that will not be numerically weighted, only their relative importance will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and business evaluations, and "go/no go" evaluation factors.

§2015.607 Disclosure of mistakes before award.

(a) The contracting officer shall require that the offeror's clarification(s) provided in accordance with FAR 15.607 be in writing.

(b) A correction of a mistake in a proposal may be made only after a written determination to permit it has been made by the contracting officer.

§2015.608 Proposal evaluation.

(a) A Source Evaluation Panel (SEP) shall evaluate technical proposals in accordance with the solicitation technical evaluation criteria. The SEP prepares and signs the Competitive Range Report with the SEP's findings and scoring for each technical proposal together with its analysis of cost and other factors and forwards the report for the review and approval of the Designating Official. The contracting officer uses this technical evaluation and analysis of costs and other factors in determining the competitive range.

(b) The Designating Official (Office Director or designee) is responsible for appointing the SEP and is responsible for conducting an independent review and evaluation of the SEP's two primary products after

proposal evaluation: the Competitive Range Report and the Final Evaluation Report. Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

§2015.610 Written or oral discussions.

The contracting officer shall point out to each offeror within the competitive range any deficiencies including ambiguities or uncertainties in its proposal. The discussions are intended to assist the SEP in understanding the proposals and their strengths and weaknesses based upon the individual efforts of each offeror to ensure that the meaning and emphasis of solicitation provisions have been adequately conveyed to the offerors so that all offerors are competing equally on the basis intended by the Government.

§2015.611 Best and final offers.

The SEP evaluates the technical proposal portion of the best and final offers. Technical proposals will be recorded and rescored by the SEP, as appropriate, and a Final Evaluation Report of the SEP's findings and scoring for each technical proposal will be prepared and forwarded to the Designating Official for review and approval prior to submission to the contracting officer for final approval. The report will include a summary of the technical analysis of costs as a part of the analysis of the technical proposals. The SEP's individual evaluation worksheets and summary score sheet must accompany the Final Evaluation Report and will become part of the official file.

§2015.612 Source Evaluation Panel structure.

(a) For all proposed contracts with total estimated values in excess of \$25,000 and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through the establishment of a SEP.

(b)(1) The SEP includes:

(i) At least three technical members (one of whom serves as the chairperson) who participate in the scoring of proposals using weighted evaluation criteria and evaluating proposals using other unweighted factors; and

(ii) A contract negotiator who ensures that procurement rules and regulations are followed, ensures that the integrity of the process is maintained, and negotiates the contract on behalf of the NRC.

(2) Except in unusual cases, the SEP should not exceed five members including the Chairperson. The technical members are usually employees of the NRC program office initiating the request or other NRC employees with expertise in areas related to the solicitation Statement of Work. Appointment of a technical member from other than the office initiating the request is encouraged. Employees of other agencies with expertise in a specific area may also serve as SEP technical members notwithstanding the fact that they are not employees of the NRC. Evaluators need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases and the solicitation should notify offerors of the NRC's intent to use non-Federal evaluators. The CO will make a determination whether or not a non-federal evaluator will be a voting SEP member. For proposed procurements with

a total estimated cost of less than \$500,000 over a performance period of three years or less, a single technical member may be appointed to evaluate proposals with the contracting officer's approval. Designation of SEP members is accomplished by memorandum initiated by the director of the program office or the director's designee. This official is referred to as the Designating Official (DO).

(c) The SEP chairperson may obtain the services of advisors (e.g., legal, financial, etc.) to assist the SEP. Advisors who serve on technical evaluation committees are appointed in writing by the DO. Advisors are not SEP members, and therefore do not score proposals. Advisors need not be Federal employees, but the potential for conflict of interest must be carefully considered in these cases, and the solicitation should notify offerors of the NRC's intent to use non-Federal advisors.

(d) The contracting officer shall establish the competitive range on all acquisitions. This is accomplished by approval of the SEP's written recommendation transmitted by the DO.

(e) The source selection official is the contracting officer. Selection is made based on review of the SEP's recommendations as endorsed by the DO, together with all supporting data to ensure that award is in accordance with sound procurement principles and directly related to the evaluation criteria as set forth in the solicitation. Any proposed selection not endorsed by the DO will be concurred in by the Head of the Contracting Activity.

§2015.670 Contract provisions.

(a) The contracting officer shall include the provision found at §2052.215-81, Contract Award and Evaluation of Proposals, in all solicitations, where technical is more important than cost:

(1) The contracting officer shall substitute the paragraph found at §2052.215-82 for paragraph (b) in all solicitations for negotiated competitive procurements where cost is more important than technical merit.

(2) The contracting officer shall substitute the paragraph found at §2052.215-83 for paragraph (b) in all solicitations for negotiated competitive procurements where cost and technical merit are of equal significance.

(b) The contracting officer may make appropriate changes to the provision to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and benchmarking criteria for ADP procurements.

Part 2016 - TYPES OF CONTRACTS

Subpart 2016.3 - Cost Reimbursement Contracts

Sec.

2016.307-70 Contract provisions and clauses.

Subpart 2016.5 - Indefinite-Delivery Contracts

Sec.

2016.506-70 Contract provisions and clauses.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2016.3 - Cost Reimbursement Contracts

§2016.307-70 Contract provisions and clauses.

(a) The contracting officer shall insert the clause at §2052.216-70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer shall insert the following provisions and clauses in all cost reimbursement contracts:

(1) Section 2052.216-71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216-72, Indirect Cost Rates - Alternate 1 (where predetermined rates apply).

(3) Section 2052.216-73, Indirect Cost Rates - Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5 - Indefinite-Delivery Contracts.

Sec.

2016.506-70 Contract provisions and clauses.

The contracting officer shall insert the following provisions in all solicitations and contracts that contain task order procedures:

- (a) Section 2052.216-74, Task Order Procedures;
- (b) Section 2052.216-75, Accelerated Task Order Procedures.

SUBCHAPTER D - SOCIOECONOMIC PROGRAMS

Part 2017 - SPECIAL CONTRACTING METHODS

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 481(b).

Subpart 2017.2 - Options

§2017.204 - Contracts

(a) The contracting officer may approve extensions to five year contracts for up to a total of an additional six months, for the purpose of completing the competitive process for a follow on contract, provided that the competitive requirement was received in DCPM not less than six months before the end of the fifth year.

(b) The Head of the Contracting Activity may approve extensions for up to a total of one year.

Part 2019 - SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

Subpart 2019.7 - Subcontracting with small business and small disadvantaged business concerns.

Sec.

2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705-4 Reviewing the subcontracting plan.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2019.7 - Subcontracting with Small Business and Small Disadvantaged Business Concerns

§2019-705 Responsibilities of the contracting officer under the subcontracting assistance program.

§2019.705-4 Reviewing the subcontracting plan.

(a) During the source selection process, subcontracting plans may be requested from all concerns required to submit them and determined to be in the competitive range, for negotiation with the apparent successful offeror.

(b) The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, if:

(1) The master plan contains all of the elements required by FAR 19.704;

(2) Subcontracting goals for small and small disadvantaged business concerns are specifically set forth in each contract or modification over the statutory threshold;

(3) Any changes to the plan deemed necessary and required by the contracting officer in areas other than goals are specifically set forth in the contract or modification; and

(4) The contracting officer has copies of the entire plan.

Part 2020 - LABOR SURPLUS AREA CONCERNS

Subpart 2020.1 General

Sec.

§2020.102 - General policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2020.1 - General

Subpart 2020.102 General Policy

Acquisitions that are in excess of \$25,000 must be reviewed for potential labor surplus area set-aside consideration in accordance with FAR

20.104 using publications and other information identifying labor surplus areas obtained from:

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service
Office of Labor Market Information
200 Constitution Ave., NW., Room N4456
Washington, DC 20510
Telephone Number: (202) 535-0157

Part 2022 - APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1 Basic Labor Policies.

Sec.

2022.101-1 General

2022.103-4 Approvals.

Subpart 2022.9 Nondiscrimination because of Age

2022.901-70 Contract provisions.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 4186 (b)

Subpart 2022.1 Basic Labor Policies.

§2022.101-1 General.

The Head of Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance.

§2022.103-4 Approvals.

The agency approving official for contractor overtime shall be the contracting officer.

Subpart 2022.9 - Nondiscrimination Because of Age.

§2022.901-70 Contract provisions.

The contracting officer shall insert the provision found at §2052.222-70, Nondiscrimination Because of Age, in all solicitations.

Part 2024 - PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1 Protection of Individual Privacy

Sec.

2024.103 Procedures.

Subpart 2024.2 - Freedom of Information Act

2024.202 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1 - Protection of Individual Privacy

§2024.103 Procedures.

The provisions at 10 CFR Part 9, Subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2 - Freedom of Information Act

§2024.202 Policy.

The provisions at 10 CFR Part 9, Subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

Part 2025 - FOREIGN ACQUISITION

Subpart 2025.1 - Buy American Act - Supplies

Sec.

2025.102 Policy.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2025.1 - Buy American Act - Supplies

§2025.102 Policy.

Contracting officers may make the determination required by FAR 25.102(a)(4), provided the determination is factually supported in writing.

For contracts exceeding \$1 million, the Head of the Contracting Activity shall approve the determination.

SUBCHAPTER E - GENERAL CONTRACTING REQUIREMENTS

Part 2027 - PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3 - Patent Rights Under Government Contracts.

Sec.

2027.305 Administration of patent rights clauses.

2027.305-3 Follow-up by Government.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2027.3 - Patent Rights Under Government Contracts.

§2027.305 Administration of patent rights clauses.

The contracting officer shall ensure that each contractor report is in writing whether any patent rights are being claimed, before final payment and closeout of the contract.

§2027.305-3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report on any patents, copyrights, or

royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

- (1) No inventions or discoveries were made,
- (2) No copyrights were secured, produced, or composed,
- (3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors, and
- (4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(b) The contracting officer may waive any of the requirements paragraphs (a) (1)-(4) of this section, after documenting the file to indicate the -

- (1) Impracticality of obtaining the document(s); and
- (2) Steps taken to attempt to obtain them.

(c) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity, and shall document the official file with the resolution to protect the Government's rights prior to making any final payment and closing out the contract.

Part 2030 - COST ACCOUNTING STANDARDS

Subpart 2030.2 CAS Program Requirements

Sec.

2030.201-5 Waiver

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Sec.

2030.201-5 Waiver

Subpart 2030.2 - CAS Program Requirements

In accordance with the FAR 30.201-5(c), the Head of the Contracting Activity may waive CAS requirements.

Part 2031 - CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 2031.1 - Applicability

Sec.

2031.109-70 Contract classes.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2031.1 - Applicability

§2031.109-70 Contract clauses.

The contracting officer shall insert the clause at §2052.231-70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the

effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

Part 2032 - CONTRACT FINANCING

Subpart 2032.4 - Advance Payments

Sec.

2032.402 General.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2032.4 - Advance Payments

§2032.402 General.

(a) The contracting officer shall have the responsibility and authority for making findings and determinations, and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements except for subscriptions to publications, the approving official shall coordinate with the Office of the Controller, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

Part 2033 - PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1 - Protests

Sec.

2033.103 Protests to the agency.

2033.203 Applicability.

2033.211 Contracting officer's decision.

2033.214 Contract clause.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2033.1 Protests

§2033.103 Protests to the agency.

The agency may not process, or shall cease processing, agency level protests that are protested outside the agency unless and until such time that a proper determination is made authorizing the agency to proceed under the applicable protest procedures.

§2033.203 Applicability.

Pursuant to an interagency agreement between the NRC and the Department of Energy Board of Contract Appeals (EBCA), the EBCA will hear appeals from final decisions of NRC contracting officers issued pursuant to the Contract Disputes Act. The EBCA rules appear in 10 CFR Part 1023.

§2033.211 Contracting officer's decision.

Contracting officers shall alter the paragraph at FAR 33.211(a)(4)(iv) to identify the Energy Board of Contract Appeals and include its address: Webb Building, Room 1006, 4040 N. Fairfax Drive, Arlington, Virginia 22203, when preparing a written decision.

§2033.214 Contract clause.

The contracting officer shall use the clause at FAR 52.233-1, Disputes, with its Alternate I where continued performance is vital to National Security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F - SPECIAL CATEGORIES OF CONTRACTING

Part 2035 - RESEARCH AND DEVELOPMENT CONTRACTING

Sec.

2035.70 Contract clauses.

2035.71 Broad agency announcements.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

§2035.70 Contract clauses.

(a) The contracting officer shall insert the following clauses in all RFPs for Research and Development or in Requests for Proposals (RFPs) for other technical services as appropriate:

(b) Section 2052.235-70, Publication of Research Results, except that in the case of universities, the contracting officer shall substitute the paragraph found at §2052.235-71 for paragraph c.

(c) Section 2052.235-72 Safety, Health and Fire Protection.

§2035.71 Broad agency announcements.

(a) Criteria for selecting contractors will include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

Part 2039 - ACQUISITION OF INFORMATION RESOURCES

Sec.

2039.001 Policy.

2039.002 Delegations of procurement authority.

AUTHORITY: 42 U.S.C 2201; 42 U.S.C. 5841; AND 41 U.S.C. 418(b).

§2039.001 Policy.

In accordance with the Federal Information Resources Management Regulation (41 CFR Ch. 201), and appropriate NRC Management Directives, the Office of Information Resources Management will be responsible for development and/or approval of requirements analysis including information needs, justification for specific make and model, analysis of alternatives, and

Delegations of Procurement Authority for information resources management procurements in excess of \$25,000 (automated data processing, telecommunications, and records), when required. These documents must be submitted to the Division of Contracts and Property Management with the Request for Procurement Action (RFPA) for which these documents are required.

§2039.002 Delegations of procurement authority.

The NRC official authorized to sign Agency Procurement Requests and Agency Telecommunications Requests for Delegations of Procurement Authority is the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support or designee.

SUBCHAPTER G - CONTRACT MANAGEMENT

Part 2042 - CONTRACT ADMINISTRATION

Subpart 2042.8 - Disallowance of Costs

Sec.

2042.803 Disallowing costs after incurrence.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 418(b).

Subpart 2042.8 - Disallowance of Costs

§2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR Subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR Subpart 33.2; and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) against amounts billed the government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the government (in situations where there are insufficient payments owed by the government to effect recovery from the contract).

PART 2045 - GOVERNMENT PROPERTY

Subpart 2045.3 - Providing Government Property to contractors

Sec.

2045.370 Providing government property (in general).

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2045.3 - Providing Government Property to Contractors

§2045.370 Providing government property (in general).

(a) Unless otherwise provided for in FAR 45.302-1(d), applicable to Government facilities with a unit cost of less than \$10,000, a contractor may be provided Government property or allowed to purchase the property at

Government expense upon determination made by the contracting officer with the advice of the agency property official that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

(b) If the program office is aware before the submission of the RFPA that it will be necessary to provide prospective contractors with Government property, a written justification must accompany the RFPA to the Division of Contracts and Property Management.

SUBCHAPTER H - CLAUSES AND FORMS

Part 2052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2 Text of Provisions and Clauses

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2052.235.71	Publication of research results - universities.
2052.235-72	Safety, health, and fire protection.

AUTHORITY: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2052.2 Text of Provisions and Clauses

§2052.200 Authority.

§2052.204-70 Security.

As prescribed at §2004.404(a), insert the following clause in applicable solicitations and contracts:

Security

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See Section J for List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in

the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall, upon completion or termination of this contract, transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract. If retention by the contractor of any classified matter is required after the completion or termination of the contract and the retention is approved by the contracting officer, the contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained. The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93-579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information in whole or in part to any other person or organization except as may be necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer.

Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission.

(e) Definition of National Security Information. The term National Security Information, as used in this clause, means information that has been determined pursuant to Executive Order 12356 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. The term Restricted Data, as used in this clause, means all data concerning (1) design, manufacture, or utilization of atomic weapons; (2) the production of special nuclear material; or (3) the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. The term Formerly Restricted Data, as used in this clause, means all data removed from the Restricted Data category under Section 142-d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form

312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. It is understood that disclosure of National Security Information, Restricted Data, and Formerly Restricted Data, relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 et seq.; 18 U.S.C. 793 and 794; and Executive Order 12356.)

(j) Subcontracts and purchase orders. Except as otherwise authorized in writing by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing the contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued hereunder involving the origination or generation of classified documents, material, and equipment must provide that the subcontractor or supplier assign classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

§2052.204-71 Site access badge requirements.

As prescribed at §2004.404(b), insert the following clause in applicable solicitations and contracts:

Site Access Badge Requirement

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for the contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel must have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work, and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

§2052.209-70 Qualifications of contract employees.

As prescribed at §2009.105-70, insert the following provision in applicable solicitations:

Qualifications of Contract Employees

The offeror hereby certifies by submission of this offer that all representations made regarding its employees, proposed subcontractor personnel, and consultants are accurate.

(End of Provision)

§2052.209-71 Current/former agency employee involvement.

As prescribed at §2009.105-70, insert the following provision in applicable solicitations:

Current/Former Agency Employee Involvement

(a) The following representation is required by the NRC Acquisition Regulation 2009.105-70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts, and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) The offeror hereby certifies that there () are () are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory

committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and brief description of the individual's role under this proposal.

(End of Provision)

§2052.209-72 Contractor organizational conflicts of interest
(representation).

As prescribed in §2009.570-4(b) and 2009.570-8, insert the following provision in applicable solicitations:

Contractor Organizational Conflicts of Interest Representation

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570-3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570-3(b) are involved, or the contracting officer otherwise determines that potential organizational

conflicts of interest exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

- (1) Impose appropriate conditions which avoid such conflicts,
- (2) Disqualify the offeror, or
- (3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009-570-9.

(b) The refusal to provide the representation required by 48 CFR 2009.570-4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570-3(b), must result in disqualification of the offeror for award.

(End of Provision)

§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.

(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 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 before the 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 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.

(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 in the same or similar 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).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines

that the situation will not pose a potential for technical bias or unfair competitive advantage.

(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.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, 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. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, 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 the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) Access to and use of information.

(1) If in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), 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 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), 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) Subject to patent and security provisions of this contract, the contractor shall have 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, 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 to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570-9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited), which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

§2052.210-70 Brand name products or equal.

As prescribed at §2010.004, insert the following clause in applicable solicitations and contracts:

Brand Name Products or Equal

Offerors (proposers) offering other than brand name items identified herein should furnish with their offers adequate information to ensure that a determination can be made as to quality of the product(s) offered.

§2052.210-71 Drawings, designs, specifications, and other data.

As prescribed at §2010.011, the following clause shall be submitted in applicable solicitations and contracts:

Drawings, Designs, Specifications, and Other Data

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of

retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

§2052.212-70 Preparation of technical reports.

As prescribed at §2012.104-70(a), insert the clause in applicable solicitations and contracts:

Preparation of Technical Reports

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See Section J for List of Attachments).

(End of Clause)

§2052.212-71 Technical progress report.

As prescribed at §2012.104-70(b), insert the following clause in applicable solicitations and contracts:

Technical Progress Report

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact.

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

§2052.212-72 Financial status report.

As prescribed at §2012.104-70(c), insert the following clause in applicable solicitations and contracts.

Financial Status Report

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, Financial Identification Number (FIN), project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

- (1) Total estimated contract amount.
- (2) Total funds obligated to date.
- (3) Total costs incurred this reporting period.
- (4) Total costs incurred to date.

(5) Provide a detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

- (6) Balance of obligations remaining.
- (7) Balance of funds required to complete contract/task order.

(8) Contractor Spending Plan (CSP) status:

(i) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(ii) Indicate if there has been a significant change in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original WRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item 8.

(9) A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(b) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232-20) or the Limitation of Funds (LOF) Clause FAR 52.232-22.

(End of Clause)

2052.212.73 Financial Status Report - Alternate 1

Financial Status Report - Alternate 1

As prescribed in §2012.104-70(c), insert the following provision in applicable solicitations:

The Contractor shall provide a monthly Financial Status Report to the Project Officer and the Contracting Officer. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following for each discrete task:

(a) Provide total estimated cost (value) of the project as reflected in the contract, the amount of funds available in the contract to date, and the balance of funds required to complete the work as follows:

- (1) Total Estimated Contract Amount.
- (2) Total Funds Obligated To Date.
- (3) Total Costs Incurred This Reporting Period.
- (4) Total Costs Incurred to Date.
- (5) Balance of Obligations Remaining.
- (6) Balance of Funds Required To Complete Contract.

(b) Detail of all direct and indirect costs incurred during the reporting period for each task.

§2052.214-70 Prebid conference.

As prescribed at §2014.201-670(a), insert the following provision in applicable solicitations:

Prebid Conference

(a) A prebid conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission
Division of Contracts and Property Management
ATTN: *
Mail Stop *
Washington, DC 20555

(d) The envelope must be marked "Solicitation No. * /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

§2052.214-71 Bidder qualifications and past experiences.

As prescribed in §2014.201-670(b), insert the following provision in applicable solicitations:

Bidder Qualifications and Past Experiences

(a) The bidder shall list * previous/current contracts for the same or similar products/services. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current

contracts for same or similar products/services or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(1) Contract No.: _____

Name and address of

Government agency or

commercial entity: _____

Point of Contact and

Telephone Number: _____

(2) Contract No.: _____

Name and address of

Government agency or

commercial entity: _____

Point of Contact and

Telephone Number: _____

(3) Contract No.: _____

Name and address of

Government agency or

commercial entity: _____

Name _____

Title _____

Telephone No. () _____

Representative Name

Title _____

Telephone No. ()

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid, constitutes the lowest overall evaluated final contract price to the Government based upon the requirements as set forth in the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for herein, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each such item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106 may be made by representatives of the Commission for the purpose of determining whether the bidder is

responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. Also, if requested by the Commission, the prospective contractor may be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

§2052.214-73 Timely receipt of bids.

As prescribed at §2014.670(b), insert the following provision in applicable solicitations:

Timely Receipt of Bids

Because the NRC is a secure facility with perimeter access control, bidders shall allow additional time for hand delivery (including express mail and delivery services) of bids to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§2052.214-74 Disposition of bids.

As prescribed at §2014.670(b), insert the following provision in applicable solicitations:

Disposition of Bids

After award of the contract, one copy of each unsuccessful bid will be retained by NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

As prescribed at §2015.407-70(a), insert the following clause in applicable solicitations and contracts:

Key Personnel

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

*

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the concurrence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the

proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer or his/her authorized representative shall evaluate the request and promptly notify the contractor of his or her approval or disapproval in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

* To be incorporated into any resultant contract

§2052.215-71 Project officer authority.

As prescribed in §2015.407-70(a)(2)(i), insert the following clause in applicable solicitations and contracts:

Project Officer Authority

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *

Address: *

Telephone Number: *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term technical direction is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approval of technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories as defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request the contracting officer to modify the contract accordingly. Upon receiving the notification

from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect there to is subject to §52.233-1 - Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval,

or suspension of payment for supplies and services required under this contract.

(End of Clause)

§2052.215-72 Project officer authority - Alternate 1.

As prescribed at §2015.407-70(2)(ii), insert the following clause in applicable solicitations and contracts:

Project Officer Authority - Alternate 1

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer for this contract is:

Name: *

Address: *

Telephone Number: *

(b) The project officer shall:

- (1) Place delivery orders for items required under this contract.
- (2) Monitor contractor performance and recommend to the contracting officer changes in requirements.
- (3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract

(End of Clause)

§2052.215-73 Timely receipt of proposals.

As prescribed in §2015.407-70(a), insert the following provision in applicable solicitations:

Timely Receipt of Proposals

Because NRC is a secure facility with perimeter access control, offerors shall allow additional time for hand delivery (including express mail and delivery services) of proposals to ensure that they are timely received in the depository at the address shown in Item 9 on the Standard Form 33.

(End of Provision)

§2052.215-74 Award notification and commitment of public funds

As prescribed at §2015.407-70(a), insert the following clause in applicable solicitations and contracts:

Award Notification and Commitment of Public Funds

(a) All offerors will be notified of their selection or nonselection as soon as possible. Formal notification of nonselection for unrestricted awards may not be made until a contract has been awarded. Pursuant to requirements of FAR 15.1001(b)(2), preliminary notification will be provided before the award for small business set-aside procurements on negotiated procurements.

(b) It is also brought to your attention that the contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

- (1) Encouraging a potential contractor to incur costs prior to receiving a contract;
- (2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;
- (3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

§2052.215-75 Disposition of proposals.

As prescribed in §2015.407-70(a)(5), insert the following provision in applicable solicitations:

Disposition of Proposals

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of proposal, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

§2052.215-76 Proposal presentation and format.

As prescribed at §2015.407-70(b), insert the following provision in applicable solicitations:

Proposal Presentation and Format

(a) Proposals must be typed, printed, or reproduced on letter-size paper and each copy must be legible.

(b) Proposals in response to this Request for Proposal must be submitted in the following three (3) separate and distinct parts:

(1) Two (2) original signed copies of this solicitation package. All applicable sections must be completed by the offeror.

(2) One (1) original and * copies of the "Cost Proposal."

(3) One (1) original and * copies of the "Technical and Management Proposal."

(c) Correctness of the proposal. Caution--offerors are hereby notified that all information provided in its proposals, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(d) Cost proposal.

(1) The offeror shall use Standard Form 1411, Contracting Pricing Proposal Cover Sheet, in submitting the Cost Proposal. A copy of the form and instructions are attached to this solicitation. The information must include

pertinent details sufficient to show the elements of cost upon which the total cost is predicted. The Cost Proposal must be submitted separately from the Technical and Management Proposal.

(2) When the offeror's estimated cost for the proposed work exceeds \$100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(3) For any subcontract discussed under the Technical and Management Proposal, provide supporting documentation on the selection process, i.e. competitive vs. noncompetitive, and the cost evaluation.

(e) Technical and management proposal.

(1) The Technical and Management Proposal may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included in the Technical and Management Proposal so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit with the Technical and Management Proposal full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror or statements to

the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(4) The Technical and Management Proposal must be tailored to assure that all sections reflect a one-to-one relationship to the evaluation criteria. The following are examples of the type of information that should be included in a technical and management proposal.

(i) Discussion of the statement of work to substantiate the offeror's understanding of the requirement.

(ii) Discussion of the proposed method of approach to meet the contract objectives.

(iii) Discussion of potential problem areas and the approach to be taken to resolve these areas.

(iv) Statements of any interpretations, requirements, or assumptions made by the offeror.

(v) Discussion of support personnel and facilities available to assist the professional personnel.

(vi) Identify "Key Personnel," and for the person(s) so identified, specify the percentage of time that will be committed to other projects over the course of the proposed contract period of performance.

(vii) Resumes for all professional personnel, including subcontractors and consultants, to be utilized in the performance of any resulting contract. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(viii) Description of the source of personnel required for performance of each task, including those not presently employed by the offeror. If any of the personnel are under commitment, describe the terms of the commitment(s). Note specifically the personnel that will be employed at time of contract award.

(ix) If the offeror plans to obtain consultant services, explain the need for the services. List the proposed consultants by name, describe the work they will perform under this contract, and include related past experience. Individuals who are employees of the contractor or of the U.S. Government are prohibited from being paid as a consultant under this contract.

(x) If the offeror plans to subcontract any of the work to be performed, list proposed subcontractors, if known, by name. Provide a detailed description of the work to be performed by the subcontractor, and supporting documentation of technical evaluation leading to the selection.

(xi) Provide a detailed schedule for work to be performed and identification of significant milestones and completion dates for each subpart or task.

(xii) Project scheduling and contingency planning demonstrating a logical progression and integration of the tasks to ensure completion within the performance period and without program slippage.

(xiii) Describe of the management organizational structure delineating areas of responsibility and authority under the proposed effort. Describe the relationship of the project organization to corporate management and to subcontractors, if any. Discuss the functions and authorities of the project manager.

(xiv) Procedures to periodically review in-house organizational functions, program reviews and controls, and subsequent coordination with the NRC.

(xv) Management controls expected to be utilized to preclude a contract cost growth.

(xvi) The offeror shall list of any commitments with other organizations, Government and/or commercial, for the same or similar effort.

(xvii) List of * previous contracts for the same or similar services, with the name, title, and full telephone number of a contact for each.

(xviii) List of the name, title, and full telephone number for the proposer's technical representative and contracts/business representative.

(xix) * _____ * * _____ * * _____ * * _____ * * _____ *

* To be incorporated into the solicitation

(End of Provision)

§2052.215-77 Proposal presentation and format - Alternate 1 (language for negotiated task order contracts.)

As prescribed at §2015.407-70(b)(1), insert the following language in provision §2052.215-76.

(d) Cost proposal.

(1) The offeror shall provide a cost proposal based on the Estimated Level of Effort. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

§2052.215-78 Proposal presentation and format - Alternate 2 (language for negotiated fixed prices, labor hour, or time and materials contracts.)

As prescribed at §2015.407-70(b)(2), paragraph (d)(2) shall be deleted from the provision §2052.215-76.

(End of Provision)

§2052.215-79 Preproposal conference

As prescribed at §2015.407-70(c), insert the following provision in applicable solicitations:

(a) A preproposal conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) prior to the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone *, no later than close of business *. Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential proposer is limited to * representatives at the conference.)

(c) Written questions must be submitted to:

U.S. Nuclear Regulatory Commission

Division of Contracts and Property Management

ATTN: *

Mail Stop *

Washington, DC 20555

(d) The envelope must be marked "Solicitation No. * /Preproposal Conference."

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

§2052.215-80 Travel reimbursement.

As prescribed at §2015.407-70(d), insert the clauses or alternate in applicable solicitations and contracts:

Travel Reimbursement

(a) Total expenditure for domestic travel may not exceed * _____ without the prior approval of the contracting officer.

(b) The contractor is encouraged to use Government contract airlines, AMTRAK rail services, and discount hotel/motel properties in order to reduce the cost of travel under this contract. The contracting officer shall, upon request, provide each traveler with a letter of identification which is required in order to participate in this program. The Federal Travel Directory (FTD) identifies carriers, contract fares, schedules, payment conditions, and hotel/motel properties which offer their services and rates to Government contractor personnel traveling on official business under this

contract. The FTD, which is issued monthly, may be purchased from the U.S. Government Printing Office, Washington, DC 20402.

(c) The contractor will be reimbursed for reasonable travel costs incurred directly and specifically in the performance of this contract. The cost limitations for travel costs are determined in accordance with the specific travel regulations cited in FAR 31.205-46, as are in effect on the date of the trip. Travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100-679, shall be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A-87, Cost Principles for State and Local Governments; OMB Circular A-122, Cost Principles for Nonprofit Organizations; and OMB Circular A-21, Cost Principles for Educational Institutions.

(d) When the Government changes the Federal Travel Regulations, or other applicable regulations, it is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract if the contractor will be unable to make all of the approved trips and remain within the cost and fee limitations of this contract due to the changes.

*To be incorporated into any resultant contract

(End of Clause)

§2052.215-81 Travel approvals.

As prescribed in §2015.407-70(d), insert the following clause in applicable solicitations and contracts:

Travel Approvals

(a) All domestic travel requires the prior approval of the project officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445 and must be in compliance with FAR 52.247-63 Preference for U.S. Flag Air Carriers. Foreign travel approval must be communicated in writing through the contracting officer.

