

August 2, 1982

Lawrence Brenner, Esq., Chairman
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Richard F. Cole
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

Dr. Peter A. Morris
Administrative Judge
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

In the Matter of
PHILADELPHIA ELECTRIC COMPANY
(Limerick Generating Station, Units 1 and 2)
Docket Nos. 50-352 and 50-353

Dear Administrative Judges:

Pursuant to the request of the Atomic Safety and Licensing Board presiding over the Shoreham proceeding (Tr. 5711), the Staff is providing to the Board and parties in the Limerick proceeding material which contains discussion and analysis of a question raised by the Board regarding whether Science Applications, Inc. (SAI) may have a conflict of interest because of PRA and systems interaction work it has done for NRC licensees and for the NRC Staff. The Staff also addressed in the enclosed reports the question of whether the roles played by SAI might have resulted in a lack of independence in the Staff's review of the Shoreham and Limerick PRA's. Additionally, the Staff conducted an analysis of whether NUS (a peer reviewer of the PRA's for Shoreham and Limerick) might have a similar conflict of interest because of work it has performed for NRC licensees and the Staff. The results of that analysis are also contained in the attached Staff reports.

The following material is provided under cover of this letter:

1. Tr. 5348-51, 5420-22, 5707-12, 6340-46, 7427-30.
2. "LILCO's Response to the Board's Request for Information Concerning Science Applications, Inc." (July 1, 1982).
3. "NRC Staff Interim Report on Involvement of SAI and NUS As Contractors for the Staff" (July 1, 1982).

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- 4. "NRC Staff Final Report on Involvement of SAI and NUS As Contractors For the Staff" (July 23, 1982).

Sincerely,

SL

Stephen H. Lewis
Counsel for NRC Staff

Enclosures: As stated

cc w/enclosure:

Walter W. Cohen
 Steven P. Hershey, Esq.
 Donald S. Bronstein, Esq.
 Judith A. Dorsey, Esq.
 Troy B. Conner, Jr., Esq.
 Mr. Marvin I. Lewis
 Joseph H. White III
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1 UNITED STATES OF AMERICA
2 NUCLEAR REGULATORY COMMISSION
3 BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

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5 In the Matter of :
6 LONG ISLAND LIGHTING COMPANY : Docket No. 50-322-OL
7 (Shoreham Nuclear Power Station) :

8 - - - - -x

9
10 Riverhead Town Hall
11 200 Howell Avenue
12 Riverhead, New York 11901
13 Thursday, June 24, 1982

14 The hearing in the above-entitled matter
15 reconvened, pursuant to recess, at 9:05 a.m.

16 BEFORE:

- 17 LAWRENCE BRENNER, Chairman
- 18 Administrative Judge
- 19 JAMES CARPENTER, Member
- 20 Administrative Judge
- 21 PETER A. MORRIS, Member
- 22 Administrative Judge
- 23 WALTER H. JORDAN, Assistant to the Board
- 24 Administrative Judge

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1 departing in any event. That would make a difference,
2 or could make a difference, and we will look at it again.

3 There is another reason why we have to
4 maintain flexibility. Last week we mentioned that we
5 directed the parties to jointly propose a schedule
6 leading to the completion of discovery on the emergency
7 planning -- LILCO emergency planning, and we have not
8 heard anything. We expected to hear this week, since
9 what we have proposed as a completion date would be the
10 end of July, and we certainly want to hear by tomorrow
11 so we can have a dialogue about it if necessary.

12 (Board conferring.)

13 That is all the procedural matters unrelated
14 to Contention 7B. We have another preliminary matter
15 related to contention 7B which we are prepared to
16 discuss if there are no other general preliminary
17 procedural matters that any of the parties wish to raise.

18 (No response.)

19 Yesterday, we received the revised staff cross
20 examination plan for Suffolk County/SOC Contention 7B,
21 as we discussed in part in the context of scheduling the
22 written rebuttal testimony of the staff. Attached to
23 that cross examination plan -- and as indicated, the
24 attachment has been provided to all of the parties --
25 was a memorandum from Mr. James H. Conran who is

1 scheduled to be a staff witness on 7B to Mr. Thadani of
2 the NRC staff. And it went through the section chief,
3 Mr. Coffman.

4 The board had an opportunity to read that in
5 some detail last evening. We had not read it earlier
6 than that. It is quite a thick attachment, and
7 presumably, the substance of this will come up in the
8 context of either the cross examination or the further
9 testimony prepared by the staff and so on. But one
10 point that was new to the members of this Board appears
11 on the first page of the meeting summary and status
12 report. That is the first page of the attachment to the
13 cover memorandum.

14 And it is indicated there that one of the
15 staff's consultant contractors for the staff's review of
16 the Indian Point PRA including the systems interactions
17 studies is SAI. This was certainly news to this Board.
18 I would like to ask the staff if that is the same SAI
19 that is a contractor for LILCO in this proceeding and,
20 in fact, for Philadelphia Electric in the Limerick
21 proceeding.

22 MR. RAWSON: Judge Brenner, I understand that
23 the SAI in question is, in fact, the same organization,
24 although it is a different segment or different branch,
25 and we have been assured of the separateness of the

1 branch dealing with the Pansy matter as opposed to the
2 other section that you mentioned.

3 JUDGE BRENNER: Well, preliminarily, this
4 information certainly would have been useful and helpful
5 for this Board to know, and we should have been apprised
6 of that.

7 I would also note but not pursue here that as
8 the parties know, Judge Morris and I sit on the Limerick
9 Board and we had extensive prehearing discussion with
10 respect to that PRA and the staff review that would be
11 conducted and so on, and it was never disclosed to us
12 there that SAI is a staff contractor.

13 In addition, I learned this morning that the
14 Chairman of the Indian Point Board in the hearing this
15 week did not know these facts, either. I worry about
16 the other cases in other contexts, but for now
17 restricting it to Shoreham, we would like an assessment,
18 a report, whatever you want to call it, from the staff
19 and LILCO and anyone else who wishes to comment as to
20 whether SAI's involvement in these various studies for
21 various plants for the staff and utilities raises any
22 conflict of interest problems, in the legal sense, and
23 also, any problems in terms of beyond just the narrow
24 legal sense -- the normal procedural separation that
25 would apply to proceedings where the Board would rely on

1 input in the form of assessments or testimony of both
2 from the utility and its consultants on the one hand,
3 and from the staff and its consultants on the other hand.

4 Bear in mind that some of the testimony we
5 have heard in writing and orally has been how the
6 Shoreham PRA is comparable to what was alluded to as the
7 industry standard; namely, these other studies that SAI
8 is apparently doing. We now learn its involvement. We
9 obviously do not know any other details beyond what I
10 have just disclosed. I do not know what the involvement
11 of SAI has been with the staff and so on. So we are
12 interested in that assessment.

13 As part of that, we want to know why this fact
14 was not disclosed to this Board or other boards. The
15 sooner we get it, the better. I hope by next Thursday.
16 I guess that is our date, unless the parties show good
17 cause why that should be extended. We would like to
18 receive that report next Thursday, which is July 7th, I
19 believe. 8th. I am sorry, that is July 1st.

20 MR. LANPHER: Judge Brenner, is that date the
21 date for the staff's submittal?

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1 knowledgeable a panel for this broad subject, and yet
2 there are others that we would like to present on
3 specific narrower issues.

4 The second issue I would like to raise with
5 the Board is the matter you raised this morning, Judge
6 Brenner, relating to SAI being noted on the memorandum
7 as an NRC consultant. We also want to look into this.
8 But may I have some guidance from the Board as to the
9 nature of the concern so that we can prepare to gather
10 the right information and think about the right issues?
11 It may just be my unfamiliarity with the general issue.
12 I think consultants consult over a broad range. I am
13 not sure. I have not had an opportunity to review
14 resumes, but I think even maybe some of the Intervenor's
15 consultants have consulted with the NRC, and so I needed
16 to have, if the Board is willing, I needed to have some
17 guidance so that we could look into this matter.

18 JUDGE BRENNER: I will tell you I was very
19 careful about not saying too much prematurely, and
20 recognizing that sometimes what a Board says is carried
21 beyond the immediate context of being just a preliminary
22 inquiry, which is all it was. And you would be advised
23 not to stimulate too much on my part too early.

24 Why don't you take a look at the transcript?
25 Offhand I do not think I could say -- I am sure I could

1 say it better, but I do not think I would add any
2 additional substance to what I said this morning. And I
3 think in large part the answers to your question will
4 appear as you look into what the situation is. I was
5 careful not to restrict it to conflict of interest in
6 only the technical sense, the narrow technical legal
7 sense, but in terms of propriety in a proceeding. And
8 if extra care is deemed appropriate in a proceeding in
9 terms of testimony, that should be taken into account.
10 And I emphasize the "if."

11 And I also had in mind the cross references in
12 terms of this is the way it is done and therefore it is
13 good, and then to find out that it is the same outfit
14 involved in all of it raised a preliminary concern, and
15 I emphasize the "preliminary." And although I was
16 purposely low-keyed, I am frankly not happy. And here
17 you get into the area that I did not want to stimulate
18 further response.

19 I am not happy that I learned about it for the
20 first time in an offhand, arcane passing comment in a
21 memo, intrastaff memo attached as an afterthought for a
22 totally different purpose, especially when I am sitting
23 on two proceedings along with Judge Morris, this and
24 Limerick, where we have talked about PRA ad infinitum in
25 the prehearing context in the other proceeding, and

1 SAI's involvement and the Staff's review, and then to
2 find out that SAI is on both sides of the fence arguably.

3 So I want to know why I did not know before
4 now in addition to the more substantive situation. And
5 I want to emphasize that it is a preliminary inquiry,
6 and no inferences should be drawn from the inquiry other
7 than you might as well draw the inference that you
8 should have told us. I should not have had to ask for
9 it -- "you" being everybody out there who knew, whoever
10 they are. And obviously that is the Staff. I do not
11 know what LILCO's knowledge was or counsel for LILCO's
12 knowledge. It is a nondisclosure. Whether or not it is
13 a material nondisclosure will await further advice from
14 the parties.

15 All right. Let's come back at 1:20 instead of
16 1:15.

17 (Whereupon, at 12:05 p.m., the hearing was
18 recessed for lunch, to be reconvened at 1:20 p.m., the
19 same day.)

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NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

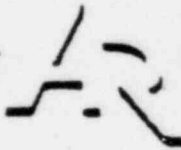
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DOCKET NO. 50-322-OL

DATE: July 6, 1982

PAGES: 5701 - 5832

AT: Riverhead, New York

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1 How is that taken care of in the filing we
2 received today?

3 MR. LANPHER: We received that filing at the
4 end of last week at the same time you did, Judge
5 Brenner, and my understanding is that my colleagues in
6 Washington spent a substantial portion of the weekend
7 taking Mr. Shapiro's filing and putting it in what we
8 served on you today. And my understanding is that it is
9 all in there. I can confirm that by phone later this
10 morning. That is my understanding.

11 JUDGE BRENNER: All right. If you can let us
12 know tomorrow or the next day, that would be helpful.
13 And we are hoping we can focus on one document.

14 We received the written filings of LILCO and
15 the staff with respect to the question we raised of the
16 role of Science Applications, Inc., SAI. Staff's filing
17 contemplates an openended, unscheduled further filing.
18 Obviously, we cannot leave it at that. We have a
19 schedule in mind, but I will ask the staff first.

20 MR. RAWSON: Judge Brenner, as we indicated in
21 the pleading, we are continuing to investigate and
22 gather facts on this matter. Part of the difficulty is
23 caused by the fact that some of the contacts that both
24 LILCO and we have discussed are in the context of
25 subcontracts under some of the national laboratories.

1 We have found that it that is very difficult to try and
2 track down the particulars on.

3 I would anticipate that we could file our
4 final report on this by the beginning of next week.

5 JUDGE BRENNER: That would be acceptable. It
6 would be helpful if we could receive it first thing
7 Monday morning so that the Board can confer and deal
8 with it on Monday.

9 MR. RAWSON: Judge, we will make every
10 attempt. And if we are going to have a problem with
11 that, I will let you know by telephone on Friday.

12 JUDGE BRENNER: All right. We won't require
13 it before Tuesday up here, but we would appreciate it
14 first thing Monday morning in the offices. And you
15 don't have to let us know. If we don't have it, we
16 won't have it.

17 I do have a few concerns regarding the
18 direction the staff has taken in their response. LILCO,
19 to some extent. The staff a little more graphically.
20 Although the staff recognizes that our inquiry was not
21 limited to just an overt legal conflict of
22 interest; that is, that SAI had worked on Shoreham
23 for both parties, starting at the bottom of page 2 and
24 continuing over to page 3 of the staff's response there
25 is the assertion "At this time and subject to the

1 staff's further review..." that SAI played no role
2 direct or indirect in the staff's analysis of the
3 Shoreham application and certainly was not involved in
4 the preparation of the staff's testimony for this
5 proceeding.

6 Obviously, we expect a further response not to
7 be limited just to that aspect. We would have been very
8 surprised had we found out differently on those points.
9 However, the key point is not these long lists of
10 contracts, which I suspect is the thing taking you the
11 most time to gather up. But rather, "We have worked on
12 the same subject for both parties; that is, systems
13 interactions in nuclear power plants," and that is what
14 we had hoped to hear more about in this filing, and that
15 is what we want to hear about in the next filing:

16 That is the salient point. We are not
17 troubled by the fact that you have an organization that
18 may be working on contracts for the staff and utilities
19 on unrelated matters. But here, there is a preliminary
20 indication that the work is on the same type of matter,
21 and the fact that it is not Shoreham per se does not
22 necessarily remove the problem.

23 Particularly coupled with the assertions in
24 the testimony that the PRA is fine because it is similar
25 to other PRAs in the industry, and it turns out that SAI

1 has had their fingers in all of the PRAs, in one form or
2 another, or many of them.

3 The staff also does not directly address the
4 point as to whether we should have been informed. I
5 will not beat a dead horse, but I will just note that
6 the staff does not address that, other than obliquely.

7 MR. RAWSON: Judge Brenner, we intend to
8 address that at greater length. As you will see at the
9 bottom of page 3 and 4, we presented some preliminary
10 thinking on that subject. . But naturally, we will have
11 more to say after we have all of the facts completely.

12 I would like to point out that in our response
13 on page 4 there is some discussion of the fact that
14 SAI's involvement with the staff's interaction program
15 has been both generic and very preliminary, and that the
16 reports are ongoing. And the staff's decisions as to
17 what it will be doing with the information provided by
18 SAI, among others, has not yet been made. And for that
19 reason, we are an additional step removed, we believe,
20 on the basis of present knowledge, from a possibly
21 conflicting situation. But we will be pursuing that
22 further and letting the Board know.

23 JUDGE BRENNER: Well, I will reiterate that if
24 the work was generic, that does not necessarily remove
25 the problem when you are talking about the same area we

1 are focusing on here. And secondly, it has not been
2 limited to generic work. They have done work
3 particularly on Indian Point.

4 In terms of notifying Board, since the staff
5 is the one link, other than two members of this Board,
6 between this proceeding and Limerick, we would
7 appreciate -- in fact, we will request -- that the
8 staff, presumably through staff's counsel in Limerick,
9 we would appreciate it, Mr. Rawson, if you could pass
10 this on: that you would serve the papers from Shoreham
11 along with the pertinent transcript excerpts when those
12 would be, too. Those would be 542828 and the other
13 would be the brief dialogue I had with Mr. Ellis at
14 approximately 5420222 and the written filings.

15 It might be convenient to wait for the staff's
16 further filing and then file the whole thing, perhaps
17 along with this transcript or some cover letter
18 indicating that it was our request that it be served in
19 Limerick in the interest of full disclosure for the
20 information of the parties to that proceeding.

21 MR. RAWSON: That is no problem, Judge
22 Brenner. Of course, staff counsel in the Limerick
23 proceeding has been involved in this investigation, and
24 we will see that those matters are all served on all of
25 the parties in Limerick.

1 JUDGE BRENNER: Thank you, we appreciate
2 that. I will leave it to the staff as to what it wants
3 to do with respect to Indian Point and any other
4 proceedings that might be involved.

5 Also, with respect to the same subject, there
6 is a general admittedly preliminary discussion of the
7 staff's contract review procedures being designed to
8 look at possible conflicts and the fact that contractors
9 are required to update information and so on. It would
10 be helpful in that context if the further report
11 disclosed whether or not staff's review was aware of
12 SAI's role for LILCO and also for Philadelphia Electric
13 with respect to their respective applications, in terms
14 of their review. And if there are any written findings
15 or summaries of that review, we would appreciate knowing
16 that.

