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May 4, 1992

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DIVISION OF CONTRACTS
(PROPERTY MANAGEMENT)

Note to: Tim Hagan, Division of Contracts
and Property Management

From: Karen Cyr, Chairman's Office

RE: Comment Letter on Contract Conflict of Interest Clause

The Chairman recently received the enclosed letter from Mr. Laird expressing his views on the conflict of interest contract clause which the staff is currently reviewing. Please include this letter among the public comments to be considered by the staff during its review. Thanks.

Karen Cyr

Karen Cyr

encl: as stated
cc: J. Scinto, OGC

MELVIN R. LAIRD
Suite 212
1730 Rhode Island Avenue, N.W.
Washington, D. C. 20036

April 30, 1992

Dear Ivan:

I wanted to follow-up on a previous discussion we had regarding the recent revision implemented by the NRC to the Conflict of Interest (COI) Contract Clause. As a Board Member of Science Applications International Corporation (SAIC), we have been proud to offer expert technical support to the NRC over the last decade and have become the largest contractor for commercial work that the NRC has. We feel that this revision to the COI Contract Clause seriously jeopardizes our relationship through some unintended consequences.

Initially, the revision was implemented to increase open competition, prevent unfair competitive advantages, and assure that the most qualified contractors performed this technical support work. Unfortunately, the opposite is resulting from implementation of this provision. SAIC has already had to forego accepting one contract they were awarded as being the best qualified because of the strict interpretation of this "work for others" clause. This was painful for SAIC to do because we feel this superior technical support we offer to the NRC is of the utmost importance to public safety.

At the March 26, 1992, public hearing before various members of your staff, it was estimated by them that no decision would be forthcoming until the July-August time frame. We are concerned because there are five contracts that we are bidding on (including one we are entering BAFO proceedings on presently) that we will not be able to accept if awarded because of this new revision to the COI Contract Clause and its strict interpretation.

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The Honorable Ivan Selin
April 30, 1992
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I have enclosed a copy of a letter sent to Mr. James Taylor of the NRC by Tom Trevino of SAIC. This elaborates on our position. I look forward to talking with you on Monday.

With best wishes and kindest personal regards, I am

Sincerely,

A handwritten signature in dark ink, appearing to read 'Melvin R. Laird', with a stylized, looping flourish at the end.

Melvin R. Laird

The Honorable Ivan Selin
Chairman
U. S. Nuclear Regulatory Commission
11555 Rockville Pike
Rockville, Maryland 20852

Enclosure



April 14, 1992

U.S. Nuclear Regulatory Commission

TT-92-25

Washington, DC 20555

Attention: Mr James M. Taylor
Executive Director For Operations

Reference: SAIC letter TT-92-16 dated March 6, 1992

Dear Mr Taylor

Science Applications International Corporation (SAIC) participated in the NRC's public meeting on Organizational Conflicts Of Interest on March 26. We were very pleased at the NRC's responsiveness to contractors' concerns which resulted in this public forum to allow industry the opportunity to further express its views on the new requirements and their implications.

As you are aware, and as documented in the reference letter, SAIC is significantly affected by the new OCI provisions. The most troubling change is the NRC's stated interpretation of the broad scope of the "Work For Others" restrictions in paragraph (c)(3), which prohibits a contractor who performs work at a licensee or applicant site for the NRC from performing any other work for that licensee or applicant in any capacity, even if that work poses no conflict of interest with the NRC work. Since this provision prohibits work even when there is no actual conflict of interest, SAIC has been unable to accept such a clause. This is evidenced by the recent situation in which SAIC had to necessarily decline, because of the Work For Others provision, the acceptance of a large contract from the NRC which SAIC had competed for and was selected for award. SAIC's inability to participate was not because it had or anticipated conflicts, but only because of a provision with the potential of restricting totally unrelated business activities could not be accepted. SAIC lost an important contract and the NRC was deprived of its apparently most qualified firm for this procurement as indicated by our selection for award.

While we hope that input provided by SAIC and others at the public meeting and in correspondence will be favorably considered and will result in some modification to the new OCI provisions which will

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SAIC

allow SAIC to remain an NRC contractor, we have an important immediate concern. We recognize that the evaluation and decision making process on this OCI issue will take several months; we were informed at the public meeting that a final decision may be reached in the July/August time frame. In the interim, several procurements for which SAIC is highly qualified and eager to compete for, are in process or anticipated. We were advised during this public meeting that pending the final decision concerning clause changes, the NRC will continue to utilize the Revised Policy on Organizational Conflicts of Interest and the OCI contract provisions contained therein. For all the reasons stated at the public meeting and in the reference letter, SAIC, and likely other qualified contractors, will be precluded from accepting contracts with this provision.

The stated purpose of the recent NRC OCI policy change which was "to avoid the serious difficulties recently encountered in obtaining the best qualified organizations to respond to NRC solicitations". Obviously, this never was achieved. The added Work For Others provision virtually eliminates SAIC, and very likely other firms, from competing. We therefore very strongly feel that appropriate action must be taken by the NRC to carefully re-evaluate and adjust requirements so that the NRC may realize its stated objectives of avoiding significant organizational conflicts of interest while maximizing competition.

Accordingly, in recognition of the length of time that is required by the NRC to make changes to this policy, and moreover the serious difficulties that have been recently encountered in making use of this new policy to obtain services of the most qualified firms, SAIC respectfully requests that until such time as final decisions are made concerning possible modification to the OCI provisions, that either of the following alternatives be implemented for all solicitations and awards issued in the interim:

- A. The general contract clause previously approved by the Commission (Contractor Organizational Conflict Of Interest Clause 2052.209-73, copy enclosed as Attachment A) or,
- B. The new OCI provisions but with the deletion of the Work For Others provision found at Paragraph (c)(3), or
- C. The new OCI provisions but with modifying language for the Work For Others provision found at Paragraph (c)(3) as indicated in Attachment B to this letter.

If some modification to the work for others provision is not adopted, it will eliminate SAIC and, we believe, other diversified and highly qualified firms from participating on NRC contracts during this interim period. This will lessen competition and most

SAIC

importantly, will have the effect of denying the NRC technical staff from accessing some of the most capable firms in this industry.

We believe that the NRC has the latitude to exercise judgment in the implementation of OCI clauses which serve their intended purpose, which is to prevent conflicts associated with the introduction of technical bias or providing to a contractor an unfair competitive advantage. FAR Section 9.504 allows for Contracting Officer discretion, with the advice of counsel, in the development of solicitation provisions for its solicitations. We feel that it is to the benefit of the NRC objectives to maintain competition to the maximum practicable extent. An interim clause modification as proposed in A., B., or C. above is therefore in the best interests of the Government and, we believe is fully within the discretion of the NRC. We believe that the NRC is sincere in its attempts to determine the appropriate balance between its efforts to avoid possible conflicts of interest and its mandatory responsibility to promote competition to the maximum practicable extent. It is for this reason that we feel optimistic that some compromise position may be achieved by the NRC's final decision in July or August. It would be unfortunate to have some of the most highly qualified firms precluded from competing for NRC contracts until such a final ruling can be made.

Again, I would like to thank you for your responsiveness to industry concerns and the opportunity to participate in the public meeting. Your favorable consideration of this request for a method to maximize competition pending your final ruling on revised clause language will be greatly appreciated. SAIC has had such a long standing and positive association with the NRC and we sincerely want to continue to support the NRC in its important work.

Should you have any questions concerning any of the above, please do not hesitate to call me at (619) 458-2770.

Sincerely,



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