(End of Clause)

*To be incorporated into any resultant contract

(End of Clause)

§2052.215.82 Contract award and evaluation of proposals.

As prescribed in §2015.670(a), insert the following provision in applicable solicitations:

Contract Award and Evaluation of Proposals

(a) By use of numerical and narrative scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below.

These factors are listed in their relative order of importance. Award is made to the offeror:

- (1) Whose proposal is technically acceptable;
- (2) Whose technical/cost relationship is most advantageous to the Government; and
- (3) Who is considered to be responsible within the meaning of Federal Acquisition Regulation Part 9.1.

(b) Although cost is a factor in the evaluation of proposals, technical merit in the evaluation criteria set forth below is a more significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

(c) The Government may:

- (1) Reject any or all offers if the action is in the public interest;
- (2) Accept other than the lowest offer; and
- (3) Waive informalities and minor irregularities in offers received.

(d) The Government may award a contract on the basis of initial offers received, without discussions. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoints.

(e) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

(f) In making the above determination, an analysis is performed by the Government that takes into consideration the results of the technical evaluation and cost analysis.

* To be incorporated into the solicitation.

(End of Provision)

§2052.215-83 Contract award and evaluation of proposals - cost more important than technical merit.

As prescribed at §2015.670(a), substitute the following paragraph for paragraph (b) in the clause at §2052.215.82:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, cost is more a significant factor in the selection of a contractor. Further, to be selected for an award, the proposed cost must be realistic and reasonable.

§2052.215-84 Contract award and evaluation of proposals - cost and technical merit of equal value.

As prescribed at §2015.670a(2), substitute the following paragraph for paragraph (b) in the clause at §2052.215.82:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance. To be selected for an award, the proposed cost must be realistic and reasonable.

§2052.216-70 Level of effort.

As prescribed at §2016.307-70(a), insert the following provision in applicable solicitations:

Level of Effort

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract

(End of Provision)

§2052.216-71 Indirect cost rates.

As prescribed at §2016.307-70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust the above rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232-20, Limitation of Cost, or FAR 52.232-22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-72 Indirect cost rates - Alternate 1.

As prescribed at §2016.307-70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates - Alternate 1

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-73 Indirect cost rates - Alternate 2.

As prescribed at §2016.307-70(b), insert the following clause in applicable solicitations and contracts:

Indirect Cost Rates - Alternate 2

(a) For this contract, the amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs are less than the ceiling rates, the rates established by the cognizant audits must apply. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

§2052.216-74 Task order procedures.

As prescribed at §2016.506-70(a), insert the following clause in applicable solicitations and contracts:

Task Order Procedures

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORP) which includes the following, as appropriate:

- (1) Scope of work/meetings/travel and deliverables;
- (2) Reporting requirements;
- (3) Period of performance - place of performance;
- (4) Applicable special provisions;
- (5) Technical skills required; and
- (6) Estimated level of effort.

(b) Task order proposal.

By the date specified in the TORP, the contractor shall deliver to the contracting officer a written proposal that provides the following technical and cost information, as appropriate:

(1) Technical proposal content;

(i) A discussion of the scope of work requirements to substantiate the contractor's understanding of the requirements of the task order and the contractor's proposed method of approach to meet the objective of the order.

(ii) Resumes for professional personnel proposed to be utilized in the performance of any resulting task order. Include educational background, specific pertinent work experience, and a list of any pertinent publications authored by the individual.

(iii) Identification of administrative support personnel and/or facilities that are needed to assist the professional personnel in completing work on the task order.

(iv) Identification of "Key Personnel" and the number of staff hours that will be committed to completion of work on the task order.

(2) Cost proposal. The contractor's cost proposal for each task order must be prepared using Standard Form 1411, Contract Pricing Proposal cover sheet. A copy of the form and instructions are attached to this contract. Each task order cost proposal must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds \$100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(c) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

- (1) Statement of work/meetings/travel and deliverables;
- (2) Reporting requirements;
- (3) Period of performance;
- (4) Key personnel;
- (5) Applicable special provisions; and
- (6) Total task order amount including any fixed fee.

(End of Clause)

§2052.216-75 Accelerated task order procedures.

As prescribed at §2016.506-70, insert the following clause in applicable solicitations and contracts:

Accelerated Task Order Procedures

(a) The NRC may require the contractor to commence work before receipt of a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall

proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233-1, Disputes. In any event, the contractor shall proceed with completion of the task order, subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

§2052.222-70 Nondiscrimination because of age.

As prescribed at §2022.901-70, insert the following clause in applicable solicitations and contracts:

Nondiscrimination Because of Age

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or

discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirements; and

(b) That contractors and subcontractors, or person acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

§2052.231-70 Precontract costs.

As prescribed in § 031.109-70, insert the following clause in applicable solicitations and contracts:

Precontract Costs

Allowable costs under this contract must include such costs, incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract, as would have been allowable pursuant to the terms of this contract if this contract had been in effect during that period; provided, however, that the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract

(End of Clause)

§2052.235-70 Publication of research results.

As prescribed in §2035.70, insert the following clause in applicable solicitations and contracts:

Publication of Research Results

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Handbook 3.8 (formerly MC 3202) and NRC Manual Chapter 3206 regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) Prior to any such publication, the contractor shall submit the proposed publication to the NRC Contracting Officer and Project Officer for review and approval.

(End of Clause)

§2052.235-71 Publication of research results - universities

As prescribed at §2035-70, substitute the following paragraph (c) for paragraph (c) in §2052.235-70.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is (1) subject to Commission approval, (2) has not been ruled upon, or (3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235-72 Safety, Health, and Fire Protection.

As prescribed in §2035.70, insert the following clause in applicable solicitations and contracts:

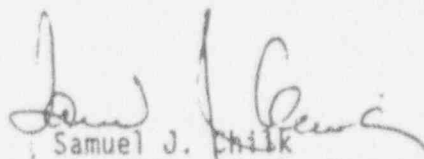
Safety, Health, and Fire Protection

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property and shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. In the event that the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work; thereafter, a start order for resumption of work may be issued at the discretion of the contracting officer. The contractor shall make no claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

Dated at Rockville, Maryland this 9th day of December, 1992.

For the Nuclear Regulatory Commission.


Samuel J. Chalk
Secretary of the Commission

Request for OMB Review

AC01-2
POR

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request U.S. Nuclear Regulatory Commission	2. Agency code 3 1 5 0
3. Name of person who can best answer questions regarding this request William F. Foster	Telephone number (301) 492-7348
4. Title of information collection or rulemaking 48 CFR Chapter 20, Nuclear Regulatory Commission Acquisition Regulation (NRCAR)	

5. Legal authority for information collection or rule (cite United States Code, Public Law, or Executive Order)
USC _____ or OFPP Act of 1974 (Pub. L. 93-400), as amended by P.L. 96-83

6. Affected public (check all that apply)

1 <input checked="" type="checkbox"/> Individuals or households	3 <input type="checkbox"/> Farms	5 <input type="checkbox"/> Federal agencies or employees
2 <input checked="" type="checkbox"/> State or local governments	4 <input checked="" type="checkbox"/> Businesses or other for-profit	6 <input checked="" type="checkbox"/> Non-profit institutions
		7 <input checked="" type="checkbox"/> Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Regulation Identifier Number (RIN)
_____, or, None assigned ☐

8. Type of submission (check one in each category)	Stage of development	Type of review requested
Classification		
1 <input type="checkbox"/> Major	1 <input type="checkbox"/> Proposed or draft	1 <input type="checkbox"/> Standard
2 <input type="checkbox"/> Nonmajor	2 <input type="checkbox"/> Final or interim final, with prior proposal	2 <input type="checkbox"/> Pending
	3 <input type="checkbox"/> Final or interim final, without prior proposal	3 <input type="checkbox"/> Emergency
		4 <input type="checkbox"/> Statutory or judicial deadline

9. CFR section affected
_____, CFR _____

10. Does this regulation contain reporting or recordkeeping requirements that require OMB approval under the Paperwork Reduction Act and 5 CFR 1320? ☐ Yes ☐ No

11. If a major rule, is there a regulatory impact analysis attached? 1 ☐ Yes 2 ☐ No
If "No," did OMB waive the analysis? 3 ☐ Yes 4 ☐ No

Certification for Regulatory Submissions

In submitting this request for OMB review, the authorized regulatory contact and the program official certify that the requirements of E.O. 12291 and any applicable policy directives have been complied with.

Signature of program official	Date
Signature of authorized regulatory contact	Date

12. (OMB use only)

9207070239

PART III.—Complete This Part Only if the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less "Procurement Regulation"

The Nuclear Regulatory Commission Acquisition Regulation is necessary to implement and supplement the government-wide Federal Acquisition Regulation and to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency. The "affected public" are offerors, bidders, and contractors of NRC procurements.

14. Type of information collection (check only one)

Information collections not contained in rules

1 ☐ Regular submission

2 ☐ Emergency submission (certification attached)

Information collections contained in rules

3 ☐ Existing regulation (no change proposed)

6 Final or interim final without prior NPRM

4 ☐ Notice of proposed rulemaking (NPRM)

A ☒ Regular submission

5 ☐ Final, NPRM was previously published

B ☐ Emergency submission (certification attached)

7. Enter date of expected or actual Federal Register publication at this stage of rulemaking (month, day, year) _____

15. Type of review requested (check only one)

1 ☒ New collection

2 ☐ Revision of a currently approved collection

3 ☐ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

4 ☐ Reinstatement of a previously approved collection for which approval has expired

5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) (include standard/optional form number(s))

N/A

17. Annual reporting or disclosure burden

1 Number of respondents	750
2 Number of responses per respondent	15
3 Total annual responses (line 1 times line 2)	11,270
4 Hours per response	10.7
5 Total hours (line 3 times line 4)	120,441

18. Annual recordkeeping burden

1 Number of recordkeepers	N/A
2 Annual hours per recordkeeper	
3 Total recordkeeping hours (line 1 times line 2)	
4 Recordkeeping retention period	years

19. Total annual burden

1 Requested (line 17-5 plus line 18-3)	120,441
2 In current OMB inventory	0
3 Difference (line 1 less line 2)	+ 120,441
Explanation of difference	
4 Program change	+ 120,441
5 Adjustment	

20. Current (most recent) OMB control number or comment number

N/A

21. Requested expiration date

3 years after approval

22. Purpose of information collection (check as many as apply)

- 1 ☒ Application for benefits
2 ☐ Program evaluation
3 ☐ General purpose statistics
4 ☐ Regulatory or compliance
5 ☐ Program planning or management
6 ☐ Research
7 ☐ Audit

23. Frequency of recordkeeping or reporting (check all that apply)

1 ☐ Recordkeeping

Reporting

- 2 ☒ On occasion
3 ☐ Weekly
4 ☒ Monthly
5 ☐ Quarterly
6 ☐ Semi-annually
7 ☐ Annually
8 ☐ Biennially
9 ☐ Other (describe) _____

24. Respondents' obligation to comply (check the strongest obligation that applies)

- 1 ☐ Voluntary
2 ☒ Required to obtain or retain a benefit
3 ☐ Mandatory

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

48 CFR Chapter 20 ; or FR ; or Other (specify): _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Date

Signature of agency head, the senior official or an authorized representative

Date

Gerald F. Cranford, DSO for Information Resources Management

7/1/92

SUPPORTING STATEMENT
FOR
48 CFR CHAPTER 20

NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION

Description of the Information Collection

NRC regulations in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The Nuclear Regulatory Commission Acquisition Regulation (NRCAR) includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements. The information collection requirements contained in 48 CFR Chapter 20 were submitted to the Office of Management and Budget (OMB) at the proposed rule stage and forwarded to the Office of Federal Procurement Policy (OFPP) for comments. NRC did not receive approval of the information collections at the proposed rule stage. Based on comments received from the Office of Federal Procurement Policy (OFPP) NRC met with OFPP on October 23, 1991 and resolved these comments. Disposition of these comments is included as Enclosure A. Provisions of the NRCAR having information collection burdens are listed below. OFPP's comments regarding these provisions have been incorporated, as appropriate.

A. JUSTIFICATION

Section 2009.570-3(b)(1)&(2) provides that the offeror or contractor disclose information concerning relationships that may be potential conflicts of interest under certain circumstances, which are listed. If there is an indication of a strong potential conflict of interest, the Contracting Officer (CO) may request specific information or may require special clauses. The burden associated with this requirement is covered under clause 2052.209-72, "Contractor Organizational Conflicts of Interest" (COI) (Representation). Language has been added to the rule to state what information is to be reported. (Ref. NRCAR page 46). This information is necessary in order to make COI determinations on a case-by-case basis and implement the statute (42 U.S.C. Sec. 2221, Sec. 170A of the Atomic Energy Act of 1954, as amended, by which NRC is bound and which governs conflicts of interest in award of contracts.

Section 2009.570-3(c) provides COI policy application guidance. Because the NRC does not predetermine COI issues before receiving offers, this information is extremely useful to organizations in deciding whether or not to expend bid and proposal costs since they could be determined to be ineligible to receive an award because of a COI determination. Therefore, this section remains in the NRCAR. The burden is covered in §2052.209-73(d)(2), (d)(3) and (f) for this requirement. (Ref. NRCAR page 5 "Statement of Considerations.")

Section 2009.570-3(c)(4)(ii) requires the contractor to report all proposed usage of information provided under contract which will be employed in the contractor's private activities. This guidance is provided after each conflict example and is used to illustrate, for NRC staff and potential contractors, the possible resolution of each COI example situation. Therefore this section remains in the NRCAR. It allows NRC opportunity to review the contractor's information to ensure that it (1) is not subject to Commission approval, (2) has not been ruled upon, or (3) has not been disapproved by the Commission. Only in rare circumstances would this requirement be incorporated into a contract.

Section 2009.570-5(b) is not consistent with the OFPP comment. This citation should be 2009.570-3(b)(2), which requires the contractor to provide specific information in situations that may result in an unfair competitive advantage. This information is necessary to determine whether or not the contractor is placed in a conflicting role that may bias its judgement in relation to its work for NRC. The burden associated with this requirement is minimal.

Section 2009.570-8 provides that the contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors and consultants performing services in excess of \$10,000. This is a clause that flows down from the prime to the subcontractor, the burden of this requirement is covered under 2052.209-72.

Section 2014.201-670 requires that all bidders describe past experience. This information will assist the contracting officer in his/her determination of responsibility. This requirement has been edited to make it optional as appropriate. In some instances where there is little or no procurement history available, the information requested concerning bidder qualifications and past experience enables the contracting officer to query the contacts identified and ascertain the offeror's performance record, integrity, and business ethics. The burden for this requirement is covered under 2052.214-71.

Section 2015.607 mandates that the contracting officer require the proposer's written clarification(s) of any mistakes be provided in accordance with FAR 15.607. This written record is needed to ensure that the proposer's real intent is clear.

Section 2019.705-4(a) provides that subcontracting plans may be requested from all concerns determined to be in the competitive range for the purpose of negotiations. Additionally, it clarifies conditions for acceptance of master subcontracting plans. This information is not covered in the FAR and is necessary to provide consistent treatment of proposers. (Ref. NRCAR page 7 "Statement of Considerations")

Section 2027.305-3(a) provides that the contracting officer, as a part of the closeout of a contract, shall require each contractor to report on any patents, copyrights, or royalties attained using any portion of

the contract funds. FAR Part 27.305-3(a) states that "Agencies shall maintain appropriate procedures to protect the Government's interest and to check that subject inventories are identified and disclosed." The reporting described in the NRCAR requires the contractor to certify that no patent or similar activities took place under the contract. Such a response is necessary to document that the contractor has not generated work to which the Federal government might have technical or economic rights.

Section 2042.803(a)(2)(i) provides that the contractor may submit a written claim to the Contracting Officer (CO) for reimbursement of a disallowed cost. This procedure allows for an informal review of the CO's decision or an alternative to established formal processes.

Section 2042.803(b) states that when audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor, whenever possible, within six months of receipt of the audit report. Contractors who have a need to receive payment due to a hardship currently can offer to help expedite the decision-making process. The resolution process is dependent on a number of inputs including the contractor's. Six months is a realistic timeframe based on experience in resolving audit cost issues. (Ref. NRCAR page 8 "Statement of Considerations")

Section 2052.204-70(b) requires the contractor, upon completion or termination of the contract to transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of the contract. The NRCAR clause 2052.204-70, "Security" is currently approved under OMB Control Number 3150-0112 which will be discontinued upon approval of the NRCAR. The clause is needed because the agency is not covered by the Defense Industrial Security Program (DISP). In addition to Executive Orders, Statutes and other directives which apply to the security systems of all Federal agencies (including the Department of Defense), NRC's security system is also based on the Atomic Energy Act (AEA) of 1954, as amended. Specifically Chapter 12, Section 145 of the AEA places certain restrictions on the control of NRC information as it relates to contracts. These restrictions/requirements have been incorporated into NRC's security system and must be adhered to by contractors requiring access to classified information. This clause is necessary to ensure that any restricted data and classified information in a contractor's possession during contract performance is protected against sabotage, espionage, loss or theft.

Section 2052.204-70(j) requires that the subcontractor insert provisions similar to those found in §2052.204-70 (b) through (i) in all subcontracts and purchase orders under the contract, to safeguard classified information. Currently approved under OMB control number 3150-0112. (See statement of need above).

Section 2052.204-70(k) requires that the contractor assign classifications to all documents, material, and equipment originated or generated by the contractor in accordance with the Commission's guidance to safeguard classified information. Currently approved under OMB control number 3150-0112. (See statement of need above).

Section 2052.204-71 requires that all contractor personnel obtain, display, and safeguard identification badges in accordance with agency procedures. Because the NRC is a secure facility with perimeter access control, all NRC employees and contractor employees needing frequent access to the NRC facilities must display current identification badges. All contractors to whom this clause applies must also safeguard classified information and safeguard against unauthorized access to other Government records or data.

Section 2052.209-71 requires the offeror to provide identifying information for each case where any current/former NRC employees (including special government employees performing services as experts, advisors, consultants, or members of advisory committees) have been or will be involved, directly or indirectly, in developing the offer, negotiating on behalf of the offeror, or managing, administering, or performing any contract, consultant agreement or subcontract resulting from the offer. This information is used to assure that conflicts of interest are avoided and fairness is maintained during the selection process.

Section 2052.209-72 requires the offeror to provide a written description of all relevant factors to be considered for any potential conflict of interest situation as the CO may identify. This information is necessary to permit NRC to make a fair analysis of such situations.

Section 2052.209-73(d)(2) requires the contractor to make an immediate and full disclosure in writing to the CO if organizational conflicts of interest are discovered after contract award. The NRCAR clause 2052.209-73 is currently approved under OMB Control number 3150-0112. Although the basic principles underlying FAR Subpart 9.5, Organizational Conflicts of Interest, are identical to the NRC rule, this clause is needed because the procedures to implement that policy are substantially different. NRC's procedures are dictated in large part by Section 170A of the Atomic Energy Act, (Section 8 of Public Law 95-601, Section 170A to Public Law 83-703, 68 Stat. 919, as amended (42 U.S.C. Ch. 14)). This section of the act requires the NRC to request information from prospective contractors regarding conflict of interest and evaluate the information prior to contract award. It is this active role of requesting and evaluating information concerning conflict of interest situations that makes agency procedures different from those intended by the FAR. This clause puts into effect agency policy of avoiding, elimination or neutralizing contractor organizational conflicts of interest. This objective is achieved by requiring prospective contractors to submit information describing relationships, if any, which may give rise to actual or potential conflicts of interest if awarded the contract. Since determinations regarding contractor

conflicts of interest cannot be made routinely, such contractor supplied information is essential. Prospective contractors must certify as to whether the contract award would or would not involve a conflict of interest situation.

Section 2052.209-73(d)(3) (formerly 2052.209-77) requires the contractor performing a task-order type contract to disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. This information is necessary to permit NRC to make a fair analysis and to avoid conflict of interest situations. This revised language in the final rule focuses on a narrower scope which reduces the reporting burden associated with this requirement. Currently approved under OMB control number 3150-0112.

Section 2052.209-73(f) requires the contractor to include the clause 2052.209-73 in subcontracts of any tier in order to prevent conflicts of interest that may be generated at those levels. Currently approved under OMB control number 3150-0112.

Section 2052.210-70 requires offerors proposing other than brand name items identified in a solicitation to furnish with their offers adequate information to ensure that a determination can be made as to the quality of the product(s) offered. The burden associated with this requirement is minimal since agency policy is that generally acquisitions will not be based on a specifically identified product or feature(s) thereof.

Section 2052.210-71 provides that all drawings, designs, specifications and other data associated with the contract work are the property of the Government and must be made available for inspection and disposed of in accordance with instructions from the contracting officer. This requirement is necessary to assure that classified, highly sensitive, and high priority specifications and other data are secured throughout the life of the contract and after expiration of the contract. The clause is included in all contracts in which drawings, designs, specifications, or where other data will be developed.

Section 2052.212-70 requires that all technical reports and technical progress reports be prepared in accordance with the Nuclear Regulatory Commission's, Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." The clause alerts the offeror to the requirements of the chapter. The prescription at 2012.104-70 states that the CO may alter these clauses.

Section 2052.212-71 provides the timing and basic content requirements for Technical Progress Reports for the offerors to consider in preparation of bid or proposal, and for guidance to the contractor. This information is necessary to save time and expense in the contractor's preparation and the NRC's review of these reports. The requirements of OMB Circular A-110 are applicable only to certain financial assistance awards; and are not appropriate for NRC contracts. The prescription 2012.104-70(d) has been strengthened to clarify that

the reporting frequency is meaningful and productive for each contract, considering the size and complexity of the particular project or program. The technical reports, normally provided monthly, are necessary for staff assessment of technical performance. These reports also serve as a surveillance and enforcement mechanism so that performance problems can be identified and addressed. Currently approved under OMB control number 3150-0112.

Section 2052.212-72 provides the requirements for timing and basic content of Financial Status Reports for the offers to consider in preparation of a bid or proposal, and for guidance to the contractor. This information is necessary to save time and expense in the contractor's preparation and the NRC's review of these reports. As stated in the justification above in 2052.212-71, the requirements of OMB A-110 are applicable only to certain financial assistance awards and are not appropriate for NRC contracts. The prescription for NRCAR 2052.212-72, Financial Status Report, states that the CO may alter the clause. The prescription 2012.104-70(d) has been strengthened to clarify that the reporting frequency is meaningful and productive for each contract. The financial status reports, normally provided monthly, are necessary to provide detailed cost information and are analyzed in concert with the technical progress report to ensure consistency of progress and costs expended. These reports are analyzed by staff to have a basis for authorized payment of the contractor's monthly invoice and to ensure that all costs are allocable and allowable. Both the technical progress and financial status reports are due within 15 calendar days after the end of the report period. This due date accommodates the accounting systems of most commercial contractors, and educational and other non-profit institutions. If this due date causes a hardship for a contractor, another date is negotiated and agreed upon. This due date also enables the staff to review the report as close to "real time" as can reasonably be required. Currently approved under OMB control number 3150-0112. The burden for this requirement has been calculated based on the most frequent reporting (monthly).

Section 2052.212-73 requires the contractor to provide monthly financial status reports to the project officer and contracting officer. This is an alternate to clause 2052.212-72, when no contractor spending plan is required. The justification for this alternative is addressed above under 2052.212-72.

Section 2052.214-71 requires the bidder to provide identifying information on previous and current contracts for the contracting officer to consider in the determination of responsibility. Past experience is relevant to award, and timely awards require this minimal information to be available. Determination of responsibility is required by FAR 14.407-2.

Section 2052.214-72(e) requires the bidder to provide, on request, statements concerning the ability to meet any of the minimum standards set forth in FAR 9.104, samples of work, and identifying information on clients. This information is necessary to assess contractor qualifications and make a determination of responsibility by checking the contacts provided to ascertain the offeror's performance record, integrity, and business ethics.

Sections 2052.214-74 and 2052.215-75 require the offeror to request in writing, with submission of the offer, that copies of their offers be returned if so desired. This permits the contracting activity to automatically dispose of extra copies of offers in a timely manner.

Section 2052.215-70 requires the contractor to immediately notify the CO if any key personnel become unavailable for contract work, and subject to the concurrence of the CO, promptly replace the personnel. This requirement helps ensure that the project is managed by competent personnel in accordance with the accepted proposal.

Section 2052.215-71(f) requires the contractor to notify the CO within five days of receipt of any unauthorized technical direction and request a modification to the contract. This requirement is in the Government's best interest and can save delays and expense associated with disputes that might surface at a later time.

Sections 2052.215-76 and 2052.215-77 provides proposal preparation instructions in Section L of NRC solicitations for research and technical assistance to inform offerors of proposal content, presentation and format required by NRC. These instructions serve as a guide for offerors in preparing a technical and management proposal, and a cost proposal. These instructions also establish uniformity and facilitate proposal evaluation. Currently approved under OMB control number 3150-0118.

Section 2052.216-74 provides instructions for offerors to use in the preparation of proposals for task order contracts and subsequent proposals for task orders. Use of these instructions by proposers will permit the NRC to perform efficient review and take prompt action on the proposals.

Section 2052.235-70 requires the contractor to comply with the requirements of Nuclear Regulatory Commission Management Directive 3.8 (formerly MC 3202) "Unclassified Contractor and Grantee Publications in the NUREG Series," and MC 3206, "NRC Contractor Unclassified Papers, Journal Articles and Press or Other Media Releases on Regulatory and Technical Subjects." (Note: MC 3206 is in the process of being converted to Management Directive 3.10). The clause alerts the offeror to the fact that publications and papers must focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications. These requirements are imposed to ensure that national security, patent rights, copyrights, proprietary rights, and rights in other areas of sensitive unclassified information

are not compromised by the release, distribution, or dissemination of technical reports from NRC, or by public statements by the contractors. Prior to publication, the contractor shall submit any proposed publication for review and approval.

Section 2052.235-71 requires university principal investigator(s) to coordinate all publications with the NRC Contracting Officer or Project Officer prior to publication. These requirements are imposed to ensure that national security, patent rights, copyrights, proprietary rights, and rights in other areas of sensitive unclassified information are not compromised by the release, distribution, or dissemination of technical reports from NRC, or by public statements by the principal investigators.

Section 2052.235-72 requires the contractor to take all reasonable precautions in the performance of work under the contract to protect the health and safety of employees and members of the public, and to comply with reporting requirements. This allows the CO, if necessary, to take immediate action to carry out the agency mission to protect the public health and safety.

1. Need for the Collection of Information

The NRC Acquisition Regulation is needed to ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency.

2. Agency Use of Information

This information is necessary to ensure that the agency's acquisitions comply with the Federal Acquisition Regulation, and other applicable statutes and to ensure that public funds used for the acquisition of commercial goods and services are expended properly.

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection. Sensitive information must be protected from improper disclosure and the integrity of the competitive procurement process must be maintained. NRC encourages the use of information technology wherever possible.

4. Duplication of Other Collections of Information

The Information Requirements Control Automated System (IRCAS) was searched to identify duplication. None was found. The nature of the collections (proposal data, certifications, and reports of current activity specific to the contract) do not lend themselves to duplication. For evaluation of proposals, only information conveyed in the proposal may be evaluated to assess the offeror's ability to successfully accomplish the prospective contract. To the extent there is similar information, updating or tailoring to the prospective contract by the offeror would have the effect of reducing the burden.

5. Effort to Use Similar Information

There is no similar information available except under clearance numbers 3150-0112 and 3150-0118 which will be replaced by this clearance.

6. Effort to Reduce Small Business Burden

The information collection is structured to facilitate the effective and efficient evaluation of proposals, certifications by offerors, and administration of contracts. The burden applied is the minimum consistent with applicable regulations and prudent business practices.

7. Consequences of Less Frequent Collection

Proposal submission and certification are basically one-time collections associated with specific contract/solicitation situations or requirements. Less frequent reporting of technical progress and financial status removes an effective mechanism required for maintenance of an aggressive contract and to affect the appropriate remedial action to protect the interests of the Government.

8. Circumstances Which Justify Variation from OMB Guidelines

The following requirements are not consistent with 5 CFR 1320.6(a):

- o Section 2052.212-71 and 72 require submittal of financial and technical reports within 15 calendar days after the end of the reporting period. This due date accommodates the accounting systems of most commercial contractors and educational and other non-profit institutions. This enables the project officer to perform an analysis of both the contractor's technical and financial reports that is as close to real time as possible. This information is used to identify the need for technical direction, cost control, and the timely initiation of remedial action required in the administration process. This information is vital to achieve good contract administration.
- o Section 2052.214-72(e) requires bidders, on request, to provide statements concerning their ability to meet minimum standards set forth in FAR 9.104. Response is needed in less than 30 days to allow timely award of contracts.
- o Section 2052.215-70 requires contractors to immediately notify the CO if any key personnel become unavailable for contract work. They must replace such personnel with personnel of substantially equal ability and qualifications. This requirement serves as a protective measure for the government from any resultant delays; loss or damage

resulting from loss of key personnel. Immediate notification aids in ensuring successful completion of a contract.

- o Section 2052.215-71(f) requires contractors, within 5 days of receipt of any unauthorized technical direction, to notify the CO and request a modification to the contract. This notification is needed to preclude possible delays and expense associated with disputes that might surface at a later time if the error were not noticed.

9. Consultations Outside the NRC

The following agencies' implementation of the FAR have been consulted: U.S. Department of Energy; U.S. Department of Health and Human Services; U.S. Department of Housing and Urban Development; U.S. Department of Defense; Environmental Protection Agency; and others. Individual procurement policy experts in many of these agencies were contacted. In addition, all acquisition proposed or final rules published in the Federal Register since August 1987 have been reviewed. Comments received on the proposed rule were considered in preparing the final rule.

10. Confidentiality of Information

To the extent information is proprietary or business confidential, procedures are in place to protect the information from improper disclosure.

11. Justification for Sensitive Questions

No sensitive information normally considered private or personal is required or requested.

12. Estimated Annualized Cost to the Federal Government

See Table 1.

13. Estimate of Burden

See Table 2.

The estimates are based on submittals to NRC in past years. Cost to respondents is calculated at a rate of \$115 per hour, which is a fully burdened rate.

14. Reason for Change in Burden

This regulation implements the NRC Acquisition Regulation (NRCAR). In addition, this regulation includes the burden for contract clauses and proposal preparation instructions previously approved under OMB Control Numbers 3150-0112 and 3150-0118. These clearances will be terminated upon approval of the NRC Acquisition Regulation.

15. Publication for Statistical Use

This collection of information does not employ statistical methods.