17 MR. RAWSON: I will investigate that as well,
18 Judge Brenner.

19 JUDGE BRENNER: Changing subjects now, unless
20 somebody else has a comment on the previous subject, we
21 received, -- at least I have seen nothing from Suffolk
22 County with respect to a need for any further inquiry of
23 Dr. Lucks, so I assume there is no such need.

24 MR. LANPHER: I sent you a letter last week to
25 that effect, Judge Brenner. You must not have received

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

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DOCKET NO. 50-322-OL

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PAGES: 6238 - 6412

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AFTERNOON SESSION

(12:50 p.m.)

JUDGE BRENNER: Back on the record.

The Staff is going to call its witness panel on this Contention.

MR. REIS: Mr. Chairman, before we get to that, there is one other matter I hesitate to bring up, but it does have to be brought up.

I was in contact with the office during lunchtime today concerning the memorandum you asked for on conflict of interest and the situation which might create the impression of impropriety from a conflict between review and preparation of application.

The Operations and Administrative Division of the Office of Executive Legal Director of the NRC is looking into this matter and finds that it is considerably more complex than we were led to believe in the beginning and finds that a proper analysis of the law, the regulations, the contracts that do exist -- and we have to face them in a factual situation that does exist -- and just what is involved in each of those contracts will require substantially more time than we indicated to the Board before.

Mr. Regan, who is division chairman or division chief of that division, and Mr. Murray, deputy

1 executive legal director, estimate that they would --
2 that that matter could not be complete before July 23.
3 And we are prepared to submit it to the Board at that
4 time. Prior to that time, we cannot have a complete
5 product.

6 (The Board conferred.)

7 JUDGE BRENNER: Well, we certainly want the
8 job done right, and that is the thrust of your comment.
9 Depending on what we do, this could put the schedule for
10 the proceeding in a terrible bind, however.

11 MR. REIS: I realize that, Your Honor. I
12 think we ought to go ahead and accept things and
13 recognize that that might have substantial effect, and
14 it might require the calling of witnesses or what have
15 you. That is what I have been informed, and I can see
16 where looking at this sort of thing could take that
17 time. I do not think that the request is unreasonable,
18 considering what is involved in those regulations.

19 JUDGE BRENNER: All right. It occurs to me
20 that in suggesting that date you had in mind some of our
21 comments. I do not remember if it was at the meeting of
22 counsel or on the record or both that we have that break
23 coming up and we wanted to be able to begin focusing on
24 it before that break. And you have probably picked the
25 last date. And it is still getting tight.

1 MR. REIS: Your inference is wrong. The date
2 was applied by the home office to me.

3 JUDGE BRENNER: By the way, I did not mean
4 that there would be an unfavorable inference even if it
5 had gone the other way. It would have been a reasonable
6 trade-off perhaps.

7 All right, we will have to live with that, and
8 the schedule for the proceeding will have to live with
9 that. If there is a way to get some advance indication
10 -- not right now but in advance of the 23rd -- as to
11 the thrust of what the Staff view will be, particularly
12 if it could upset the applecart, so to speak, that is
13 going to be, obviously, very helpful.

14 MR. REIS: Right now I have no indication that
15 it upsets the applecart. There are conclusions given in
16 memorandum or as a preliminary matter that would be
17 changed. It is just the Board raised this matter, and
18 we felt we should put it to rest one way or the other.
19 And we feel it will take that length of time to do it.

20 We will also -- we could undertake to give the
21 Board a progress report around the 15th of July -- well,
22 let's see, today is the 9th. The 15th is a little too
23 close. Let us say towards the end, at the end of next
24 week, which is the 15th. Let us make it the following
25 Monday or Tuesday. We will give a progress report.

1 JUDGE BRENNER: That would be helpful. Since
2 you are taking additional time, I certainly hope that --
3 we attempted to make some comments the other day that
4 would help focus our interest, and I assume that is
5 going to be taken into account in addition.

6 One thing we were considering is that
7 regardless of what the Board for itself decided in the
8 context of this particular case, and that is the only
9 thing we were going to focus on, we were thinking of
10 some way of apprising whatever cognizant offices there
11 would be, whether it would be the Commission itself or
12 the Office of General Counsel or some other body, that
13 from an administrative point of view we would be
14 interested in focusing on this for its possible
15 implication in other proceedings.

16 MR. REIS: I agree, Your Honor, that would be
17 very appropriate. But let us see what the effect of
18 this examination is. We certainly have already brought
19 in and are consulting with the trial attorneys at least
20 in other proceedings which have been mentioned in the
21 past and are looking at this from a larger scope than
22 just this proceeding. We are looking at it in a hearing
23 proceeding, and certainly it does affect our
24 contracting.

25 As we indicated in the memorandum we already

1 filed, there is processes by which we screen these
2 matters and look at them. Now, to the extent that this
3 turns out not to be sufficient, we will certainly go
4 beyond that, and we think all levels of the Commission
5 should be involved in that if that is so, if there is a
6 blot on the independence of the review of the Staff.

7 JUDGE BRENNER: Well, all I was going to
8 suggest is that since additional time is being taken and
9 we do not get caught short at the end after we make our
10 preliminary determination, it would be good, I think, if
11 some mechanism on an informal basis for now could be
12 found for the Staff people working on it to keep an
13 appropriate contact in the Office of General Counsel or
14 whatever appropriate Commission office would be
15 appropriate. I do not know if it is the OGC.

16 MR. REIS: I am not sure myself, Your Honor.
17 But we will look into that.

18 JUDGE BRENNER: Either Mr. Remick's office --
19 I forget the name of it now.

20 MR. REIS: Policy Evaluation.

21 JUDGE BRENNER: Or OGC or both, in the sense
22 that they know of the inquiry and perhaps could be
23 supplied copies of what we have been given so far and
24 the contemporaneous copy of what the Staff is going to
25 supply when it supplies it to the parties, just so if we

1 do refer something to them -- and I do not know that we
2 will -- it will not be the first time they have heard
3 about it.

4 The reason I suggested it now is I thought we
5 would be focusing on this a lot sooner. Now that we are
6 going to be delayed, maybe we could save some time later
7 perhaps.

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1 MR. REIS: Well, as you probably recognize,
2 Your Honor, this is a continuing problem within the
3 Commission, with the limited amount of specialized
4 contractors in certain areas, and this has -- is and has
5 been looked at by the Commission, and of course in the
6 past contractors have reviewed applications and
7 testified on completely different applications.

8 It is nothing new from that point of view, but
9 we will look at it further and see what the story is and
10 make sure that there is nothing that could leave any
11 doubt to the Staff's independence in this regard.

12 JUDGE BRENNER: All right. We will look
13 forward to the progress report, and also a very thorough
14 analysis of the question.

15 MR. RAWSON: Judge Brenner, at this time the
16 Staff calls as its witnesses on contention 7.B and SOC
17 contention 19.B Demos P. Speis, Walter P. Haas, Marvin
18 W. Hodges, C.E. Rossi, James H. Conran, Senior, and
19 Robert Kirkwood.

20 JUDGE BRENNER: I guess other than Mr. Hodges
21 and Mr. Kirkwood, the witnesses have not been sworn.

22 MR. RAWSON: That's right, Your Honor.

23 JUDGE BRENNER: If the rest of you would
24 rise.

25 Whereupon,

NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of:

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station)

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DOCKET NO. 50-322-OL

DATE: July 21, 1982

PAGES: 7422 - 7681

AT: Riverhead, New York

ALDERSON  REPORTING

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Telephone: (202) 554-2345

1 MR. LANPHER: Judge Brenner, I have two very
2 brief preliminary matters.

3 MR. REIS: The Staff also has two very brief
4 preliminary matters.

5 JUDGE BRENNER: They cannot wait for beyond
6 today? I want to get this testimony done today.

7 MR. REIS: One is the interim report that you
8 asked on SAI, and I wanted to give you that. I do not
9 think it would take more more than a minute or two.

10 JUDGE BRENNER: All right, let us take that,
11 and then we will go back to Mr. Lanpher for his
12 matters.

13 MR. REIS: In our further review of the SAI
14 matter and the possible conflict, we find that there may
15 be a conflict from a contracting point of view, but it
16 probably does not affect the testimony, mainly because
17 the Staff has not accepted SAI's position.

18 SAI had substantial input on generic issues
19 into systems interaction, and SAI also did the PRAs at
20 Shoreham and Limerick. There is, as you know, a
21 continual debate on how to do systems interaction. As
22 you can see from the testimony that has come out so far,
23 we have not accepted SAI's counsel to us on how to do
24 systems interaction.

25 We generally view the conflicts that may exist

1 from a contracting point of view not germane to this
2 proceeding. However, we will get you the memorandum you
3 requested by Friday as the date set. I just wanted to
4 give you that interim report.

5 Further, NUS, who I believe Joksimovich worked
6 for, Dr. Joksimovich, has also worked on the safety
7 goals and PRA generally for the Staff. And Sol Levine,
8 of NUS, has, in addition, worked on the safety goals.
9 So there are some problems there.

10 Further, in inquiring into this matter and
11 going into it, we also find that there is a Mr. Budnitz,
12 who apparently has worked for the County and the Staff,
13 although on different matters. I think he is a
14 consultant to the County on emergency planning, and he
15 has worked for the Staff on safety goals.

16 That is the interim report. The other matter
17 is Judge Jordan asked some questions on aux feed. I am
18 informed there is a memorandum going to all boards from
19 Mr. Denton, dated July 1, 1982, on NRC Staff release,
20 reliance on bleed-and-feed, which is relevant to Judge
21 Jordan's questions of last week.

22 JUDGE BRENNER: All right. But that was not
23 the thrust of his questions. As you know, the
24 bleed-and-feed would only apply directly to pressurized
25 water reactors. And he was asking his questions in

1 terms of getting a handle on the approach to
2 classification and the possible effect of some methods
3 other than the traditional methods which may or may not
4 have been used in that decision; that is, some possible
5 probabilistic approach.

6 So I appreciate your mentioning it, and I
7 guess if you provide us a copy of the memo, we will make
8 sure Judge Jordan sees it. Incidentally, he will be
9 here shortly today. So we appreciate knowing that, but
10 it does not sound like the thrust of where he was going,
11 or some of us who are familiar with feed-and-bleed, and
12 that is not directly where he was going. In terms of
13 your interim report, thank you.

14 When you indicate your conclusion and the
15 support thereof in the memo that you do not think that
16 presents a conflict problem for this proceeding, we
17 would be interested in knowing whether that is your
18 conclusion as to all proceedings and whether it is just
19 this proceeding. We are not interested in your detailed
20 findings as to any other proceedings, but just in that
21 distinction, whether the finding is limited to this
22 proceeding or whether, therefore, in other proceedings
23 there might be a different finding. But we are not
24 interested in the details of what those might be.

25 MR. REIS: I know we are working with the

1 attorneys at Indian Point and Limerick, and I know the
2 matter will be served, a similar memorandum will be
3 served, in the Limerick proceeding by the Staff. So I
4 presume what is being prepared while I am here is going
5 to cover that situation.

6 JUDGE BRENNER: All right. If it is going to
7 turn, in part, on the Staff's reliance or lack of
8 reliance, you are talking about quite a different
9 approach than what was envisioned in the initial
10 response. And I expect the support as to why the
11 details of support or not support would serve to relieve
12 what otherwise might have been a conflict situation.
13 And we will be looking forward to seeing that.

14 MR. REIS: Mr. Chairman, as we went into this,
15 we did not expect -- we were, frankly, surprised by the
16 results.

17 MR. LANPHER: Judge Brenner, just briefly, the
18 parties have been discussing the schedule as we look
19 ahead and for witness schedules and some other matters.
20 We do have a change in the order that we think things
21 should be taken up in, and I just wanted to pass that
22 along to the Board so that you could consider it today
23 or tomorrow, since it is a short week, probably.

24 Leaving aside the -- well, leaving aside
25 28A(1), 31, 26.

10
LILCO, July 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

Before the Atomic Safety and Licensing Board

In the Matter of)
LONG ISLAND LIGHTING COMPANY) Docket No. 50-322 (OL)
(Shoreham Nuclear Power Station,)
Unit 1))

LILCO'S RESPONSE TO THE
BOARD'S REQUEST FOR INFORMATION
CONCERNING SCIENCE APPLICATIONS, INC.

On June 24, 1982, the Board requested that the parties, the NRC Staff and LILCO in particular, provide information regarding work that Science Applications, Inc. (SAI) is doing under contract for the NRC Staff. SAI is LILCO's PRA consultant and an SAI employee, Dr. Edward T. Burns, is a witness in this proceeding. The following information is provided in response to the Board's request.

SAI, like many consultants in the nuclear industry, has performed work for the NRC Staff in a wide range of areas. A listing of SAI's NRC contracts over the past few years is attached. The list does not include contracts with national laboratories since there is no easy way for SAI to distinguish

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whether the funds for a contract come from the NRC or the Department of Energy. SAI has, however, provided information on the contract of interest to this Board -- SAI's work for Lawrence Livermore Laboratory on systems interaction.

This work was performed by SAI's Energy Technology & Engineering (ET&E) Group's Accident Consequence Division.^{1/} SAI, under contract with Lawrence Livermore Laboratory, surveyed available systems interaction methodologies and assessed the current state of the art. The purpose of the study was to aid in the development of a methodology for systems interaction studies. SAI's principal involvement was through one of its employees, a member of the WASH-1400 Reactor Safety Study and a recognized expert in the field. The work for Lawrence Livermore Laboratory resulted in the publication of NUREG/CR-1859, "Systems Interaction: State-of-the-Art Review."^{2/}

^{1/} The ET&E Group within SAI is diverse both in its geography and expertise. The Group's management structure reflects this diversity. The Accident Consequence Division is located in Palo Alto and is part of the Physics & Safety Operation of the ET&E Group.

The work for LILCO was performed by ET&E's Power Engineering Services Division located until very recently in San Jose. The Power Engineering Services Division is part of the Engineering Analyses Operation of the ET&E Group.

These divisions report to separate Operations Managers. The work performed for Lawrence Livermore Laboratory was done without knowledge of the performance requirements for LILCO and vice versa. There was no exchange of technical information between the organizations on their respective studies.

^{2/} Three other national laboratories also published reports on systems interaction for the NRC. The reports represent

As an outgrowth of this systems interaction work for Lawrence Livermore Laboratory SAI prepared for and participated in one review meeting of the Indian Point Systems Interaction Study (being conducted by PASNY and EBASCO). SAI's role was as an expert reviewer to provide comments on the study to the NRC through Lawrence Livermore Laboratory.

The contract between Lawrence Livermore Laboratory and SAI has been inactive since December 1981 because of lack of funding. No future SAI participation in the Indian Point Systems Interaction Study is anticipated.

SAI has summarized its position on the present matter as follows:

- SAI is a company of approximately 3500 employees distributed in 50 offices throughout the country. SAI clients include private industry, the Defense Department, the NRC and National Laboratories.
- SAI has provided consulting services to the NRC and to utilities
- SAI does employ as members of its staff experts in the field of probabilistic risk assessment; because of the limited number of such experts available, these people may consult at different times with both NRC and private industry
- On the subject of systems interaction, the NRC has performed at least four studies in an attempt to define a methodology
- SAI participated as a contributor to one of these studies

(Footnote Continued)

diverse viewpoints from which the NRC presumably will mold its systems interaction policy.

- SAI has also participated as a reviewer and adviser to the NRC on the PASNY/Ebasco systems interaction pilot program at Indian Point
- SAI is no longer an active consultant to Lawrence Livermore Laboratory on systems interaction
- No member of the SAI staff participated in both the Lawrence Livermore Laboratory sponsored review of Indian Point and the Shoreham PRA

As to LILCO's involvement with SAI, contact was first made with the Power Engineering Services Division in late 1979 or early 1980. SAI provided LILCO with information on PRA's in general and SAI's capabilities in particular throughout 1980. During this period LILCO also discussed PRAs with other potential contractors. Formal competitive bids for the Shoreham PRA were submitted to LILCO in February 1981, and SAI was awarded the contract for phases I and II of the PRA in April 1981.^{3/}

Counsel for LILCO has been aware of SAI's role in the Shoreham PRA as well as SAI's participation in the Limerick PRA. Counsel was also aware that SAI is a widely known expert in the PRA field and has done PRA work for other utilities. Counsel did not know of SAI's involvement in the Indian Point Systems Interaction Study.

LILCO sees no conflict of interest in SAI's performance of work for utilities, LILCO in particular, on the one hand,

^{3/} For the Board's information, LILCO's other PRA expert witness, Dr. Vojin Joksimovich, is employed by the NUS Corporation. NUS has also done work for the NRC Staff. In the PRA area, that work has consisted of conducting seminars on PRA methodology for NRC Staff personnel.

and the NRC Staff on the other. In the systems interaction area, SAI's work for the Lawrence Livermore Laboratory (under contract with the NRC Staff) was an assessment of the state of the art in systems interaction methodology done by a recognized expert in the field. It is appropriate for the NRC Staff or its contractor to seek the expert views of one of the handful of pre-eminent organizations in the field. SAI's Indian Point work appears to have been merely an extension of this state of the art review.

In sum, the only bearing of SAI's prior systems interaction work on this proceeding concerns not conflict of interest but whether Dr. Burns' testimony is consistent with the pertinent views of other SAI experts. Although LILCO does not believe any inconsistencies exist, the parties and the Board can certainly explore the area if they so desire.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

W. Taylor Reveley, III

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DATED: July 1, 1982

LILCO, July 1, 1982

CERTIFICATE OF SERVICE

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station, Unit 1)
Docket No. 50-322 (OL)

I hereby certify that copies of LILCO'S RESPONSE TO THE BOARD'S REQUEST FOR INFORMATION CONCERNING SCIENCE APPLICATIONS, INC., were served upon the following by first-class mail, postage prepaid, or by hand (as indicated by an asterisk), on July 1, 1982.

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DATED: July 1, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
LONG ISLAND LIGHTING COMPANY
(Shoreham Nuclear Power Station,
Unit 1)

Docket No. 50-322 O.L.

NRC STAFF INTERIM REPORT ON INVOLVEMENT OF SAI AND NUS
AS CONTRACTORS FOR THE STAFF

On June 24, 1982, the Atomic Safety and Licensing Board raised a concern on the record (Tr. 5348-52) about the possibility that a conflict of interest existed because Applicant's contractor for its Shoreham probabilistic risk assessment, Science Applications, Inc. (SAI), has also served as a subcontractor for the NRC Staff on certain aspects of the Staff's systems interaction program. The Board requested a report from the Staff as to whether SAI's involvement in these matters creates a conflict of interest or a situation where there might not be complete separation between the preparation of an application and the Staff review of that application. The Board further requested a report as to why facts material to these matters were not disclosed to the Board. The Staff's interim report on these questions, based on matters orally related to Staff counsel, is set forth below. Further investigation and analysis is continuing and a final report will be made to the Board when that process is completed. Because the Board may have similar concerns about NUS, the Staff has also initiated a review of its

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involvement in contracts with NUS.^{1/}

SAI is a large firm specializing in technology research and regulatory matters. The Staff has used SAI as a contractor for many projects in the past and has many current contracts with SAI. A list of all past and present NRC commercial contracts with SAI is attached.

Three specific aspects of the relationship between the Staff and SAI may be of particular interest to the Board. First, SAI has acted as a subcontractor (under Lawrence Livermore Laboratory) for two generic reports to the Staff on methodologies for analyzing systems interactions in nuclear power plants. Second, SAI has acted as a subcontractor (again under Lawrence Livermore Laboratory) assisting the Staff in its analysis of the systems interaction study done by PASNY for Indian Point Unit 3. Third, SAI has a contract with the Division of Licensing, NRR, to supply services to the Staff in connection with licensing issues. Tasks performed under this contract relate to NMSS rather than NRR and bear no relation to Shoreham.

The Staff is obtaining the details of these contracts and will provide further information to the Board. At this time, however, it appears that none of these contracts, including the three highlighted above, have any relationship to the Staff's review of Shoreham or the Staff's testimony in the Shoreham proceeding. SAI appears to have

^{1/} A complete investigation of the Staff's contractual relationships with SAI and NUS is a lengthy and complex undertaking. In addition, certain of the Staff members involved in this investigation are also involved in preparing testimony for this proceeding. A final report on these matters will be submitted as soon as possible.

played no role, direct or indirect, in the Staff's analysis of the Shoreham application and certainly was not involved in the preparation of the Staff's testimony for this proceeding.

The Staff's contractor review process is designed to avoid any possibility that a conflict will be created by Staff contracts. Prior to the awarding of a contract, the Staff reviews the nature of work being done by the prospective contractor for industry members or other organizations which may have some contact with the Staff on the matters involved in the contract. This review is comprised of a formal analysis of the prospective contractor's work supplemented by any available input from cognizant Staff members regarding the prospective contractor's other activities. This review process does not end with the awarding of the contract. Contractors are obligated to inform the Staff of subsequently-acquired work which may involve issues relating to the contractor's work for the Staff. If a conflict of interest appears, a contract is not awarded; if the conflict arises during the term of the contract, appropriate remedial actions are taken.

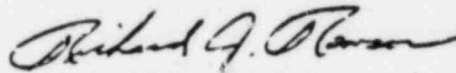
Parties to NRC adjudicatory proceedings, including the Staff, have an obligation to bring to the attention of adjudicatory bodies information that is relevant and material to the matters being adjudicated. See generally Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 & 3), ALAB-677, 15 NRC _____ (1982); Duke Power Co. (William B. McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973). On the basis of the facts as presently known, the Staff believes that the involvement of SAI as a contractor for LILCO on the Shoreham PRA and as a subcontractor for the Staff on certain systems interaction matters does not create a situation of conflict of interest or of a situation of less

than complete separation between application preparation and Staff review of that application, nor does it appear to be information material to the matters being adjudicated here.^{2/}

LILCO's contractors in this proceeding have discussed PRA generally and the Shoreham PRA and have taken the position that probabilistic risk assessment techniques provide the best way of resolving systems interaction problems. The Staff has offered no testimony on the specific subject of PRA or the Shoreham PRA. SAI has been involved in analyzing systems interaction techniques generically for the Staff. However, the positions taken by SAI in that analysis have not been adopted by the Staff and are not reflected in the Staff's testimony in this proceeding.

The Staff is continuing to investigate and analyze the facts concerning its relationship with SAI and NUS regarding the issues of PRA and systems interaction.

Respectfully submitted,



Richard J. Rawson
Counsel for NRC Staff

Dated at Bethesda, Maryland
this 1st day of July, 1982

^{2/} The Staff draws the same conclusions with respect to SAI's involvement for the applicant in the Limerick proceeding.

CONTRACTS WITH SCIENCE APPLICATIONS, INC.

<u>Contract Number</u>	<u>Title</u>
AT(49-24)-0087	Assistance in Study on GESMO
AT(49-24)-0119	Consulting Assistance for GESMO
AT(49-24)-0121	Quantitative Evaluation of Safeguard Systems Component Test and Maintenance Allowed Outage Times
AT(49-24)-0294	Analysis of Guides and Regulations With Material Control Performance Criteria
AT(49-24)-0332	Study to Develop Intergrated Systems Concepts for Safeguards
AT(49-24)-0388	Security from Internal Threat
NRC-02-77-023	Technical Assistance in Revising the Draft Safeguards Supplement to GESMO
NRC-03-77-059	A Quantitative Approach to Establish LCO for ECCS Outage
NRC-02-77-961	Security Force Collusion
NRC-02-77-185	Analysis of Small-Group Encounter Experience
NRC-02-77-200-03	Support of the Decision on Mixed Oxide Fuel (MOX)
NRC-02-77-201-02 (BOA)	Regulatory Framework for Nuclear Waste Management
NRC-02-78-026	Table S-3 Rulemaking - Expert Testimony
NRC-02-78-045	Study of Consumer Products Containing Radioactive Material
NRC-02-78-049	Analysis of Material Accounting Practices at a Specific Nuclear Facility
NRC-02-78-073	Collusion in Nuclear Fuel Cycle Facility Security Forces
NRC-02-78-077	Material Control and Accounting Performance Rule Development

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CONTRACTS WITH SCIENCE APPLICATIONS, INC.

<u>Contract Number</u>	<u>Title</u>
NRC-03-78-161	Feasibility of Balancing Light Water Reactor Safety Risks Against Occupational Radiation Exposure Risks
NRC-04-78-199	Scoping Study - Spent Fuel Transport - Accidents
NRC-17-78-468	Analysis of British Views on Making Proliferation Resistance Fuels for Breeder and Thermal Reactors
NRC-02-79-028	Development of Improved Techniques for Analyzing Material Control and Accounting Data
NRC-02-79-029	Licensing Assistance Tailings Management Program Technical Evaluation
NRC-02-79-032	Waste Management - Systems Analysis of Shallow Land Burial
NRC-02-79-035	Safeguards for High Level Waste Repositories
NRC-02-79-043-01	Bulk Material Control
NRC-02-79-044	Analysis of LEID Calculations at a Specific Nuclear Facility
NRC-01-80-001	Study of the Parameters that Affect NDA Measurement Response and the Development of Design Specifications to Minimize Their Effect
NRC-02-80-027-01 (BOA)	Licensing Assistance/Environmental Impact Statement Preparations
NRC-02-80-035 (BOA)	Licensing Technical Assistance
NRC-02-80-035-01	Licensing Technical Assistance/License Renewal, Exxon Fuel Fabrication Plant, Richland, Washington
NRC-02-80-035-02	Licensing Technical Assistance/Increase UF ₆ to UO ₂ Conversion Capacity - Combustion Engineering, Inc. Fuel Fabrication Plant, Hematite, Missouri

CONTRACTS WITH SCIENCE APPLICATIONS, INC.

<u>Contract Number</u>	<u>Title</u>
NRC-02-80-035-03	Licensing Technical Assistance/Increase UF ₆ to UO ₂ Conversion Capacity - General Electric Fabrication Plant, Wilmington, North Carolina
NRC-02-80-035-04	Licensing Technical Assistance/Install Incinerator - General Electric Fuel Fabrication Plant, Wilmington, North Carolina
NRC-02-80-035-05	Licensing Technical Assistance/Structural (Seismic) Analysis of Spent Fuel at West Valley, New York
NRC-02-80-035-06	Licensing Technical Assistance/Environmental Assessment Relative to Operations of the Battelle Memorial Institute at West Jefferson, Ohio
NRC-04-80-178	Fuel Cycle Project Review
NRC-19-80-472	Alternative Processes for TMI-2 Kr-85 Removal
NRC-02-81-040	In-Process Control of Special Nuclear Material (SNM)
NRC-02-81-045	Environmental Assessment of Raffinate Study Disposal at the Kerr-McGee Sequoyah Facility, Gore, Oklahoma
NRC-02-81-050	Environmental Assessment of Low Level Waste Storage at TVA Browns Ferry Nuclear Plant in Limestone County, Georgia
NRC-02-81-051	Seminar on SAI Systems Model
NRC-02-81-053	Environmental Assessment for Low Level Waste Storage at TVA Sequoyah Nuclear Plant
NRC-02-81-054	Environmental Assessment Relative to the Union Carbide Application for Renewal of License No. SNM-639

CONTRACTS WITH SCIENCE APPLICATIONS, INC.

<u>Contract Number</u>	<u>Title</u>
NRC-02-81-057	Environmental Assessment of Radioactive Waste Stabilization Project at the Amax Site, Wood County, West Virginia
NRC-02-81-058	Environmental Impact Assessment Relative to the General Electric Company Special Nuclear Material License No. SNM-1097 Renewal Action
NRC-02-81-060	Environmental Impact Assessment Relative to the Combustion Engineering's (CE) Special Nuclear Material License No. SNM-33 Renewal Action
NRC-02-81-064	Environmental Assessment of Low-Level Waste Storage at Pennsylvania Power and Light Company - Susquehanna Steam Electric Station
NRC-02-82-026-07 (BOA)	Environmental Assessments and Impact Statements for Low-Level Waste Disposal Facilities
NRC-03-82-096 (BOA)	Technical Assistance in Support of NRC Reactor Licensing Actions-Program III

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of

LONG ISLAND LIGHTING COMPANY

(Shoreham Nuclear Power Station,
Unit 1)

}
} Docket No. 50-322
} (OL)

CERTIFICATE OF SERVICE

I hereby certify that copies of "NRC STAFF INTERIM REPORT ON INVOLVEMENT OF SAI AND NUS AS CONTRACTORS FOR THE STAFF" in the above-captioned proceeding have been served on the following by deposit in the United States mail, first class, or, as indicated by an asterisk, through deposit in the Nuclear Regulatory Commission's internal mail system, or, as indicated by double asterisks, by express mail on the 2nd day of July, this 1st day of July, 1982:

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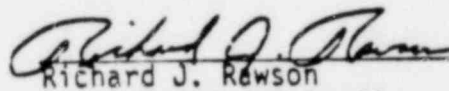
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07/23/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)
LONG ISLAND LIGHTING COMPANY)
(Shoreham Nuclear Power Station,)
Unit 1))

Docket No. 50-322 O.L.

NRC STAFF FINAL REPORT ON INVOLVEMENT OF
SAI AND NUS AS CONTRACTORS FOR THE STAFF

The following constitutes the Staff's response to the conflict of interest questions raised by the Board during the Shoreham proceeding. The Board (Tr. 5348-52) raised the question of whether a conflict of interest exists because Applicant's contractor for its Shoreham probabilistic risk assessment (PRA), Science Applications, Inc. (SAI), has also served as a subcontractor for the Staff on certain aspects of the Staff's systems interaction program. The Board requested a report as to whether SAI's involvement in these matters creates a conflict of interest or a situation where there might not be complete separation between the preparation of an application and the review of that application.

This report will address the general legal framework employed by the NRC for dealing with organizational conflicts of interest and will analyze some of the specific contract work being done for NRC by SAI in the context of the conflicts of interest rules. The implications of this analysis will then be considered as it relates to the issues before the Board. We will conclude with some comments relative to the relationship between NUS (another contractor to the Applicant) and the Staff and some observations

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regarding the applicability of these considerations to the Limerick proceeding. See Tr. 5711.

The problem of organizational conflicts of interest has been a vital concern to the Government for many years.^{1/} The NRC is among several agencies required by law to promulgate formal rules establishing policies and procedures to insure that organizational conflicts of interest are avoided.^{2/}

The NRC receives contract assistance through two different mechanisms: 1) by commercial contracts issued through the Division of Contracts, and 2) by interagency task orders to the Department of Energy (DOE) issued by the program offices.^{3/} Task orders are actually performed by the contractors operating the National Laboratories and by their subcontractors. The procedures utilized to avoid conflicts of interest in a commercial context are administered by the Division of Contracts with assistance by the Office of the Executive Legal Director (ELD) and the program offices

^{1/} Early studies of the subject include H.R. Rep. No. 1121, 86th Cong., 1st Sess (1959) and S. Doc. No. 94, 87th Cong., 2d Sess. (1962) (The "Bell Report").

^{2/} NRC's present rule is found at 41 C.F.R. Part 20. (Attachment 1) This rule was promulgated under Section 170A of the Atomic Energy Act of 1954, as amended.

^{3/} A very small portion of outside assistance is acquired by agreements with agencies other than DOE. Although these actions are not formally covered by the regulations discussed here, they are subjected to the same type of analysis for conflicts of interest as are all other transactions.

When NRC issues a work order to DOE, the DOE field office issues a task to its contractor under the master contract for operation of the national laboratory which is to perform the work.

as necessary. The procedures governing DOE work orders are part of Manual Chapter 1102 (Attachment 2, ¶ 1102-031(1), Exhibit 1, p. 5 and Exhibit 4, p. 4) and are administered by the program offices with assistance by ELD as needed. The policy considerations underlying both 41 C.F.R. Part 20 and Manual Chapter 1102 are identical; they differ only in the mechanics of implementation. The Contracting Officer solicits and evaluates the relevant information in the course of awarding and administering commercial contracts. In the case of DOE work orders, the DOE Contracting Officer does the initial review of the conflicts issue. If this review indicates a potential conflict of interest, the question is referred to the NRC program office for resolution.^{4/}

The policy embodied in these rules is that contractors ought not to be placed in conflicting roles which might bias their judgment in relation to their work for NRC.^{5/} If the contractor is placed in a situation where it is forced to reconcile competing interests, an actual conflict of interest exists, regardless of how those interests may, in fact, be ultimately reconciled. When the business activities of a prospective

^{4/} The program offices are very sensitive to this issue and often indicate relevant lines of inquiry to the DOE operations office at the time a work order is issued or during the course of its execution.

^{5/} The rule also addresses avoidance of unfair competitive advantage. This issue concerns fairness to the business community rather than the reliability of contract work products and thus will not be addressed in this report.

contractor indicate the potential for a conflict of interest,^{6/} the NRC examines the relevant circumstances to see if they provide a realistic motivation for bias in performance of the contract work. If so, one of several paths may be followed: the prospective contractor may be excluded from competing for the contract; a waiver may be processed;^{7/} or other appropriate steps may be taken (such as modification of the proposed scope of work). The key to making the necessary judgment concerning the existence of a conflict of interest lies in a detailed analysis of all relevant facts to see if a realistic motivation for bias can be found. Motivations for bias which are remote or speculative are not a proper basis for action in this area.^{8/}

Once a contract is awarded, contract clauses require the contractor to advise the NRC of any other work the contractor is considering which might present a conflict of interest. The contractor is prohibited from

^{6/} The term "potential conflict of interest" is used to signify those situations which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

^{7/} The conflict of interest rule recognizes that the existence of a conflict does not necessarily foreclose a contract. Provisions are made in the rule for "waiving" the conflict when such action "is in the best interest of the United States". 41 C.F.R. 20-1.5411. These provisions are statutorily authorized by Section 170A of the Atomic Energy Act of 1954, as amended. A document analogous to a waiver is processed for DOE work orders when circumstances indicate such action is appropriate.