B. COLLECTIONS OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

TABLE 1

Estimate of Cost to the Federal Government

Section	Government Staff Hours - Annual	Gov't Cost
2009.570(b)(1)&(2)		
2009.570-3(c) COI policy guidance info. to potential contractors		no cost.
2009.570-3(c)(4)(ii)	2	230
2009.570-8	10	1,150
2014.201-670(b)(1)	60	6,900
2015.607	1500	172,500
2019.705-4(a)	150	17,250
2027.305-3(a)	6000	690,000
2042.803(a)(2)(i)	200	23,000
2042.803(b)	120	13,800
2052.204-70(b)	4	230
2052.204-70(j)	10	1,150
2052.204-70(k)	100	11,500
2052.204-71	2000	230,000
2052.209-71	100	11,500
2052.209-72	100	11,500
2052.209-73(d)(2)	40	4,600
2052.209-73(d)(3)	100	11,500
2052.209-73(f)	40	4,600
2052.210-70	20	2,300
2052.210-71	150	17,250
2052.212-70	300	34,500
2052.212-71	300	34,500
2052.212-72	450	51,750
2052.212-73	600	69,000
2052.214-71	60	6,900
2052.214-72(e)	60	6,900
2052.214-74		
and .214-75	8	920
2052.215-70	20	2,300
2052.215-71(f)	50	5,750
2052.215-76		
and -77	2250	258,750
2052.216-74	3000	345,000
2052.235-70	1200	138,000
2052.235-71	40	4,600
2052.235-72	2	230
TOTAL	19,052	\$2,190,750

The estimated cost to the agency attributable to this collection is \$2,190,750. The cost to the Government was derived from the experience as to the approximate time contract specialists and program personnel expend in ensuring that offerors comply with the instructions.

TABLE 2

Estimate of Compliance Burden
Reporting Requirements

<u>Section</u>	<u>No. of Respondents</u>	<u>Submittals Annually</u>	<u>Respondent Hrs Per Submittal</u>	<u>Total Annual Respondent Burden</u>
2009.570(b)(1)&(2)	Burden included under 2052.209-72			
2009.570-3(c)	Burden included under 2052.209-73(d)(2), (d)(3) and (f)			
2009.570-3(c)				
(4)(ii)	1	1	1	1
2009.570-8	5	1	1	5
2014.201-670(b)(1)	Burden included under 2052.214-71			
2015.607	750	1	.25	188
2019.705-4(a)	300	1	20	6,000
2027.305-3 (a)	300	1	10	3,000
2042.803(a)(2)(i)	10	1	10	100
2042.803(b)	30	1	2	60
2052.204-70(b)	1	1	3	3
2052.204-70(j)	100	1	2	200
2052.204-70(k)	10	1	20	200
2052.204-71	20	1	100	2,000
2052.209-71	400	1	2	800
2052.209-72	400	1	.25	100
2052.209-73(d)(2)	1	1	5	5
2052.209-73(d)(3)	100	1	1	100
2052.209-73(f)	400	1	.25	100
2052.210-70	5	1	1	5
2052.210-71	300	1	5	1,500
2052.212-70	300	4	.5	600
2052.212-71	150	12	4	7,200
2052.212-72	180	12	2	4,320
2052.212-73	Burden included under 2052.212-70.			
2052.214-71	400	1	.5	200
2052.214-72(e)	30	1	1	30
2052.214-74				
and .215-75	8	1	.25	2
2052.215-70	10	1	4	40
2052.215-71(f)	10	1	4	40
2052.215-76				
and -77	750	1	100	75,000
2052.216-74	100	6	30	18,000
2052.235-70	300	4	.5	600
2052.235-71	4	1	10	40
2052.235-72	2	1	1	2
TOTAL			120,441	

There are no recordkeeping requirements.

TOTAL BURDEN HOURS: 120,441

TOTAL NUMBER OF RESPONDENTS: 750 (seven hundred and fifty companies or individuals, on the average propose or bid for NRC contracts above \$25,000. The number of contractors with active awards ranges from 300 to 400. Many selections of the proposed regulation apply to only a small number of proposers, bidders, or contractors.)

Cost to Respondents to Comply

<u>Section</u>	<u>Cost</u>
2009.570-(b)(1)&(2)	
2009.570-3(c) see 2052.209-73(d)(2),(d)(3) and (f)	
2009.570-3(c)(4)(ii)	115
2009.570-8	575
2014.201-670(b)(1) Burden included under 2052.214-71	
2015.607	21,620
2019.705-4(a)	690,000
2027.305-3(a)	345,000
2042.803(a)(2)(i)	11,500
2042.803(b)	6,900
2052.204-70(b)	345
2052.204-70(j)	23,000
2052.204-70(k)	23,000
2052.204-71	230,000
2052.209-71	92,000
2052.209-72	11,500
2052.209-73(d)(2)	575
2052.209-73(d)(3)	11,500
2052.209-73(f)	11,500
2052.210-70	575
2052.210-71	177,500
2052.212-70	6,000
2052.212-71	828,000
2052.212-72	496,800
2052.212-73 Burden included under 2052.212-70	
2052.214-71	23,000
2052.214-72(e)	3,450
2052.214-74	
and .214-75	230
2052.215-70	4,600
2052.215-71(f)	4,600
2052.215-76	
and -77	8,625,000
2052.216-74	2,070,000
2052.235-70	69,000
2052.235-71	4,600
2052.235-72	230

TOTAL: \$13,851,175

The total annual industry cost is \$13,851,175 (120,441 hours times \$115 per hour). The estimated annual cost per respondent averages \$18,468 but would vary on a case-by-case basis depending on the type of contract, the individual business circumstances, the reporting requirements imposed, and other business and contractual circumstances.

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review.

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C Chapter 35).

1. Type of submission, new, revision, or extension: New
2. The title of the information collection:
48 CFR Chapter 20, Nuclear Regulatory
Commission Acquisition Regulation (NRCAR)
3. The form number if applicable: N/A
4. How often the collection is required:
On occasion; one time

5. Who will be required or asked to report:
Offerors responding to NRC solicitations and
contractors receiving contract awards from
NRC.
6. An estimate of the number of responses:
11,270
7. An estimate of the burden per response: 10.7
hours
8. An estimate of the total number of hours
needed to complete the requirement or
request: 120,441
9. An indication of whether Section 3504(h),
Pub. L. 96-511 applies: Applicable
10. Abstract:

The NRCAR is necessary to implement and supplement the government-wide Federal Acquisition Regulation, and to ensure that the regulations governing the procurement of goods and services within the NRC satisfy the needs of the agency.

UNIVERSITY OF CALIFORNIA

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DAVID FIERPONT GARDNER
President

RONALD W. BRADY
Senior Vice President—
Administration

OFFICE OF THE PRESIDENT
300 LAKESIDE DRIVE
OAKLAND, CALIFORNIA 94612-3550

November 20, 1989

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, DC 20555

Dear Secretary:

We are writing to offer comments on the proposed issuance of the NRC Acquisition Regulation (NRCAR) that was published in the Federal Register on October 2, 1989. Because of the paperwork implications of this new NRCAR, copies of these comments are also being submitted to Nicolas Garcia/OMB and Brenda Shelton/NRC in response to the notice of proposed information collection published in the Federal Register on October 4, 1989.

Our comments are written from the point of view of a major research university. Although only a small proportion of the NRC budget is spent on research and development (\$3.9 million in FY87), it is precisely those dollars that will lead to the new knowledge and technological innovations needed to make improvements in the nuclear energy sector. Thus it is important that research funds be spent as efficiently as possible.

Unfortunately, there are several sections in the proposed NRCAR that would be objectionable if used in contracts supporting research at colleges and universities, because they are inconsistent with the rules that govern work we do under virtually all other federal contracts and grants. In addition, there are other places where the NRCAR deviates from the Federal Acquisition Regulations (FAR) and no clear reason is given for the deviation. These inconsistencies would make administering NRC contracts more burdensome and costly than necessary. We have outlined our concerns below:

NRC Authority

The FAR at 1.304(b) requires that "Agency acquisition regulations shall not --"

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- (1) Unnecessarily repeat, paraphrase, or otherwise restate material contained in the FAR . . . ; or
- (2) Except as required by law or as provided in Subpart 1.4, conflict or be inconsistent with FAR content.

The only section of the proposed NRCAR that is justified explicitly by reference to a public law is Subpart 2009.5, Organizational Conflicts of Interest. There is no indication that NRC has gone through the formal deviation process for the remainder of its proposed FAR supplement, as required by FAR Subpart 1.4.

We therefore question NRC's authority to issue any material that supplements the FAR (other than Subpart 2009.5 and those sections that merely identify responsible NRC officials) that is not explicitly required by statute or approved pursuant to the formal deviation process outlined in FAR Subpart 1.4.

Paperwork Burdens

The NRC estimates that the "public reporting burden for this collection of information is estimated to average 12 hours per response." We have been unsuccessful after three attempts in obtaining the paperwork clearance packet for the NRCAR, so it is difficult to say how the 12 hour figure was arrived at. Nevertheless, it is clearly wrong with respect to the total potential paperwork burdens imposed by the additional NRC clauses and requirements. The technical reporting requirements alone, with twelve reports due each year, would account for over 30 hours per respondent per year.

We request that NRC perform an adequate paperwork burden analysis for each paperwork burden that may be imposed on NRC contractors, broken down by category: security, debarment, organizational conflicts of interest, purchasing, proposal preparation, subcontracting plans, invention reporting, contract financing, government property management, technical reporting, financial reporting, prior approvals, and other areas.

Administrative Procedures Act

Under the heading "Administrative Procedures Act," NRC declares that the proposed rule is "not significant within the meaning of OFPP Policy Letter No. 83-2," where 'significant' is defined as:

The Secretary of the Commission
November 20, 1989
Page 3

something which has an effect beyond the internal operating procedures of the agency or has a cost or administrative impact on contractors.

The proposed rule, however, would clearly have a cost or administrative impact on contractors who have to comply with the requirements discussed above under "Paperwork Burdens." We request that NRC retract this claim and admit that the NRCAR does fall under the rubric of OFPP Policy Letter 83-2. We are not aware of any other Federal agency claiming such an exemption for their entire Federal Acquisition Regulation Supplement. If agency Supplements are exempt, then what isn't exempt?

OFPP Regulatory Reduction Efforts

At 24 pages of small, three-column type, this FAR Supplement is one of the longer agency supplements. This is disconcerting at a time when the Office of Federal Procurement Policy is devoting a great deal of effort to reducing the number of pages of procurement regulations. We call NRC's attention to the June 1989 report issued by OFPP titled "Procurement Regulatory Activity Report" in which OFPP efforts to reduce the number of pages in FAR supplements are summarized.

We would strongly urge NRC to re-review every paragraph in this proposed Supplement with a view to determining whether there is not sufficient FAR coverage already and so no need for additional NRC coverage. A high degree of cooperation is necessary if we are not all to drown in a sea of paper.

Subcontracting Plans

FAR Subpart 19.702(a)(1) states that

In negotiated acquisitions, each solicitation of offers to perform a contract or contract modification, which individually is expected to exceed \$500,000 (\$1,000,000 for construction) and that has subcontracting possibilities shall require the apparently successful offeror to submit an acceptable subcontracting plan.
(emphasis added)

Thus the FAR makes it clear that when considering thresholds for subcontracting plans, each contract or contract modification is to be

considered separately as to whether the amount of that contract or modification exceeds the threshold.

FAR Subpart 19.705-2 goes on to say that

The contracting officer shall take the following action to determine whether a proposed contractual action requires a subcontracting plan:

- (a) Determine whether the proposed contractual action will meet the dollar threshold in 19.702(a)(1) or (2). If the action includes options or similar provisions, include their value in determining whether the threshold is met.

It is clear that the phrase "options or similar provisions" applies to terms of individual contracts or contract modifications; "options or similar provisions" could not encompass contract modifications without contradicting Subpart 19.705-2.

Nevertheless, the NRCAR proposes to state at 2019.705-2, Determining the Need for a Subcontracting Plan, that:

In determining whether the acquisition meets the dollar threshold established in FAR 19.702 for requiring a subcontracting plan, the total value of the acquisition must be considered, including the value of all proposed option quantities and funding actions.

The only reason for adding this language is to try to include contract modifications within the meaning of "funding actions." This would mean that a contract for \$50,000 which may have \$50,000 modifications for the following nine years (for a ten year total of \$500,000) would have to have subcontracting plans for each of those ten years.

The language in 2019.705-2 is inconsistent with the FAR and should be deleted.

Invention Reports

The FAR at 27.305-3, Follow-up by Government, makes it clear that invention reporting requirements are specified in the patents rights clause used in the particular contract. The Contracting Officer is supposed to make sure that the contractor fulfills its obligations under the applicable patent rights clause (see FAR Subpart 27.305-3(c)). This subpart adds no additional reporting requirements beyond

what is in the applicable patent rights clause. Nevertheless, NRCAR Subpart 2027.305-3, Follow-up by Government, is proposed to read:

(a) The contracting officer shall ... require each contractor to report on any patents, copyrights, or royalties attained using any portion of the contract funds. The contractor shall, if no activity is to be reported, certify that in connection with the performance of the contract:

- (1) No inventions or discoveries were made,
- (2) No copyrights were secured, produced, or composed,
- (3) No notices or claims of patent or copyright infringement have been received . . .
- (4) No royalty payments were directly involved . . .

These additional reporting requirements are inconsistent with the FAR and should be deleted.

Debarment

The FAR debarment and suspension rules, we understand, are currently under review and will soon be merged into a government-wide debarment system that covers both contracts and grants. Until that happens, the agencies' contract rules for debarment should be consistent with current FAR coverage. Currently, the FAR has a \$25,000 threshold for using the clause at 52.209-5, and that clause contains standard language used by virtually every agency.

Unaccountably, the NRCAR would require its own debarment certification in all solicitations, regardless of dollar amount. The certification language would be unique to NRC and inconsistent with the FAR.

Rights in Data

Pursuant to FAR 27.409(e), the clause at 52.227-14, Rights in Data - General, is to be used with Alternate IV in contracts for basic or applied research performed solely by universities and colleges. This Alternate IV provides that:

. . . Except as otherwise specifically provided in this contract, the Contractor may establish claim to copyright subsisting in any data first produced in the performance of this contract. . . .

In contrast, the proposed NRCAR at 2052.210-71 would state:

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations and other data and memoranda of every description relating thereto are the property of the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors . . . [the remainder of this clause is somewhat garbled]

This language is unacceptable in contracts supporting research at colleges and universities. The NRCAR needs to allow for a comparable Alternate IV to be used.

Technical Reporting

Although there is no comparable FAR coverage on technical reporting on research contracts, most agencies adhere to the standards in OMB Circular A-110, Attachment H, Monitoring and Reporting Program Performance, which state in part:

4. . . . Except [when events occur that have significant impact on the project], performance reports shall not be required more frequently than quarterly . . .

8. Federal sponsoring agencies shall submit proposed technical and performance reports to OMB for approval in accordance with the report clearance requirements of OMB Circular No. A-40 as revised.

Comparing this with the proposed NRCAR clause at 2052.212-71, Technical Progress Report [to be use when contract deliverables include a technical report, pursuant to 2012.104-70(a)], we find the following language:

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period . . .

Not only are these time intervals unreasonably short, but there is no indication that NRC will clear the format used with OMB.

Financial Reporting

Attachment G of OMB Circular A-110 contains financial reporting requirements for grants as follows:

3.a. Financial Status Report

(3) ... the report shall not be required more frequently than quarterly . . .

(4) Federal sponsoring agencies shall require recipients to submit the Financial Status Report (original and no more than two copies) no later than 30 days after the end of each specified reporting period ... and 90 days for annual and final reports. Extensions to reporting due dates may be granted upon request of the recipient.

Again the NRCAR is much more restrictive in its time limits, where the proposed 2052.212-72, Financial Status Report [to be used when detailed assessment of costs is warranted, pursuant to 2012.104-70(c)], states:

The contractor shall provide a monthly Financial Status Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period . . .

These impossibly strict time limits should be brought into line with requirements that OMB feels are reasonable.

Travel

Pub. L. 100-679, at Section 24, exempts universities from having to comply with Pub. L. 99-234 if they follow their own travel policies in accordance with OMB Circular A-21. NRCAR 2052.215-75, Travel Reimbursement, makes no provision for exempting universities from having to comply with the Federal Travel Regulations and federal per diem limits.

In addition, OMB Circular A-21, Section J.43.(f), states:

Domestic travel costs are allowable when permitted by the sponsored agreement. Expenditures for such travel will not be allowed if they exceed the amount specified by more than 25% or \$500,

The Secretary of the Commission
November 20, 1989
Page 8

whichever is greater, except with an advanced approval of the sponsoring agency.

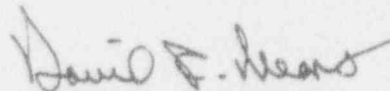
The proposed clause at NRCAR 2052.215-76, Travel Approvals, is inconsistent with A-21 when it says that:

(a) All domestic travel requires the prior approval of the project officer.

The clauses at 2052.215-75 and 2052.215-76 should be clarified so that they will not be inconsistent with Federal Statute nor with OMB Circular A-21. It would be best if these clauses were not used at all in contracts with colleges and universities, since A-21 already contains sufficient coverage for these kinds of costs.

Thank you very much for the opportunity to comment on the proposed NRC Supplement. If you have any questions, or would like to discuss this letter further, please contact Bill Sellers in my office at 415-642-1638.

Sincerely,

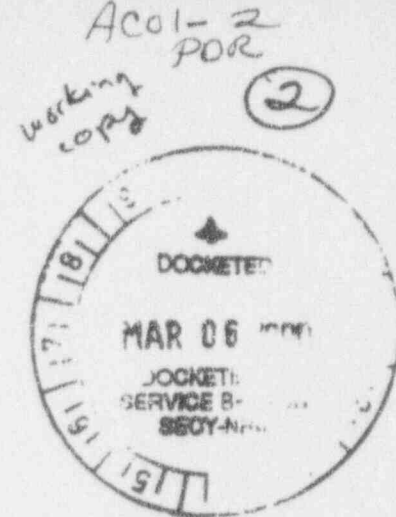


David F. Mears
Director, Research
Administration Office

cc: Nicolas B. Garcia/OMB
Brenda Jo. Shelton/NRC
Kate Phillips/COGR
Bob Coakley
Sue Spitz
Allan Burman/OFPP

Original
Do Not Destroy

DOCKET NUMBER
PROPOSED RULE PR 48 C20
(54 FR 40420)
FIVE OFFICE OF THE PRESIDENT
CE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503



OFF
PROC

MAR 1 1990

Mr. Samuel J. Chilk
Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

Formal
OFPP Comments

Dear Mr. Chilk:

This letter is in response to the November 3, 1989, Federal Register notice of proposed rulemaking regarding the establishment of the Nuclear Regulatory Commission Acquisition Regulation (NRCAR).

Your efforts to establish the NRCAR are appreciated. We do, however, have a number of concerns, as set out in Enclosure A to this letter. We recognize the difficulty of promulgating an entire agency acquisition regulation, and the issues we raise are indicative of the complexity of this task.

We request that the Commission delay publication of a final rule pending resolution of our comments. We also request that, if possible, publication of NRCAR Subpart 2000.9 be delayed until the Office of Federal Procurement Policy (OFPP) Policy Letter 89-1, Conflict of Interest Policies Applicable to Consultants, December 8, 1989 (Enclosure B) is implemented in the Federal Acquisition Regulation (FAR). That should occur on or before July 8, 1990.

We also ask that those provisions that are appropriate for inclusion in the FAR be referred to the FAR Councils for consideration in accordance with FAR 1.304(c). We have enclosed a list of the provisions (Enclosure C) of the NRCAR we believe may be candidates for the FAR. If regulatory coverage is required while the regulations are being reviewed by the FAR Councils, NRC may promulgate a supplemental rule designated as "provisional" concurrently with NRC's request for review by the FAR Councils. However, if the FAR Councils determine an issue does not warrant regulatory coverage, NRC should take that determination into account and forego NRCAR coverage, unless justified by unique circumstances at the NRC. (Please see the OFPP memorandum, FAR System Maintenance and Use of Provisional Agency Rules, dated August 8, 1988 (Enclosure D) respecting provisional rules.)

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The NRCAR is an excellent draft document. We hope our comments are helpful. We will be happy to meet to discuss any of our concerns.

Sincerely,



David F. Baker
Associate Administrator
for Management Controls

Encls.

- A - Comments
- B - Possible government-wide provisions
- C - OFPP Policy Letter 89-1
- D - FAR System Maintenance and Use of Provisional Agency Rules

7/19/91 -
Review by AL Scott

ENCLOSURE A
Specific OFPP Comments*

1. Introductory text.

Page 6: Why do you include reference to "5 USC 553"?
Section 553 is not an independent authority to issue regulations and expressly excludes contract regulations from the general notice requirement. Substitute "FAR Subpart 1.3"? *done*

2. Subpart 2001.1. Purpose, authority, issuance.

Page 10: Citation of authority. Add FAR Subpart 1.3. Citations are not specific enough. Provide exact statutory citation that grants authority to regulate. Citation of Federal Property and Administrative Services Act is incorrect. Section 252 is but one codified section of the Act and does not contain direct authority for agencies to regulate. Suggested cite: "40 U.S.C. 486(c), 42 U.S.C. _____, 42 U.S.C. _____, and FAR Subpart 1.3." *done*

3. Section 2001.402. Policy.

Although Section 2001.301 "Policy" specifically states that policy, procedures and guidance of an internal nature will be issued through internal NRC issuances such as Manual Chapters, directives, or Division of Contracts and Property Management Instructions, this section contains instructional language that should be excluded from the NRCAR and issued through one of the above NRC issuances. (*Discuss this with provide a further level of detail for staff*) - *Drop if necessary*

4. Subpart 2001.6. Contracting authority and responsibilities.

Page 17: §2001.602-3. Unnecessary to provide general discussion of ratification of unauthorized commitments. Not necessary to implement or supplement FAR.

5. Subpart 2003.1. Safeguards.

Page 22 (and elsewhere): Statutory citations are confusing. E.g., on page 22, reference is to "Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 4841)." Refer to exact codified section only where possible. In same citation on page 22, give more precise reference to authority than 41 U.S.C. 401 et seq.).

6. Subpart 2009.1. Responsible prospective contractors.

a. This subpart, beginning on p. 26, appears more suited to be added as a supplementation of FAR Subpart 3.6, Contracts with

(*Discuss w/OFPP* *asked on* *Format Change* *(not appropriate in P&C Com)*)

* Page references are to the typewritten draft of the NRCAR submitted with OMB paperwork clearance submission.

NO-FAR 9.1
talks about technical skills
of contractor. FAR 3.601 talks
about current
employees.

Government Employees, etc. It is not an implementation of FAR Subpart 9.1, dealing with responsibility. Presumably former NRC employees would be more capable than most in performing contracts for the NRC. FAR 3.601 speaks of avoiding the appearance of favoritism or preferential treatment of current Government employees. NRC's provision is aimed at former employees.

1st Question already clear in NRCR

done
argued
2-3 pages
quarter
b. Page 26: Does the two-year period apply to firms in which former NRC employees are partners, etc., or does this only apply to individual would-be contractors? If not, what purpose is served by providing special treatment to, say, a firm predominantly staffed by former NRC employees, none of whom were employed by the NRC within the last two years?

c. Page 26: Missing scope reference. Add "2009.1000 Scope" reference before "(a)". Or suitable section number for a "Policy" section heading.

Check w/ M. He

d. Page 27: Subsection "(c)" is unnecessary. Regulations cannot alter statutory provisions. (Brian might be able to find it)

7. Subpart 2009.4. Definitions.

a. Page 28: Section 2009.404. Suggest: "The contracting officer responsible for the contract affected by the debarment or suspension shall perform" (not included)

done b. Page 29: Line 8 -- Clause required is for "all" solicitations, yet FAR 9.404 states that clause is to be included only in contracts for \$25,000 or more. What are the reason and authority for requiring this information for all solicitations?

8. Subpart 2009.570. NRC Organizational conflicts of interest.

a. In general, we question the need to draft these provisions as a supplement to the FAR. Much conceptual clarity would be achieved if provisions bearing on organizational conflicts were set out as implementations or supplementations of the relevant FAR provisions. If this were to be done, it would be possible to identify more readily any new material truly supplementing the FAR. *general comment*

b. Also, there seems to be some conceptual ambiguity in the regulation on the distinction between organizational conflicts and other (personal, relationship, interest) types of conflicts. The NRC regulation should be revised to treat the two concepts as distinct problems.

c. The NRC regulation also does not follow the distinction in FAR Subpart 9.5 relating to preparation of specifications or work statements in developmental and nondevelopmental work, but rather seeks to regulate both kinds of work for purposes of

discuss w/ OFPP
organizational conflicts. Why is it necessary to expand the FAR in this way?

d. Finally, we encourage delay in publishing final regulations in this area until the regulations implementing OFPP Policy Letter 89-1 on consultants and conflicts of interest are published in final form.

Specific suggested revisions follow:

discuss w/ OFPP
e. 2009.570-3. Criteria for recognizing contractor conflicts. This provision covers an issue of concern that was addressed recently in 41 U.S.C. § 405b. OFPP Policy Letter 89-1 implements the directions of Congress and was published in the Federal Register on December 18, 1989. (A copy is enclosed for your information.) The NRC rules on conflicts of interest should be published as provisional rules until the issue is addressed in the FAR. At that time, NRC should review the need for additional regulatory language to ensure that the FAR is not duplicated and that NRC policy is consistent with the FAR.

discuss w/ OFPP
f. 2009.570-3(c). Criteria for recognizing contractor organizational conflicts of interest; Policy application guidance. Although Section 2001.301 "Policy" specifically states that policy, procedures and guidance of an internal nature will be issued through internal NRC issuances such as Manual Chapters, directives, or Division of Contracts and Property Management Instructions, this section contains instructional language that should be excluded from the NRCAR and issued through one of the above NRC issuances.

discuss w/ OFPP
g. Page 32: 2009.500. Amend to read "In accordance with 42 U.S.C. 2210a, NRC acquisitions are processed" Present form of citation confusing and requires unnecessary additional research to find provision cited.

discuss w/ OFPP
h. Page 34: Change reference in definition of contract to "2009.570-1(c)".

i. Page 34: Suggested revision to definition of "contractor": ". . . partnership, or corporation who or that is a party to a contract with the NRC, including his, her, or its affiliates, successors in interest, chief executive officers, directors, key personnel (as identified in the contract), proposed consultants, or subcontractors of the person, firm, etc." Appropriate changes to definition of "offeror".

(feel language adequately covers in NRCAR)
discuss w/ OFPP
j. Page 35: Line 6 -- Change to read ". . . suggests or indicates . . ."

k. Page 35: Definition of organizational conflict of interest does not really capture the essence of the term. As

treated in FAR Subpart 9.5, organizational conflicts are those that arise when a contractor is called upon to provide systems engineering or technical direction, or to develop specifications or statements of work respecting nondevelopmental items. The contractor's dilemma is whether to perform the contract in an objective manner or whether to make recommendations that will ensure that the contractor's products or services are required in the follow-on contracts to supply the system in question. This concept is dealt with more clearly in FAR 9.501.

This approach is distinct from what may be called "personal" or "relational or interest-based" conflicts where the contractor is called upon to render services to the government, for example, but if he provides unbiased advice he might cause the government to take actions that would harm the fortunes of a firm or industry in which the contractor has invested or that employs the contractor or members of his family.

We believe the NRCAR needs to deal with these different concepts separately. At a minimum, the word "organizational" should be removed from the definition, although even then we think that the resulting definition would not be an adequate one.

1. Page 36: Line 7 -- We recommend that you delete "organizational" from "potential organizational conflicts". Organizational conflicts as defined in FAR Subpart 9.5 involve restrictions on future activity, whereas "personal" conflicts require restrictions on, or exclusions from, pending contract actions. Also, would it be useful to add ", relationships, or interests" after "roles" on the next line, and to delete "relation to" from the following line. On following line -- change "May" to "Might". Perhaps it would be preferable to have a separate definition of "conflict of interest" and "organizational conflict of interest," or even just to use one definition for "conflict of interest" alone. The congressional approach seems to be to define "conflict of interest" in terms of being able to render impartial advice and having an unfair competitive advantage.

done m. Page 36: Change last two lines to read -- ". . . contract for advice, consultation, or evaluation, or similar services that directly lay the groundwork"

n. Page 37: Delete first five lines of p (b) and renumber accordingly, and substitute: "Conflict of interest situations--Disclosure. Contractors must provide, and the contracting officer may request, relevant information from an offeror, or may require special contract clauses, such as provided in §2009.570, in the following circumstances: (1) Where the offeror or contractor provides advice and recommendations to the NRC"

o. Page 37: Add to end of (1) and (11), as presently numbered, "or to any foreign person".

p. Page 38: Add new p (c): Disclosure. Relevant information for purposes of (b), above, includes: ". Add description of kinds of information that will be required. Existing subparagraph (b)(1) on previous page gives no indication of what kinds of information will be required, or how much. Impossible to calculate the information burden. Also, if determination of what information to collect is entirely up to officials, collection burden may be too great.

(not included - example would not be helpful)

q. Page 38: Change subparagraph (2) to: "(d) Unfair competitive advantage situations. Unless otherwise provided in FAR Subpart 9.5, the contracting officer may require special contract clauses, such as provided in §2009.570-5(b):". Renumber remaining paragraphs accordingly. We recommend elimination of the provision authorizing the contracting officer to request information in unfair competitive advantage situations described. Whether or not an unfair competitive advantage exists can be determined from facts about the acquisition known to the contracting officer. For example, when a contractor is to prepare specifications or is to be provided with proprietary information, that is all that the contracting officer needs to know. No other information is necessary from the contractor to determine the existence of an unfair competitive advantage.

r. Page 38: Delete "competitive" from existing (ii). FAR 9.502(b) makes Subpart 9.5 applicable to all types of contracts. Is there a reason for including only competitive actions?

s. Page 38: Line 4 from bottom -- Delete "result in placing . . . result in " and substitute "bestow". Change "for" to "on". Delete provision already covered on page 37, existin. (iv).

t. Page 39: Change (c) to (e). Line 5 -- Change "Proposal" to "Proposals". Line 12 -- Change "would" to "should". Line 16 -- Change "would be" to "is". Line 18 -- Change "perform certain analyses of" to "analyze". Line 23 -- Change "have" to "has".

u. Page 40: Line 3 -- Change "normally could" to "may". Line 5 -- Change "motivate bias" to "bias the offeror". Lines 6 and 10 -- Change "would" to "should". Line 19 -- Change "whom" to "which".

v. Pages 41-42: Replace Example (4)(ii) Guidance with this: "(ii) Guidance. This is not considered a conflict of interest. The competitive advantage ABC Co. receives during its performance of the contract to develop information or a product needed by the NRC is not unfair. In accordance with E.O. 12591, the contractor should retain exclusive rights to commercialize the data to other with paying royalties. NRC may pass the data to other companies only as is necessary for use in other government contracts. Any information NRC furnished to ABC Co. for the performance of the contract may not be used in the contractor's private activities

Whole Check #
Page By En-

unless the information is generally available to others. Note: In its negotiations for pricing the contract, NRC should recognize the commercial value of the data ABC Co. will develop. Note also that this does not preclude NRC from negotiating for unlimited rights in data if the agency's mission is best served by dissemination. Special care must be taken to prevent the creation of a conflict of interest or an unfair competitive advantage when a contract is for the development of technology that the agency will require other companies to adopt through regulation."