^{8/} Columbia Research Corp., B-185843, July 1, 1976, 76-2 CPD ¶ 2. (Attachment 3)

undertaking such work until the NRC has examined the circumstances and decided either that no conflict exists or that a waiver is appropriate. The NRC may also bar the contractor from entering into other contracts if they would present a conflict of interest.

The mere fact that a company may work both for the NRC and a utility is not, in itself, a conflict of interest. If a contractor provides advice in the same technical area or on the same matter to the NRC and to an organization regulated by the NRC, the potential for conflict of interest becomes greater and the circumstances must be examined more closely. Even in this case, however, if the work being done for the regulated party does not bear any necessary technical relationship to the work requested by the NRC, a conflict of interest does not result. In such cases it is acceptable for a contractor to support a licensee or applicant in one proceeding before the NRC and to support the NRC in a different proceeding because there is no risk that the information supplied to the NRC might be biased.

The above general principles are applied in all cases where the NRC receives contract assistance. The following analysis treats the specific instance of SAI and its work relative to the issues in the Shoreham proceeding.

Intervenors' Contention 7B alleges that neither the Applicant nor the Staff has applied a systematic methodology in the safety classification of structures, systems and components and in the analysis of systems interactions. Intervenors cited particular methodologies including fault tree/event tree logic and stated that, absent such a methodological approach, compliance with the Commission's regulations

could not be shown. Pursuant to this contention there has been extended litigation on the subject of the PRA, which utilizes fault tree/event tree methodology, voluntarily undertaken for Shoreham and on its treatment of systems interaction issues.

SAI has provided, or is in various stages of providing, contract support to the NRC on a number of matters related to systems interaction. This support is usually in the role of a subcontractor to a national laboratory. SAI had input into NUREG/CR-1859, Systems Interaction: State-of-the-Art Review and Methods Evaluation as a subcontractor to Lawrence Livermore Laboratories (LLL). The title of this report is self-explanatory. SAI has also been involved, again as a subcontractor to LLL, in the review of the Indian Point Unit 3 systems interaction study. This project has three phases: (1) to develop a recommended methodology for the study; (2) assist NRC with an audit and walk-through of the plant; and (3) develop a systems interaction audit plan for interconnected systems. Phase (1) has been completed. SAI recommended primary reliance be placed on PRA methods for the systems interaction study. The Staff did not adopt SAI's recommendations under this phase.^{9/} Phases (2) and (3) have not been performed yet. SAI is assisting in another project for the review of selected Light Water Reactors (LWR's) for systems interactions. This project consists of several tasks which include: assessment of general guidance for

^{9/} See "Meeting Summary and Status Report For Meeting with PASNY/EBASCO on Proposed IP-3 Systems Interaction Program" (July 24, 1981) attached to NRC Staff Testimony of Themis P. Speis, [et al.] . . . on Safety Classification and Analysis of Structures, Systems and Components, ff Tr. 6357.

application to specific plants; guidance in applying the selected methods to two plants; documentation of matrix based diagraph procedures;^{10/} and demonstration of the selected method by having a contractor apply the method to a selected plant. The first phase of this project is completed, the others are yet to be done.

In addition to the work done by SAI for the Staff on systems interactions, SAI has also performed services for the Staff regarding PRA's. As a subcontractor to Brookhaven National Laboratory (BNL), SAI is helping to write the National Reliability Evaluation Program (NREP) PRA procedures guide. SAI is serving as a subcontractor to Sandia for a detailed review of the Zion and Indian Point risk studies. Sandia is also considering using SAI to review a number of PRA's with a view toward extracting any possible generalizations. To date, SAI has not been formally retained for this effort. The Staff has also been considering using SAI to study partitioning of fault trees so as to identify systems interactions. This contract has not been consummated as yet.

Having examined the various undertakings by SAI, it is necessary to ask whether they give rise to a conflict of interest. In a very strict sense it could be said that SAI's PRA work for NRC licensees, such as the Applicants in Shoreham and Limerick, could place SAI in a position where it might be motivated to bias its advice to the NRC under the above

^{10/} This is a formal mathematical treatment which consists of transforming graphs of systems into matrices and then manipulating the matrices so as to discover properties of the system.

contracts. SAI has taken the position in Shoreham that PRA is the preferred methodology for purposes of systems interaction analyses.^{11/} Having taken this position on behalf of a licensee, SAI might be regarded as being motivated to provide the same advice to the Staff so as not to compromise the position it has taken for the licensee.

In assessing how realistic these motives for bias actually are it should be noted that both within the NRC and within the industry there is a spectrum of views on the merits of PRA as a methodology for performing systems interactions analyses. It still seems, however, that SAI has an interest in not developing results which would adversely affect its existing PRA's.

The primary question is what effect, if any, the SAI position that PRA methodology should be employed in conducting systems interactions analyses might have had on the Staff's position in the Shoreham proceeding. At the outset it should be noted that the Staff has not relied upon the Shoreham PRA as a basis for licensing. Nor has the Staff relied upon any input from SAI in formulating its position on the adequacy of the consideration of systems interaction in the Staff's present deterministic analyses. In fact, the Staff has specifically differed from SAI's views on the relationship of PRA's and systems interaction and has brought this to the Board's attention.^{12/} Thus, regardless of whether there is a

^{11/} See generally, "Testimony of Edward T. Burns, [et al.] . . . Regarding Suffolk County/Shoreham Opponents Coalition Contention 7B and Shoreham Opponents Coalition Contention 19B", ff. Tr. 4346, at 3.

^{12/} See footnote 9, supra.

motive for bias on the part of SAI, or even if there has been bias in fact in SAI's work for the NRC, it does not appear to be material to the issues in the Shoreham proceeding.

The issue in the context of a licensing hearing is to determine whether actual biased input has been presented to the Staff and, if so, whether the Staff has relied upon such input. As stated above, the Staff believes that its position in this proceeding has not been affected by any work done for it by SAI. The Staff agrees with Applicant^{13/} that such questions as might exist are properly a question of credibility to be resolved through examination of the SAI witnesses. In the Staff's view, there is no need for such an inquiry in the Shoreham proceeding.

The Staff has also undertaken to review NUS' consultant activities for the Staff and for the Applicant in light of NUS' services to the Applicant as a peer reviewer of the Shoreham PRA. Based upon our review to date, we have identified only one contract that might be considered relevant and material to the PRA and systems interactions issues in Shoreham. That contract was for the conduct of workshops for the NRC Staff on WASH-1400, The Reactor Safety Study.^{14/} As the workshops

^{13/} See LILCO's Response to the Board's Request for Information Concerning Science Applications, Inc., July 1, 1982.

^{14/} JBF Associates of Knoxville, Tennessee was also involved in the conduct of these workshops. Additionally, NUS providing "Expert Opinion on the Use of Probabilistic Risk Assessment (PRA) and Safety Goals" to the Office of Policy Evaluation, which serves in an advisory capacity to the Commission. If the Staff determines as a result of its further review that there are any other consultation services being performed for it by NUS in the areas of PRA or systems interaction which may be relevant and material to the Shoreham and Limerick proceedings, we will notify the Board and parties to those proceedings.

were conducted for the purpose of educating the Staff on PRA methodology and were not structured in such a way as to advocate the use of one type or another of specific analysis methods, the Staff does not perceive any motive NUS would have had to give the Staff biased advice in the workshops. In any event, the Staff has not offered testimony in this proceeding on the results of the Shoreham PRA and it does not, therefore, appear that NUS' views on PRA have been reflected in the Staff's position in the proceeding.

The situation with regard to the Limerick proceeding is somewhat different than that examined above. There, the Staff requested the Applicant, Philadelphia Electric Company (PECo), to prepare a PRA. PECo has used SAI as a principal consultant in the preparation of the PRA. Unlike Shoreham, however, the Staff is conducting a review of the Limerick PRA and does expect to present the results of its review in evidence at the Limerick hearings. The Staff has arranged with Brookhaven National Laboratory (BNL) for the conduct of this review and BNL does not have a subcontract with SAI for any aspect of that review.

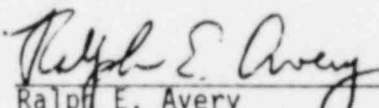
There does not, therefore, appear to be an immediate conflict of interest or lack of separation between preparation of an application and the review thereof in the Limerick proceeding in the sense of SAI doing work for both the Staff and PECo on PRA or systems interaction. The same relationships, however, which Staff believes may present a motive for bias on SAI's part in the Shoreham proceeding would also be relevant to the Limerick proceeding. As with Shoreham, Staff believes that any issue will be one of witness credibility, which can be explored through voir dire and cross examination at the Limerick hearings.

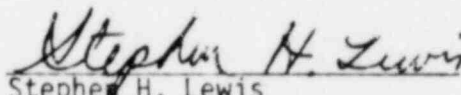
NUS is also providing services to PECO as a peer reviewer of the Limerick PRA, but is not assisting BNL or the Staff in reviewing the Limerick PRA. We have addressed above the consulting activities which NUS has conducted for the Staff in the areas of PRA and systems interactions. At the present time, we do not perceive any organizational conflict of interest based upon these facts and do not believe the Staff's PRA testimony in that proceeding will be influenced in any significant way by the views of NUS as to the conduct of a review of a PRA.

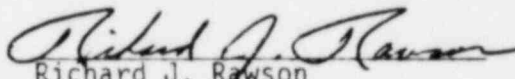
On the basis of the review it has conducted, the Staff does not believe the information as to SAI's (and NUS') consultant services for the Staff and for the Applicant is relevant and material to the position it has taken on PRA and systems interactions before the Shoreham Licensing Board. See generally Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2, and 3), ALAB-677, 15 NRC ____ (1982); Duke Power Co. (McGuire Nuclear Station, Units 1 and 2), ALAB-143, 6 AEC 623, 625 (1973). The Staff agrees that the subtle interrelationships between the services performed by consultants for the nuclear industry and the NRC, particularly in such interdisciplinary areas as PRA and systems interactions analysis, merit scrutiny and that all parties to NRC proceedings should be under an obligation to disclose to the other parties and to the presiding board those interrelationships of which they are aware which they believe to be relevant and material to the proceeding in question. With respect to the Limerick proceeding, Staff counsel was not aware of SAI's consultant activities for the Staff at the time of the January 1982 Special Prehearing Conference at which the proposed PRA contentions were extensively discussed. Although Staff counsel for

Limerick believe they had seen references to SAI services to the Staff on systems interactions prior to the time the issue was raised in Shoreham, Staff counsel did not focus upon the possible significance of that information to the independence of the Staff's review of the Limerick PRA. In any event, pursuant to the request of the Shoreham Licensing Board (two of whose members also serve on the Limerick Licensing Board), we will serve copies of this report and other relevant pleadings and transcript passages on the Licensing Board and parties in the Limerick proceeding.

Respectfully submitted,


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Dated at Bethesda, Maryland
this 23rd day of July, 1982

07/23/82

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of
LONG ISLAND LIGHTING CO.
(Shoreham Nuclear Power Station,
Unit 1)

)
)
)

Docket No. 50-322 (OL)

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the above-captioned matter. In accordance with 10 C.F.R. § 2.713(a), the following information is provided:

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United States Supreme Court
Name of Party: NRC Staff

Respectfully submitted,

Stephen H. Lewis
Stephen H. Lewis
Counsel for NRC Staff

Dated in Bethesda, Maryland
this 23 day of July, 1982

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

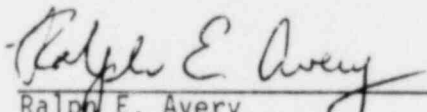
BEFORE THE ATOMIC SAFETY AND LICENSING BOARD

In the Matter of)	
Long Island Lighting Company)	Docket No. 50-322 O.L.
(Shoreham Nuclear Power Station, Unit 1))	

NOTICE OF APPEARANCE

Notice is hereby given that the undersigned attorney herewith enters an appearance in the captioned matter. In accordance with §2.713 of the Commission's Rules of Practice, the following information is provided:

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Name of Party:	U.S. Nuclear Regulatory Commission Washington, D.C. 20555


Ralph E. Avery
Counsel for the NRC Staff

Dated at Bethesda, Maryland
this 23rd day of July, 1982.

PART 20-1—GENERAL

Subpart 20-1.54—Contractor
Organizational Conflicts of Interest

Sec.

- 20-1.5401 Scope and policy.
- 20-1.5402 Definitions.
- 20-1.5403 Criteria for recognizing contractor organizational conflicts of interest.
- 20-1.5404 Representation.
- 20-1.5405 Contract clauses.
- 20-1.5405-1 General contract clause.
- 20-1.5405-2 Special contract provisions.
- 20-1.5406 Evaluation, findings, and contract award.
- 20-1.5407 Conflicts identified after award.
- 20-1.5408 [Reserved]
- 20-1.5409 [Reserved]
- 20-1.5410 Subcontractors.
- 20-1.5411 Waiver.
- 20-1.5412 Remedies.

AUTHORITY: Sec. 8, Pub. L. 95-601, adding sec. 170A to Pub. L. 83-703, 88 Stat. 919, as amended (42 U.S.C. ch. 14).

§ 20-1.5401 Scope and policy.

(a) It is the policy of the U.S. Nuclear Regulatory Commission (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 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 so as 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 the policy. NRC contracting and program officials must be alert to other situations which may warrant application of this policy guidance. The ultimate test is: 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 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 such agreements, as appropriate.

§ 20-1.5402 Definitions.

(a) "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.

(b) "Research" means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

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

(d) "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 the contractor to be given access to information which has not been made available to the public or proprietary information. Such services typically include assistance in the preparation of program plans; and preparation of preliminary designs, specifications, or statements of work.

(e) "Contract" means any contract, agreement, or other arrangement with the NRC except as provided in § 20-1.5401(c).

(f) "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 is a party to a contract with the NRC.

(g) "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 (41 CFR 1-1.605-1(e)).

(h) "Subcontractor" means any subcontractor of any tier which performs work under a contract with the NRC except subcontracts for supplies

and subcontracts in amounts of \$10,000 or less.

(i) "Prospective contractor" or "offeror" means any person, firm, unincorporated association, joint venture, partnership, corporation, or affiliates thereof, including its chief executive, directors, key personnel (identified in the proposal), proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

(j) "Potential conflict of interest" means that a factual situation exists that suggests (indicates) 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 which merit investigation prior to contract award in order to ascertain whether award would give rise to an actual conflict or which must be reported to the contracting officer for investigation if they arise during contract performance.

§ 20-1.5403 Criteria for recognizing contractor organizational conflicts of interest.

(a) General. Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist: (1) Are there conflicting roles which might bias a contractor's judgment in relation to its work for the NRC? (2) May the contractor be given an unfair competitive advantage based on the performance of the contract? The ultimate determination by NRC as to whether organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts disclosed and the work to be performed. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships which might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements which call for the rendering of advice, consultation or evaluation activities, or similar activities that lay direct groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs.

(b) Situations or relationships which may give rise to organizational conflicts of interest. (1) The offeror or contractor shall disclose information concerning relationships which may give rise to organizational conflicts of interest under the following circumstances:

(i) Where the offeror or contractor provides advice and recommendations

to the NRC in a technical area in which it is also providing consulting assistance in the same area to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter in 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 the products or services of another entity where the offeror or contractor has been substantially involved in their development or marketing.

(iv) Where the award of a contract would otherwise 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 may otherwise 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 provisions such as provided in § 20-1.5405-2 in the following circumstances:

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

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using such 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 which 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 otherwise 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 may otherwise 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) Example. The XYZ 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 XYZ Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the XYZ 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 XYZ Corp. because it would be placed in a position in which its judgment could be biased in relationship to its work for NRC. Since there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2) Example. The ABC Corp., in response to a RFP, proposes to perform certain analyses of a reactor component which are 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 would 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 during the performance of the NRC contract with the private sector which could create a conflict. 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) Example. As a result of operating problems in a certain type of commercial nuclear facility, it is imperative that NRC secure specific data on various operational aspects of that type of plant so as to assure adequate safety protection of the public. Only one manufacturer has extensive experience with that type of plant. Consequently, that company is the only one with whom NRC can contract which can develop and conduct the testing programs required to obtain the data in reasonable time. That company has a definite interest in any NRC decisions that might result from the data produced because those decisions affect the reactor's design and thus the company's costs.

Guidance. This situation would place the manufacturer in a role in which its judgment could be biased in relationship to its work for NRC. Since the nature of the work required is vitally important in terms of NRC's responsibilities and no reasonable alternative exists, a waiver

of the policy may be warranted. Any such waiver shall be fully documented and coordinated in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4) Example. The ABC Co. submits a proposal for a new system for evaluating a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Co. has advised 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 Co. provided that the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless such information has been reported to NRC. Information which is reported to NRC by contractors will normally be disseminated by NRC to others so as to preclude an unfair competitive advantage that might otherwise accrue. When NRC furnishes information to the contractor for the performance of contract work, it shall not be used in the contractor's private activities unless such 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 under the contract is proposed to be used.

(5) 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 § 20-1.5403(b)(1)(i), 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. The work for others clause of § 20-1.5405-1(c) would preclude ABC Corp. from accepting work during the term of the NRC contract which could create a conflict of interest.

(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 such 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.

§ 20-1.5404 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.

(b) Representation procedure. The following organizational conflicts of interest representation provision shall be included in all solicitations and unsolicited proposals 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 shall also apply 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 provision has previously been submitted with regard to the contract being modified, only an updating of such statement shall be required.

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 () or does not () involve situations or relationships of the type set forth in 41 CFR § 20-1.5403(b)(1).

(c) Instructions to offerors. The following shall be included in all NRC solicitations: (1) If the representation as completed indicates that situations or relationships of the type set forth in 41 CFR 20-1.5403(b)(1) are involved, or the contracting officer otherwise determines that potential organizational conflicts exist, the offeror shall provide a statement in writing which describes in a concise manner all relevant facts bearing on his representation to the contracting officer. If the contracting

officer determines that organizational conflicts exist, the following actions may be taken: (i) Impose appropriate conditions which avoid such conflicts, (ii) disqualify the offeror, or (iii) determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of § 20-1.5411.

(2) The refusal to provide the representation required by § 20-1.5404(b) or upon request of the contracting officer the facts required by § 20-1.5404(c), shall result in disqualification of the offeror for award. The nondisclosure or misrepresentation of any relevant interest may also result in the disqualification of the offeror for award; or if such nondisclosure or misrepresentation is discovered after award, the resulting contract may be terminated. The offeror may also be disqualified from subsequent related NRC contracts and be subject to such other remedial actions provided by law or the resulting contract.

(d) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work from the statements of work contained in a RFP unless the RFP specifically prohibits such 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 work to the detriment of the competitive posture of the other offerors, the proposal must be rejected as unacceptable.

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

§ 20-1.5405 Contract clauses

§ 20-1.5405-1 General contract clause

All contracts of the types set forth in § 20-1.5404(b) shall include the following clauses:

(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 interest (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 herein shall 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.* Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forgo 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 who are employed full time under this contract and employees designated as key personnel, if any, under this contract abide by the provision of this clause. If the contractor believes with respect to itself or any such 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.

(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 shall 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 for convenience if it deems such termination to be in the best interests of the government.

(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 such information for any private purpose until the information has been released to the public; (ii) compete for work for the Commission based on such information for a period of six (6) months after either the completion of this contract or the release of such information to the public, whichever is first; (iii) submit an unsolicited proposal to the government based on such information until one year after the release of such information to the

public, or (iv) release the information without prior written approval by the contracting officer unless such 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 such information in accordance with restrictions placed on use of the information.

(3) The contractor shall have, subject to patent and security provisions of this contract, the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) *Subcontracts.* Except as provided in 41 CFR 20-1.5402(h), the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms "contract," "contractor," and "contracting officer," shall be appropriately modified to preserve the government's rights.

(g) *Remedies.* For breach of any of the above proscriptions or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations as necessarily imply bad faith, the government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies as may be permitted by law or this contract.

(h) *Waiver.* A request for waiver under this clause shall be directed in writing through the contracting officer to the Executive Director for Operations (EDO) in accordance with the procedures outlined in § 20-1.5411.

20-1.5405-2 Special contract provisions.

(a) If it is determined from the nature of the proposed contract that organizational conflicts of interest exist, the contracting officer may determine that such conflict can be avoided or after obtaining a waiver in accordance with § 20-1.5411, neutralized through the use of an appropriate special contract provision. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any such restriction. These provisions include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related

nonproduction contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of his 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.

(b) The following additional contract clause may be included as section (i) in the clause set forth in § 20-1.5405-1 when it is determined that award of a follow-on contract would constitute an organizational conflict of interest.

(i) Follow-on effort. (1) 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 shall 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 such products or services.

(2) If the contractor under this contract prepares a complete or essentially complete statement of work or specifications, the contractor shall be ineligible to perform or participate in the initial contractual effort which is based on such statement of work or specifications. The contractor shall not incorporate its products or services in such statement of work or specifications unless so directed in writing by the contracting officer, in which case the restriction in this subparagraph shall not apply.

(3) Nothing in this paragraph shall preclude the contractor from offering or selling its standard commercial items to the government.

§ 20-1.5406 Evaluation, findings, and contract award.

The contracting officer will evaluate all relevant facts submitted by an offeror pursuant to the representation requirements of § 20-1.5404(b) and other relevant information. After evaluating this information against the criteria of § 20-1.5403, a finding will be made by the contracting officer whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that conflicts of interest exist, then the contracting officer shall either:

(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 § 20-1.5411.

§ 20-1.5407 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor, the contracting office determines that such conflicts do, in fact, exist and that it would not be in the best interests of the government to terminate the contract as provided in the clauses required by § 20-1.5405, the contracting officer will take every reasonable action to avoid, eliminate, or, after obtaining a waiver in accordance with § 20-1.5411, neutralize the effects of the identified conflict.

§ 20-1.5408 [Reserved]

§ 20-1.5409 [Reserved]

§ 20-1.5410 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement in accordance with § 20-1.5404(b) from subcontractors and consultants. The contracting officer shall require the contractor to include contract clauses in accordance with § 20-1.5405 in consultant agreements or subcontracts involving performance of work under a prime contract covered by this subsection.

§ 20-1.5411 Waiver

(a) In the first instance, determination with respect to the need to seek a waiver for specific contract awards shall be made by the contracting officer with the advice and concurrence of the program office director and the Office of Executive Legal Director. Upon the recommendation of the contracting officer, and after consultation with the Office of the General Counsel, the EDO 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) Such action shall be 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; and (3) contractual and/or technical review and supervision methods can be employed by NRC to neutralize the conflict. For any such waivers, the justification and approval documents shall be placed in the Public Document Room.

§ 20-1.5412 Remedies.

In addition to such other remedies as may be 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.

Dated at Washington, D.C. this 27th day of March 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chalk,

Secretary of the Commission.

[FR Doc. 79-0724 Filed 3-30-79; 8:45 am]

BILLING CODE 7590-01-M

INTERSTATE COMMERCE COMMISSION
49 CFR Part 1033

Car Service; Missouri Pacific Railroad Co. Authorized To Operate Over Tracks of the Atchison, Topeka, and Santa Fe Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 4 to Service Order No. 1269.

SUMMARY: The Missouri Pacific's line between Winfield, Kansas, and Arkansas City, Kansas, has been damaged by flooding and is inoperable. Service Order No. 1269 authorizes the Missouri Pacific to operate over parallel tracks of the Atchison, Topeka and Santa Fe between those points in order to provide continued railroad service to shippers served by the undamaged portions of this line. Service Order No. 1269 is published in full in volume 42 of the Federal Register at page 34883. Amendment No. 4 extends this order until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m., March 31, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 26, 1979.

Upon further consideration of Service Order No. 1269 (42 FR 34883, 54294; 43 FR 14476 and 44586), and good cause appearing therefor:

It is ordered, that Service Order No. 1269, § 1033.1269 **MISSOURI PACIFIC RAILROAD COMPANY AUTHORIZED**

TO OPERATE OVER TRACKS OF THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY is amended by substituting the following paragraph (c) for paragraph (c) thereof:

(c) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homma, Jr.,

Secretary.

[S.O. No. 1290, Amdt. No. 4]

[FR Doc. 79-0646 Filed 3-30-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

Car Service; The Chesapeake and Ohio Railway To Operate Over Tracks of Consolidated Rail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 3 to Service Order No. 1290.

SUMMARY: Service Order No. 1290 authorizes the Chesapeake and Ohio Railway to operate over tracks of Consolidated Rail Corporation between Hallett, Ohio, and Walbridge, Ohio, to avoid congestion on the tracks of the Toledo Terminal Railroad Company formerly used by the Chesapeake and Ohio to traverse this territory. Service Order No. 1290 is published in full in volume 42 of the Federal Register at page 63890. Amendment No. 3 to Service Order No. 1290 extends this order until modified or vacated by order of this Commission.

DATES: Effective 11:59 p.m., March 31, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT:

J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided March 27, 1979.

Upon further consideration of Service Order No. 1290 (42 FR 63890, 43 FR 14021 and 45868), and good cause appearing therefor:

It is ordered, that Service Order No. 1290, § 1033.1290 **The Chesapeake and Ohio Railway Company Authorized To Operate Over Tracks of Consolidated Rail Corporation** be, and it is hereby, amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., March 31, 1979.

(49 U.S.C. (10304-10305 and 11121-11126).)

A copy of this amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homma, Jr.,

Secretary.

[S.O. No. 1290, Amdt. No. 3]

[FR Doc. 79-10028 Filed 3-30-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

Car Service; Lenawee County Railroad Co., Inc., To Operate Over Tracks of Consolidated Rail Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 5 to Service Order No. 1321.

SUMMARY: The Lenawee County Railroad operates two separate lines of railroad in the vicinity of Grosvenor, Michigan. Service Order No. 1321 authorizes the Lenawee County Railroad to operate over 3.6 miles of a line of the

Attachment 2

Form NRC-489
(1-76)

U. S. NUCLEAR REGULATORY COMMISSION NRC MANUAL TRANSMITTAL NOTICE

CHAPTER NRC-1102 PROCEDURE FOR PLACEMENT OF WORK
WITH THE DEPARTMENT OF ENERGY

SUPERSEDED:

Number	Date
Chapter _____	_____
Page _____	_____
_____	_____
_____	_____
Appendix _____	_____
NRC Bulletin 1102-6 2/24/78	

TRANSMITTED:

Number	Date
TN <u>1100-6</u>	_____
Chapter <u>NRC-1102</u>	<u>10/2/79</u>
Page _____	_____
_____	_____
_____	_____
Appendix _____	_____

REMARKS:

The present Bulletin 1102 is revised to clarify several administrative areas where questions have resulted since February 1978. This was based on both NRC and DOE suggestions. Additionally, the format was revised to standard manual chapter style.

Planning and mutual notification requirements are expanded to support both long range planning and specific project or task action. This includes early notification of future year plans as well as more detailed cost and schedule estimates, and adds requirement for notification when funding reaches the 90% level or is expected to result in any overrun or short funding situation. Cost detail reporting is expanded.

The internal coordination process within NRC is revised to insure that all program offices concur in each project prior to submittal to a DOE laboratory. This review will include the NRC Form 173, the statement of work, and the proposal forwarded to the sponsoring office.

A method is included for immediately starting work on urgent projects, such as TMI support, prior to formal documentation of all steps.

An added statement clarifies the applicability of the 1102 procedure to DOE GOGO's as well as GOCO laboratories.

Technical reporting requirements are expanded to include a requirement for preparation of an abstract and executive summary. Procedures for reports approval prior to publication, handling, printing, and distribution are expanded, clarified, and standardized. The use of the NRC Form 426A is added.

Published in advance of incorporation in
NRC Manual Chapter 1102
File and retain in Manual until superseded.

UNITED STATES NUCLEAR REGULATORY COMMISSION
NRC MANUAL

BULLETIN

NO. 1102-17

DATE: November 25, 1981

SUBJECT: PROCEDURE FOR PLACEMENT OF WORK WITH THE DEPARTMENT OF ENERGY -
REVISION

The following changes clarify administrative practices to help assure compliance with 31 U.S.C. 665, Section 3679 ("The Anti-Deficiency Act").

1. Section 1102-03-Responsibilities and Authorities

Subsection 031-Directors of Offices:

The following subelement will be added:

"o) coordinate and obtain Division of Budget and Resources Analyses certification of funding availability for EDO and Commission offices prior to placement of work at DOE."

2. Section 1102-04-Basic Requirements

A. Subsection 043-Issuing Authority:

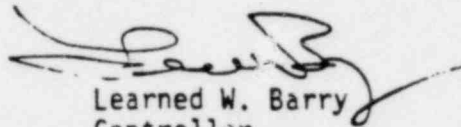
The following sentence will be added to the current paragraph:

"Offices under the EDO and Commission allotments must obtain a certification of availability of funds from the Director, Division of Budget and Resources Analyses, or his delegate."

B. Subsection 047-Exhibits:

The following sentence will be added to the "Remarks" subsection of Exhibit No. 3 - Sample NRC Form 173 and Instructions for Preparation:

"For EDO and Commission offices, certification as to the availability of funds cited in the order must be affixed to the Form 173 by the designated official in the Division of Budget and Resources Analyses, Office of the Controller."



Learned W. Barry
Controller

U.S. NUCLEAR REGULATORY COMMISSION
NRC MANUAL

Volume: 1000 Finance
Part : 1100 Accounting

CON

CHAPTER 1102 PROCEDURE FOR PLACEMENT OF WORK
WITH THE DEPARTMENT OF ENERGY

1102-01 COVERAGE

This chapter covers the responsibilities, authorities, and procedures for placing work with the U.S. Department of Energy (DOE) and its contractors, and (a) obligating NRC funds on a reimbursable basis, (b) paying for such work, and (c) preparing and issuing reports on the work. It represents the actions necessary to implement Section III and portions of Section VII of the DOE-NRC memorandum of understanding dated February 24, 1978.

This chapter has been coordinated with and indicated to be acceptable to the U.S. Department of Energy. It does not cover procedures for placement of work with other government agencies or outside contractors.

1102-02 OBJECTIVES

021 To provide a standardized procedure for requesting and authorizing work to be performed by DOE under interagency agreement on a reimbursable basis. It also provides a framework for program control, administration, monitoring, and closeout of approved work.

022 To provide terms and conditions for work to be performed by DOE.

1102-03 RESPONSIBILITIES AND AUTHORITIES

031 Directors of Offices:

- a. cooperate with DOE in long-range planning so as to ensure that both agencies anticipate the magnitude of funding, allocation of resources, and timing of events necessary to conduct interagency activities in accordance with the DOC-NRC Interagency Agreement on Institutional Planning System, dated August 18, 1978.
- b. issue requests for work proposals from DOE for research or technical assistance work (program support) to be performed at DOE facilities.
- c. evaluate the proposals; determine that the documents are technically adequate and that budgetary authority exists.

Approved: October 2, 1979

PROCEDURE FOR PLACEMENT OF WORK
WITH THE DEPARTMENT OF ENERGY

- d. prepare, coordinate, authorize, sign and issue NRC Forms 173, "Standard Order for DOE Work" (SOEW), and accompanying statements of work. This authority may be redelegated with written notification provided to the Director, Division of Accounting.
- e. establish, with regard to each research or technical assistance program, overall and specific plans; monitor and assess progress; followup to ensure that program results are properly analyzed, evaluated, and disseminated; additionally, insure that adequate feedback exists for the incorporation of results into the Commission's confirmatory assessment program and other regulatory activities. Keep the DOE operations offices and the Safety Engineering Division (EV/SED) informed of appropriate activities, including prior notification of planned program reviews and visits.
- f. coordinate and obtain the NRC Division of Security facility approval prior to placement of classified work at DOE facilities and notify the Division of Security of the completion of classified work.
- g. ensure appropriate clauses are included in the Standard Order for DOE Work regarding the private use and protection of proprietary and sensitive unclassified government information.
- h. during the course of work, develop any additional listings, reports, or other information required for the completion of NRC directed programs or tasks.
- i. provide timely funding or guidance to permit continuance of on-going programs which encompass more than one fiscal year.
- j. formally notify DOE operations offices of any on-going programs the sponsoring office intends to phase out or terminate as soon as such intent is known.
- k. review all billings certified by DOE in accordance with the scope of work and the SOEW, and approve for payment by signature on transmittal memorandum to the Division of Accounting. This responsibility may be redelegated with the Division of Accounting advised.
- l. assure that the proposed work shall be in accordance with appropriate conflict of interest policy and regulations.
- m. coordinate and obtain Division of Automatic Data Processing Support approval prior to placement of tasks limited to computer support for NRC offices at DOE facilities.

- n. maintain supporting data justifying placement of tasks with DOE versus commercial contracting which indicates the basis of the placement.