W. Page 42: Line 5 -- Delete sentence beginning with "Further". This is potentially a very burdensome requirement. The contractor is required by this provision to report all proposed usages. It is also probably sufficient merely to prohibit the usage of the information.

X. Page 42: Line 12 -- Delete "the representation in the RFP" and "(1)(1)" from the citation. Line 17 -- Delete sentence beginning on this line and substitute "Award of a contract is proper." Line 15 -- Change "would" to "must be used to". Last line -- Change "(d)" to "(g)."?

Y. Page 43: Line 1 -- Delete "identify and". Line 3 -- Add "roles, interests, or relationships, or" after "from". Add comma after "contract". Line 8 -- Add "to be" before "awarded" and hyphenate "sole source" on next line.

Z. Page 43. Line 10 -- Change "representation" to "Certification". This is usual term for this kind of document. Line 11 -- Change sentence to read "Certifications are designed to assist the NRC contracting officer to determine whether the offeror or contractor has a conflict of interest." Line 15-- Delete "(b)" and join next sentence with previous sentence. Change "representation" to "certification" (here and throughout); and add "contracts based on" before "unsolicited" in next line. Line 18 -- Delete "or activities".

aa. Page 44: Line 1 -- Add "services" after "Research". Line 2 -- Delete "contractual". At end of "(4)" change add after "required": ", if it is necessary to reflect any changes in the statement, otherwise no update is required." This will help to reduce the paperwork requirements on the contractor.

ab. Page 44: Paragraph (c). Rename as "(f)" and insert after new "(e)" on page 42. Change "(d)" to "(b)".

ac. Page 45: Line 2 -- Change cite from §2009.570-4(b) to §2009.570-4(d). With respect to p (b), make changes here (and elsewhere) depending on how question of definition of (organizational) conflict of interest is resolved.

unnecessary edit
*Bring
Check all
edit*
ad. Page 46: Sixth line from bottom -- Delete "and" and add after "award": ", and other actions".

ae. Page 47: Line 10 -- Regulation states that authority to terminate is provided for in the clauses prescribed. See comment for Page 103.

3-12-8
af. Page 47: Section 2009.570-8 does provide for the \$10,000 threshold required by 42 U.S.C. 2210a(a)(2). It also does not distinguish between supply contracts and other contracts as required by that paragraph.

6-2
ag. Page 48: *add* Delete "and concurrence". As written, the decision is unnecessarily complicated. Reduce numbers of officials with veto power and maximize autonomy of contracting officer. Fourth line from bottom: Delete "question of".

ah. Page 49: Line 3 -- Add after "DC": ", unless release of such information is prohibited by law or regulation". This retains agency flexibility when sensitive information may be involved.

ai. Page 102: Change "represent" to "certify", "representation" to "certification" throughout. Line 9 -- Change cite to "§2009.570-3(b)(1)" if suggested changes in cited section adopted. Line 11 -- Add "concise" before "statement", delete "in a concise manner" next line.

unintentional
aj. Page 104: Line 2 -- Add comma after "contractor" and citation; delete "as".

ak. Page 104: Line 9 -- Add "of its" after "all". Clarifies that contractor need only take responsibility for its own employees. It is not clear that NRCAR here intends to task contractor to ensure that subcontractors abide by clause provisions.

11/1/8
al. Page 104: Lines 2 and 5 from bottom -- Reference to "organizational" conflicts of interest problematic in view of problems with definition of "organization conflict of interest." On last line, is authority to require full disclosure provided for in the prescriptive portions of the regulation?

am. Page 105: Line 8 -- Delete "internal". Substitute statutory citation "5 U.S.C. § 552a" for Public Law cite. Line 9 -- Add "other" before "data" and "pursuant to the Freedom of Information Act, 5 U.S.C. § 552 or other authority" after "public".

an. Page 105: Second line from bottom -- Why is the time limit one year in this subparagraph but six months in the one just above?

*edit
checked by
BWB*

ao. Page 106: Line 6 -- Change citation to U.S. Code cite. Add reference to "FOIA, or other authority".

ap. Page 106: Lines 12-13 -- Change line 12 and 13 to "products under this contract for private purposes subject to the provisions of this contract."

aq. Page 106: Line 17 -- Delete "to preserve the Government's rights".

ar. Page 107: Line 10 -- Change "As prescribed" to "When prescribed". Line 15 -- Change "as directed" to "authorized". Line 16 -- Change "perform" to "provide". Line 16 -- Delete "work" and substitute "services" for "activities".

as. Page 109: Line 2 from bottom -- "all proposed new work of any type" is extremely broad and thus burdensome. Better to provide for disclosure of new work that is "the same as, or substantially similar to,"?

9. Part 2012. Contract delivery or performance.

a. Page 52: Authority line deficient. Use specific U.S. Code reference wherever possible. Do not refer broadly to acts of Congress or code sections followed by "et seq.". Too much of a burden on the user to find authorizing provisions. Use specific reference.

b. Page 52: Line 8 -- Why does NRCAR supplement the FAR here, instead of implement it?

monthly
can be used
to
edit
~~Page 52: Line 8 -- Why does NRCAR supplement the FAR here, instead of implement it?~~
c. Pages 111-114: What is the reason for requiring monthly technical, technical progress, and financial status reports more frequently than quarterly? This appears to establish a very burdensome reporting requirement and is highly undesirable unless justified by some specific, clear need. Is monthly reporting requirement consistent with OMB Cir. A-110, Attachment H, Section 4, when applicable to institutions of higher learning, etc.?

10. Part 2014. Sealed bidding.

a. Page 54: Authority line deficient.

b. Page 55: Line 3 -- Clause required is for "all" IFBs, yet FAR 9.105-1 states that requests for information regarding the responsibility of prospective contractors shall "ordinarily be limited to information concerning (i) the low bidder or (ii) those offerors in range for award." What are the reason and authority for requiring this information for all solicitations?

edited the clause

✓ ~~done~~ c. Page 119: Paragraph (a). Duplicative of clause required by FAR 14.201-6(b)(4). Line 5 -- Change cite to "FAR Subpart 9.1". See FAR 1.104-2(c)(3)(ii).

~~done~~ d. Page 119: Paragraphs (d) and (e). Wouldn't it be clearer to remove these provisions from the clause and add them to the NRCAR as positive requirements supplementing FAR 14.404-2? Alternatively, simply add supplementing provisions to FAR 14.404-2 and leave language in clause. *already in the FAR Requirements materially violate FAR 14.404-2 (g) NRC - put it in clause.*

✓ e. Page 120: Line 4 -- Add "9.105 and" after "FAR".

11. 2019.705-2. Determining the need for a subcontracting plan.

Duplicates FAR.

12. 2020.102. General policy.

Duplicates FAR.

13. 2032.402. General.

Subsection 2032.402(b), which contains language on approving advance payment agreements, should be covered under "small purchase procedures" and not included within the contract financing section.

14. 2035.71. Broad Agency Announcements.

Duplicates FAR. Specifically, 2035.71(b) (1) and (2) repeat, in part, the coverage at FAR 35.016(a), (b), and (d).

15. 2035.71. Broad agency announcements; criteria for selecting contractors.

Although Section 2001.301 "Policy" specifically states that policy, procedures and guidance of an internal nature will be issued through internal NRC issuances such as Manual Chapters, directives, or Division of Contracts and Property Management Instructions, this section contains instructional language that should be excluded from the NRCAR and issued through one of the above NRC issuances.

16. Part 2042. Contract administration.

a. Page 87: Authority line deficient.

~~done~~ b. Page 88: Line 11 -- Substitute "for payment of the disallowed cost and explaining" for "as to". "Claim . . . as to ~~any~~" construction is awkward. Line 15 -- Change cite to "FAR Subpart 33.2".

c. Page 89: Line 2 -- Add after "report": ", or 30 days when payment has not already been made to the contractor". It may be unusually onerous to allow the government to take six months to resolve a disputed item, especially for small businesses. Where payment has already been made, more time can be permitted the government to ~~resolve a cost issue~~. Second line from bottom-- Change cite to "FAR Subpart 33.2" *203*

edit *add at require clause*
Page 90: Line 1 -- Change (iv) to read: "Initiate immediate recoupment actions for all disallowed costs paid to the contractor but now owed to the government, in accordance with FAR Subpart 32.6." Transfer (A)-(D) to NRCAR Subpart 2032.6 and add as implementing or supplementing provision, if FAR Subpart 32.6 inadequate.

17. Part 2045.3. Providing government property to contractors.

a. Page 87: Authority line deficient.

b. Page 91: Subsection 2045.370(a) -- Add before "At":
"Unless otherwise provided for in FAR 45.302-1(c), applicable to Government facilities with a unit cost of less than \$10,000."
Contractor will be able to find it.

18. 2052.215-73. Data Universal System (DUNS) number.

1/20
Added to FAR 4.603 by Federal Acquisition Circular (FAC) 51.

19. 2052.216-70. Level of Effort.

to
This provision provides for the insertion of an estimate of the total professional and clerical level of effort for the project in applicable solicitations. This estimate should be segregated for the two distinct categories of professional and clerical services. Such an approach should allow for more meaningful evaluation of offers.

Done
20. 2052.235-71. Private Use of Contract Information and Data.

This clause is inconsistent with Executive Order No. 12591 and this Administration's policy of promoting commercialization of data developed under Government contract. Please contact Wayne Leiss (395-3501) of this Office for further information on efforts to develop a FAR clause on technical data.

AC01-2
PDR



Science Applications International Corporation
An Employee-Owned Company

March 23, 1990

90-TJR.166

U.S. Nuclear Regulatory Commission
Office of Policy, M/S P-1118
Washington, DC 20555

Attention: Ms. Mary Lynn Scott,
Acting Branch Chief

Subject: Proposed Rule to Establish the Nuclear
Regulatory Commission Acquisition Regulation
(NRCAR), 48 CFR Chapter 20

Reference: Federal Register, Volume 54,
No. 189 dated October 2, 1989

Dear Ms. Scott:

This letter has been prepared for the purpose of providing the Office of Policy with comments on the proposed rule to establish the Nuclear Regulatory Commission Acquisition Regulation (NRCAR) as Chapter 20 to Title 20 of the Code of Federal Regulations. Comments set forth in this letter reflect concerns identified by Science Applications Corporation International (SAIC) with respect to certain aspects of the proposed rule. These comments reflect SAIC's perspective as an NRC contractor directly affected by this proposal, as this rule will govern all NRC procurements of supplies and services made with appropriated funds.

It is respectfully requested that the recommendations, clarifications and changes contained herein be given ample consideration as part of the NRC's final rule making process. The Office of Policy is encouraged to adopt these recommendations, which are intended to provide the NRC with a fair and reasonable means of implementing and supplementing the Federal Acquisition Regulation (FAR) with the establishment of the NRCAR.

Recommended changes and clarifications to the proposed rule are briefly outlined below and are discussed in greater detail in the paragraphs which immediately follow this summarization:

1. The organizational conflicts of interest provisions set forth under Subparts 209.5 and 2052.2 to the proposed NRC acquisition regulation contain inequitable and overly restrictive requirements for contractors having access to NRC-regulated activities and for work performed by contractors under task order type contracts. Section 209.570-5 and the additions to the general organizational conflicts of interest clause set forth under contract clauses 2052.209-76 and 2052.209-77 should only apply to work being performed under an NRC contract. This limitation to the scope of these additions will adequately protect the NRC against situations which may (a) result

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in providing an offeror or contractor with an unfair competitive advantage, or (b) impair the offeror's or contractor's objectivity in performing work for the NRC.

2. With respect to negotiated procurements, Section 2009.570-5 should permit a contracting officer to alter any contract clause making an addition to the general contract clause found at 2052.209-74. Contracting officers should be authorized to amend contract clauses 2052.209-75, 2052.209-76 and 2052.209-77 in drafting solicitations, during competitive procurements by solicitation amendment and in conducting contract negotiations. This will permit contracting officers to examine each individual contracting situation on the basis of its particular facts and the nature of the proposed contract. Furthermore, this will provide contracting officers with the freedom to exercise common sense, good judgment, and sound discretion in negotiating contracts, which contain organizational conflicts of interest terms and conditions.
3. The proposal presentation and format provisions set forth under clause 2052.215-71 should be expanded to include guidance for the completion of the referenced Contractor Spending Plan. This clause should also be clarified such that the requirement for submission of subcontractor cost evaluations is deleted from the technical and management proposal instructions. This requirement should be made part of the cost proposal preparation instructions, ensuring that there are no references to cost information furnished to the NRC as part of an offeror's technical and management proposal.
4. The travel reimbursement provisions contained in contract clause 2052.215-75 should be amended to be consistent with Clause 31.205-46 of the FAR. The cost limitations, per diem rates for specific localities, cost of travel by privately owned vehicles and items which may require receipts should be determined in accordance with the aforementioned FAR Clause.
5. The number of the clause establishing task order procedures should be corrected to read "2052.216-74. Subparagraph (a) should specify a proposal submission due date as an additional Task Order Request for Proposal (TORP) requirement. The task order proposal due date should be subject to mutual agreement. In addition, reference to "any fixed fee" in subparagraph (c)(6) should be deleted and replaced with language that is not specific to a certain contract type.

In an effort to provide the NRC with an understanding of the basis for these recommendations, each concern raised by SAIC is discussed in greater detail in the following paragraphs:

1. With respect to Section 2009.570-5 of the proposed NRCAR, the proposed expansion of the general organizational conflicts of interest clause to include the "Work for others" restrictions set forth in paragraphs (2) and (3) to contract clause 2052.209-76 for use with contractors having access to NRC-regulated activities, is in certain instances inequitable and overly restrictive. These additional restrictions, as they are presently written, are inappropriate for inclusion in task order type contracts. This view is supported by the fact that these restrictions may preclude a contractor from accepting work from an NRC licensee or applicant, which is related to any aspect of a broad NRC statement of work even if there are no identified task order requirements for work involving that particular licensee or applicant. This clause constitutes an intolerable restraint on the ability of a contractor to perform work for entities regulated by the NRC. It clearly interferes with a contractor's ability to serve nuclear industrial clients, and will adversely affect a contractors ability to maintain an in-depth involvement and understanding of nuclear safety and regulatory issues.

Task order type contracts afford the NRC the convenience and flexibility to order services on an as-required basis with typically no minimum order requirements or financial obligation to the contractor. Accordingly, the proposed restrictions set forth in the aforementioned paragraphs to Clause 2052.209-76 should be revised such that they only apply to work to be performed under such NRC contracts. It is therefore recommended that the additions to the general clause be amended to read as follows:

- "(2) The contractor may not perform any services for any NRC licensee or applicant that are the same as, or substantially similar to the services being performed under the scope of work for this contract without having first satisfied the "Disclosure after award" requirements of contract clause 2052.209-73, and if applicable, contract clause 2052.209-77.
- (3) The contractor may not represent, assist or otherwise support any 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 or substantially similar to the services being performed under this contract, except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the entity regulated by the NRC."

Ms. Mary Lynn Scott/NRC
Serial No. 90-TJR.166
March 23, 1990
Page Four

SAIC

Contract clause 2052.209-77, which is prescribed for use with task order contracts, is also of concern to SAIC. The proposed expanded "Disclosure after award" terms and conditions contained in this contract clause impose a burdensome information reporting requirement upon contractors, which force affected contractors to maintain constant surveillance of company wide proposal activities of any type involving NRC licensees or applicants. This additional disclosure requirement stipulates that contractors disclose all proposed new work of any type involving NRC licensees or applicants, regardless of whether the proposed activities represent a potential or actual conflict of interest with work being performed for the NRC.

These proposed "Disclosure after award" terms and conditions contradict the organizational conflicts of interest provisions set forth in the Sections 9.504(d) of the FAR, which clearly state that contracting officers should avoid creating unnecessary delays, burdensome information requirements, and excessive documentation in identifying and resolving potential conflicts. Accordingly, this proposed contract clause is inconsistent with the guidance set forth in the FAR and creates an unnecessary reporting requirement, which should be eliminated to remain in compliance with the Paper Work Reduction Act of 1980. The public reporting burden for the collection of this information has been estimated by the NRC to be 12 hour per response. The basis for this estimate is not included in the proposed rule and is likely to vary from contractor to contractor with a greater burden being place upon large business concerns. Large businesses will likely expend a significantly higher number of hours in complying with this additional reporting requirement in searching numerous sources of data, reviewing, collecting and disseminating such information to the NRC and in assisting the NRC in properly interpreting such information.

As this contract clause is presently written, it is also unclear as to whether the NRC will reimburse its contractors for all costs associated with complying with this burdensome contract reporting requirement, which extends beyond the disclosure and mitigation of potential organizational conflicts of interest. Presumably, costs incurred by NRC contractors in searching for and providing this information to the NRC would be considered an allowable cost, which may be directly charged to the Government in the performance of cost reimbursement type contracts. The fulfillment of this "Disclosure after award" requirement is not necessarily an inexpensive undertaking and it may be especially problematic for large, diverse companies to furnish this information to the NRC on a cost effective basis.

Furthermore, the "Disclosure after award" terms and conditions set forth in the general clause found at 2052.209-74(c) already require contractors to make immediate and full disclosure in writing to the contracting officer of any organizational conflicts of interest discovered after contract award. In recognition of this pre-existing disclosure requirement, the additional reporting requirements prescribed under contract clause 2052.209-77 are considered to be unnecessary, burdensome and indirect contradiction to the FAR and the Paper Work

Reduction Act. In addition, the later contract clause is likely to have a significant cost and administrative impact upon NRC contractors. This finding is contrary to NRC's determination that this rule will not have a cost or administrative impact on its contractors and that this rule is not deemed to be significant within the meaning of OFPP Policy Letter No. 83-2. Based on the foregoing concerns and questionable need for this information, it is recommended that the proposed expansion of paragraph (d), "Disclosure after award" be deleted in its entirety from contract clause 2052.209-77.

2. To enable contracting officers to examine each individual contracting situation on the basis of its particular facts and the nature of the proposed contract, any contract clause making an addition to the general contract clause found at 2052.209-74 should not be considered a mandatory provision. Contracting officers should be authorized to alter contract clauses 2052.209-75, 2052.209-76, and 2052.209-77 when dealing with negotiated procurement actions and should be empowered to amend these contract clauses in drafting solicitations, during competitive procurements by solicitation amendment and in the conduct of contract negotiations with a prospective contractor. Consistent with guidance set forth in Section 9.505 of the FAR, contracting officers should exercise common sense, good judgment, and sound discretion in amending these provisions. It is the contracting officers responsibility to ensure that a contractor is prevented from being placed in conflicting roles that might bias the contractor's objectivity, and that appropriate measures are in place to adequately prevent a contractor from gaining an unfair competitive advantage.

3. In accordance with the proposal presentation and format instructions prescribed by section 2052.215-71(d)(2) of the proposed NRCAR, offerors are to provide the NRC with a Contractor Spending Plan (CSP) as part of any cost proposal exceeding \$100,000 with a period of performance longer than six months. Guidance for completing the CSP is referenced as an attachment to the NRCAR but was not provided as part of the proposed rule published in the Federal Register. To afford all interested parties an opportunity to comment on the guidance for completing the Contractor Spending Plan (CSP), it is recommended that a copy of these instructions be published in the Federal Register.

With respect to subparagraph (e)(4)(x) of clause 2052.215-71, it is recommended that the requirement for submission of subcontractor cost evaluations be deleted from the technical and management proposal preparation instructions and be made a part of the cost proposal requirements. In adding this requirement to the cost proposal instructions under subparagraph (d) to this clause, there will be no reference to any cost information furnished to the NRC as part of an offeror's technical and management proposal. This will ensure that all offerors comply with subparagraph (1) of this clause which states that technical and management proposals may not contain any reference to cost.

It is also recommended that subparagraph (4) to clause 2052.215-71 instruct offerors to address the criteria enumerated under items (i) through (xix) but not necessarily in the manner and sequence outlined under this provision. This will provide offerors with flexibility to develop and structure their respective technical and management proposals in a format consistent with the stated evaluation criteria contained in an NRC solicitation.

4. To remain in compliance with the Federal Civilian Employee and Contractor Travel Expense Act (PL 99-234) and FAR Clause 31.205-46 entitled Travel Costs, contract clause 2052.215-75 should be revised such that subparagraph (c) is changed to read:

"(c) Reimbursement for travel related expenses shall be in accordance with FAR Clause No. 31.205-46 entitled "Travel Costs".

In addition, subparagraph (e) to clause 2052.215-75 should be deleted in its entirety.

Cost limitations, per diem rates for specific localities, cost of travel by privately owned vehicles and items which require receipts are adequately covered by the aforementioned FAR clause, which incorporates by reference the Federal Travel Regulations, Joint Travel Regulations and Standardized Regulations. The Federal Travel Regulations, prescribed by the General Services Administration, cover travel in the conterminous 48 United States. Joint Travel Regulations, Volume 2, DoD Civilian Personnel, Appendix A, prescribed by the Department of Defense, cover travel in Hawaii, the Commonwealth of Puerto Rico, and the territories and possessions of the United State. Standardized Regulations (Government Civilians, Foreign Areas) Section 925, prescribed by the Department of State, cover travel in areas not governed by the other two sources. The portions of the above mentioned regulations that are considered to be applicable to contractors are specified under FAR 31.205-46(a)(4).

5. The number of the contract clause establishing task order procedures should be corrected such that it reads " 2052.216-74". It is recommended that subparagraph (a) be expanded to include a task order proposal submission due date for inclusion in the NRC's Task Order Request for Proposal (TORP). In recognizing that the requested due date for submission of a task order proposal may be changed by mutual agreement between the contracting officer and the NRC's contractor, it is suggested that the first sentence in subparagraph (b) include the phrase "or an otherwise mutually agreed upon date" after the acronym "TORP". Finally, the reference to "any fixed fee" in subparagraph (c)(6) should be replaced and superseded with "the total estimated cost and any applicable fees or profit". This change is recommended such that the clause is appropriate for use with all types of task order contracts, and not just cost-plus-fixed-fee contracts.

Ms. Mary Lynn Scott/NRC
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Page Seven

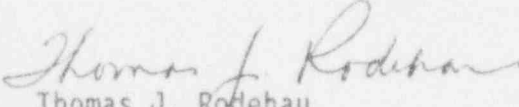


SAIC appreciates having the opportunity to provide the NRC with the foregoing comments on the proposed establishment of the NRCAR. In offering these comments to the Office of Policy, it has been our intention to provide fair and reasonable recommendations aimed at improving, clarifying and expanding upon the proposed rule. The NRC is respectfully requested to carefully consider these suggestions and is strongly encouraged to adopt these constructive recommendations in implementing the NRCAR.

In the event there are any questions with regard to these comments, please refer them to the attention of the undersigned at (703) 448-6503.

Very truly yours,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION


Thomas J. Rodehau
Senior Contract Representative

cc: The Secretary of the Commission
Mr. James Taylor, EDO
Mr. Thomas Murley
Mr. Robert Bernero
Mr. Edward Halman
Civilian Agency Acquisition Council (Chairperson)
Mr. Nicolas Garcia, OMB
Mr. Alan Busman, OFPP

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(54 FR 40420)



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March 23, 1990

OFFICE OF SECRETARY
DOCKETING & SERVICE
BRANCH

The Secretary of the Commission
U.S. Nuclear Regulatory Commission
Attention: Docketing and Service Branch
Washington, D.C. 20555

Dear Secretary:

I am writing on behalf of SAIC to offer comments on the proposed NRC Acquisition Regulation (NRCAR) published in the Federal Register on October 2, 1989.

SAIC is one of NRC's primary commercial technical assistance contractors, having provided over \$14 million of technical support to all the program offices and the Regions, on over 100 task orders under six separate contracts, in the past ten years. Three major contracts are currently active. Our support of the federal nuclear regulatory program predates the creation of NRC itself.

The contract clauses pertaining to Organizational Conflicts of Interest (Subpart 2009.5) at 2052.209-76(2) and 2052.209-77, which the proposed rule would add to the general clause at 2052.209-74, would be unacceptable to SAIC in their present form in broad scope technical assistance contracts such as those under which we are presently providing services to NRR and several other program offices. The requirement to obtain NRC approval for proposed new work for licensees and applicants, even when such work would not pose a conflict of interest with respect to ongoing work for NRC, constitutes an unreasonable, overly restrictive, and unwarranted intrusion into a contractor's business. The administrative burden and the requirement for rapid response would make it unworkable. The proposed rule would be detrimental to NRC's interests because it would limit competition and NRC's access to broadly qualified contractors such as SAIC. It would be all the more regrettable because the added clauses are not needed to avoid conflicts of interest.

We urgently recommend that the clauses at 2052.209-76 and 2052.209-77 not be made mandatory. NRC should retain for itself the flexibility, and potential contractors should be afforded the opportunity, to negotiate these provisions to the mutual satisfaction of both parties where there are potential conflicts of interest.

900470001



Page two

The Secretary of the Commission
March 23, 1990

My staff has prepared detailed comments on these and other aspects of the proposed rule, which are being sent under separate cover to the NRC Office of Policy.

Sincerely,

A handwritten signature in cursive script, reading "E. A. Straker", is positioned above the typed name.

Edward A. Straker
Sector Vice President
Space, Energy and Environment

cc: Mr. James Taylor, Executive Director for Operations
Dr. Thomas E. Murley, Director
Mr. Robert Bernero, Director
Mr. Edward L. Halman, Director
Ms. Mary Lynn Scott, Acting Chief, Operations Support Staff
Dr. L. A. Kull, President, SAIC
Dr. Peter E. McGrath, Senior Vice President, SAIC
Dr. Robert T. Liner, Jr., SAIC Program Manager for NRC support



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

AC01-2
FDR
chip

November 9, 1992

IN RESPONSE, PLEASE
REFER TO: M921102

MEMORANDUM FOR: James M. Taylor
Executive Director for Operations

Stephen G. Burns, Director
Office of Commission Appellate Adjudication

FROM: Samuel J. Chilk, Secretary \s\

SUBJECT: STAFF REQUIREMENTS - AFFIRMATION/DISCUSSION
AND VOTE, 3:30 P.M., MONDAY, NOVEMBER 2,
1992, COMMISSIONERS' CONFERENCE ROOM, ONE
WHITE FLINT NORTH, ROCKVILLE, MARYLAND (OPEN
TO PUBLIC ATTENDANCE)

I. SECY-92-344 - Final Rule on Organizational Conflicts of Interest

The Commission by a 5-0* vote, approved a final rule modifying the NRC's organizational conflicts of interest policy. The rule relaxes certain restrictions regarding the work an NRC contractor can perform for a licensee on site while working for the NRC at the same site.

The amended section 2052.209-73(c)(4)iii should be clarified. The Commission suggests deleting the phrase "this type of work" and substituting "other than work in the same or similar technical area,".

The FRN should be modified as noted, reviewed by the Regulatory Publications Branch, ADM and returned for signature and publication.

(EDO)

(SECY Suspense: 11/30/92)

* Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Rogers and Remick were not present when this item was affirmed. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision. Commissioners Rogers and Remick, however, had previously indicated that they would approve this paper and had they been present they would have affirmed their prior votes.

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

II. SECY-92-343A - Randall C. Orem, D.O. - Atomic Safety and
Licensing Board Memorandum and Order Approving of Settlement
Agreement and Termination Proceeding (LBP-92-18, Docket No.
30-31758-EA)

The Commission, by a 4-1* vote (with Commissioner Remick disapproving), approved an order which seeks further information from the NRC staff in connection with the staff's settlement agreement with Dr. Randall C. Orem.

(Subsequently, on November 2, 1992, the Secretary signed the Order.)

cc: The Chairman
Commissioner Rogers
Commissioner Curtiss
Commissioner Remick
Commissioner de Planque
OGC
PDR - Advance
DCS - P1-24
Office Directors, Regions (via E-Mail)
OP, SDBU/CR, ASLBP (via fax)

* Section 201 of the Energy Reorganization Act, 42 U.S.C. §5841, provides that action of the Commission shall be determined by a "majority vote of the members present." Commissioners Rogers and Remick were not present when this item was affirmed. Accordingly, the formal vote of the Commission was 3-0 in favor of the decision. Commissioner Rogers, however, had previously indicated that he would approve this paper and had he been present he would have affirmed his prior vote. Commissioner Remick, however, has previously indicated that he would disapprove this paper and had he been present he would have affirmed his prior vote.



Science Applications International Corporation
An Employee-Owned Company

~~AE34-1~~ PDR
ACOL-2

September 17, 1992

92-TJR.616

Mr. Samuel J. Chilk
The Honorable Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Proposed Amendment of the NRC Acquisition Regulation (NRCAR)
Concerning Organizational Conflicts of Interest

Reference: (a) Federal Register Vol. 57, No. 160 dated August 18, 1992
(b) SAIC Letter dated April 14, 1992, Serial TT-92-25
(c) SAIC Letter dated March 6, 1992, Serial TT-92-16

Dear Mr. Chilk:

Science Applications International Corporation (SAIC) appreciates the consideration the Commission has given to comments received from our corporation and other NRC contractors concerning proposed changes to the NRC's organizational conflicts of interest (COI) regulation. We are pleased and we support the NRC's amendment of this regulation, and in particular the work for others language contained therein. SAIC wishes to express our favorable review of this proposed rule, and at the same time provide the NRC with additional comments on the proposed constructive changes to this COI regulation, which we request be favorably considered prior to the issuance of a final decision on the proposed amendment.

Through our participation in the NRC's public meeting on organizational conflicts of interest and subsequent correspondence, the NRC has been provided with our concerns and recommendations on this important regulation. Of the utmost concern to SAIC has been the NRC's prior stated interpretation of the work for others restrictions contained in the current COI regulation. Presently, these restrictions, as interpreted by the NRC, prohibit a contractor who performs work for the NRC at a licensee or applicant site from soliciting or conducting work of any type for that particular licensee or applicant in any capacity, even if such work poses no conflict of interest with the work performed for the NRC. Since this provision prohibits the solicitation or conduct of work even when there is no actual conflict of interest, we have been unable to accept this COI contract provision. As you are aware, SAIC had to necessarily decline the acceptance of a large contract from the NRC for which SAIC was selected to receive, on a competitive basis, solely based on the impact of these restrictions, which had the effect of prohibiting totally unrelated business activities. Apart from SAIC's loss, this unfortunate situation deprived the NRC from obtaining the services of the contractor judged to be the most qualified to perform this particular contract.

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Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
Page Two



We are very pleased that the NRC has considered our concerns on this matter and has carefully evaluated the comments provided by other interested parties on these restrictive provisions. In addition, we believe the NRC has recognized the public policy benefits that stem from having flexibility in the regulation, which allows for certain exceptions to these restrictions in situations where other work exists that poses no potential for a conflict of interest with work being performed for the NRC.