032 The Office of the Controller:

- a. carries out implementation of the NRC-DOE Memorandum of Understanding through Management Directives, publication of Bulletins, and guidance memoranda to NRC program offices.
- b. provides consolidated long-term planning data and annual budgetary information to meet both DOE and NRC planning requirements.

033 Director, Division of Budget:

- a. issues allotments and approves financial plan information to NRC program offices.
- b. maintains official allotment records for EDO and Commission offices and certifies funding availability for these offices.
- c. provides FIN listing to the Division of Accounting and reviews the applicable program office financial summary data.
- d. provides advice and guidance to other NRC offices as required for formulation of budget estimates.
- e. provides financial program status analyses to the Executive Director for Operations and the Commission as required.
- f. maintains and files copies of all NRC Standard Orders for DOE Work with accompanying statements of work and laboratory proposals. Reviews for proper office coordination and duplication of effort.

034 Director, Division of Accounting:

- a. records obligations against those SOEW's that have been accepted by DOE and forwarded to the Division of Accounting assuring use of proper accounting citations, FIN, and Budget and Reporting Classifications (B&R).
- b. records costs as reported by DOE through receipt of their monthly Financial Information System (FIS) tape.
- c. receives all billings from DOE for work performed for NRC, transmits billings to appropriate NRC program offices for review and approval signature; upon receipt thereof, certifies correct for payment through the U.S. Treasury.
- d. monitors day-to-day status of not-yet-accepted or rejected SOEW's and provides information to NRC program offices.

- e. maintains records of outstanding DOE uncosted obligations and unpaid billings and provides reports to NRC program offices.
- f. resolves day-to-day problems associated with billings through direct contact with DOE operations offices (such as billings that do not reflect costs as reported through the FIS, incorrect or invalid FIN, etc.).
- g. transmits to the Property and Supply Branch, ADM, and the program offices copies of all itemized receiving reports furnished by DOE for equipment and related material funded by NRC.

035 Director, Division of Security:

- a. provides advice and assistance to NRC program offices on the placement of classified work at DOE facilities.
- b. obtains facility approval for classified work from the appropriate DOE Operations Office Security Organization and notifies the NRC program office of such approval.
- c. maintains master facility register for all NRC classified interests at DOE facilities.

036 Director, Division of Technical Information and Document Control:

- a. develops and issues instructions in conjunction with the NRC program offices and DOE/OTI for the preparation of reports.
- b. prints or duplicates reports as specified by the terms and conditions of the Standard Order for DOE Work.
- c. makes physical distribution of all reports required by the SOEW that are to be made publicly available.

037 Director, Division of Automatic Data Processing Support:

- a. provides advice and assistance to NRC program offices in obtaining computer services at DOE facilities.
- b. obtains DOE facility approval for computer services to NRC staff.
- c. prepares requests for work proposals and evaluates DOE proposals for computer services to NRC staff.
- d. provides coordinated hardware and consulting software support services to NRC offices obtaining computer services at DOE facilities.

PROCEDURE FOR PLACEMENT OF WORK
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NRC-1102-04

1102-04 BASIC REQUIREMENTS

041 Request for Work Proposals from DOE for New or Continuing Programs. In the formulation of their annual budget, DOE Operations Offices submit work proposals to DOE Headquarters to support the funding level requested in their budgets for both new efforts and continuing work. These work proposals are received in May of each year for work in the next fiscal year. For efforts in support of the NRC, copies of the proposals are sent directly to the NRC office concerned, with information copies sent to the DOE Safety Engineering Division (EV/SED). These proposals may be requested or submitted at any time during the year.

Some NRC offices use these proposals in formulating their budget and issue orders to DOE to perform the work contained in the work proposal. Other NRC offices rely primarily or completely upon work proposals submitted by DOE in response to requests from the NRC.

Exhibit 1 shows how to prepare a request for work proposed to DOE. It indicates the minimum information required for all requests (additional information may be requested when needed). A sample transmittal letter is also included in the Exhibit. Note: Copies must be provided to Headquarters, DOE, EV/SED(2).

042 Ordering Work to be Performed by DOE. After evaluation of an appropriate work proposal from DOE, work shall be authorized by issuance of an NRC Form 173, "Standard Order for DOE Work," as illustrated in Exhibits 2, 3 and 4. When the work is being initiated in response to user requirements, the office originating the user requirement will be consulted during the preparation of the SOEW.

The standard transmittal letter (Exhibit 2) should be addressed to the Manager of the appropriate DOE Operations Office (and his designee when notified in advance) and include the three paragraphs shown in the Exhibit. An information copy should be sent to the Safety Engineering Division (EV/SED) at DOE Headquarters as well. The transmittal letter may include additional information, but it should be noted that the transmittal letter is not a part of the order.

To insure projects are properly reviewed and coordinated within NRC, each program office (RES, NRR, NMSS, IE, SD) will provide copies of standard transmittal letters with any attachments to all other program offices (including International Programs and State Programs as appropriate) for all projects of \$100K or greater. It will remain the individual responsibility of the issuing office director to determine the degree of coordination needed for projects of less than \$100K. This procedure will afford all program offices the opportunity to comment or concur as they feel necessary on the higher value projects. This concurrence may be obtained concurrently (vice sequentially) and will be indicated within one week of receipt. The absence of a response will be considered a positive response. If a problem or reservation is identified, the nonconcurring office director will provide specific rationale in writing to the issuing office within an additional week. The issuing office is responsible to

PROCEDURE FOR PLACEMENT OF WORK
WITH THE DEPARTMENT OF ENERGY

take whatever action is necessary to resolve the problem before the NRC Form 173 is transmitted to the manager of the appropriate DOE operations office. The nonconcurring or commenting office shall work expeditiously with the issuing office in resolving the problem. Only after final internal review and coordination, noted above, may an NRC Form 173 be transmitted to DOE.

This procedure will insure a completed Standard Order of DOE Work does not unnecessarily duplicate ongoing or prior tasks. Under no circumstances will an issuing office break up a program to circumvent this required coordination. Revisions to SOEWs which increase funding by \$100K or greater will also be processed by this procedure. Additionally, each SOW must have attached a documented justification for placement of new work with DOE. NOTE: Specific program coordination and review procedures will be noted in a forthcoming NRC Manual Chapter 1401 and will be complied with, when issued. This may change the above stated requirements.

The NRC Form 173 will be filled out by the issuing office in accordance with the instructions in Exhibit 3. Exhibit 4 is a set of Standard Terms and Conditions which normally will apply to all standard orders sent to DOE. They do not have to be attached to each order. However, any modification or deletions to the standard terms are to be noted on the NRC Form 173 and provided as an attachment. Exhibit 5 provides the addresses of the DOE Operations Office managers.

There may be instances when urgently required work does not provide sufficient time for proposal preparation and review prior to issuance of a work authorization. In these instances, the standard transmittal letter shall include an additional appropriate paragraph as indicated in Exhibit 2.

For specific policy and procedures for obtaining DOE consultant services, see Chapter NRC 4139, Appendix Part III. Additional requirements of that chapter must also be met by issuing NRC offices.

043 Issuing Authority. The Directors of NRC Offices, by receipt of an allotment, have been delegated the authority to incur obligations within a specified amount. The Directors of NRC Offices as holders of an allotment may redelegate the authority to designated officials to incur obligations. The designated officials to whom such authority has been redelegated must have direct financial management responsibility for the execution of important segments of the Commission program. Consequently, the Director of the appropriate NRC Office or his delegate, as noted above, must sign all NRC Forms 173.

044 Changes. Any change to an existing order (i.e., funding amount, work period, statement of work, etc.) will be accomplished by the issuance of a new NRC Form 173.

045 Authorizing Financial Flexibility. Reallocation of funds between FINs is not authorized unless the issuing authority so indicates on the NRC Form 173. If an issuing office authorizes the DOE performing organization to reallocate funds between FINs, the issuing authority of the office will be notified within five days after such an adjustment. To be recognized in the current year, the adjustments must be incorporated in a Standard Order for DOE Work, signed and dated by both parties prior to October 1. This new NRC Form 173 will change the amounts per FIN in accordance with the performing organization's cost experience.

Issuing offices shall not authorize funds to be transferred between FINs after the end of the fiscal year without the prior approval of the Controller, NRC.

046 Applicability. The provisions of this chapter apply to and shall be followed by all NRC offices. (DOE has also agreed to these provisions, as noted in paragraph 01.)

047 Exhibits. The exhibits of this chapter provide the procedures, forms, and terms and conditions for placing work with DOE.

1. Sample Letter and Statement of Work (Request for Proposal)
2. Sample Transmittal Letter for NRC Form 173
3. Sample NRC Form 173 and Instructions for Preparation
4. Terms and Conditions - Standard Order for DOE Work
5. Addresses of DOE Operations Office Managers



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

Exhibit 1
Page 1 of 5

(date)

SAMPLE

Mr. R. J. Hart, Manager
Oak Ridge Operations Office
U.S. Department of Energy
P.O. Box E
Oak Ridge, Tennessee 37830

Dear Mr. Hart:

This letter is a request for a proposal from the Oak Ridge National Laboratory to provide program support contractual assistance to the Office of Nuclear Material Safety and Safeguards of the Nuclear Regulatory Commission. The enclosed statement of work details the required work and should be used as the basis for preparing a proposal for submission to this office. Standard terms and conditions for NRC work, as approved by Headquarters, DOE apply to this effort. A copy of these terms and conditions has been furnished your office separately. The proposal should contain as a minimum the information set forth in Enclosure 2 and should be submitted in six copies to:

U.S. Nuclear Regulatory Commission
Office of Nuclear Material Safety and Safeguards
Attn: Program Support
Washington, D.C. 20555

Work under this task (is anticipated to be unclassified.) or (will require access to and/or the origination of classified information as indicated on the enclosed NRC Form 187.)

This request for proposal is not an authorization to start work. Authorization to commence work becomes effective upon the Oak Ridge Operations Office acceptance of an appropriately executed NRC Form 173.

If you have any questions about this request, please contact Mr. Don Loosley on FTS 427-4072. Thank you for your assistance.

Sincerely,

William J. Dircks, Director
Office of Nuclear Material
Safety and Safeguards

Enclosures:

1. Statement of Work
2. Proposal Content
3. NRC Form 187 (If classified)

cc:

H. Postma, ORNL
R. W. Barber, EV/SED(2)

STATEMENT OF WORK FOR
(FILL IN FIN TITLE, FIN, AND B&R)

1.0 Background

Provide a brief statement to orient the reader to the requirements for the work and discuss any pertinent work previously accomplished.

2.0 Work Required

Provide a concise description of the tasks to be accomplished by the performing organization. Highlight changes from prior authorized statements of work (SOW), if any.

3.0 Reporting Requirements

Each program office shall specify its reporting requirements (types of reports, frequency, and distribution) in the SOW. This may be accomplished by reference to existing office procedures.

The report listing shall include, as a minimum, a monthly letter status report and a formal final report to be furnished upon completion of the program. Consulting service contracts should be reported based on activity level. The programmatic distribution of these documents shall be as specified by the responsible program office.

3.1 Monthly Letter Status Report

Each month the performing organization shall submit a brief letter status report which summarizes: the work performed during the previous month, personnel time expenditures during the previous month, and costs generated against the work effort. The first monthly letter status report after program authorization shall include planned monthly rate of expenditures for the fiscal year, if not provided with the proposal and include any changes to prior schedules or estimated costs. Other estimates in the proposal will be corrected at this time to reflect authorized program levels. Exception: for consultants the frequency should be in consonance with the activity level; i.e., report only if activity occurs. If this report is to be made available routinely in the NRC Public Document Room, it shall be treated as an interim technical report (see 3.2 for procedure).

3.2 Interim and Final Technical Reports

Instructions for the preparation of this portion of the statement of work are provided in the Terms and Conditions of the Standard

Order for DOE Work, Paragraph 12. List the required reports and specify content and due date, if known. An individual task report may be designated to be either an interim report or final report.

3.3 Environmental Impact Statements

Draft and final environmental impact statements will be published as NRC documents, as required by NEPA. Environmental impact statements will follow guidelines for NRC staff-generated documents. (Reference: NRC Manual Chapter 3201.)

4.0 Meetings & Travel

Consider any required meetings and associated travel requirements for meetings which the performing organization will attend or host. All foreign travel requires identification per NRC Manual Chapter 1501.

5.0 NRC Furnished Material

Specify any special reports, equipment, or other items to be provided to the performing organization by the NRC and when the material will be provided. If convenient, this information may be provided as an integral part of the task definition in Paragraph 2 above.

6.0 Period of Performance

Specify the start and completion dates for the work described in this statement of work. Where appropriate, this information should be specified for individual milestones, as well as for total effort.

7.0 Technical Direction

Insert name and FTS telephone number of the individual designated as the NRC technical monitor for this effort.

8.0 Disposal of Property

Upon completion of a program or termination of a program, a reconciled report will be developed jointly by DOE and NRC to record available material purchased with NRC funds. This report should be developed as soon as possible after program completion or termination decision has been made, but not later than sixty days after work termination date. The report should be submitted to the Property and Supply Branch, NRC.

PROPOSAL CONTENT

The minimum items required in all proposals are:

1. Performing Organization's Name and Location
2. FIN Title (as on statement of work)
3. FIN Number
4. B&R Number (NRC's)
5. Performing organization's key personnel, program manager, or principal investigator, and FTS phone number.
6. Background (include previous technical progress if a continuation, and relationship to other projects).
7. Work to be Performed (Provide a concise description of tasks to be performed and expected results for the period of performance. Identify major subcontracts, including consultants. Note technical data requirements, potential problems, and other technical information needed to fully explain the effort. Highlight changes from prior authorized SOW's, if any, identify changes in performance, schedule, or costs).
8. Costs estimated to be incurred by DOE contractors, subcontractors, and consultants. (List by fiscal year to completion):
 - a. Manyears of Technical Support (MTS)
 - b. Costs:
 - (1) Direct Salaries (Labor) for MTS
 - (2) Material and Services (excluding ADP)
 - (3) Total ADP Support
 - (4) Subcontracts
 - (5) Capital Equipment
 - (6) Direct Travel Expense (Foreign travel must be shown separately.)
 - (7) General and Administrative Expense (Include indirect labor cost.)
 - c. Total Estimated Cost:

9. Forecasts:

- a. Milestone Chart for accomplishing the work.
- b. Planned monthly rate of costs for first fiscal year. This may be provided with the first report of an authorized program if not known at time of proposal submittal. At the beginning of each subsequent year, reports should include the planned monthly rate of costs for the ensuing year.

10. Conflict of Interest:

In order to assist the Commission in its evaluation, the DOE Contracting Officer shall describe any significant contractual and organizational relationships of the DOE, its contractor, their employees, or expected subcontractors or consultants on this proposal, with industries regulated by the NRC (e.g. utilities, etc.) and suppliers thereof (e.g. architect engineers and reactor manufacturers, etc.) that might give rise to an apparent or actual conflict of interest.



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

Exhibit 2
Page 1 of 1

(date)

SAMPLE

Mr. R. J. Hart, Manager
Oak Ridge Operations Office
U.S. Department of Energy
P. O. Box E
Oak Ridge, Tennessee 37830

Dear Mr. Hart:

The enclosed NRC Form 173, Standard Order for DOE Work, for \$ _____ is hereby submitted in accordance with Section III.B.2 of the DOE/NRC Memorandum of Understanding of February 24, 1978.

(Include as second paragraph when appropriate:) This work is urgently required to support (define activity) and the SOEW is forwarded without prior proposal. The work authorization provides for proposal preparation as part of the work scope.

Please indicate DOE acceptance by signing and returning the enclosed NRC Form 173 to the NRC Office of the Controller, Division of Accounting, with a copy to this office.

If you have any questions, please contact Mr. Don Loosley (FTS 427-4072). Thank you for your assistance.

Sincerely,

William J. Dircks, Director
Office of Nuclear Material
Safety and Safeguards

Enclosure(s):

1. Standard Order for DOE Work
2. NRC Form 187 (if classified)

cc: R. Barber, EV/SED(2)

NRC FORM 173 (5-79)		U.S. NUCLEAR REGULATORY COMMISSION		DATE
STANDARD ORDER FOR DOE WORK				DATE
ISSUED TO (DOE Office)	ISSUED BY (NRC Office)	ACCOUNTING CITATION		
PERFORMING ORGANIZATION AND LOCATION		APPROPRIATION SYMBOL		
FIN TITLE		B&R NUMBER		
OBLIGATION AVAILABILITY PROVIDED BY:		FIN NUMBER		
A THIS ORDER		WORK PERIOD THIS ORDER		
B TOTAL OF ORDERS PLACED PRIOR TO THIS DATE WITH THE PERFORMING ORGANIZATION UNDER THE SAME APPROPRIATION SYMBOL AND THE FIRST FOUR DIGITS OF THE B&R NUMBER CITED ABOVE		FIXED ESTIMATED		
C TOTAL ORDERS TO DATE		FROM TO		
D AMOUNT INCLUDED IN "C" APPLICABLE TO THE "FIN NUMBER" CITED IN THIS ORDER				
FINANCIAL FLEXIBILITY				
<input type="checkbox"/> FUNDS WILL NOT BE REPROGRAMMED BETWEEN FINs. LINE D CONSTITUTES A LIMITATION ON OBLIGATIONS AUTHORIZED.				
<input type="checkbox"/> FUNDS MAY BE REPROGRAMMED NOT TO EXCEED ± 10% OF FIN LEVEL UP TO \$50K. LINE C CONSTITUTES A LIMITATION ON OBLIGATIONS AUTHORIZED.				
STANDARD TERMS AND CONDITIONS PROVIDED DOE ARE CONSIDERED PART OF THIS ORDER UNLESS OTHERWISE NOTED.				
ATTACHMENTS THE FOLLOWING ATTACHMENTS ARE HEREBY MADE A PART OF THIS ORDER		SECURITY		
<input type="checkbox"/> STATEMENT OF WORK		<input type="checkbox"/> WORK ON THIS ORDER IS NOT CLASSIFIED		
<input type="checkbox"/> ADDITIONAL TERMS AND CONDITIONS		<input type="checkbox"/> WORK ON THIS ORDER INVOLVES CLASSIFIED INFORMATION. NRC FORM 187 IS ATTACHED.		
<input type="checkbox"/> OTHER				
REMARKS (Reference the proposal by number and date, and indicate if the attached statement of work modifies the DOE proposal)				
ISSUING AUTHORITY		ACCEPTING ORGANIZATION		
SIGNATURE		SIGNATURE		
		TITLE		
		DATE		

INSTRUCTIONS FOR PREPARATION OF
NRC FORM 173

The following items will be completed by the NRC issuing office:

Order No.

The order number identifies the issuing office, fiscal year the order is issued and the sequential number of the order. The number is XX-XX-XXX. The first two digits represent the office code, i.e., 10 for Office of Standards Development, 20 for Nuclear Reactor Regulation, etc. The third and fourth digits identify the fiscal year in which the order is issued. The last three digits are sequential numbers of the order assigned by the issuing office starting with 001 for the first order placed with DOE for that fiscal year.

Date

The date signed by the issuing authority.

Issued To

The name of the DOE office receiving the order.

Issued By

The name of the NRC office issuing the order.

Performing Organization

The name and location of the DOE laboratory, prime contractor, or office which will perform the work. Provide further identification of laboratory complex, site, etc., if possible. Identify DOE program manager or principal investigator if known.

FIN Title

The title should be a concise description of the work. The title on this form should be the same as that provided to the Division of Budget, CON, for the Financial Plan Listing. For continuing efforts, titles generally will not change from year to year. In the event that the order covers a number of FIN tasks, insert the words "see remarks," then provide the appropriate lists and remarks.

Accounting Citation - Appropriation

Use the same appropriation number as that identified on the allotment for current fiscal year funds. For adjustments to prior year FINs, use appropriate allotment citation.

B&R Number

Show the NRC B&R number under which the order was placed. This should be the same B&R number as that identified in the financial plan. When an order covers a number of tasks, insert the statement "see remarks" and add as appropriate.

FIN Number

Show the FIN number which identifies the task and fiscal year of the funds. The basic number (first five positions) will not change for continuing efforts. (The sixth digit denotes the fiscal year of the funds.) In the case of an order covering a number of tasks, insert the statement "see remarks" and add as appropriate.

Work Period

Show the period in which the work is to be performed and funded. Note whether work period is fixed or estimated and check applicable box. If the order is for more than one FIN, insert the words "see remarks" and provide as appropriate.

Definitions: Fixed means that costs shall not be incurred beyond the cited work period. For the work period to be extended a revised NRC Form 173 must be issued.

Estimated means that the exact period of performance is not known at inception of the project. In this instance the period of performance may be extended without prior approval by the NRC. However, when the period of performance is determined, a revised NRC Form 173 will be issued providing a fixed work period.

Obligation Availability Provided By:

a. This Order

Include the dollar value of the order.

b. Total of Orders Placed Prior to This Date

Show the total value of all prior orders this fiscal year placed by the issuing office to this performing organization citing the same appropriation source and the first four digits of the NRC B&R number appearing in the accounting citation. Leave blank for the initial order in any fiscal year.

c. Total Order to Date

Show the total of a. and b. above.

d. Amount Included in c.

If the order is for a single FIN, this amount would represent the cumulative year-to-date amount of funds obligated against the FIN. If the order is for more than one FIN, insert "see remarks" and add as appropriate.

Financial Flexibility

Check the appropriate box to denote level of flexibility the issuing office wishes to grant the performing organization without prior notification.

Attachments

Check the appropriate box identifying the attachments to this order.

Security

Check the appropriate box. If classified, complete NRC Form 187 and forward to the Division of Security for appropriate concurrence, along with a copy of the statement of work.

Remarks

Use this space for any pertinent information you may want to include. If the order is for more than one FIN, include the following listing:

(1) FIN numbers, (2) FIN titles, (3) NRC B&R numbers, (4) amount of this order by FIN, (5) cumulative amount by FIN, and (6) work periods.

If additional cost reporting information is required by the NRC technical monitor, this will be coordinated with the Controller, and noted in the remarks section. (The DOE operations office will accept such requests only if they appear reasonable and the information requested is readily available.)

Issuing Authority

The signature of the director of the appropriate NRC office or his designee must appear in this block.

Accepting Organization

The signature of the DOE representative authorized to accept the order, title, and the date of the signature should appear here.

TERMS AND CONDITIONS
STANDARD ORDER FOR DOE WORK*

1. Security - Unclassified Work Efforts

To the extent that performance of work under this order does not involve classified information, the following clauses are applicable:

- (a) It is mutually expected that the activities under this work order will not involve classified information or material. If in the opinion of either party this expectation changes, they shall immediately notify the other party in writing. In any event, DOE shall handle and otherwise safeguard classified information and material in accordance with applicable law and DOE requirements and shall promptly inform the Commission in writing if and when classified information or material becomes involved.
- (b) The DOE contractor (performing organization) shall not permit any individual to have access to Restricted Data, or other classified information except in accordance with the Atomic Energy Act of 1954, as amended, and DOE's regulations or requirements.
- (c) Except as specifically authorized by this work order or as otherwise approved by the issuing authority, records or other information, documents and materials furnished by the NRC in the performance of the order shall be used only in connection with the work performed under the order. Upon completion or termination of this order, DOE shall transmit to the issuing authority all records or other information, documents and materials and any copies thereof, furnished by the NRC in the performance of this work order except those required by the DOE Contracting Officer's official records.
- (d) All parties conducting activities under this work order shall be responsible for the safeguarding from unauthorized disclosure any information or other documents and material exempt from public disclosure by the NRC's regulations and made available in connection with the performance of work under this order. Both parties agree to conform to all regulations, requirements, and directions of the NRC with respect to such material.

* While these terms and conditions are oriented to government owned, contractor operated facilities (GOCO), they apply equally to government owned, government operated facilities (GOGO). Examples of GOGO are the New Brunswick Laboratory (NBL) and the Idaho Radiological Environmental Sciences Laboratory (RESL).

2. Security - Classified Work Efforts

To the extent that the performance of work under this order involves classified information, the following clauses are applicable:

- (a) DOE and the DOE contractor (performing organization) shall be responsible for safeguarding Restricted Data, Formerly Restricted Data, and other National Security Information and for protecting against sabotage, espionage, loss and theft in accordance with DOE's security regulations and requirements.

Except as otherwise expressly provided, DOE shall, upon completion or termination of the work order, transmit to the Commission all classified matter in its possession or in the possession of any person under its control in connection with performance of this work order. If retention of any classified matter is required by DOE, it must obtain the approval of the Commission and complete a certificate of possession specifying the classified matter to be retained.

- (b) Regulations. The Contracting Officer shall ascertain that the DOE contractors conform to all security regulations and requirements of DOE.
- (c) 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 shall not include data declassified or removed from the Restricted Data category pursuant to Section 142 of the Atomic Energy Act of 1954, as amended.
- (d) Definition of Formerly Restricted Data. The term "Formerly Restricted Data," as used in this clause, means classified information related primarily to the military utilization of atomic weapons removed from the Restricted Data category under Section 142.d of the Atomic Energy Act of 1954, as amended.
- (e) Definition of National Security Information. Official information or material which requires protection against unauthorized disclosure in the interest of the national defense or foreign relations of the United States.
- (f) Security Clearance of Personnel. DOE and DOE contractors shall not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other National Security Information, except in accordance with the Atomic Energy Act of 1954, as amended, and the DOE regulations or requirements

applicable to the particular type or category of classified information to which access is required.

- (g) Criminal Liability. It is understood that the unauthorized disclosure or the failure to properly safeguard Restricted Data, Formerly Restricted Data, National Security Information, or any other classified matter that may come to the DOE or to any person under a DOE contract in connection with work under the work order, may subject the performing organization, 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 974; and Executive Order 12065.)
- (h) Subcontracts and Purchase Orders. Except as otherwise authorized in writing by the Commission, DOE shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this work order.

3. Classification

To the extent that the performance of work under this order involves classified information, the following clause is applicable: "In the performance of the work under this work order DOE shall assure that the performing organization shall assign interim classification levels to all documents, material, and equipment originated or generated by the performing organization in accordance with classification guidance furnished by the Commission. Each subcontract and purchase order issued hereunder involving the generation of classified documents, material, or equipment, shall include a provision to the effect that in the performance of such subcontract or purchase order the subcontractor or supplier shall assign interim classification levels to all such documents, material, and equipment in accordance with classification guidance furnished by the performing organization. The performing organization shall in turn submit through appropriate channels all documents, material, and equipment generated under the work order to the office responsible for the work order for final classification determination. It is the responsibility of the office originating the work order to ensure that proper classification is assigned by an Authorized Classifier. The attached NRC Form 187, Security/Classification Requirement, dated _____ is a part of this order."

4. Proprietary Information

In connection with the performance of work under this order, the Commission may furnish for DOE review, evaluation, or other use, certain trade secrets or confidential or privileged commercial or financial information determined by the Commission to be otherwise exempt from public inspection or disclosure. Such information

shall be submitted in writing to the DOE Contracting Officer (where the DOE performing organization is a DOE contractor) or the DOE Facility Manager (where the DOE performing organization is a DOE facility) for approval of the acceptance of the proprietary information, and for reaching agreement with the Commission on the limitations, conditions and terms under which the information may be used by the performing organization.

For DOE contractor employees used as NRC consultants, proprietary or other privileged information may be provided by NRC on an individual basis with the understanding that it will be protected from disclosure and will be returned to NRC upon completion of the task.

5. Work for Others

Notwithstanding any other provision of the work order, the DOE Contracting Officer and DOE contractor agree that placement of this work does not give rise to any actual or apparent conflict of interest from either agency's viewpoint. They further agree that during the period of performance, the contractor will forego entering into any new contractual arrangement which could give rise to a conflict of interest. The performing organization shall ensure that all employees designated as key personnel, if any, under the work order abide by the provisions of this clause. The DOE organizational conflict of interest provisions will be used as a guide in making such determinations. If in the DOE Contracting Officer's view, any proposed contractual arrangement creates a possibility for conflict of interest, he shall notify the issuing NRC office and obtain their written approval prior to the execution of the associated contract.

6. Subcontracting

The DOE organization shall notify the issuing office reasonably in advance of entering into any major or significant technical service subcontract not contained in the original proposal. "Major or significant" must be used with judgement and related to the total value of the project and/or impact on the results. This advance notification will include:

- (a) A description of services to be called for by the subcontract,
- (b) Identification of the proposed subcontractor,
- (c) The proposed subcontract costs, and
- (d) A statement that the proposed subcontract will not result in a real or apparent conflict of interest situation. If the NRC program office requires additional specific subcontractor

information or limitations, those requirements shall be stated on the NRC Form 173. Doe will provide any special requirements such as financial and organizational disclosures for consulting type services.

7. Stop-Work Order

- (a) The issuing office may, at any time, by written order to the DOE Contracting Officer, require the contractor to stop all, or any part, of the work called for by this work order for a period of ninety days after the order is delivered to the contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop-Work Order issued pursuant to this clause. Upon receipt of such an order, the contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of cost allocable to the work covered by the order during the period of work stoppage. Within a period of ninety days after a Stop-Work Order is delivered to DOE, or within any extension of that period to which the parties shall have agreed, the issuing office shall either:
 - (i) Cancel the Stop-Work Order, or
 - (ii) Terminate the work covered by this work order.
- (b) If a Stop-Work Order issued under this clause is cancelled or the period of the Stop-Work Order or any extension thereof expires, DOE shall authorize its contractor to resume work. An adjustment shall be made in the delivery schedule or cost, or both, and the work order shall be modified in writing accordingly.
- (c) If a Stop-Work Order is not cancelled and the work covered by such is terminated in accordance with the terms of this work order, costs resulting from the Stop-Work Order shall be allowed in arriving at the termination settlement.

8. Patent Rights

The statutory, regulatory and procedural patent policies of DOE will be applicable to the work falling under this work order, provided however:

- (a) Disclosures of inventions conceived or first actually reduced to practice under Commission funded work shall be promptly furnished to the Commission together with notice of DOE's intended patent action on such invention;

- (b) If DOE should determine not to protect such inventions, either domestically or abroad, the Commission shall have the right to protect such inventions;
- (c) If the technology covered by any invention disclosure upon which DOE intends to file is deemed by the Commission to fall within the Commission's mission, i.e., relates to nuclear facilities and materials safety, safeguards, and environmental protection, in support of the Commission's licensing and regulatory functions, the Commission may so notify DOE and a determination will be made by the parties as to which party will file such patent application or applications; and
- (d) In view of the statutory patent policies of DOE and NRC, neither party shall grant any form of exclusive patent rights, by waiver or by licensing, without expressed approval of the other party.

9. Patent Clearance

In order that public disclosure of information regarding scientific or technical developments arising out of this work order will not adversely affect the patent interests of either DOE or NRC, patent approval for release or publication shall be secured from DOE prior to the release or publication of any such information.

10. Limitation of Funds

- (a) The Commission shall not be obligated to reimburse DOE for costs incurred by its contractors in excess of the total amount authorized by an appropriately executed NRC Form 173. NRC will formally notify the appropriate DOE Field Office of any programs they intend to phase out or terminate as soon as such intent is known; preferably, at least 30 days prior to the proposed termination date. For programs with fixed performance periods, the DOE Field Office should assume that the program will terminate on the last day of the period specified in the Standard Order for DOE Work unless notified otherwise.
- (b) If at any time DOE has reason to believe that the costs will exceed the total amount authorized, DOE shall notify the issuing authority. In the absence of formal NRC instructions to continue or to terminate a program, the DOE Field Office (contracting officer or his designee) will notify NRC, by TWX or other suitable written means, when the accrued costs of any NRC program approaches 90% of the authorized funding level. The notification should include estimated date when the accrued costs will equal the authorized funds, and may, if appropriate, recommend or request NRC action desired. The notification

should be addressed to the appropriate NRC office, with copy to the NRC Controller, and to DOE-EV-SED. After such notification, the issuing office will:

- (i) Increase funding authorization, and/or
 - (ii) Change the scope of work, and/or
 - (iii) Change the period of performance, or
 - (iv) Terminate this work order.
- (c) If this work order permits DOE to reallocate funds authorized by this order between FIN's, the issuing office shall be notified of such reallocation within five days after such an adjustment. To be recognized in the current fiscal year, the adjustments must be incorporated in an NRC Form 173 signed and dated prior to October 1.
- (d) In cases where the work period states "estimated," prior notification that work is to extend beyond the period indicated is not necessary to completing the assigned work.
- (e) If the work period under this work order is fixed, the performance of work should be completed within that period. However, when it is first anticipated by DOE that the work cannot be completed within the time period fixed by this work order, the issuing office shall be notified in writing. Notification shall occur in sufficient time to allow the issuance of another NRC Form 173 authorizing an extension of the work period to such time as is necessary to complete the authorized work.

Work shall not be performed beyond the end of the work period of this order unless authorized by an appropriately executed NRC Form 173. If the period of performance is not extended, the issuing office will issue an NRC Form 173 to the appropriate DOE office deobligating any excess funds.

11. Billing Requirements

- (a) DOE will bill NRC monthly for costs reported through the FIS system by the six position FIN number via separate bills for costs applicable for each NRC Program Office, (e.g., Standards Development, Nuclear Reactor Regulation, etc.).
- (b) The bills will identify the NRC FIN (6-positions) such as A10017, B20016, etc. (the last digit identifies the fiscal year of the funding), the NRC B&R number shown on the NRC Form 173, and the DOE B&R number.