Accordingly, based on our understandings of the proposed changes to this COI regulation, which are discussed below, we agree with the NRC's proposition to modify the work for others restrictions for the purpose of permitting, in appropriate cases, exceptions to the blanket restrictions, provided that the following conditions are met:

- (1) The work is not in the same technical area as the work performed for the NRC, and
- (2) The Contracting Officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

Our support for the expansion of the work for others language in the manner proposed by the NRC is, however, based on the assumption that this provision will permit a contractor to discuss and negotiate in good faith an advance agreement with the cognizant Contracting Officer on the scope of these restrictions. In addition, it is our understanding that pursuant to paragraph (4)(iii) of the proposed work for others provisions, the Contracting Officer will, at the successful conclusion of the negotiations, provide the contractor with an appropriate written authorization permitting the contractor to solicit and perform certain types of activities for NRC licensees or applicants, the nature of which the NRC has determined will not place the contractor in a conflict of interest situation.

With the adoption of this proposed rule, we believe it is of vital importance that Contracting Officers be encouraged to adopt fair and reasonable exceptions to the work for others limitations and for contractors to be afforded the opportunity to periodically discuss and negotiate in a timely manner exceptions to these restrictions in good faith with the NRC. We also recognize that determinations made by Contracting Officers on exceptions to these restrictions are to be based on good judgments, considering the factors below:

- (a) the relative value of the work for the NRC,
- (b) whether there has been an on-going contractual or financial relationship between the contractor and the NRC licensee,

Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
Page Three



- (c) whether the contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract,
- (d) the relative amount of time spent at the site by the contractor's personnel.
- (e) whether the work for the NRC at the site is specific or is a part of a generic task or contract, and
- (f) any other factors that may indicate financial ties or competitive advantage.

We believe that in making determinations on any requested exceptions to these restrictions, the assessment of the significance of financial ties between the contractor and a particular licensee must at all times be put in a proper perspective. In our judgment, care must be taken to properly evaluate the true significance of any financial relationship between a contractor and a licensee by not only considering the monetary value of the work but by also comparing these financial ties against the contractor's total corporate income.

Furthermore, we believe it is also important for the Contracting Officer to assess the nature of the work that the contractor is required to perform for the NRC and determine if there is a direct or indirect relationship between this work and the activities that the contractor is interested in pursuing with a licensee or applicant. In instances where the contractor expresses an interest in pursuing totally unrelated activities, it is our expectation that a favorable determination on an exception to the work for others restrictions will be a timely and routine matter.

SAIC also wishes to take this opportunity to acknowledge the due consideration given by the NRC to comments received from interested parties on the disclosure-after-award requirement and the special recognition given to difficulties that have been experienced by highly diversified firms in making good faith efforts to disclose all proposed new and conceivably related work at least 15 days in advance of undertaking these initiatives. Groups within SAIC who perform work for the NRC have and continue to make their very best effort to monitor the activities of others segments of our corporation to remain in full and complete compliance with this particular requirement. As we have stated repeatedly, it is extremely difficult for a large company with many remote business offices to be knowledgeable of the work throughout all organizational elements and to disclose relevant activities to the NRC within such a narrow period of time.

Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
Page Four



The proposed expansion of the disclosure-after-award requirement permitting a Contracting Officer to approve relief from this rather stringent requirement is considered to be fair and reasonable and considers the occasional difficulty that might be experienced by a contractor in complying with these reporting requirements. Based on our review of this portion of the proposed rule, we support the authorization of a somewhat less stringent reporting requirement in situations of urgency or others compelling reasons.

SAIC appreciates having had the opportunity to provide the NRC with the foregoing comments on the proposed amendment of this COI regulation. We encourage the NRC to consider our comments on this proposed rule as part of the final rule making process and we look forward to the adoption of the proposed amendments to the work for others provisions and disclosure-after-award requirement as part of this COI regulation.

Should there be any questions with regard to any of these comments, please refer them to the attention of the undersigned at (703) 318-4720.

Very truly yours,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

Thomas J. Rodehau
Deputy Contracts Manager
Energy Systems Group

TJR:jmb

cc: Office of the Executive Director for Operations/James M. Taylor
Office of Administration/Patricia G. Norry
Division of Contracts and Property Management/Edward L. Halman
Policy Branch/William H. Foster
Office of General Counsel/William C. Parler
Office of Nuclear Regulatory Research/Eric S. Beckjord
Office of Nuclear Reactor Regulation/Thomas E. Murley
Office of Nuclear Materials Safety & Safeguards/Robert M. Bernero
Office of Analysis & Evaluation of Operational Data/Edward L. Jordan

DOCKET NUMBER
48C20
(57FR 37140)

SAIC

Science Applications International Corporation
An Employee-Owned Company

DOCKETED
USNRC

'92 SEP 18 P3:57

September 17, 1992

92-TJR.616

Mr. Samuel J. Chilk
The Honorable Secretary of the Commission
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Attention: Docketing and Service Branch

Subject: Proposed Amendment of the NRC Acquisition Regulation (NRCAR)
Concerning Organizational Conflicts of Interest

Reference: (a) Federal Register Vol. 57, No. 160 dated August 18, 1992
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11251 Roger Bacon Drive, Reston, Virginia 22090 • (703) 318-4500

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

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Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
Page Two



We are very pleased that the NRC has considered our concerns on this matter and has carefully evaluated the comments provided by other interested parties on these restrictive provisions. In addition, we believe the NRC has recognized the public policy benefits that stem from having flexibility in the regulation, which allows for certain exceptions to these restrictions in situations where other work exists that poses no potential for a conflict of interest with work being performed for the NRC.

Accordingly, based on our understandings of the proposed changes to this COI regulation, which are discussed below, we agree with the NRC's proposition to modify the work for others restrictions for the purpose of permitting, in appropriate cases, exceptions to the blanket restrictions, provided that the following conditions are met:

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Our support for the expansion of the work for others language in the manner proposed by the NRC is, however, based on the assumption that this provision will permit a contractor to discuss and negotiate in good faith an advance agreement with the cognizant Contracting Officer on the scope of these restrictions. In addition, it is our understanding that pursuant to paragraph (4)(iii) of the proposed work for others provisions, the Contracting Officer will, at the successful conclusion of these negotiations, provide the contractor with an appropriate written authorization permitting the contractor to solicit and perform certain types of activities for NRC licensees or applicants, the nature of which the NRC has determined will not place the contractor in a conflict of interest situation.

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Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
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- (c) whether the contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract,
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Mr. Samuel J. Chilk/U.S. Nuclear Regulatory Commission
Serial No. 92-TJR.616
September 17, 1992
Page Four



The proposed expansion of the disclosure-after-award requirement permitting a Contracting Officer to approve relief from this rather stringent requirement is considered to be fair and reasonable and considers the occasional difficulty that might be experienced by a contractor in complying with these reporting requirements. Based on our review of this portion of the proposed rule, we support the authorization of a somewhat less stringent reporting requirement in situations of urgency or others compelling reasons.

SAIC appreciates having had the opportunity to provide the NRC with the foregoing comments on the proposed amendment of this COI regulation. We encourage the NRC to consider our comments on this proposed rule as part of the final rule making process and we look forward to the adoption of the proposed amendments to the work for others provisions and disclosure-after-award requirement as part of this COI regulation.

Should there be any questions with regard to any of these comments, please refer them to the attention of the undersigned at (703) 318-4720.

Very truly yours,

SCIENCE APPLICATIONS INTERNATIONAL CORPORATION

Thomas J. Rodehau
Deputy Contracts Manager
Energy Systems Group

TJR:jmb

cc: Office of the Executive Director for Operations/James M. Taylor
Office of Administration/Patricia G. Norry
Division of Contracts and Property Management/Edward L. Halman
Policy Branch/William H. Foster
Office of General Counsel/William C. Parler
Office of Nuclear Regulatory Research/Eric S. Beckjord
Office of Nuclear Reactor Regulation/Thomas E. Murley
Office of Nuclear Materials Safety & Safeguards/Robert M. Bernero
Office of Analysis & Evaluation of Operational Data/Edward L. Jordan

Request for OMB Review

Important

Read instructions before completing form. Do not use the same SF 83 to request both an Executive Order 12291 review and approval under the Paperwork Reduction Act.

Answer all questions in Part I. If this request is for review under E.O. 12291, complete Part II and sign the regulatory certification. If this request is for approval under the Paperwork Reduction Act and 5 CFR 1320, skip Part II, complete Part III and sign the paperwork certification.

Send three copies of this form, the material to be reviewed, and for paperwork—three copies of the supporting statement, to:

Office of Information and Regulatory Affairs
Office of Management and Budget
Attention: Docket Library, Room 3201
Washington, DC 20503

PART I.—Complete This Part for All Requests.

1. Department/agency and Bureau/office originating request

2. Agency code

U.S. Nuclear Regulatory Commission

3 1 5 0

3. Name of person who can best answer questions regarding this request

Telephone number

William H. Foster

301 492-7348

4. Title of information collection or rulemaking

48 CFR 20 - Nuclear Regulatory Commission Acquisition Regulation (NRCAR)

5. Legal authority for information collection or rule (Cite U.S. Code, Title, Section, or Executive Order)

OFPP

OFPP Act of 1974 (Pub.L. 93-400), as amended by Pub.L. 96-83

6. Affected public (Check all that apply)

☒ Federal agencies or employees☐ Federal agencies or employees☒ State or local governments☒ Private citizens☒ Small businesses or organizations☒ Small businesses or organizations

PART II.—Complete This Part Only if the Request is for OMB Review Under Executive Order 12291

7. Certification to separate rulemaking

8. Regulatory impact

Classification

Stage of development

Type of review requested

1. ☐ Draft
2. ☐ For major

- ☐ Completed and in final review
☐ Completed and in final review
☐ Final or interim major rule or final proposal

1. ☐ Standard
2. ☐ Pending
3. ☐ Emergency
4. ☐ Statutory or judicial deadline

9. CFR section affected

48 CFR

10. Does this regulation require a separate review under the Paperwork Reduction Act and 5 CFR 1320?

☐ Yes ☐ No

11. Is the major rule, as there is a regulatory impact analysis attached?

☐ Yes ☐ No

12. If No, did OMB waive the analysis?

☐ Yes ☐ No

Certification for Regulatory Submissions

I, the submitting official for OMB review, the authorized regulatory contact, and the program official certify that the requirements of E.O. 12291 and any applicable regulatory directives have been followed.

Signature of program official

Date

Signature of author and Paperwork contact

Date

13. (OMB use only)

PART III.—Complete This Part Only If the Request is for Approval of a Collection of Information Under the Paperwork Reduction Act and 5 CFR 1320.

13. Abstract—Describe needs, uses and affected public in 50 words or less "Procurement Regulation"

The proposed revision allows contractors to deviate from the requirement to disclose all new work within 15 days, by submitting a justification to NRC when the requirement cannot be met.

14. Type of information collection (check only one)

Information collections not contained in rules

1 ☐ Regular submission

2 ☐ Emergency submission (certification attached)

Information collections contained in rules

3 ☐ Existing regulation (no change proposed)

6 Final or interim final without prior NPRM

7. Enter date of expected or actual Federal

4 ☒ Notice of proposed rulemaking (NPRM)

A ☐ Regular submission

Register publication at this stage of rulemaking

5 ☐ Final, NPRM was previously published

B ☐ Emergency submission (certification attached)

(month, day, year) _____

15. Type of review requested (check only one)

1 ☐ New collection

2 ☐ Revision of a currently approved collection (new collection under OMB review)

3 ☐ Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection

4 ☐ Reinstatement of a previously approved collection for which approval has expired

5 ☐ Existing collection in use without an OMB control number

16. Agency report form number(s) (include standard/optional form number(s))

22. Purpose of information collection (check as many as apply)

1 ☒ Application for benefits

2 ☐ Program evaluation

3 ☐ General purpose statistics

4 ☐ Regulatory or compliance

5 ☐ Information for planning or management

6 ☐ Research

7 ☐ Audit

17. Annual reporting or disclosure burden

1 Number of respondents

750

2 Number of responses per respondent

15

3 Total annual responses (line 1 times line 2)

11,270

4 Hours per response

10.7

5 Total hours (line 3 times line 4)

120,441

18. Annual recordkeeping burden

1 Number of recordkeepers

N/A

2 Annual hours per recordkeeper

3 Total recordkeeping hours (line 1 times line 2)

4 Recordkeeping retention period

years

19. Total annual burden

1 Requested (line 17-5 plus line 18-3)

120,441

2 In current OMB inventory (under OMB review)

120,441

3 Difference (line 1 less line 2)

Explanation of difference

4 Program change

5 Adjustment

23. Frequency of recordkeeping or reporting (check all that apply)

1 ☐ Recordkeeping

reporting

2 ☒ On occasion

3 ☐ Weekly

4 ☒ Monthly

5 ☐ Quarterly

6 ☐ Semiannual

7 ☐ Annually

8 ☐ Biennially

9 ☐ Other (specify) _____

20. Current (most recent) OMB control number or comment number

3150-0169

21. Requested expiration date

3 years after approval of new collection

24. Respondents' obligation to comply (check the strongest obligation that applies)

1 ☐ Voluntary

2 ☒ Required to obtain or retain a benefit

3 ☐ Regulator

25. Are the respondents primarily educational agencies or institutions or is the primary purpose of the collection related to Federal education programs? ☐ Yes ☒ No

26. Does the agency use sampling to select respondents or does the agency recommend or prescribe the use of sampling or statistical analysis by respondents? ☐ Yes ☒ No

27. Regulatory authority for the information collection

48

CFR

Chapter 20

; or

FR

; or

Other (specify) _____

Paperwork Certification

In submitting this request for OMB approval, the agency head, the senior official or an authorized representative, certifies that the requirements of 5 CFR 1320, the Privacy Act, statistical standards or directives, and any other applicable information policy directives have been complied with.

Signature of program official

Date

Signature of agency head, the senior official or an authorized representative

Date

Gerald F. Cranford, DSO for Information Resources Management

SUPPORTING STATEMENT
FOR
48 CFR CHAPTER 20 AMENDMENT
3150-0169

ACQUISITION REGULATION (NRCAR): ORGANIZATIONAL CONFLICTS OF INTEREST

Description of the Information Collection

NRC regulations in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The Nuclear Regulatory Commission Acquisition Regulation (NRCAR) includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements. The information collection requirements contained in 48 CFR Chapter 20 were submitted to the Office of Management and Budget (OMB) on July 2, 1992 for approval at the final rule stage and published in the Federal Register on July 10, 1992 (57 FR 30761).

The subject proposed revision, organizational conflicts of interest (COI), is contained in the NRCAR. This provision has been revised to clarify specifically what proposed new work by the contractor must be disclosed to the contracting officer prior to the proposed award date for such work. The contractor's disclosure must be received by the NRC at least 15 days before the proposed award date, unless a justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer.

It has always been the policy of the NRC to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by NRC) which may give rise to potential or actual conflicts of interest. The information disclosed is needed in order for NRC to apply sound judgement on virtually a case-by-case basis regarding contractor conflict of interest determinations.

Justification:

- A. Section 2052.209-73(d)(3) requires the contractor performing a task-order-type contract to disclose all new work which may give rise to a conflict of interest. The contractor's disclosure must be received by the NRC at least 15 days before the proposed award date, unless a justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. This information is necessary to permit NRC to make a

determination as to whether the proposed new work would constitute a conflict of interest and to avoid such situations as dictated in large part by Section 170A of the Atomic Energy Act, (Section 170A of Public Law 83-703, 68 Stat 919, as amended (42 U.S.C. Ch. 14)). The revised language in the proposed rule focuses on ensuring that the contractor is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under a contract and does not obtain an unfair competitive advantage.

1. Need for the Collection of Information

The proposed amendment to the COI provision contained in NRC Acquisition Regulation is needed to: (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

2. Agency Use of Information

This information is necessary to ensure that contractors performing under NRC contracts do not have potential or existing conflicts of interest (Reference response to item 1).

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection through the use of information technology. NRC encourages the use of information technology wherever possible.

4. Duplication of Other Collections of Information

The Information Requirements Control Automated System (IRCAS) was searched to identify duplication. None was found. The nature of the collection does not lend itself to duplication. There are no comparable government-wide statutes, practices, or policies to consider. Department of Energy regulations on COI (48 CFR Subpart 909.5) are generally comparable to NRC's existing regulations and contain a test based on financial ties to industry.

5. Effort to Use Similar Information

There is no similar information available except under clearance number 3150-0112 which will be replaced by the clearance given to NRCAR (48 CFR Chapter 20).

6. Effort to Reduce Small Business Burden

The information collection is structured to determine if awarded a task-order contract, the contractor would be placed in a position where its judgement may be biased, and to ensure that NRC contractors do not have

divided financial interests while working at a licensee site. The burden applied is the minimum consistent with applicable regulations and prudent business practices.

7. Consequences of Less Frequent Collection

Failure to justify why a firm did not make a timely disclosure could eventually lead to non-disclosure of new work and have the potential to bias the technical assistance work being performed for NRC. Non-disclosure would violate Section 170A of the Atomic Energy Act of 1954, as amended, which imposes disclosure requirements and contracting restrictions upon all NRC contracts for the conduct of research, development, and evaluation activities or for technical and management support services.

8. Circumstances Which Justify Variation from OMB Guidelines

There is no variance. The 15 days from the proposed start date of contract award generally exceeds 30 days from the date of the initial action that would start the time clock for meeting this requirement.

9. Consultations Outside the NRC

The revised COI regulation was published in the Federal Register on February 6, 1992 (57 FR 4652). NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision.

10. Confidentiality of Information

Procedures are in place to protect proprietary or business confidential information from improper disclosure.

11. Justification for Sensitive Questions

No sensitive information normally considered private or personal is required or requested.

12. Estimated Annualized Cost to the Federal Government

The estimated annual burden to the government for reviewing a justification stating why a contractor did not make a timely disclosure is one hour per response. Approximately two contractors are expected to submit a justification each year. Therefore, the total burden is estimated at two hours (2 contractors x 1 hour). The total cost at \$115 an hour is \$230.

13. Estimate of Burden

Staff estimates two contractors will submit the justification for not making a timely disclosure each year. The burden per response is one

hour, the total annual burden is two hours (2 contractors x 1 hour). The total cost at \$115 an hour is \$230.

All estimates are based on management's judgement of the limited number of organizations that do work for NRC and are so diversified that the firm would be unable to meet the 15 day disclosure requirement under certain circumstances.

14. Reason for Change in Burden

This rule would increase the burden contained in the information collection request currently under review by OMB by requiring the contractor to submit justification when the 15 day disclosure requirement cannot be met. The provision contained in the package under review does not allow any deviation from the 15 day disclosure requirement.

15. Publication for Statistical Use

This collection of information does not employ statistical methods.

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AE34

Acquisition Regulation (NRCAR): Organizational Conflicts of Interest

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its proposed Nuclear Regulatory Commission Acquisition Regulation (NRCAR) concerning organizational conflicts of interest. The proposed NRCAR, published for public comment on October 2, 1989 (54 FR 40420), addresses a full range of agency acquisition matters. A portion of the proposed NRCAR, relating to debarment, suspension and ineligibility procedures, has been adopted as a final agency regulation (57 FR 29220; July 1, 1992). The remainder of the proposed NRCAR is in preparation for publication as a final rule. One aspect of the NRCAR relates to the agency's organizational conflicts of interest rules. The amendment proposed by this notice modifies a section of the conflicts of interest rules relating to work for others during the period work is being performed for NRC. If the NRCAR is issued as a final rule before the Commission decides on the amendment proposed by the this notice, the proposed amendment will be considered for amendment of the NRCAR. Otherwise, the proposed amendment will be considered for incorporation into the NRCAR when published as a final rule.

DATE: The comment period expires (30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSEES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch, Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1991, the Commission approved a revision to its proposed NRCAR published October 2, 1989 (54 FR 40420) concerning organizational conflicts of interest (COI). The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC staff believed that the revised policy would increase competition for NRC technical assistance and research work, additional restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their

services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI regulation or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

Statement of Considerations

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness of the policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

Another section of this clause on which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The

Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. The Commission published the proposed NRCAR, including proposed COI regulations, on October 2, 1989 (54 FR 40420). Nonetheless, this proposal provides a further opportunity for public comment on a proposed amendment to the conflict of interest provisions presented in the October 2, 1989, proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22 (c)(5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This proposed rule establishes the policy, procedures, and requirements necessary to comply with 42 U.S.C. Sec. 2221, Sec. 170 A of the Atomic Energy Act of 1954, as amended, as it addresses COI. This provision will not have an additional adverse economic impact on any contractor or potential contractor because it merely implements the statute which governs COI in the award of NRC's contracts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the agency's COI policy and procedures to comply with 42 U.S.C. Sec. 221, Section 170 A of the Atomic Energy act of 1954, as amended. Because the proposed rule establishes procedures applicable only in certain instances, these provisions do not have a significant economic impact on any contractor, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule. Therefore, a backfit analysis is not required because the rule does not involve any provision which would impose backfits as defined in 10 CFR Part 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is proposing to adopt the following amendments to the provisions of paragraphs (c) and (d) of proposed §2052.209-74, "Contractor organizational conflicts of interest", which was contained in the proposed rule published in the Federal Register on October 2, 1989 (54 FR 40420).

PART 2052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 2052, as proposed to be added at 54 FR 40435; October 2, 1989, continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2. Section 2052.209-74, as proposed to be added at 54 FR 40437; October 2, 1989, is proposed to be further amended by revising paragraphs (c) and (d) to read as follows:

§ 2052.209-74 Contractor organizational conflicts of interest.

* * * * *

(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 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 before the 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 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.

(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 in the same or similar 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).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(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.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, 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. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, 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 the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

Dated at Bethesda, Maryland this 6th day of August, 1992.

For the Nuclear Regulatory Commission.


Patricia G. Norry, Director
Office of Administration.

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review.

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: revision
(Information collections contained in final rule are currently under review by OMB.)
2. The title of the information collection: 48 CFR Chapter 20,
Nuclear Regulatory Commission Acquisition Regulation (NRCAR):
Organizational Conflicts of Interest
3. The form number if applicable: N/A
4. How often the collection is required: on occasion

5. Who will be required or asked to report: contractors receiving task-order-type contract awards from NRC.
6. An estimate of the number of responses: 2
7. An estimate of the burden per response: 1 hour
8. An estimate of the total number of hours needed to complete the requirement or request: 2
9. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Applicable
10. Abstract: The NRC is proposing a revision to one provision, Organizational Conflicts of Interest (COI), contained in the Nuclear Regulatory Commission Acquisition Regulation. This revision would require a contractor to justify why the firm was unable to comply with the requirement to disclose all new work within 15 days of the proposed start date of such work.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

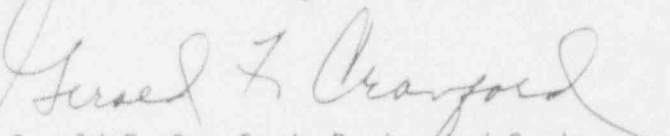
Ronald Minsk
Office of Information and Regulatory Affairs, NEOB-3019
(3150-0169)
Office of Management and Budget
Washington, D.C. 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 17th day of August 1992.

For the Nuclear Regulatory Commission

A handwritten signature in dark ink, appearing to read "Gerald F. Cranford", is written over the typed name and title.

Gerald F. Cranford, Designated Senior
Official For Information Resources
Management

AE34-1-PDR

AC01-2-PDR

August 17, 1992

The Honorable Philip Sharp, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication a proposed revision to NRC's proposed rule which would amend the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The proposed NRCAR, published for public comment on October 2, 1989 (54 FR 40420) sets forth agency policy and procedures for organizational conflicts of interest. The proposed revision would under certain circumstances allow a contractor to perform unrelated work for both a licensee and the NRC at the same site. It would also clarify the time frame for disclosure of work for others.

Sincerely,

Original signed by Linda Portner for/

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As Stated

cc: Representative Carlos Moorhead

(Retyped in OCA to show
"Sincerely")

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555

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Committee on Energy and Commerce
United States House of Representatives
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Linda Portner
for

Dennis K. Rathbun, Director
Office of Congressional Affairs

Enclosure:
As Stated

cc: Representative Carlos Moorhead

~~AE34-1~~ PDR
AC01-2

August 17, 1992

The Honorable Peter Kostmayer, Chairman
Subcommittee on Energy and the Environment
Committee on Interior and Insular Affairs
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Enclosure:
As Stated

cc: Representative John J. Rhodes (Retyped in OCA to show "Sincerely")

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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for

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Office of Congressional Affairs

Enclosure:
As Stated

cc: Representative John J. Rhodes

~~AE34-1~~
AC01-2.PDR

August 17, 1992

The Honorable Bob Graham, Chairman
Subcommittee on Nuclear Regulation
Committee on Environment and Public Works
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

The Nuclear Regulatory Commission (NRC) has sent to the Office of the Federal Register for publication a proposed revision to NRC's proposed rule which would amend the Nuclear Regulatory Commission Acquisition Regulation (NRCAR). The proposed NRCAR, published for public comment on October 2, 1989 (54 FR 40420) sets forth agency policy and procedures for organizational conflicts of interest. The proposed revision would under certain circumstances allow a contractor to perform unrelated work for both a licensee and the NRC at the same site. It would also clarify the time frame for disclosure of work for others.

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Enclosure:
As Stated

(Retyped in OCA to show "Sincerely")

cc: Senator Alan K. Simpson

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PGNORRY
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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

August 17, 1992

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Committee on Environment and Public Works
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for

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Enclosure:
As Stated

cc: Senator Alan K. Simpson

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DOCKET NUMBER
PROPOSED RULE 48 C 20
(57 FR 37140)

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NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AE34

Acquisition Regulation (NRCAR): Organizational Conflicts of Interest

AGENCY: Nuclear Regulatory Commission.

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Pub 8/18/92

9/17/92

DATE: The comment period expires (30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSEES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch, Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347

SUPPLEMENTARY INFORMATION:

Background

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Statement of Considerations

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness of the policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

Another section of this clause on which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The

Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

Administrative Procedure Act

Section 553 of the Administrative Procedure Act (5 U.S.C. 551 et seq) exempts rules relating to public contracts from the prior notice and comment procedure normally required for rulemaking. However, the Office of Federal Procurement Policy (OFPP), Office of Management and Budget, has established procedures to be used by all Federal agencies in the promulgation of procurement regulations. The Commission published the proposed NRCAR, including proposed COI regulations, on October 2, 1989 (54 FR 40420). Nonetheless, this proposal provides a further opportunity for public comment on a proposed amendment to the conflict of interest provisions presented in the October 2, 1989, proposed rule.

Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22 (c)(5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This proposed rule establishes the policy, procedures, and requirements necessary to comply with 42 U.S.C. Sec. 2221, Sec. 170 A of the Atomic Energy Act of 1954, as amended, as it addresses COI. This provision will not have an additional adverse economic impact on any contractor or potential contractor because it merely implements the statute which governs COI in the award of NRC's contracts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the agency's COI policy and procedures to comply with 42 U.S.C. Sec. 221, Section 170 A of the Atomic Energy act of 1954, as amended. Because the proposed rule establishes procedures applicable only in certain instances, these provisions do not have a significant economic impact on any contractor, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule. Therefore, a backfit analysis is not required because the rule does not involve any provision which would impose backfits as defined in 10 CFR Part 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is proposing to adopt the following amendments to the provisions of paragraphs (c) and (d) of proposed §2052.209-74, "Contractor organizational conflicts of interest", which was contained in the proposed rule published in the Federal Register on October 2, 1989 (54 FR 40420).

PART 2052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 2052, as proposed to be added at 54 FR 40435; October 2, 1989, continues to read as follows:

AUTHORITY: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 93-400, 88 Stat. 796, as amended by Pub. L. 96-83, 93 Stat. 648, Pub. L. 98-577, 98 Stat. 3074 (41 U.S.C. 401 et seq.).

2. Section 2052.209-74, as proposed to be added at 54 FR 40437; October 2, 1989, is proposed to be further amended by revising paragraphs (c) and (d) to read as follows:

§ 2052.209-74 Contractor organizational conflicts of interest.

* * * * *

(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 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 before the 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 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.

(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 in the same or similar 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).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(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.

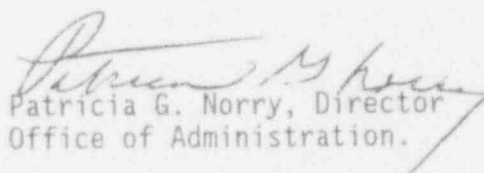
(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken 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.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, 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. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, 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 the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

Dated at Bethesda, Maryland this 6th day of August, 1992.

For the Nuclear Regulatory Commission.


Patricia G. Norry, Director
Office of Administration.

~~AE34~~ AC01-2
PDR

SUPPORTING STATEMENT
FOR
48 CFR CHAPTER 20 AMENDMENT
3150-0169

ACQUISITION REGULATION (NRCAR): ORGANIZATIONAL CONFLICTS OF INTEREST

Description of the Information Collection

NRC regulations in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The Nuclear Regulatory Commission Acquisition Regulation (NRCAR) includes policies, procedures, solicitation provisions, and contract clauses needed to ensure effective and efficient evaluation, negotiation, and administration of procurements. The information collection requirements contained in 48 CFR Chapter 20 were submitted to the Office of Management and Budget (OMB) on July 2, 1992 for approval at the final rule stage and published in the Federal Register on July 10, 1992 (57 FR 30761).

The subject proposed revision, organizational conflicts of interest (COI), is contained in the NRCAR. This provision has been revised to clarify specifically what proposed new work by the contractor must be disclosed to the contracting officer prior to the proposed award date for such work. The contractor's disclosure must be received by the NRC at least 15 days before the proposed award date, unless a justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer.

It has always been the policy of the NRC to avoid, eliminate or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by NRC) which may give rise to potential or actual conflicts of interest. The information disclosed is needed in order for NRC to apply sound judgement on virtually a case-by-case basis regarding contractor conflict of interest determinations.

Justification:

- A. Section 2052.209-73(d)(3) requires the contractor performing a task-order-type contract to disclose all new work which may give rise to a conflict of interest. The contractor's disclosure must be received by the NRC at least 15 days before the proposed award date, unless a justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. This information is necessary to permit NRC to make a

determination as to whether the proposed new work would constitute a conflict of interest and to avoid such situations as dictated in large part by Section 170A of the Atomic Energy Act, (Section 170A of Public Law 83-703, 68 Stat 919, as amended (42 U.S.C. Ch. 14). The revised language in the proposed rule focuses on ensuring that the contractor is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under a contract and does not obtain an unfair competitive advantage.

1. Need for the Collection of Information

The proposed amendment to the COI provision contained in NRC Acquisition Regulation is needed to: (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

2. Agency Use of Information

This information is necessary to ensure that contractors performing under NRC contracts do not have potential or existing conflicts of interest (Reference response to item 1).

3. Reduction of Burden Through Information Technology

There are no legal obstacles to reducing the burden associated with this information collection through the use of information technology. NRC encourages the use of information technology wherever possible.

4. Duplication of Other Collections of Information

The Information Requirements Control Automated System (IRCAS) was searched to identify duplication. None was found. The nature of the collection does not lend itself to duplication. There are no comparable government-wide statutes, practices, or policies to consider. Department of Energy regulations on COI (48 CFR Subpart 909.5) are generally comparable to NRC's existing regulations and contain a test based on financial ties to industry.

5. Effort to Use Similar Information

There is no similar information available except under clearance number 3150-0112 which will be replaced by the clearance given to NRCAR (48 CFR Chapter 20).

6. Effort to Reduce Small Business Burden

The information collection is structured to determine if awarded a task-order contract, the contractor would be placed in a position where its judgement may be biased, and to ensure that NRC contractors do not have

divided financial interests while working at a licensee site. The burden applied is the minimum consistent with applicable regulations and prudent business practices.

7. Consequences of Less Frequent Collection

Failure to justify why a firm did not make a timely disclosure could eventually lead to non-disclosure of new work and have the potential to bias the technical assistance work being performed for NRC. Non-disclosure would violate Section 170A of the Atomic Energy Act of 1954, as amended, which imposes disclosure requirements and contracting restrictions upon all NRC contracts for the conduct of research, development, and evaluation activities or for technical and management support services.

8. Circumstances Which Justify Variation from OMB Guidelines

There is no variance. The 15 days from the proposed start date of contract award generally exceeds 30 days from the date of the initial action that would start the time clock for meeting this requirement.

9. Consultations Outside the NRC

The revised COI regulation was published in the Federal Register on February 6, 1992 (57 FR 4652). NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision.

10. Confidentiality of Information

Procedures are in place to protect proprietary or business confidential information from improper disclosure.

11. Justification for Sensitive Questions

No sensitive information normally considered private or personal is required or requested.

12. Estimated Annualized Cost to the Federal Government

The estimated annual burden to the government for reviewing a justification stating why a contractor did not make a timely disclosure is one hour per response. Approximately two contractors are expected to submit a justification each year. Therefore, the total burden is estimated at two hours (2 contractors x 1 hour). The total cost at \$115 an hour is \$230.

13. Estimate of Burden

Staff estimates two contractors will submit the justification for not making a timely disclosure each year. The burden per response is one

hour, the total annual burden is two hours (2 contractors x 1 hour). The total cost at \$115 an hour is \$230.

All estimates are based on management's judgement of the limited number of organizations that do work for NRC and are so diversified that the firm would be unable to meet the 15 day disclosure requirement under certain circumstances.

14. Reason for Change in Burden

This rule would increase the burden contained in the information collection request currently under review by OMB by requiring the contractor to submit justification when the 15 day disclosure requirement cannot be met. The provision contained in the package under review does not allow any deviation from the 15 day disclosure requirement.

15. Publication for Statistical Use

This collection of information does not employ statistical methods.

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review.

AGENCY: Nuclear Regulatory Commission (NRC)

ACTION: Notice of the OMB review of information collection

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: revision
(Information collections contained in final rule are currently under review by OMB.)
2. The title of the information collection: 48 CFR Chapter 20,
Nuclear Regulatory Commission Acquisition Regulation (NRCAR):
Organizational Conflicts of Interest
3. The form number if applicable: N/A
4. How often the collection is required: on occasion

5. Who will be required or asked to report: contractors receiving task-order-type contract awards from NRC.
6. An estimate of the number of responses: 2
7. An estimate of the burden per response: 1 hour
8. An estimate of the total number of hours needed to complete the requirement or request: 2
9. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Applicable
10. Abstract: The NRC is proposing a revision to one provision, Organizational Conflicts of Interest (COI), contained in the Nuclear Regulatory Commission Acquisition Regulation. This revision would require a contractor to justify why the firm was unable to comply with the requirement to disclose all new work within 15 days of the proposed start date of such work.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk
Office of Information and Regulatory Affairs, NEOB-3019
(3150-0169)
Office of Management and Budget
Washington, D.C. 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this day of August 1992.

For the Nuclear Regulatory Commission

Gerald F. Cranford, Designated Senior
Official For Information Resources
Management

[7590-01]

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150-AE34

Acquisition Regulation (NRCAR): Organizational Conflicts of Interest

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing an amendment to its proposed Nuclear Regulatory Commission Acquisition Regulation (NRCAR) concerning organizational conflicts of interest. The proposed NRCAR, published for public comment on October 2, 1989 (54 FR 40420), addresses a full range of agency acquisition matters. A portion of the proposed NRCAR, relating to debarment, suspension and ineligibility procedures, has been adopted as a final agency regulation (57 FR 29220; July 1, 1992). The remainder of the proposed NRCAR is in preparation for publication as a final rule. One aspect of the NRCAR relates to the agency's organizational conflicts of interest rules. The amendment proposed by this notice modifies a section of the conflicts of interest rules relating to work for others during the period work is being performed for NRC. If the NRCAR is issued as a final rule before the Commission decides on the amendment proposed by the this notice, the proposed amendment will be considered for amendment of the NRCAR. Otherwise, the proposed amendment will be considered for incorporation into the NRCAR when published as a final rule.

DATE: The comment period expires (30 days after publication in the Federal Register). Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSEES: Submit written comments to: The Secretary of the Commission; U.S. Nuclear Regulatory Commission; Attention: Docketing and Service Branch, Washington, DC 20555. Copies of comments received may be examined or obtained for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC (telephone (202) 634-3273).

FOR FURTHER INFORMATION CONTACT: Edward L. Halman, Director, Division of Contracts and Property Management, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492-4347

SUPPLEMENTARY INFORMATION:

Background

On August 15, 1991, the Commission approved a revision to its proposed NRCAR published October 2, 1989 (54 FR 40420) concerning organizational conflicts of interest (COI). The thrust of this revision limited COI restrictions to the relatively narrow scope and shorter duration of individual task orders rather than to the entire scope and term of the basic contract. While the NRC staff believed that the revised policy would increase competition for NRC technical assistance and research work, additional restrictions were added to (a) avoid the potential for unfair competitive advantage that could result if NRC contractors were permitted to market their

services while working for NRC at a licensee site, and (b) ensure that NRC contractors do not have divided financial interests while working at a licensee site.

Two of NRC's major technical assistance and research contractors commented that the COI provision, approved on August 15, 1991, was overly restrictive and would impede rather than enhance NRC's ability to increase competition in the technical assistance marketplace. Therefore, the NRC held a public meeting on March 26, 1992, in order that all interested parties could provide further comments on the proposed revision of the Commission's COI regulation or provide alternatives that would achieve an equivalent level of COI protection (57 FR 4652; February 6, 1992).

Statement of Considerations

The nature of the comments received in connection with the March 26, 1992, meeting varied with respect to how the commenters viewed the restrictiveness of the policy. While a number of commenters found the existing COI language adequate, others stated the policy was overly restrictive and lacking in flexibility.

The Commission has considered the comments concerning the substantial restrictions against performing any work at an NRC licensee site where the contractor performs on-site work for NRC, coupled with the lack of flexibility in applying this restriction, and agrees that exceptions to the blanket restriction may be permitted in appropriate cases. Thus, the Commission has modified the restriction to authorize the NRC contractor to perform work for NRC licensees at the site of work performed for NRC if:

(a) The work is not in the same technical area as the work performed for NRC; and

(b) The contracting officer determines that the specific situation will not pose a potential for technical bias or unfair competitive advantage.

In making the determination, the contracting officer will consider factors such as: the relative value of the work for NRC; whether there has been an on-going contractual or financial relationship between the NRC contractor and the NRC licensee that predates the NRC contract; whether the NRC contractor gained information about the availability of work for the NRC licensee as a result of contractor access to the site under the NRC contract; the relative amount of time spent at the site by the NRC contractor's personnel; whether the work for NRC at the site is specific or is a part of a generic task or contract; and any other factors that may indicate financial ties or competitive advantage.

Another section of this clause on which the Commission received objections related to the requirement to disclose all other work proposed to be done by the contractor for others that may give rise to a COI situation. The specific objection related to the requirement that the NRC be informed of the work at least 15 days in advance of undertaking the work. Some companies complained that it is difficult for diversified firms to ensure that the division performing the work for NRC would be aware of the work by other divisions 15 days in advance in all cases. Giving due consideration to these comments, the Commission has modified the provision to require that the contractor use due diligence to identify and obtain information about work for others that would fall within the scope of the NRC contract, and report the information to NRC 15 days in advance of undertaking the work. The

Commission has also added a corresponding provision which indicates that the contracting officer may approve reporting not in accordance with this provision in cases where the contractor justifies the deviation on the grounds of urgency or by showing that despite the exercise of due diligence, the contractor's officials responsible for the NRC contract were not aware of the work for others falling within this provision.

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Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in the categorical exclusion set forth in 10 CFR 51.22 (c)(5) and (6). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

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This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB-7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-3019, (3150-), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

This proposed rule establishes the policy, procedures, and requirements necessary to comply with 42 U.S.C. Sec. 2221, Sec. 170 A of the Atomic Energy Act of 1954, as amended, as it addresses COI. This provision will not have an additional adverse economic impact on any contractor or potential contractor because it merely implements the statute which governs COI in the award of NRC's contracts.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. The proposed rule establishes the agency's COI policy and procedures to comply with 42 U.S.C. Sec. 221, Section 170 A of the Atomic Energy act of 1954, as amended. Because the proposed rule establishes procedures applicable only in certain instances, these provisions do not have a significant economic impact on any contractor, including small entities.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule. Therefore, a backfit analysis is not required because the rule does not involve any provision which would impose backfits as defined in 10 CFR Part 50.109(a)(1).

List of Subjects in 48 CFR Chapter 20

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is proposing to adopt the following amendments to the provisions of paragraphs (c) and (d) of proposed §2052.209-74, "Contractor organizational conflicts of interest", which was contained in the proposed rule published in the Federal Register on October 2, 1989 (54 FR 40420).

PART 2052 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for Part 2052, as proposed to be added at 54 FR 40435; October 2, 1989, continues to read as follows:

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2. Section 2052.209-74, as proposed to be added at 54 FR 40437; October 2, 1989, is proposed to be further amended by revising paragraphs (c) and (d) to read as follows:

§ 2052.209-74 Contractor organizational conflicts of interest.

* * * * *

(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 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 before the 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 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.

(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 in the same or similar 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).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(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.

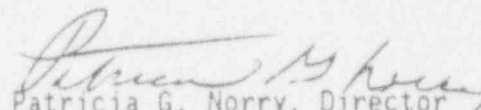
(2) The contractor agrees that, if after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken 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.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, 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. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, 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 the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

Dated at Bethesda, Maryland this 6th day of August, 1992.

For the Nuclear Regulatory Commission.


Patricia G. Norry, Director
Office of Administration.

~~AE34-1-PDR~~
AC01-2

7590-01

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer:

Ronald Minsk
Office of Information and Regulatory Affairs, NEOB-3019
(3150-0169)
Office of Management and Budget
Washington, D.C. 20503

Comments can also be submitted by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this day of August 1992.

For the Nuclear Regulatory Commission

Gerald F. Cranford, Designated Senior
Official for Information Resources
Management

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The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland this 14 day of August 1992.

For the Nuclear Regulatory Commission

Original signed by
Gerald F. Cranford

Gerald F. Cranford, Designated Senior
Official For Information Resources
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AC01-3
PDR

OFFICIAL TRANSCRIPT OF PROCEEDINGS

Agency: U.S. Nuclear Regulatory Commission

Title: Public Meeting on Organizational
Conflicts of Interest

Docket No.

LOCATION: Bethesda, Maryland

DATE: Thursday, March 26, 1992

PAGES: 1 - 43

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1 UNITED STATES
2 NUCLEAR REGULATORY COMMISSION

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4 PUBLIC MEETING ON
5
6 ORGANIZATIONAL CONFLICTS OF INTEREST
7
8
9

10
11 Nuclear Regulatory Commission
12 8120 Wisconsin Avenue
13 Bethesda, Maryland
14 Thursday, March 26, 1992
15

16 The above-entitled meeting commenced, pursuant to
17 notice, at 9:30 o'clock a.m.
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24
25

P R O C E E D I N G S

[9:30 a.m.]

MS. NORRY: I am Pat Norry, Director of the Office of Administration.

We have with us today Dennis Dambly, who is the Assistant General Counsel for Administration; Tim Hagan, who is the Acting Director of the Division of Contracts and Property Management; and, William Foster, who is Chief of the Policy Branch in the Division of Contracts and Property Management.

The Nuclear Regulatory Commission is holding today's public meeting for the purpose of soliciting comments on the agency's current policy for organizational conflict of interest.

Comments received will be reconciled with the existing policy as part of the agency's rulemaking process for the NRC acquisition regulation.

Accordingly, this meeting will be transcribed and a copy of the transcript will be made available to the public. The final version of the regulation is scheduled for publication in early July.

This morning we will present a brief historical perspective of NRC's conflict of interest policy, followed by a discussion of the current policy. We will discuss the rationale for the policy and explain the application of the

1 policy's restrictions in general terms.

2 We hope that this discussion will contribute to
3 clarifying our current position on conflict of interest, as
4 well as addressing the responses submitted by some of you in
5 conjunction with holding this meeting.

6 Following our presentation, you will be given an
7 opportunity to ask questions for the purpose of clarifying
8 any of the policy's provisions which are still unclear. At
9 this time, you will also have the opportunity to present
10 remarks for the record.

11 As you know, the conflict of interest
12 determinations are made on a case-by-case basis and consider
13 all circumstances particular to a specific procurement. For
14 this reason, it would be helpful if you would limit your
15 comments and questions to basic policy issues. We cannot
16 address application of the policy to specific cases which
17 are currently under review.

18 If you require any administrative support for the
19 handling of messages and so forth, please see one of the
20 receptionists located right outside the meeting room.

21 Before I turn the discussion over to Mr. Hagan,
22 are there any questions on how the meeting will proceed?

23 [No response.]

24 MS. NORRY: Tim Hagan will now talk on the
25 conflict of interest policy.

1 MR. HAGAN: Thank you, Pat. Please let me know if
2 you can't hear me. As Pat indicated, we are here to solicit
3 your comments on our proposed policy for conflict of
4 interests. Before we open the floor to discussions, I want
5 to review what got us here, basically. I will also address
6 some of the comments that we received in advance of this
7 meeting.

8 Prior to 1989, NRC's policy for conflict of
9 interest did not specifically address the question of task
10 ordering contracts. Under these types of contracts, there
11 is a broad scope and individual tasks are issued for
12 specific work assignments.

13 NRC, in practice, applied the conflict
14 restrictions to the individual task orders prior to 1989.
15 After experiencing some difficulty in that practice with
16 contractors who would not disclose contracts they were
17 pursuing with the industry, we reexamined that policy, and,
18 in early 1989, we adopted language which would apply the
19 conflict restrictions to the entire scope and duration of
20 these broad-scoped contracts.

21 That language was included in our publication of
22 the proposed NRC acquisition regulations in October of 1989.
23 During that rulemaking process, we experienced some
24 additional difficulties with the language in getting
25 contractors to accept it.

1 We also felt that the language may have been
2 contributing to the reduced level of competition we were
3 receiving on some technical assistance projects. For these
4 reasons, we reviewed the policy again and made some
5 recommendations to the Commission, and, in August of last
6 year, the Commission approved a revised policy.

7 The revised policy essentially reverted back to
8 the practice of applying conflict of interest restrictions
9 to the individual task orders under broad-scoped contracts.
10 It did, however, add some new restrictions, which I will go
11 over right now.

12 One of the provisions that was incorporated into
13 the new policy was designed to prevent situations where a
14 contractor may take advantage of its presence at a site to
15 market the firm's services to a licensee.

16 We added a provision to protect against that. We
17 also added a provision, that same provision, to protect
18 against situations where a contractor's financial ties may
19 put them in a situation of conflicting loyalties in terms of
20 work for NRC and a licensee.

21 The specific provision requires that while
22 performing work at a licensee's or applicant's site for the
23 NRC, a contractor may not solicit work at that site, perform
24 any work for the licensee at that site, or perform work for
25 the licensee or applicant organization in the same technical

1 area as the work that is being performed on-site for the
2 NRC.

3 As a further protective measure, these
4 restrictions applied for a period of one year after
5 completion of work at the site. The revised policy also
6 added a provision pertaining to disclosure of work after
7 award. The new language was specific to task order type
8 contracts and requires that contractors disclose all
9 proposed new work involving NRC licensees or applicants
10 which falls within the general scope of the underlying
11 contract.

12 When you disclose this work, NRC then reviews that
13 proposed contract that you want to undertake for the
14 licensee and looks at what NRC anticipates awarding in terms
15 of tasks under its contract and decides whether that would
16 pose a conflict with what you're proposing to do.

17 In that regard, we received a question about what
18 "plans to do" means in terms of NRC and how would the
19 industry know what NRC plans to do. The only way you would
20 know under these broad-scoped contracts is through this
21 disclosure mechanism, you would let us know where work that
22 you're contemplating falls within this broad scope of the
23 contract, and then we would look at what our plans are in
24 terms of scheduling reviews at particular plants, for
25 example.

1 This language was felt necessary because a number
2 of firms had previously interpreted our provisions as
3 allowing the decisionmaking on conflict of interest for new
4 work with a contractor to reside with the contractor instead
5 of the NRC. This interpretation led to contractors
6 notifying NRC of work for licensees only when the firm
7 believed a conflict existed.

8 This disclosure provision also has a time
9 provision in it that requires contractors to notify NRC 15
10 days prior to the proposed award date.

11 We also received a question regarding what
12 constituted a licensee or applicant organization for
13 purposes of these restrictions. A licensee or applicant
14 organization is the business entity which owns the facility
15 which has either been licensed or has applied for a license
16 with the NRC. For example, Duke Power Corporation is a
17 licensee organization for Sharon Harris, Catawba and a
18 number of other nuclear facilities. DOE is not a licensee
19 organization, as it does not manage and operate any NRC-
20 licensed facilities.

21 There was another question as to whether conflict
22 of interest restrictions flowed to the organization or to an
23 individual or division within an organization. NRC's
24 conflict of interest restrictions apply to the organization
25 as a whole. In other words, if it is determined that an

1 individual or division within a multi-divisional firm has a
2 conflict of interest, a conflict of interest situation would
3 exist for the entire firm proposing to perform NRC work.

4 As Pat indicated, we will be soliciting your
5 comments today and we'll consider them as part of our
6 rulemaking process. We'll also consider the letters we
7 received prior to this proceeding, and we're also going to
8 consider any subsequent comments you have which will need to
9 be submitted by April 15.

10 I will now open the floor up. I think what we're
11 going to do here is to take the list of individuals who
12 indicated on the way in that they would like to present
13 remarks. I'm just going to go down that list. If you're
14 not prepared to give your remarks, you may just defer until
15 later in the meeting. Then at the conclusion of that,
16 anyone who wants to speak will be free to speak.

17 Bahman Atefi?

18 MR. ATEFI: Will we have a chance to come back and
19 ask questions?

20 MR. HAGAN: Yes, you will. Tom, would you step up
21 to the mike and state your name and the organization you're
22 representing.

23 MR. TREVINO: My name is Tom Trevino, and I'm
24 representing Science Applications International Corporation.
25 My first question has to do with your work-for-others

1 provision C-3. In there, you say that we can't solicit work
2 on-site, and I don't think -- certainly SAIC and I don't
3 believe other companies have any objection to while we're
4 working for the NRC on-site, that they do nothing but work
5 for the NRC.

6 So to even strengthen your language, and later we
7 can talk about some suggestions to do that, we'd be happy to
8 agree to not doing that when we're working on-site.

9 However, you go further in Clause C-3 and you talk
10 about the contractor shall not allow -- let's see. We talk
11 about we cannot perform work on-site or work in the same
12 technical area for that licensee. Then in your
13 supplementing comments, you say regardless of location, if
14 we're working at that licensee's site.

15 The problem that we have with this is that it is
16 possible for a diverse company, such as SAIC, to actually
17 have other opportunities at that licensee's site that have
18 absolutely nothing to do with the work that we'd be
19 performing for the NRC.

20 Since the OCI clauses are meant to prevent
21 conflicts of interest, that's technical bias or unfair
22 competitive advantage, it doesn't seem to make sense to, on
23 a blanket basis, say that you can't do anything else at that
24 site.

25 So my first question is what are you trying to

1 accomplish by this? Certainly, you make OCI administration
2 much easier because you just say you can't do it.
3 Therefore, if you have a contractor that agrees to that,
4 then it makes it very easy.

5 But for very experienced and diversified
6 contractors, such as SAIC, they may be unable to accept that
7 and, therefore, you eliminate them from the competition. I
8 was just wondering how you balance that.

9 MR. HAGAN: Tom, the basis for that part of the
10 revised policy gets to the financial tie issue, where when
11 the NRC looked at this, we felt that it would not be
12 desirable for NRC to have work at a particular site going on
13 where a contractor working for us was also working for the
14 licensee at that site and may have a substantial financial
15 tie to the licensee.

16 We felt that posed a serious potential for
17 conflict and possibly biased results in favor of the
18 licensee if the tie was significant. We do have a waiver
19 provision in the rule which would certainly be something
20 that we would look at if you have cases that make sense to
21 grant a waiver for.

22 But the basis for this thing in the rule is the
23 financial tie issue.

24 MR. TREVINO: So you're saying that if we have --
25 if somebody is doing something totally unrelated to the work

1 that we would be performing for the NRC at that site, just
2 because some other part of the company is working under
3 contract, that's a financial tie that you think could
4 introduce technical bias.

5 Is that what you're saying?

6 MR. HAGAN: True. Yes.

7 MR. TREVINO: We don't understand how some totally
8 unrelated work could introduce technical bias on some work
9 that we would be doing for the NRC. If you leave the clause
10 the way it is there, it makes it very clear that we couldn't
11 do any work there, so that would have a tendency to inhibit
12 competition.

13 MR. HAGAN: I appreciate that, but I think the
14 rationale there is the -- for example, if you had a million-
15 dollar contract at a particular site and you're doing
16 \$20,000 work for us, we think that poses a problem.

17 That's what led to the provision that's in the
18 rule. I certainly appreciate your comments. I gave the
19 example of where you might have a million-dollar contract to
20 do some unrelated work at a particular site and a very small
21 \$30,000 or \$20,000 job for NRC, and we felt that that posed
22 a problem in terms of potentially biasing the results of the
23 work.

24 But I understand your position and it's something
25 that we will consider in our review.

1 MR. TREVINO: The clause doesn't put a standard as
2 to what the value is of the work. It just says that you
3 can't do anything. So what that has a tendency of doing is
4 just put a blanket over any possibility to do work at a site
5 in any capacity for work that we might do for the NRC.

6 So just right on the surface, the way the clause
7 is written, I think it would tend to stifle broad-based
8 companies from even bidding. Of course, I think probably
9 later in the meeting we'll get to the subject of inhibiting
10 competition and how that could be reconciled with the
11 Competition in Contracting Act and so on, the balancing
12 between those two diverse forces.

13 That's the first question I have. There will be
14 others.

15 MR. HAGAN: Thank you. Do you have a question?

16 MR. ORTIZ: Mr. Ortiz from Sandia National Lab. I
17 have a question on your use of the phrase "the same
18 technical area" or "the same technical matter."

19 Would you explain what you mean by "the same
20 technical area" and give a few examples? My concern is that
21 some areas may be defined too broadly. When you talk of the
22 same site, then it's easier for us to see what the same site
23 means.

24 MR. HAGAN: So you want to know what we consider
25 to be same or similar technical areas.

1 MR. ORTIZ: Right, and give us a few examples.

2 MR. HAGAN: It's difficult --

3 MR. ORTIZ: For example, say safety is an area and
4 it's broad. But if I would say somebody's working on -- and
5 somebody else is working in pump failures. Those are two
6 different technical areas, to me.

7 MR. HAGAN: It's difficult to address these kinds
8 of examples, but we would work within the framework of the
9 scope of the contract to determine whether that defines the
10 technical area. So it's difficult to come up with examples.

11 Dennis, do you have any suggestions?

12 MR. DAMBLY: I think on task order, we're looking
13 at the scope of the task orders to defining the technical
14 area. We do have broad-scoped contracts in the task order
15 area, but we're only looking at the individual task order at
16 that point.

17 The disclosure of work for others covers the whole
18 broad scope of the contract, where we'll make a decision
19 then as to whether we think there's a conflict. But in
20 terms of the same technical area, we're only talking on
21 specific task orders.

22 So if you're given a task order to go out and look
23 at vessel embrittlement, then I would think that's the
24 scope. If you got another deal on some kind of pump
25 failures at a different facility, even under the same

1 licensee, I don't think that would be the same technical
2 area.

3 We're not going to use a word like "safety," if
4 that's your -- obviously, that would just -- hopefully, that
5 covers most everything we do. So we wouldn't try and define
6 it in terms of safety.

7 MR. HAGAN: Tenny Johnson, I believe, from SAIC,
8 also signed up and wanted to present some remarks.

9 MR. JOHNSON: Mr. Chairman, I'll defer my
10 comments.

11 MR. HAGAN: Does anybody else have any remarks?

12 MR. PIKEL: Yes. My name is Bob Pikel and I'm
13 with the Mitre Corporation. I'd like to make a few comments
14 with regard to the proposed policy.

15 First of all, I feel that the provision addresses
16 a serious issue from the standpoint of providing credibility
17 to the agency, assurance to the public, and assurance to the
18 industry, the regulated industry, that the NRC is, in fact,
19 obtaining conflict-free advice and lack of bias from its
20 contractors relating to sensitive regulatory issues.

21 So I think it's an important issue and it's one
22 that clearly should be addressed by the agency. However, I
23 think also that the focus of the policy may be incorrect in
24 the sense that I think that the measure could be considered
25 as a last resort rather than first resort from the

1 standpoint of obtaining your objectives in terms of
2 conflict-free activity.

3 The government has established organizations, like
4 Mitre Corporation, for example, where -- the government has
5 established organizations, for example, whose corporate
6 characteristics and not certifications assure the government
7 of obtaining the objectives that are specified in the
8 policy.

9 The Competition and Contracting Act was mentioned,
10 also, and it provides the government with a legal basis to
11 access these organizations in those areas where this is a
12 primary consideration.

13 The organizations -- if these organizations are
14 technically qualified, which is obviously a primal and
15 important consideration, then it seems to me that their use
16 assures the attainment of the objectives of the policy.

17 The determination of technical qualification does
18 not require anything extra with regard to these
19 organizations. That work by the agency has to be performed
20 under any circumstances. So the consideration of these
21 organizations doesn't impose any extra obligation, I don't
22 think, on the agency.

23 Now, it seems also that in the cases where the
24 organizations are not technically qualified, then the
25 government agency should look to other organizations in the

1 private sector and require that these measures which are
2 described in the policy are properly implemented.

3 Now, this kind of approach would reduce the cost
4 of contracting both to the government and to the private
5 sector. On just very few comments that were made so far,
6 it's clear that issues of interpretation, issues of
7 definition, rationale for positions, submission of
8 certifications, evaluation of all these things, are going to
9 create a burden on the determination.

10 I'm proposing that that burden be reduced as much
11 as possible when, in fact, other feasible alternatives exist
12 where conflict-free advice is, in fact, the primal
13 consideration.

14 I propose, then, that any policy statement should
15 acknowledge this situation and the guidance specify that the
16 agency seek conflict-free advice on those essential issues
17 from organizations whose corporate characteristics will
18 assure that without any special determination or
19 examination.

20 In this manner, then, if these organizations are
21 not technically qualified to do the work, then clearly the
22 agency should have recourse to other options in the private
23 sector. I feel that this type of an approach would tend to
24 reduce the costs to the agency of contracting, as well as to
25 the private industry, to the organizations who will have to

1 comply with the policy.

2 Thank you.

3 MR. HAGAN: Thank you. Do we have any other
4 comments?

5 [No response.]

6 MR. HAGAN: Tenny, I guess you're next.

7 MR. JOHNSON: My name is Tenny Johnson. I'm a
8 private attorney. I have been engaged by SAIC from time to
9 time to advise on potential conflicts of interest and how to
10 avoid them. In this role, I have made myself acquainted
11 with the proposed NRC policy.

12 I should say that I've had substantial involvement
13 with organization conflict of interest matters since they
14 first came to the regulatory attention to the government in
15 1959. I won't go through all that history because it's not
16 immediately relevant, except that I have to say, generally
17 speaking, I think some aspects of the new policy do go
18 farther than is necessary for pure organization conflict of
19 interest avoidance, and, in fact, trench upon activities
20 that are really outside the kin of the NRC.

21 First, I would like to address myself to a
22 statement made earlier that in this Paragraph C-3, the
23 intention, the underlying intention was to avoid a financial
24 tie between the contractor, the portion of the contractor
25 that was performing work at an NRC site, and another part of

1 a contractor.

2 And when I say contractor here, I'm talking about
3 a diversified company that does many individual -- has many
4 individual customers and many divisions, such as SAIC, but
5 certainly not exclusively SAIC.

6 The argument or the explanation here was that
7 there would be a financial tie between the two elements of
8 the corporation and that the purpose was to prevent this.
9 But it seems to me that the purpose of preventing that,
10 which we concede and agree is a desirable thing, is
11 accomplished by the review of the information provided by
12 the proposer at the time the contract is submitted as to
13 what its intentions are, what its activities are.

14 It's at that point that the agency is in a
15 position to make the determination that there is or is not a
16 conflict. We recognize that it is for the agency to make
17 this determination and we're not trying to usurp the role of
18 the agency in doing that.

19 But the clause really goes further than making the
20 determination concerning whether there is a financial tie
21 that might bias the performance of the contractor for the
22 NRC. I say, again, that determination can be made at the
23 time the proposal is submitted and the information about the
24 activities and the proposed activities of a corporation are
25 examined.

1 This, however, goes further and says that you may
2 not solicit work of any kind. Well, solicitation may be
3 submission of a company brochure of a general character to
4 an applicant, to a utility, for example. It has utterly
5 nothing to do with the work that is being performed by one
6 segment of the contractor at that particular utility, but is
7 simply an advertising piece of work.

8 Perhaps in six months, another division of the
9 utility seeks to get some specialized experience of the
10 diversified corporation, from people who weren't involved in
11 any way with the original work. We're not really satisfied
12 with the word "technical area" being defined as merely
13 scope, because that is very ill-defined, indefinite, and
14 extremely hard to administer for the contractor, as well as
15 for the agency.

16 But the prohibition here is not upon non-
17 conflicting activities of the contractor -- is upon non-
18 conflicting areas of the contractor, in an area that has
19 nothing to do with the work that's being for the NRC.

20 It doesn't involve any bias on the part of the
21 contractor because there's no way for the people performing
22 the work to know that another segment may be issuing a
23 brochure at some subsequent time that finds its way to the
24 contractor at the site who are doing some work under a task
25 order.

1 What this is doing is really, it was told to us
2 informally at another occasion, was to try to regulate the
3 activity of the corporation from embarrassing the Commission
4 by performing work at a site and then immediately going back
5 to the Commission and saying, oh, by the way, we did some
6 work for you and the NRC loves us and we would like to -- we
7 think that we'd like to do some more work for you in a
8 different area.

9 We for SAIC would cheerfully agree that this is
10 not a practice that we condone, that we engage in, and we
11 think that if the agency wishes to prohibit it, it's well
12 with in its prerogative to do so.

13 On the other hand, it is not the avoidance of a
14 conflict of interest that you're seeking there. It's a
15 totally different purpose.

16 The organizational conflicts of interest really
17 should be understood as techniques of good procurement for
18 the government, not techniques to deal with the morality of
19 a contractor or perceptions of good business practice on the
20 part of the contractor, but rather how to make sure that the
21 government gets unbiased technical advice or avoids putting
22 the contractor into an unfair competitive advantage.

23 What do we mean by unfair competitive advantage?
24 We mean a situation where a contractor has been placed in a
25 position that it can acquire -- has an inside track on

1 getting further government business.

2 Why does the government wish to avoid this, why is
3 it bad policy? Because it means that other contractors are
4 not going to compete for that work if they have a belief
5 that one contractor already has the inside track.

6 The government, for good procurement policy
7 reasons, wants to avoid that. That's the origin of the
8 phrase "unfair competitive advantage." It was not unfair
9 competitive advantage in terms of getting work with
10 commercial contracts unrelated to the work of NRC. It has
11 utterly nothing to do with that.

12 In fact, when the original conflicts of interest
13 regulation was developed and the word "unfair competitive
14 advantage" was used, the question was raised, well, what
15 about the normal research and development contractor.

16 We try to go to such contractors and get the best
17 possible job. We go to the best qualified contractors. If
18 we have them do a research and development job that results
19 in something we can buy, are we precluded from going to that
20 contractor and buying the finished article, because
21 certainly such a contractor has an inherent advantage from
22 having performed the research and development that led to
23 the creation of this article.

24 The answer was and had to be such is not an unfair
25 competitive advantage. It's inherent benefit and an

1 apparent attraction of performing a government contract.
2 Hereto, if the contractor is placed in the position of
3 having inside information about a future NRC procurement,
4 the NRC wants to prevent that situation in order to prevent
5 other contractors from refraining from bidding because they
6 fear that X contractor has an unfair advantage.

7 We support this purpose of the regulation. I want
8 to make that absolutely plain. But we think that trying to
9 press the words "unfair competitive advantage" and put them
10 into a regime, into an area that is not regulated by the
11 NRC, that is outside the scope of the activity that's
12 performed by the contractor at a particular site, you're
13 pressing the organizational conflicts of interest policy too
14 far.

15 And in doing so, you are endangering the very
16 thing that organizational conflicts of interest policy was
17 intended to promote; namely, good procurement policy. By
18 overreaching in this area, you will be reducing the number
19 of contractors willing to propose for a particular job, and
20 this is not, I submit, in the public interest.

21 Thank you.

22 MR. HAGAN: Thank you.

23 MR. TREVINO: I would like to say that SAIC has
24 been doing work for the NRC for well over ten years, and we
25 have been living with the OCI regulations that have been in

1 place during that whole time.

2 We believe that there are systems in place to make
3 certain that the real objectives of the OCI clauses, which
4 is to prevent an unfair competitive advantage or to
5 eliminate the potential for technical bias, that all of
6 those standards have been met during all of these years.

7 Every once in a while, a situation would come up
8 that we would disclose, as part of the disclosure
9 requirements, and there would be an issue to discuss and
10 we'd figure out a way to mitigate it, and then whatever the
11 solution was, we would go on.

12 But what is happening now with the changes that
13 have come in is you're restricting a company such as SAIC,
14 that is diversified, you're telling them absolutely that
15 they can't work in other areas and it doesn't matter whether
16 or not there is a conflict of interest as defined by the
17 regulations.

18 When you do that, you don't say that, like it is
19 now, that you just disclose any relevant issues and then
20 we'll discuss it and try to figure out what to do. You tell
21 them in advance that there is a work-for-others exclusion
22 and they can't do that work.

23 Well, companies such as SAIC would have difficulty
24 in accepting something like that because there are other
25 parts of the company totally unrelated to the part that's

1 doing the NRC work that might be interested in doing some of
2 that other work, and it's hard for us to say you can't work
3 in that area.

4 Now, as to whether or not this really will
5 restrict competition or whether contractors are going to
6 just accept this new clause, it will be forced upon us and
7 we'll have no choice and we'll accept it. I don't think
8 that will be the case.

9 As you know, in SAIC's case, we had won a contract
10 in a competition. We were selected for award. The contract
11 was approximately a million dollars, which is very
12 significant to SAIC. And because as we were being notified
13 of award, we were told that this brand new clause was going
14 to apply to the contract and SAIC was unable to accept it.

15 We couldn't reach an understanding as to what it
16 meant. At first, I thought we had because we sent in some
17 correspondence to the NRC and we said, well, surely, what
18 this Clause C-3 means is that we cannot do, at that licensee
19 site, we cannot do conflicting work, as defined by the
20 clause. After all, that's what this clause is all about.

21 The initial reaction was, yes, that's a reasonable
22 interpretation, but I have to go check with counsel. When
23 they came back to us, we had a letter back that says, no,
24 you're absolutely wrong in your interpretation. It doesn't
25 matter whether the work is conflicting or not conflicting.

1 They didn't say those words exactly, but they said
2 work in any capacity is precluded. On that basis, SAIC,
3 after winning that contract, after going through all the
4 effort and expense to win that contract, we had to say we
5 can't accept the contract.

6 That will tell you that broad-based firms, such as
7 mine, would be unable to accept these types of contracts if
8 there is any chance that the work that you would ask us to
9 do involves multiple locations, multiple sites and that sort
10 of thing.

11 So I honestly believe that you're going to find
12 that competition is going to be severely restrained, and, of
13 course, that isn't good for anybody. When you restrain
14 competition, you go against other provisions of the
15 government that say that you should get competition to the
16 maximum practicable extent. So that's one issue.

17 The other issue is when you eliminate competition,
18 costs tend to eventually start to rise because you have a
19 smaller base of people that are providing the work. But the
20 most important issue, in my mind, anyway, is that when you
21 eliminate that competition, the people that you will be
22 eliminating, if there is a broad base of contractors out
23 there, the ones that you will be eliminating are those that
24 probably have the greatest capability to do the work for
25 you, because they are the ones that are very experienced.

1 They're generally successful companies. They're
2 big. They're doing lots of things. They have lots of
3 experience and they're generally the reason why, in the
4 solicitation itself, when you talk about the evaluation
5 criteria and what it takes to win the contract, technical
6 experience, experience in that particular area, they're
7 amongst the highest weighted items in there.

8 So if you take those contractors that have the
9 most experience and you say you can't play, and that, in
10 effect, is what you're saying, then you're taking the best
11 talent out of the arena. I think that is the most
12 significant impact of the NRC.

13 The escalating prices, perhaps you can live with
14 that, but I wonder whether or not in the end the NRC can
15 live with having some of its best contractors, its most
16 experienced contractors not participate.

17 I feel that that balance between trying to obtain
18 competition, which the government, by definition, says is
19 good and it's a desirable thing and it helps alleviate a lot
20 of problems in the government procurement process.

21 So that, I think, is very good. I think OCI is
22 also very good. We certainly don't want to have situations
23 where technical bias or unfair competitive advantage
24 prevent. But to just arbitrarily add some additional rules
25 to make it easier to administer OCI issues at the expense of

1 the other, it just doesn't seem to balance, in my mind.

2 I was wondering is there a -- who is the
3 competition advocate for the NRC?

4 MR. HAGAN: Right now, I am the acting competition
5 advocate.

6 MR. TREVINO: There's a conflict of interest right
7 there.

8 MR. HAGAN: In a couple of weeks, the Director of
9 the Division of Contracts and Property Management will be
10 back in his position and he will resume his duties as
11 competition advocate.

12 MR. TREVINO: I would think that -- I mean, in my
13 entire career in government contracting, maximizing
14 competition and keeping that introduced in government
15 procurement has -- it's been one of the most important
16 things that we've had to contend with.

17 I really feel that just by the turn of a few
18 phrases here, that we're severely handicapping that part of
19 it and it is going to affect a lot of companies. Obviously,
20 the NRC believes that it will because we're having this
21 public hearing. SAIC was certainly one of the companies, by
22 its action in refusing to accept that contract and by other
23 correspondence and communication, we let you know that it is
24 a very serious problem with us.

25 I can't help but believe it's a very serious

1 problem with other firms. Now, some small firms that are
2 doing almost exclusively NRC work, it's probably not a
3 problem with them, and I'm not saying that you can't get
4 acceptable work from them.

5 But I am saying you are going to eliminate from
6 the competition some very, very good firms and firms that
7 have been doing this kind of work for a long period of time,
8 and that your technical people feel very comfortable are
9 going to get an acceptable job done.

10 I'm really curious as to how the NRC has taken
11 that into consideration and what your comments are in terms
12 of competition versus OCI.

13 MR. HAGAN: That's a broad question. First of
14 all, the NRC's interest is to get the most highly-qualified
15 firms to compete for the work. But at the same time, we
16 have to get conflict-free work.

17 All the objectives that you have mentioned are
18 inherent in what we propose in the revised rule. This
19 public meeting is to solicit comments for our consideration,
20 just like the ones you just made, and we're going to
21 consider all those before we issue the final rule.

22 That really is the purpose of this. So we'll take
23 your comments under advisement and go and consider the rule
24 and reconcile those comments.

25 MR. FOSTER: Let me add one thing to that. We

1 will have about seven to eight months experience with the
2 conflict rule by the time that we sit down and analyze your
3 comments, and that will also be taken into consideration
4 along with what you just said today.

5 MR. TREVINO: What is the NRC's plan in the
6 interim? Are you going to continue to impose the new rules
7 in all contracts until such time as you decide finally what
8 to do?

9 MR. HAGAN: Yes.

10 MR. TREVINO: See, in the interim, I think you
11 will probably find that that is going to affect your
12 procurement process, because it certainly depends upon the
13 individual procurement, but lots of companies are probably
14 going to be unable to accept that.

15 It seems to me that since you've had OCI rules
16 that have been in place for over the past ten years and that
17 contractors have been able to live with them, that it would
18 be more appropriate to allow the old clause to stand until
19 such time as you can decide what you're finally going to put
20 into the new clause so that contractors aren't unfairly
21 penalized during this iterative process.

22 I would certainly request that you would consider
23 that. I realize that some things are going to have to be
24 sorted out, but to go ahead and to put in a rule that the
25 public is generally saying or parts of the public are

1 generally saying is not acceptable and I can't play anymore,
2 and to leave that be until such time as you decide what to
3 do.

4 We certainly believe that the old process worked.
5 I can't think of a really sound reason to change it without
6 giving careful consideration to what the procurement
7 community is saying.

8 I'd like to officially request that you consider
9 doing that. I feel that the process that you have now,
10 which provides for disclosure and then if something comes up
11 in that disclosure, that there is discussion and something
12 determines to be a conflict or you define it to be a
13 conflict, and after we work it out and then we're directed
14 to take the appropriate action, that that should be
15 sufficient for the NRC to handle conflicts.

16 Just to say right up front that you agree not to
17 do anything and, therefore, the conflicts are automatically
18 eliminated and, therefore, we don't have to work at it
19 anymore, I agree that it takes work. It takes a lot of work
20 on SAIC's part, because, believe me, these conflicts that
21 we're supposed to be avoiding, in most cases, they're not
22 real conflicts at all.

23 You could have another part of the company and the
24 part of the company that's working for the NRC has no clue
25 as to what they're doing over there.

1 In order to find out, in order to comply with the
2 OCI regulations, we have to take great pains to find out
3 everything that people are doing. So it's a lot of work on
4 our part, but we're saying NRC is an important customer and
5 we want continue to participate with them.

6 So we'll do all that work necessary to put in
7 systems to find out everything that the company is doing,
8 and anything that looks to be relevant, we'll disclose it,
9 and if there's something further to discuss, we'll discuss
10 it. And if a decision has to be made, we'll deal with it.

11 So that's a system that seems to me to work. It
12 has been working. What we're trying to do is to make it
13 easier, and I agree that it will make it easier. It will
14 make it so easy in some cases that for some companies,
15 they're just not going to play. So it's going to be very
16 easy for them.

17 But they're not going to have an opportunity to
18 gain that contract and you're not going to have an
19 opportunity to have their services.

20 MS. NORRY: I think we just need to clarify one
21 thing. You suggest that we go back to the old policy while
22 we decide. The current policy is a Commission decision. It
23 was decided to have this meeting because questions had been
24 raised.

25 But we are operating under a currently Commission-

1 approved policy. So what we've said is that we will
2 consider comments that are received prior to and at and
3 following this meeting in reviewing that policy.

4 But there is not a possibility of going back to an
5 old policy because we have a currently approved Commission
6 policy on this.

7 MR. TREVINO: Is there not a possibility to, in
8 the interim, to revise the policy to reflect the current
9 situation and then to modify it or further refine it and
10 then further implement it later?

11 MS. NORRY: The purpose of this meeting is to
12 solicit comments at the meeting and afterwards that would
13 reflect concerns and reflect questions, and those will be
14 taken under advisement.

15 MR. HAGAN: That's all the people that signed up
16 to make remarks.

17 MS. NORRY: I think there are a few people that
18 came in after we started because of traffic or weather or
19 whatever and may not have heard the initial introduction.
20 If you have comments or questions, now is the time.

21 MR. RODEHAU: Tom Rodehau with SAIC. Ms. Norry,
22 in response to your point that you're operating under an
23 approved policy, I think there were some underlying
24 fundamental goals that the NRC was trying to achieve in
25 establishing that revised policy.

1 First and foremost, if I'm not mistaken, was to
2 foster increased competition among firms for your contracts.
3 I think it's noted that firms such as SAIC are left in a
4 position right now of perhaps being unable to continue
5 offering our services to you, and I don't think that you're
6 going to perhaps achieve that goal if that policy remains in
7 place as it is presently written today.

8 I would also like to request consideration being
9 given to perhaps a change to the waiver policy that Mr.
10 Hagan alluded to earlier in the discussions. The waiver
11 policy, as it is presently written, is really confined for
12 use in several specific instances and there are prerequisite
13 requirements that must be satisfied in order for your staff
14 to proceed and request such a waiver of your organization
15 interests, conflict of interest policy.

16 Those conditions are as follows. The work must be
17 of vital interest to the NRC, and the work can only be
18 satisfied by a contractor whose interests give rise to a
19 conflict of interest situation, perhaps.

20 Thirdly, the contract must be able to employ an
21 acceptable mitigation technique for eliminating that
22 perceived conflict of interest. It is the second category
23 that is most difficult for us, because, in essence, it
24 becomes a discriminator among firms.

25 Those that might have a potential conflict of

1 interest could not request a waiver under this unless they
2 were in a sole-source position bidding on a contract.
3 Generally speaking, that's not the case.

4 We fully support competition among firms for
5 contracts. However, we feel capable under certain instances
6 to offer acceptable mitigation techniques for accepting
7 contracts and performing them without the appearance of
8 actual perceived conflicts of interest.

9 It's requested that perhaps consideration be given
10 to relaxing somewhat the waiver policy as it's presently
11 written, such that you're able to foster increased
12 competition among firms and making those firms capable of
13 offering to the agency an acceptable avoidance scheme for
14 use with the contract that they're bidding on, and that that
15 be carefully analyzed through the contract evaluation
16 process leading up to an award decision, and that the
17 contractor perhaps be afforded an opportunity to enter into
18 discussions with your contract negotiations staff in
19 structuring an acceptable avoidance technique that will
20 enable it to perform successfully the contract at hand.

21 MR. HAGAN: Thank you.

22 MR. PIKEL: Bob Pikel, again, with the Mitre
23 Corporation. I would just like to comment on my perception
24 of the linkage, if you will, between this policy statement
25 and restriction of competition.

1 I think that it's important that we maintain the
2 distinction between restriction of competition and selection
3 of appropriate contractors based upon qualifications and
4 criteria.

5 For example, on a technical basis, if, for some
6 reason, the NRC comes up with a requirement that an
7 individual or a firm have five years or, let's say, ten
8 years of design experience in reactors, then clearly you've
9 already restricted all of those firms that don't have ten
10 years of design experience in reactors. They may have only
11 five.

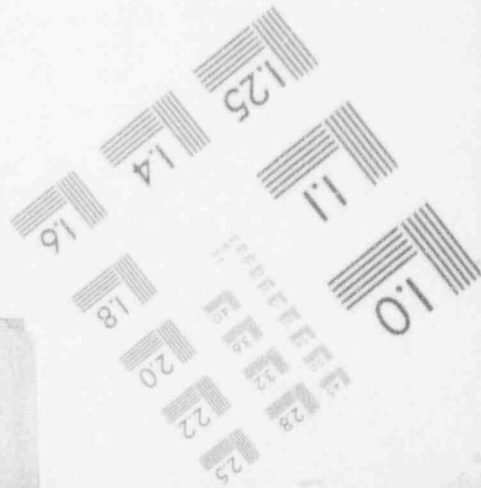
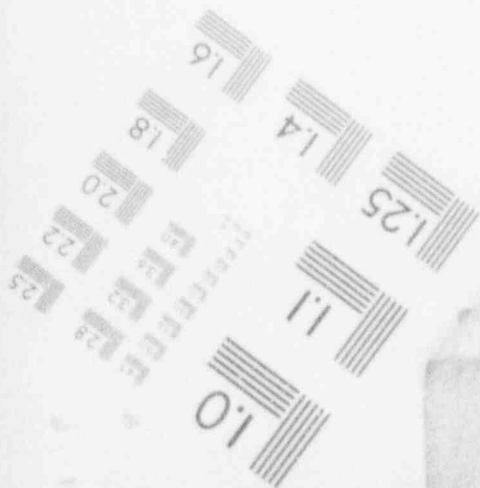
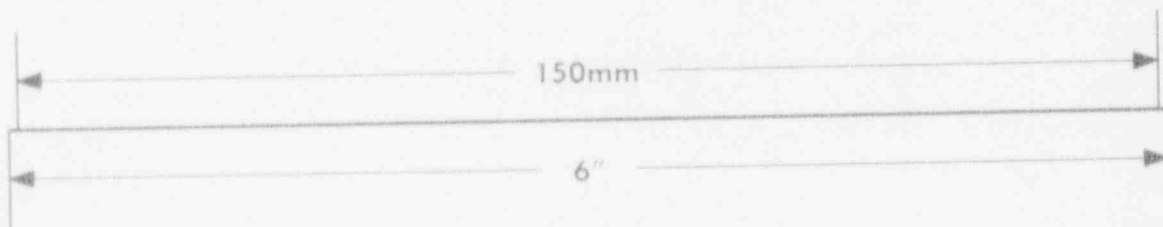
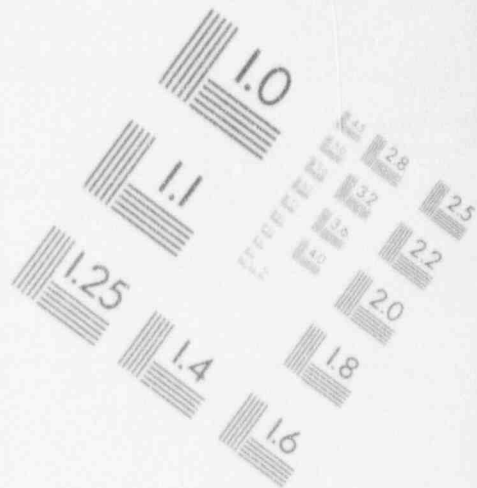
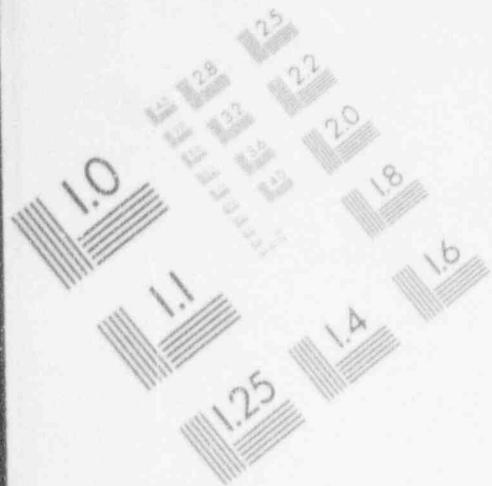
12 Is that being non-competitive and restrictive?
13 Well, to a certain extent, yes. But it's not going against
14 the spirit of obtaining competitive procurements or
15 obtaining services, taking into account all of the factors
16 that are important to your procurement.

17 So the fact that you have selected a certain
18 envelope for technical qualifications does restrict other
19 firms from bidding, but I don't think anybody says that
20 that's violating the idea of competitive procurement, for
21 example.

22 Well, similarly, it seems to me that if conflict
23 of interest is an important consideration from the
24 standpoint of your procurement in terms of integrity of the
25 organization, the public perception and the factual

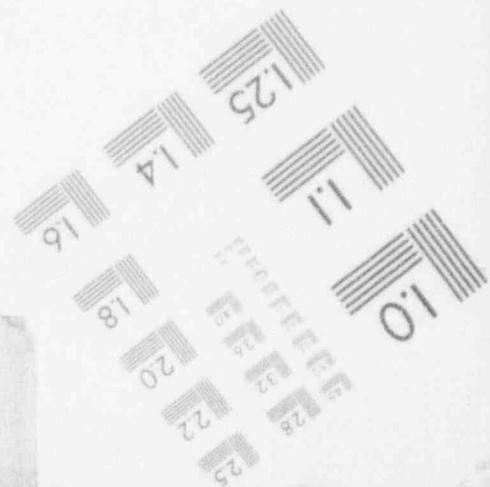
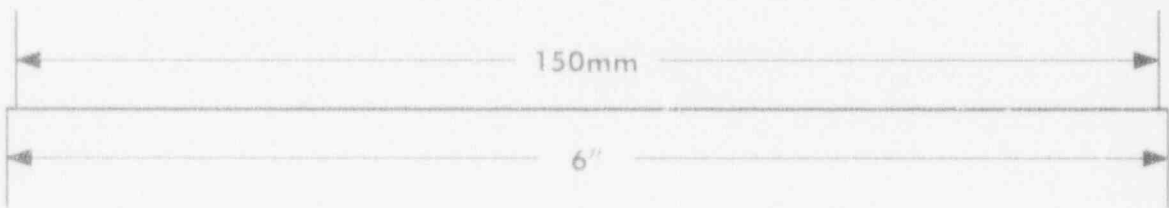
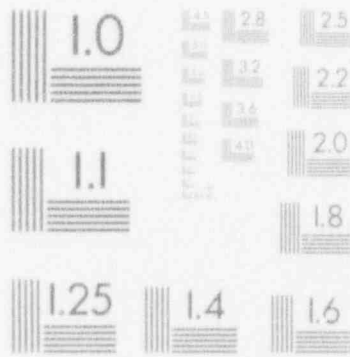
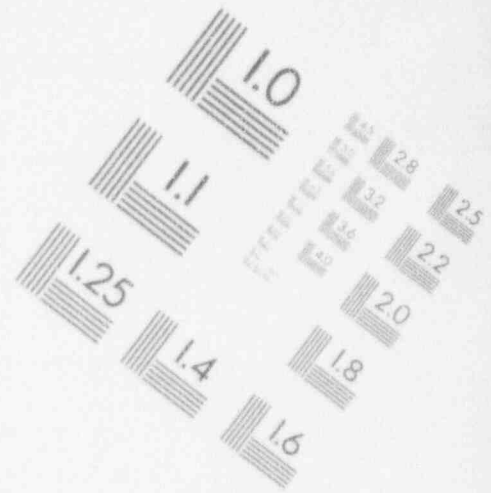
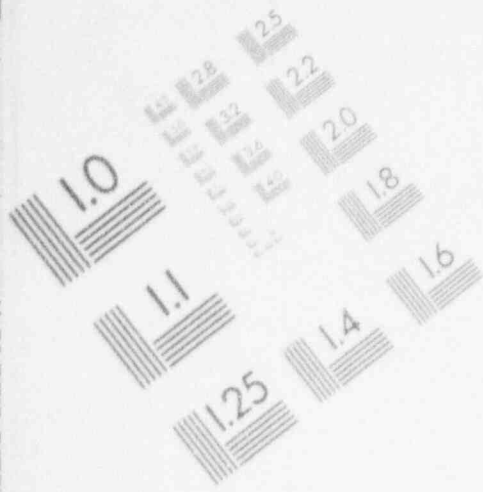
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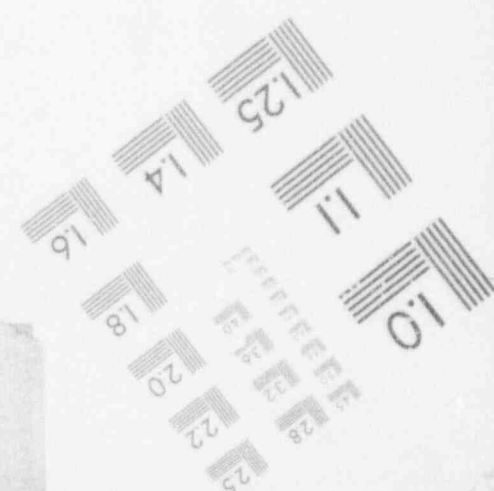
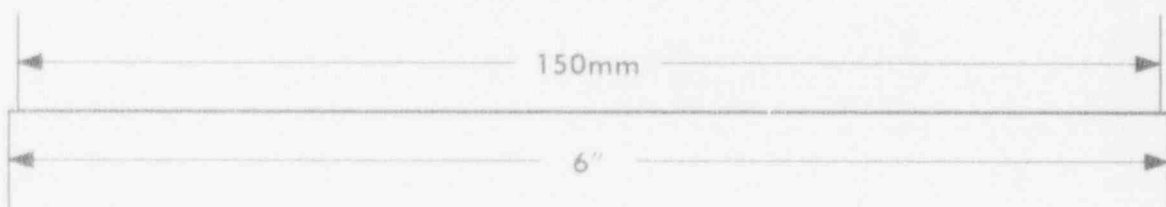
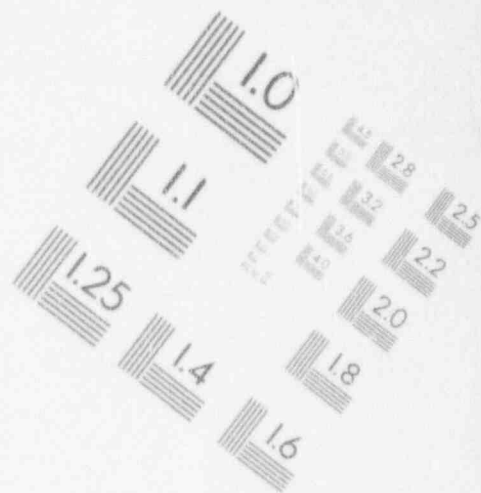
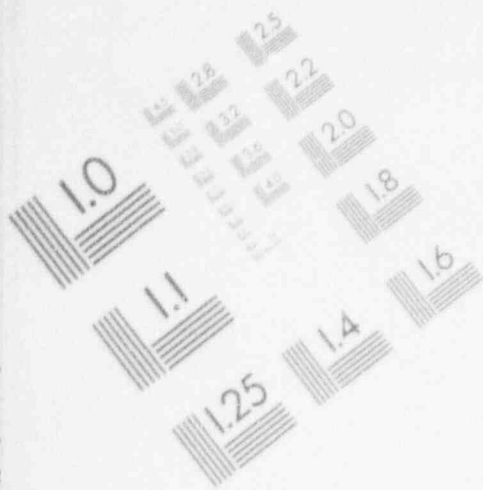
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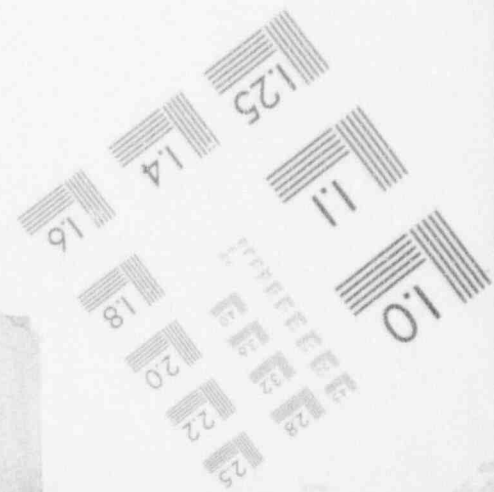
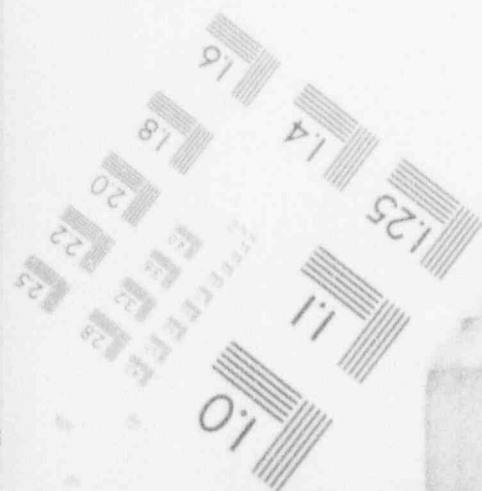
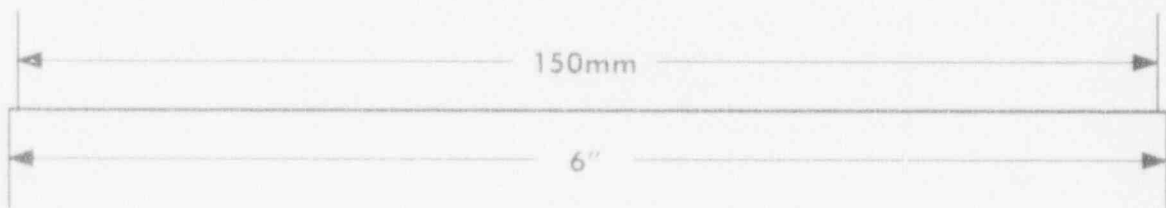
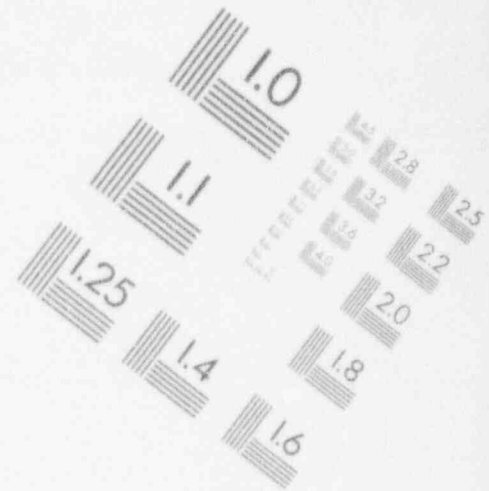
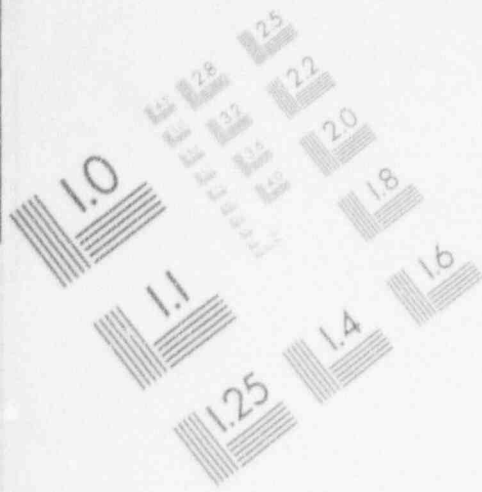
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IMAGE EVALUATION
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1 conflict-free and lack of bias in your sensitive issues,
2 then requiring certain qualifications -- to that extent, I
3 think we have to make that distinction between making those
4 requirements and restricting competition.

5 MR. HAGAN: Thank you.

6 MS. HICKEY: My name is Eva Hickey. I'm with
7 Battelle Pacific Northwest Laboratory. I have a question
8 about how the new policy will affect contracts that we've
9 had in place for many years.

10 Are we going to be asked to use the new conflict
11 of interest policy or will we be able to continue working
12 under our original understanding?

13 MR. HAGAN: The clause that is in your existing
14 contract will govern.

15 MS. HICKEY: Okay. What happens when the contract
16 is renewed?

17 MR. HAGAN: If it's a new procurement, the new
18 policy will apply.

19 MS. HICKEY: But if it's just where we resubmit a
20 189 --

21 MR. HAGAN: Well, you're talking about a different
22 arena there. The 189 is relating to DOE lab agreements with
23 the agency, which are not commercial contracts, per se.

24 MS. HICKEY: So if we work under that type of
25 contract, this conflict of interest is not in the same --

1 MR. HAGAN: Right. This is an organizational
2 conflict of interest that applies to commercial
3 organizations.

4 MS. HICKEY: Thank you.

5 MR. ORTIZ: In relation to that question, do you
6 have a set of documents or a set of criteria that apply to
7 government agency agreements on conflict of interest?

8 MR. HAGAN: Right now we're examining the issue of
9 conflict of interests in our relationship with DOE, but
10 that's not the subject of this. We are looking at that
11 issue and --

12 MR. ORTIZ: My question is do you have a set of
13 criteria in writing that you can provide. I understand that
14 this particular thing that we're discussing today does not
15 apply to other government agencies.

16 My question is do you have a document similar to
17 this where you spell out the criteria for potential conflict
18 of interest when applied to government agencies that we can
19 use to guide our behavior in this area?

20 MR. HAGAN: There is an MOU between NRC and DOE
21 which addresses application of conflict of interest.

22 Tom?

23 MR. TREVINO: I have a question concerning Clause
24 D-3, the disclosure after award. In there, it has a
25 requirement that we have to disclose any potential

1 conflicting situations and it has to be received 15 days
2 prior to contract award.

3 Paragraph B-2 says that we have to disclose at any
4 time that it comes to our attention, and that's the language
5 that's always been in the clause and that doesn't present a
6 problem.

7 This generally doesn't present a problem, except
8 that we could be -- we could find ourselves in technical
9 violation when you put an absolute deadline like that. In
10 some cases, the work that may be proposed and the
11 procurement cycle of something for a utility might be very,
12 very short.

13 So we have recommended some language that would
14 make it a best efforts basis. It's certainly an absolute
15 requirement to disclose, but a best efforts basis when it
16 comes to doing it within 15 days, so that we don't end up in
17 a technical violation of OCI clauses. So we'd certainly
18 like you to consider that.

19 The other part of this is that it talks at the end
20 of the clause about once things are disclosed, what is the
21 discretion of the NRC, what can they do. We believe that
22 the clause ought to be amended to add that the paramount
23 reason for denying acceptance of another piece of work
24 should be that it poses an actual conflict of interest as
25 defined in the OCI regulations.

1 So it shouldn't be just because it's work for that
2 particular customer at some different site. It ought to be
3 because the piece of work that is being proposed poses an
4 actual conflict.

5 So we are suggesting that that language be
6 included to the disclosure-after-award clause.

7 MR. HAGAN: I understand. Are there any other
8 comments?

9 MR. JOHNSON: My name is Tenny Johnson, again. I
10 just have a short comment based on the fact that one of the
11 speakers was from Sandia.

12 Sandia is a -- the stock in Sandia is owned by the
13 American Telegraph and Telephone Company. Technically
14 speaking, if the clause might preclude the utility from
15 engaging long distance telephones from AT&T if Sandia
16 Laboratories performed any activity at that utility's site.

17 I'm not saying that this makes any sense, but I'm
18 saying this is how far the policy, literally driven, could
19 apply and I'm very glad that the Commission and the
20 Commission staff will take a second look at it before
21 putting it in concrete forever.

22 Thank you.

23 MR. HAGAN: Thank you. Any further comments?

24 MR. ORVIS: I am Douglas Orvis from the Accident
25 Prevention Group. I have a question regarding the site

1 definition. For example, our company has done work in the
2 past for Electric Power Research Institute, which is a
3 research agency serving many utilities.

4 How would that be interpreted if we were -- as far
5 as this conflict of interest clause is concerned?

6 MR. HAGAN: The intention of the revised policy is
7 to apply to a specific plant site, licensed facility.

8 MR. RODEHAU: I have two questions, one dealing
9 with the statement that just was made about EPRI. Is EPRI
10 viewed as a licensee of the NRC or -- I believe that there
11 are situations that have arisen in the past where some work
12 that a contractor might have been performing for the EPRI
13 folks would result in perhaps potential for conflict with
14 the NRC activities.

15 MR. HAGAN: To the extent that there's going to be
16 work proposed with EPRI, we'd have to examine the
17 circumstances.

18 MR. RODEHAU: A question regarding how vendors,
19 such as GE or Westinghouse, are viewed by the Commission in
20 the conflict of interest arena as potential licensees or
21 organizations from which there could potentially be a
22 conflict of interest situation, if a contractor was engaged
23 in performance of work for GE, for instance, and that
24 somehow related to an activity taking place under an NRC
25 contract.

1 What I'm trying to accomplish is that there's a
2 border spectrum of potential for conflict not just with
3 utilities, per se, but with their vendors and with the
4 research institutes that support that industry as a whole.

5 It's a much broader area of concern than just
6 being narrowly focused on the utility industry, per se.

7 MR. HAGAN: Our conflict rule does apply to those
8 situations and we look at those on a case-by-case basis. I
9 think the question is related to the specific site issue.

10 We do have to look at work you would do for GE or
11 Westinghouse and apply our conflict rule to particular
12 circumstances.

13 MR. RODEHAU: The other question I have is in the
14 lower tier role as a subcontractor perhaps to Battelle, in a
15 situation such as that, what type of OCI clause could a
16 contractor expect to receive as being a sub to Battelle?
17 Would it be a DOE-type provision or would it be the NRC
18 clause that we have some concerns with here?

19 MR. HAGAN: Are you talking about doing work for
20 DOE as a --

21 MR. RODEHAU: If we were to enter into a
22 subcontract agreement with Battelle, for instance, to
23 support an NRC project, what type of OCI clause could that
24 contractor expect to receive?

25 MR. HAGAN: The DOE provisions would govern in

1 that situation.

2 MR. RODEHAU: That typically historically has not
3 been the case, I'm led to believe.

4 MR. HAGAN: If there's a contract -- if you're
5 talking about -- if there's a commercial sector of Battelle
6 that if we had a contract with Battelle and you were a sub
7 to Battelle, then our conflict policy would apply.

8 You're dealing with the other part of Battelle's -
9 - the lab part, then DOE's rule would apply.

10 MS. NORRY: Are there any more questions or
11 comments?

12 [No response.]

13 MS. NORRY: If there are none, I'd like to thank
14 all of you for coming today and for giving us your
15 questions. If there are any additional questions or
16 comments you'd like us to consider based on today's meeting,
17 please submit them to Mr. Foster by April 15.

18 The receptionist will have the mailing address, if
19 you don't have that. All comments which were received prior
20 to, during and after this meeting will be considered and
21 made a part of the record.

22 A copy of the transcript of today's meeting will
23 be put in the NRC's public document room.

24 If there are no more questions, we'd like to close
25 this meeting and thank you very much for coming.

[Whereupon, the public meeting was concluded.]

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REPORTER'S CERTIFICATE

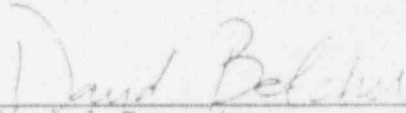
This is to certify that the attached proceedings
before the United States Nuclear Regulatory
Commission
in the matter of:

NAME OF PROCEEDING: Public Meeting

DOCKET NUMBER:

PLACE OF PROCEEDING: Bethesda, Maryland

were held as herein appears, and that this is the
original transcript thereof for the file of the
United States Nuclear Regulatory Commission taken
by me and thereafter reduced to typewriting by me
or under the direction of the court reporting
company, and that the transcript is a true and
accurate record of the foregoing proceedings.



Official Reporter
Ann Riley & Associates, Ltd.

Contractor Organizational Conflicts of Interest (December 1991)

(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 Section I, "Scope of Policy," paragraph C, of document entitled "NRC Organizational Conflicts of Interest" (see Section J, List of Attachments).

(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 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 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.

(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 or work in 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 Section II, "Definitions," paragraph C, of the document entitled "NRC Organizational Conflicts of Interest" (see Section J, List of Attachments).

(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) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants that comes within the scope of work of the underlying contract. Such disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity whenever possible, and must be received by the NRC at least 15 days before 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), above.

(e) Access to and use of information.

(1) If in the performance of this contract the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)) or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), 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 (5 U.S.C. Section 552a (1988)) or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), 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) Subject to patent and security provisions of this contract, the contractor shall have 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 Section II, "Definitions," paragraph 1, of the document entitled "NRC Organizational Conflicts of Interest" (see Section J, List of Attachments), 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 to the contracting officer in accordance with the procedures outlined in Section VII, "Waiver," paragraph A, of the document entitled "NRC Organizational Conflicts of Interest" (see Section J, List of Attachments).

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefore (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting, management support services work, or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(l) If the contractor, under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement

of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(END OF CLAUSE)

NRC Organizational Conflicts of Interest

I. Scope of policy.

A. It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

B. Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations which might arise. However, examples are provided in these regulations to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

C. The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by this regulation. This rule does not apply to the acquisition of consulting services through the personnel appointment process, NRC agreements with other government agencies, international organizations, or state, local, or foreign governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

II. Definitions.

A. Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

B. Contract means any contractual agreement or other arrangement with the NRC except as provided in the section, "Scope of Policy," paragraph C.

C. Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants, or subcontractors, which are a party to a contract with the NRC.

D. Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

E. Offeror or prospective contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

F. Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract 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.

G. Potential conflict of interest means that a factual situation suggests that an actual conflict of interest may arise from award of a proposed contract. The term potential conflict of interest is used to signify those situations that (1) merit investigation before contract award to ascertain whether award would give rise to an actual conflict, or (2) must be reported to the contracting officer for investigation if they arise during contract performance.

H. Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

I. Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding the small purchase threshold.

J. Technical consulting and management support services means internal assistance to a component of the NRC in the formulation or administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

III. Criteria for recognizing contractor organizational conflicts of interest.

A. General.

1. Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

- a. Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

b. May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

2. NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

B. Situations or relationships. The following situations or relationships may give rise to organizational conflicts of interest:

1. The offeror or contractor shall disclose information that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

a. Where the offeror or contractor provides advice and recommendation to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

b. Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

c. Where the offeror or contractor evaluates its own products or services, or has been substantially involved in the development or marketing of the products or services of another entity.

d. Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

2. The contracting officer may request specific information from an offeror or contractor or may require special contract clauses in the following circumstances:

a. Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

b. Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

c. Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

d. Where the offeror or contractor is granted access to proprietary information of its competitors.

e. Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

C. Policy application guidance. The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

1. The ABC Corp., in response to a Request for Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

Guidance. An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

2. The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

Guidance. An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

3. The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR Part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to

continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

Guidance. This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy in accordance with the section "Waiver" may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy, with particular attention to the establishment of protective mechanisms to guard against bias.

4. The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

Guidance. A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

5. The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and the section, "Criteria for Recognizing Organizational Conflicts of Interest," paragraph B.1 above, ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

Guidance. The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Paragraph (c), "Work for Others," of the clause in Section I entitled "Contractor Organizational Conflicts of Interest" would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

6. AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle

facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services, required under the NRC's contract, for an applicant or licensee.

Guidance. An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with section VII, "Waiver," below.

D. Other considerations.

1. The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

2. It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

IV. Evaluation, findings, and contract award.

A. The contracting officer shall evaluate all relevant facts submitted by an offeror, and other relevant information. After evaluating this information against the criteria in section III, "Criteria for Recognizing Contractor Organizational Conflicts of Interest," the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

1. Disqualify the offeror from award;
2. Avoid or eliminate such conflicts by appropriate measures; or
3. Award the contract in accordance with the section VII, the

Waiver.

V. Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the government to terminate the contract, the contracting officer shall take every reasonable action to avoid, eliminate, or after obtaining a waiver in accordance with section VII, "Waiver" below, neutralize the effects of the identified conflict.

VI. Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of \$10,000. The contracting officer shall require the contractor to include contract clauses in consultant agreements or subcontracts involving performance of work under a prime contract.

VII. Waiver.

A. The contracting officer determines the need to seek a waiver for specific contract awards, with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the contracting officer, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

B. Waiver action is strictly limited to those situations in which:

1. The work to be performed under contract is vital to the NRC program.

2. The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

3. Contractual and/or technical review and supervision methods can be employed by the NRC to neutralize the conflict.

C. For any waivers, the justification and approval documents must be placed in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

VIII. Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

Please provide written comments by April 15, 1992 to:

*U.S. Nuclear Regulatory Commission
ATTN: William H. Foster, Chief Policy Branch
Division of Contracts and Property Management
Mail Stop P-1118
Washington, D.C. 20555*

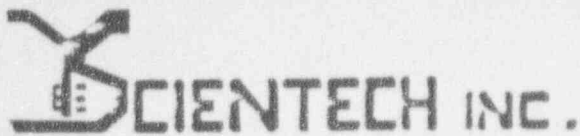
Transcripts of the Organizational Conflicts of Interest meeting may be obtained from:

*Mailing Requests: U.S. Nuclear Regulatory Commission
Public Document Room
Mail Stop LL-6
Washington, D.C. 20555*

*Personal Requests: U.S. NRC Public Document Room
2120 L Street, N.W.
Lower Level
Washington, D.C.*

Hours of Operation: 7:45 a.m. to 4:15 p.m.

*Telephone Reference Hours: 8:30 a.m. to 4:15 p.m.
(202) 634-3273*



ENGINEERING & MANAGEMENT SERVICES
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March 19, 1992

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

SUBJECT: RJM-146-92: NRC's Organizational Conflict of Interest Policy

Dear Mr. Foster:

SCIENTECH, Inc. is pleased to have this opportunity to comment on NRC's revised policy on conflict of interest.

SCIENTECH does business with a number of government agencies and private companies. We see a wide range of requirements on organizational conflict of interest. We find that the requirements of the NRC are the most stringent. Correspondingly, we find that the NRC staff is the most thorough and the most fair of all of the federal agencies with which we deal on these matters. NRC is also the best in this area from a performance point of view, i.e., from our perspective there is very low likelihood that NRC will be embarrassed or compromised in its mission because of a contractor with a real or perceived conflict of interest.

In 1984, NRC became the first client of our company. Since then we have had a number of opportunities to serve the NRC. Today, we have several NRC contracts underway representing about five percent of our business. These contracts are subject to varying conflict of interest clauses, because the NRC's rules on conflict of interest have changed several times over the past few years.

We have not yet performed work under the new conflict of interest policy that was announced by the NRC on August 15, 1991. On September 30, 1991, we signed a contract with the NRC that contained the new policy, but NRC later decided to not award that contract to SCIENTECH.

We see the new policy as attempting to address a particular type of conflict of interest, i.e., to prevent NRC contractors from taking advantage of the knowledge or contacts afforded them in performing work for NRC at a licensee's

site. We are told that this situation has occurred in the past, and we agree with the NRC that it should be prevented in the future.

To determine the best method of addressing this problem, we suggest that the NRC turn to first principles. In our view, it is unethical for a contractor to use current work for a regulatory authority to generate future work by that contractor for the regulated entity. NRC ought to say that it will not allow this practice by its contractors. If NRC were to adopt this principle as a matter of policy, then the Commission could leave it to the staff to implement the policy on a contract-by-contract basis. If this policy were also to be publicized with NRC licensees, they would probably assist NRC in policing the very few contractors that would attempt to violate the simple ethical premise which underlies such a policy.

Under the approach we have suggested, businesses that work for NRC could do work for nuclear power plants so long as they do not take unfair advantage of the work they do for NRC. Businesses would not be prohibited from doing work for an NRC licensee which was gained in a manner unrelated to NRC work and which did not conflict with NRC's interests. For example, under the principle we recommend, our company could not make sales to an NRC licensee while NRC is paying us to be at that licensee's site, and we could not help NRC tell a licensee what to do and then offer to help the licensee do that work. Conversely, even if we were working for NRC at a particular site we could do analytical chemistry work for that licensee or assist with its state public utility commission presentations because we do not do such work for the NRC. Similarly, we could work on computer codes or perform safety analyses for a utility so long as we did not review or require such work by the utilities on behalf of the NRC.

What the recent NRC policy change does to such interactions, in our judgment, is to forbid an NRC contractor from going to a site to solicit or perform work within a year of doing any work at all for the NRC at that site, regardless of whether the work being solicited or performed is related to the work performed for the NRC. We could live with this new NRC policy by carefully controlling when our people go to a site, what type of work they perform for utilities, and where they perform work for utilities.

However, it would be much easier for us to comply with our understanding of the intent of NRC's new policy if the policy were to be articulated as we have described above. Then, we would be free to go to utility sites to do work unrelated to work that we might have done there for the NRC within the past year. In a larger sense all NRC contractors would not be deprived of legitimate work by an all encompassing NRC conflict of interest policy that is really directed at a narrower target of abusers.

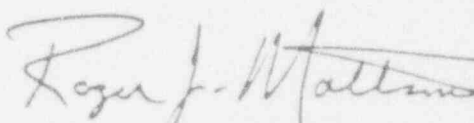
Mr. Foster
RJM-146-92
3/19/92
Page 3

Thus, a "win-win" situation would result wherein NRC continues its excellent record of avoiding conflict of interest while at the same time using contractors with hands on experience in nuclear technology and fostering the entrepreneurial spirit which makes our economy strong.

The principal advantage to our approach for NRC is the fact that the Commission preserves a larger set of qualified contractors to support its mission while still acting to prevent the unethical situation of one of its contractors abusing the privilege of working for NRC.

Thank you for this opportunity to comment on the new policy.

Sincerely,



Roger J. Mattson, PhD
Senior Vice President

cc: Larry Ybarrondo, SCIENTECH

File: NRC

PROPOSALS & CONTRACTS DEPARTMENT
1310 Beulah Road
Pittsburgh, PA 15235

FROM: M. Zaharoff 3/11/92

ph: 412-256-2533

Under the revised policy, NRC's right to disapprove work for others is limited to those instances in which NRC already has the contractor performing under a specific task order, or plans to do so. In that case, the contractor shall neither solicit nor perform work at the site or work in the same technical area for that licensee or applicant organization for a period from the start of the award to one year after completion.

Questions:

What does "or plans to do so mean," and how would a multi-divisional contractor know what plans NRC has for one of its divisions?

How would the contractor be able to gain information regarding NRC's plans regarding one of its divisions without violating integrity in procurement regulations?

What is the definition of a licensee or applicant organization?

Could DOE be considered a licensee or applicant organization in its Management and Operating (M&O) role at sites all over the country?

If the answer to the above is yes, would one division of a corporation be precluded from soliciting furthering research for, say for example DOE Savannah River, while one of its other divisions is performing the current state of the art for a different DOE site, both in the same technical area?

Could one division of a multi-divisional corporation ever be considered a separate entity with respect to questions regarding COI?

Parameter, Inc.

Consulting Engineers

Mechanical Design and Analysis

13380 WATERTOWN PLANK ROAD, ELM GROVE, WISCONSIN 53122

PHONE: 414-786-7580

FAX: 414-786-0419

Since 1964

March 6, 1992

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

Attn: Mr. William H. Foster, Chief Policy Branch

Copy: T. F. Hagan

Reference: Letter dated 2/21/92 from Mr. T. F. Hagen of the
NRC to Mr. R. A. Lofy of PARAMETER, Inc.

Subject: Proposed Revision of the NRC's Organizational
Conflict of Interest (COI) Policy

Gentlemen:

Unfortunately, due to prior commitments, we will be unable to attend the public meeting on the proposed revision of the NRC's Organizational Conflict of Interest (COI) policy. We, as an NRC contractor for 28 years, would like to make the following comments on conflict of interest.

1. We strongly believe that no NRC contractor should take advantage of their position while working at, or after leaving, a NRC licensee site to solicit licensee business from that licensee during the life of the NRC contract.
2. No NRC contractor should be receiving financial remuneration from a licensee in any technical area or location of the licensee, its parent company, or a licensee supported group or association during the life of the NRC contract.

We believe that these should be part of the NRC conflict of interest policy.

An NRC contractor should be capable of certifying that they have at present no electric utility clients; nor are they seeking business from utilities. The contractor should receive no income or revenues from NRC regulated nuclear utilities, state power authorities, members of such owners' groups, or any other utility related or sponsored organizations.

This, we believe, is necessary to provide an unbiased evaluation of each licensee regarding NRC actions and regulations affecting that licensee.

Parameter, Inc.

CONSULTING ENGINEERS
ELM GROVE, WISCONSIN

March 6, 1992
Page 2 of 2

Mr. William H. Foster, Chief Policy Branch
U.S. Nuclear Regulatory Commission

If you have any question or need additional information please
feel free to contact us.

Very truly yours,

PARAMETER, Inc.



Lou Albers
Project Administration

CC: RAL
FAX'ed on 3/6/92 to
W. H. Foster

06 March 1992

U.S. Nuclear Regulatory Commission
Policy Branch
Division of Contracts and Property Management
Mail Stop P-118
Washington, DC 20555

Attention: William H. Foster, Chief
Subject: Nuclear Regulatory Commission "Conflict of Interest" Policy
Reference: NRC letter dated February 21, 1992

Dear Mr. Foster:

Science and Engineering Associates, Inc. (SEA) supports the NRC's current Conflict of Interest Policy without reservation.

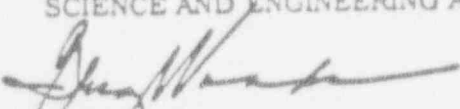
Ten years ago we made a decision to compete for business at the NRC. That decision process included a review of our potential for conflict of interest. Because we recognized the sensitive role a regulatory agency has, we decided to not solicit any business with the operators of nuclear power plants. We took the position then, and endorse again now, that it is imperative for contractors to avoid performing work which might give rise to a bias, or the appearance of a possibility of bias, in the services we and others perform for the NRC. Our experience since then and our reputation for meeting or exceeding expectations on our NRC contracts strongly supports our original position.

We believe that the existing policy is reasonable and is the best interest of the NRC, the nuclear power industry, and the engineering and services firms that provide support to both industries. In addition to SEA, we know there are many other well qualified firms who support the NRC without a real or apparent conflict of interest, and willingly accept the need to remain free of bias. We endorse the current policy and oppose changes that would weaken it.

We appreciate the opportunity to comment on the Policy. If you desire further information, please call me at (505) 884-2300.

Very truly yours,

SCIENCE AND ENGINEERING ASSOCIATES, INC.


Greg Woods
President

GW/klj

5 March 1992

CORPORATION

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

Ref: (a) NRC Invite to 26 March 92 COI Meeting dated 21 February 92

Subject: Input to NRC Re: Organizational Conflicts of Interest

Dear Mr. Foster:

I am the President of COMEX Corporation, a Washington State small business which has performed prime and subcontractor technical support services for NRC, DOE, and FEMA over the past 10 years. We believe that this COI meeting, advertised in reference (a), has been largely driven by the requests of large businesses in the DC area who can afford to employ large legal staffs which interface with agencies such as NRC on a daily basis. Unfortunately, we cannot support sending a representative to the meeting, but request that our comments be included in the staff's presentation. Here then some comments:

- * Our company has been extremely careful to completely avoid COI issues, through a policy of performing absolutely no work of any nature for any commercial reactor licensee, vendor or supplier. While we have undoubtedly passed up profitable opportunities, we have chosen this course to avoid the related legal costs which would be incurred in trying to convince NRC that utility work slightly different from our NRC support work isn't really a COI issue.

- * In competitive bid situations, we believe that NRC should always award work to the technically qualified company with the least, or preferably zero COI.

- * Realizing that some contracts cover such a wide diversity of technical areas that it may be impossible to find a company (or team of companies) that is technically qualified, and yet has no COI, we believe that large companies (or teams) could be awarded the work if they structured task order work to ensure that only the non-COI portions of the team (e.g., subcontractors) perform onsite work and regulatory (versus administrative) work related to licensee sites where a COI issue exists for the prime contractor.

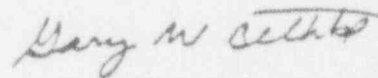
* NRC should consider the fact that small businesses, with little or no COI, can easily locate specialized technical assets in the post-contract-award period. However, the current environment makes such businesses reluctant to assemble teams to bid major contracts in a prime role (for fear of being eliminated over a few missing technical disciplines and the lack of a strong DC presence). From our perspective, it appears that NRC is more willing to live with awards to full service large companies with gross COI, than to award work to a COI free company initially capable of performing 80 to 90% of the known scope of work.

* We fully support tightening (versus relaxation) of the present COI rules and the rules prohibiting the private sector from employing previous NRC employees for performance on NRC contracts. Stronger enforcement of such restrictions would help level the playing field for those of us located outside the Beltway!!! In support of our not-so-subtle contention that a Beltway location provides a distinct advantage, please consider the following:

- > On a recent group of five NRC RFPs (NRR-92-021, 027, 033, 034, 035), our Beltway competition received their copies of the RFPs a full 8 days before we did.
- > Geographic information in RFPs which are heavily reactor site oriented still show preference for DC area companies.
- > Beltway companies' lawyers and management can interface with NRC on a daily basis over mitigating COI issues, while we outside companies must take the safe route of just avoiding COI issues.

We respectfully request that our comments be included in the staff's 26 March 92 COI Meeting presentation, but also request that the source of our comments remain confidential. None of our comments should be considered an "Allegation", and none require a formal response. We would appreciate a copy of any transcript or minutes developed during the 26 March meeting.

Regards,



Gary W. Bethke
President

COMEX

March 6, 1992

TT-92-16

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.

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



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

APR 05 1985

MEMORANDUM FOR: Robert B. Minogue, Director
Office of Nuclear Regulatory Research

Harold R. Denton, Director
Office of Nuclear Reactor Regulation

John G. Davis, Director
Office of Nuclear Material Safety & Safeguards

James M. Taylor, Director
Office of Inspection and Enforcement

Patricia G. Norry, Director
Office of Administration

Guy H. Cunningham, III
Executive Legal Director

G. Wayne Kerr, Director
Office of State Programs

Clemens J. Heltemes, Jr., Director
Office for Analysis and Evaluation of Operational Data

James R. Shea, Director
Office of International Programs

FROM: William J. Dircks
Executive Director for Operations

SUBJECT: REGULATORY HISTORY PROCEDURES

In a February 15, 1985 memorandum to Chairman Palladino, issued jointly with the Office of General Counsel, I informed the Chairman that procedures would be developed for the creation of a regulatory history of each proposed and final rulemaking initiated by the offices reporting to the EDO. This memorandum outlines the individual office responsibilities for the implementation of the regulatory history procedures. The objective of the regulatory history is to ensure that all documents of central relevance to a particular rulemaking are identified and accessible. This will facilitate the resolution of any issues that may arise concerning the interpretation of a particular regulation. The following procedures will be applicable to any proposed or final rule submitted to the Federal Register for publication after the date of this memorandum. The Rules and Procedures Branch, Office

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of Administration, will provide further information on these procedures, as necessary, in the periodic revision of the NRC Regulations Handbook, NUREG/BR-0053.

Program Office Responsibilities

Each office that sponsors a proposed or final rulemaking shall ensure that:

1. all documents of central relevance to the factual basis, coverage, meaning, and historical development of the rulemaking are identified, and maintained during the course of the rulemaking. Although the Project Manager's judgment will be necessary in some instances to determine whether specific documents are of "central relevance" to a rulemaking, the following documents should be included:
 - . the Office of Nuclear Regulatory Research (RES) Independent Review Package (containing the RES recommendations on whether to proceed with the rulemaking, the sponsoring Office's recommendation to proceed with rulemaking, and the evaluation of the rulemaking proposal against the six criteria required for the RES Independent Review)
 - . prior drafts of the rulemaking transmitted for interoffice review
 - . formal Office comments on the drafts submitted for interoffice review
 - . source documents relied upon in preparing the draft rule (e.g. research studies, consensus standards endorsed in the draft rule)
 - . documents which synthesize or organize data in a form relied upon in the draft rule
 - . supporting documentation such as the regulatory analysis, the Cost Analysis Group Report, environmental assessment or environmental impact statement, regulatory flexibility analysis, and OMB Clearance Package
 - . public comments submitted in response to a Petition for Rulemaking, an Advanced Notice of Proposed Rulemaking, or a Notice of Proposed Rulemaking
 - . Committee to Review Generic Requirements (CRGR) minutes and recommendations concerning the draft rule
 - . the ACRS comments on the draft rule

- . the Commission Paper transmitting the draft rule to the Commission or the memorandum transmitting the rule to the EDO for approval
- . the transcript or summary of the Commission meeting or briefing on consideration of the draft rule
- . the Staff Requirements memo containing the Commission recommendations on the draft rule
- . the Federal Register Notice for the rule (Petition for Rulemaking, Advanced Notice of Proposed Rulemaking, Notice of Proposed Rulemaking, Final Rule, or any other Federal Register notice issued concerning the rule)
- . any other documents of central relevance (e.g. interagency correspondence, agreement state correspondence)

Documents that fall within any of the above categories must be typewritten rather than handwritten to permit conversion into microfiche by the Document Control System (DCS). If the only record of substantive office review comments on a draft rule are contained as handwritten annotations on the draft itself, the Project Manager should summarize these comments in a typed note to the file.

2. At the completion of a particular rulemaking action, i.e. publication of the proposed or final rule, the project manager shall compile an index of all documents that comprise the regulatory history file. The Project Manager is responsible for identifying a source of access for each document listed. For internal documents, this will require the Project Manager to ascertain whether each document listed is available in the DCS. The Project Manager must ensure that any internal document not already available in the DCS is placed in the DCS, and that the record's accession number is identified for each document on the index. In the case of published documents (e.g. NUREGS, NTIS publications, books, articles, etc.), it will be sufficient to include the bibliographic citation for that document. The Project Manager shall forward the completed index to the Rules and Procedures Branch, Office of Administration, within sixty days after the completion of the rulemaking. The title of the index, and the file, should be the name of the rule and applicable NRC citation (e.g. 10 CFR Part 50) as it appears in the Federal Register notice, the Federal Register citation and date of publication.

Office of Administration

The Rules and Procedures Branch, Office of Administration, will be responsible for ensuring that a completed index of the documents comprising the regulatory history has been compiled for each proposed and final rulemaking. The Rules and Procedures Branch is also responsible for retaining the index and for disseminating copies of the index to interested NRC offices.

(Signed) William J. Dircks

William J. Dircks
Executive Director for Operations

cc: Herzel H.E. Plaine, GC

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