- (c) The bills will be certified by the DOE field office prior to submission to NRC. The bills, at a minimum, will indicate the month the costs were incurred and the dollar amount of those costs.
- (d) For bills which include equipment and related material (including sensitive items), an itemized receiving report will be provided to include:

DOE Facility Identification (each page)

<u>National</u> <u>Stock No.</u> (When available)	<u>Item</u> <u>Description</u>	<u>Manufacturer</u> <u>& Model No.</u>	<u>Serial</u> <u>Number</u>	<u>Acquisition</u> <u>Cost</u>	<u>Quantity</u>	<u>Total Fin</u> <u>Cost</u>	<u>Fin</u> <u>No.</u>
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- (e) All bills (SF 1081) shall be issued (original and 5 copies) to:

U.S. Nuclear Regulatory Commission
Office of the Controller
Division of Accounting (L 316)
Washington, D.C. 20555

- (f) Any additional billing information to be requested must be so indicated under the "Remarks" section of the NRC Form 173.

12. Technical Reporting Requirements

- (a) The statement of work will specify the technical reporting requirements, including a concise list of reports to be provided by DOE, frequency and distribution. The minimum reporting requirement is a formal final report to be furnished upon completion of the work. Annual reports may be required if the work is to take longer than 16 months.

All costs associated with report preparation of camera-ready copy, printing, and shipping for NRC are to be direct charges to the authorized program involved, and are not to be included in DOE General and Administrative Expenses.

Each report required by the statement of work shall be identified as interim or formal in accordance with the following definitions:

- (i) Interim Contractor Reports - Regulatory and technical documents prepared in accordance with contract or inter-agency agreement requirements for recording plans and

results during the course of the work. Such documents may include, but are not limited to, informal progress reports, letter reports, quick-look reports, data reports, technical status reports, project descriptions, pre-test predictions, model verifications, experiment safety analyses, experiment operating procedures, facility certification reports, and test result reports.*

- (ii) Formal Contractor Reports - Regulatory and technical documents that record the results of contractor work at principal points in the program. Such documents may include, but are not limited to, quarterly, topical, and annual progress reports and final reports.

Draft and final environmental impact statements, which will be published as NRC documents, as required by NEPA, are not subject to paragraph 12 of these terms and conditions. DOE laboratory inputs are not acknowledgable in these documents. This variation from the standard terms and conditions must be included in the statement of work.

If the NRC program office placing the work desires to give the principal investigator of the work the option of publication in a recognized technical journal rather than a formal report, this option will be stated in the statement of work.

Exercise of this option requires that the final draft (subsequent to peer review) of the journal article be submitted by letter to the NRC Division of Technical Information and Document Control (NRC/TIDC) for processing for accession by the NRC Public Document Room at the time it is submitted to the journal. When the journal article is published, the draft must be replaced with a copy of the journal article by sending an author's copy, properly identified, to NRC/TIDC.

Each journal article submission must be accompanied by the following statement, "The submitted manuscript has been authored by a contractor of the U.S. Government under contract number _____. Accordingly, the U.S. Government has a nonexclusive, royalty-free license to publish or reproduce the published form of this contribution, or allow others to do so, for U.S. Government purposes." In addition, each article must carry the statement, "Work supported by the U.S. Nuclear Regulatory Commission, Office of _____ under Interagency Agreement DOE 40-550-75 with the U.S. Department of Energy."

If requested by the journal or other publisher to transfer the copyright, the author shall respond to the journal or other publisher, in writing, in accordance with the sample letter shown in Figure 1.

*All these documents must carry the title page shown in Figure 2.

Presentation of the results at a technical meeting may also be authorized by NRC.

(b) Content of Technical Reports

The content of technical reports should follow generally accepted technical writing practice with appropriate flexibility to meet the author's (authors') specific needs.

Progress and final reports should include an abstract of 200 words or less. The abstract shall summarize the major points of the report results, recommendations and/or conclusions. For progress reports, the abstract should outline the status of work to date. The preferred location for the abstract is between the title page of the report and the table of contents. The pertinent NRC FIN number(s) and the official FIN title(s) should be placed at the bottom of the abstract page.

Progress and final reports for all NRC offices except the Office of Standards Development (SD) should also include a 500 to 1000 word executive summary (one or two pages) of the major findings, conclusions, and recommendations (if any) of the report. The executive summary, labeled as such, should appear as the first section of the main report on page one, and should precede the introduction, if any.

Interim reports for all NRC offices except SD should also include a one-page executive summary of the subject matter covered in the body of the report. The summary should also be included in the letter transmitting the report to the NRC technical monitor.

Scientific and technical reports should not include administrative, managerial or fiscal information unsuitable for wide dissemination. They should also not include proposals for further support which are to be submitted separately to protect their privacy.

(c) Interim Reports Preparation and Handling

The number of copies specified in the statement of work for each interim report are to be sent to the NRC technical monitor on the schedule indicated in the statement of work. Two copies and an NRC Form 426A, Publications Release, are to be sent to the NRC Division of Technical Information and Document Control with a title page of the type shown in Figure 2, unless the NRC technical monitor specifies that all copies be sent through him. In that case the Technical Monitor will forward two copies of the report with an NRC Form 426A to NRC TIDC for processing into the NRC Public Document Room (PDR). (If an official of the performing organization is authorized to sign the NRC Form 426A, he will be designated by name in the statement of work).

Two copies and a signed DOE Form 426 are to be sent to DOE Technical Information Center (DOE TIC) by the performing organization.

(d) Formal Reports Preparation and Handling

Formal reports may be printed for NRC distribution by those DOE facilities that have Joint Committee on Printing (JCP), U.S. Congress, authorized printing plants if the work is being done for either of the following NRC offices:

Office of Nuclear Regulatory Research
Office of Standards Development

Formal reports will not be printed for NRC if the work is being done for any of the following NRC offices:

Office of Nuclear Reactor Regulation
Office of Nuclear Material Safety and Safeguards
Office of Inspection and Enforcement
Office of State Programs

The principal DOE facilities that perform NRC work and which have JCP authorized printing plants are:

Ames Laboratory
Argonne National Laboratory
Brookhaven National Laboratory
Grand Junction Office
Hanford Atomic Products Operation
Idaho National Engineering Laboratory
Knolls Atomic Power Laboratory
Lawrence Berkeley Laboratory
Lawrence Livermore Laboratory
Los Alamos Scientific Laboratory
Mound Laboratory
Oak Ridge National Laboratory (through K-25 plant)
Sandia/Albuquerque
Savannah River Plant

Printed copies or reproducible masters will be supplied in accordance with the following procedures:

- (i) Formal Reports Printed at DOE Facilities - The distribution quantity indicated in the statement of work plus reproducible master will be supplied to the NRC Division of Technical

Information and Document Control. When a report is printed for NRC, DOE procedures prevail; however, the data elements, shown in Figures 3, 4, and 5 will be incorporated in the printed version. See 12(h) for copies to be retained by the performing organization.

- (ii) Formal Reports Printed at NRC - Reproducible masters (camera-ready copy) for printing and distribution are to be sent to the NRC Division of Technical Information and Document Control. The originator may retain up to 25 duplicated copies "for internal use only" prior to receiving printed copies from NRC. See 12(h) for copies to be supplied the performing organization.

If publication is to be delayed by NRC to coordinate with program office issuance, this is to be noted both on the NRC Form 426A and the DOE Form 426. If the document is not to be reviewed prior to printing, state on the NRC Form 426A that accompanies the camera-ready copy when it is sent to NRC Division of Technical Information and Document Control that the document is not to be reviewed prior to publication.

- (iii) NRC Form 426A and DOE Form 426 - In all cases a completed NRC Form 426A must accompany the formal report. Two copies of all paragraph (i) and (ii) reports and a signed DOE Form 426 are to be sent to DOE TIC by the performing organization.

The reproducible masters must be accompanied by NRC Form 426A. If an official of the performing organization is authorized to sign the NRC Form 426A, that official will be designated by name in the statement of work.

- (e) Programmatic Review of Reports

The statement of work must indicate those technical reports that will be reviewed in draft form for NRC policy, management, regulatory and legal issues. After such review the final form of the report will be prepared by the performing organization and submitted to NRC/TIDC as reproducible masters or printed copies.

- (f) Administrative Review of Reports

Patent and security classification review of all reports will be accomplished by the cognizant DOE Operations Office.

(g) Reports Containing Commercial Proprietary Information

Proprietary information used in reporting to NRC will be noted on the title page of any report submitted to NRC.

(h) Printing and Distribution of Reports

All interim and formal reports to be made publicly available will be prepared in accordance with DOE standards for style and format utilizing the performing organization's standard cover, if any, with the data elements shown on Figure 3, and a title page with the data elements shown on Figure 2 for interim reports and on Figure 5 for formal reports. These reports are to be submitted to the NRC Division of Technical Information and Document Control with a completed NRC Form 426A.

Up to 50 copies of all publicly available reports may be retained by or will be bulk shipped to the performing organization by NRC for internal use of the performing organization. If the performing organization requires more than 50 copies for internal use, a written justification must be sent to the NRC Technical Monitor, with a copy to the Director, Division of Technical Information and Document Control. The Director, NRC/TIDC, will formally consider the request and inform the technical monitor of the results. This procedure requires a minimum of six weeks.

Single copies for specific individuals in organizations other than the performing organization who are not included in the distribution list stated in the SOW may be requested on a program basis or on a report-by-report basis. The request, with written justification, shall be addressed to the NRC Technical Monitor with a copy to NRC/TIDC. If the additional distribution is approved by the Technical Monitor, the performing organization shall send these copies (if printing is done by the performing organization) and address labels for the individuals to NRC/TIDC, where the distribution will be made along with the standard distribution.

(i) Announcement of Formal Reports

Formal reports will be announced by the Government Printing Office and the National Technical Information Service (NTIS) and will be placed on sale by NTIS.

(j) Document Identification

All unclassified technical reports will be made publicly available and will carry an NRC identification number and a DOE identification number, with the NRC identification as the prime number, as shown in Figures 3 and 5. For interim reports (see Figure 2), this number will be the computer accession number and will be added by NRC at the time the document is sent to the Public Document Room (NRC/PDR). For formal reports, the identification number will be assigned by NRC/TIDC. Advance information regarding number is needed and it may be obtained by the performing organization's publication group by calling NRC/TIDC. Commercial: (301) 492-7566, FTS: Access Code + 492-7566.

The NRC identification number for formal reports will have the form NUREG/CR-xxxx.

(k) Transmittal of Technical Reports to NRC and DOE

The transmittal of all technical reports and reproducible masters of interim and formal reports will be accomplished under an NRC Form 426A and a DOE Form 426. Actual shipment of reproducible masters to NRC shall be by first class mail to the Division of Technical Information and Document Control at the following address:

United States Nuclear Regulatory Commission
Attn: Division of Technical Information and
Document Control
Washington, DC 20555

Printed reports for NRC distribution shall be sent to NRC by express carrier to the following address:

Division of Technical Information and
Document Control
United States Nuclear Regulatory Commission
7920 Norfolk Avenue
Bethesda, MD 20014

The address for transmittal to DOE TIC is:

Technical Information Center
United States Department of Energy
P. O. Box 62
Oak Ridge, TN 37830

(1) Summary Check List

The check list presented in Table 1 gives guidance on the actions and requirements for technical reporting.

Table 1
Technical Reporting Actions and Requirements*

<u>Actions and Requirements</u>	<u>Interim (informal) Reports</u>	<u>Formal Reports</u>
NRC Form 426A	yes	yes
DOE Form 426	yes	yes
Copies to NRC Program Office	See statement of work	4 preliminary
Copies to NRC/TIDC	2 with NRC Form 426A	Sufficient printed reports for NRC distribution and reproducible masters or only reproducible masters (camera-ready copy) with NRC Form 426A (see Statement of Work)
Copies to DOE/TIC	2 with DOE Form 426	2
Available NRC Public Document Room	yes	yes
Available DOE/TIC	yes	no
Available NTIS	no	yes
Draft Review	Specified in Statement of Work	Specified in Statement of Work
Patent Review	yes	yes
Classification Review	yes	yes
Proprietary Material Review	yes	yes

*This table does not apply to draft and final environmental impact statements.

FIGURE 1

Sample Letter on Copyright Agreement

Dear _____:

We recently received a document for signature assigning copyright and republication rights in the submitted article (title) to (name of publication). This letter is offered in lieu of the document as a means of completing the transfer of ownership. Accordingly, we hereby expressly transfer and assign our rights of ownership in the above cited work to (name of publisher).

You are advised, however, that the above assignment and any publication or republication of the above cited work is subject to the following Government rights:

The submitted manuscript has been authored by a contractor (grantee) of the U.S. Government under contract (grant) No. _____. Accordingly, the U.S. Government has a nonexclusive, royalty-free license to publish or reproduce the published form of this contribution, or allow others to do so, for U.S. Government purposes.

In addition, each article which results from the placement of NRC work with DOE must state "Work supported by the U.S. Nuclear Regulatory Commission, Office of _____ under Interagency Agreement with the U.S. Department of Energy."

Sincerely,

FIGURE 2
SAMPLE TITLE PAGE FOR INTERIM CONTRACTOR DOCUMENTS
TO BE MADE PUBLICLY AVAILABLE

Accession No.
(Will be added by NRC)
Contractor's Report No.
Title of Program for
Which Contract Written
Limited Subject of
This Document
Type of Document:
Status Report, Quick-
Look Report, etc.
Individual

INTERIM REPORT	
	Accession No. _____ _____
Contract Program or Project Title	
Subject of this Document	
Type of Document:	
Author(s):	
Date of Document:	
Responsible NRC Individual and NRC Office or Division:	
<div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;">This document was prepared primarily for preliminary or internal use. It has not received full review and approval. Since there may be substantive changes, this document should not be considered final.</div>	
Oak Ridge National Laboratory Oak Ridge, Tennessee 37830 operated by Union Carbide Corporation for the U.S. Department of Energy	
Prepared for U.S. Nuclear Regulatory Commission Washington, D.C. 20555 Under Interagency Agreement DOE 40-550-75 NRC FIN No. A12347 INTERIM REPORT	

Contractor and
Address

NRC FIN Number

FIGURE 3
SAMPLE COVER FOR UNCLASSIFIED FORMAL REPORTS PREPARED
UNDER OR PURSUANT TO INTERAGENCY AGREEMENTS

NRC Report No.
Contractor Report No.
Vol., Part, Rev., etc.

NUREG/CR-0960

Title

A Review of The Application of Strategic Analysis to Material Accounting

Type of Report
or Subtitle

A Consensus Report
by the Peer Review Group

Author(s), Editor(s)

Argonne National Laboratory

Contractor

Prepared for
U. S. Nuclear Regulatory
Commission

Sponsorship

**FIGURE 4
DISCLAIMER AND AVAILABILITY STATEMENTS
(BACK OF COVER)**

NOTICE

This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, or any of their employees, makes any warranty, expressed or implied, or assumes any legal liability or responsibility for any third party's use, or the results of such use, of any information, apparatus, product or process disclosed in this report, or represents that its use by such third party would not infringe privately owned rights.

Available from

GPO Sales Program
Division of Technical Information and Document Control
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555

and

National Technical Information Service
Springfield, Virginia 22161

FIGURE 5
SAMPLE TITLE PAGE FOR UNCLASSIFIED FORMAL
REPORTS TO BE PRINTED BY NRC

NRC Report No.
Contractor's Report No.
Vol., Part, Rev., etc.
Distribution
Category

NUREG CR-0950
RS

Title

A Review of The Application of Strategic Analysis to Material Accounting

Subtitle

A Consensus Report
by the Peer Review Group

Report Dates

Manuscript Completed: June 1979
Date Published: August 1979

Author(s), Editor(s)

Prepared by
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Contractor's
Name and Address

NRC Sponsorship

Prepared for
Division of Safeguards
Office of Nuclear Materials Safety and Safeguards
U.S. Nuclear Regulatory Commission
Washington, D.C. 20555
NRC FIN No. A2156

NRC FIN No.

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Attachment 3

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-185843

DATE: July 1, 1976

MATTER OF: Columbia Research Corporation

DIGEST:

- 9771
1. Where offeror's proposed project manager and principal investigator would be in position of evaluating adequacy and applicability of reliability standard which he originated under prior contract, agency's rejection of such proposal as not within the competitive range pursuant to unweighted evaluation criterion dealing with conflicts of interest is sustained. Since major proposal alteration would have been required to eliminate conflict, it was not unreasonable to reject proposal without negotiation.
 2. Contractor's cost estimate should not be considered controlling in selecting contractor for cost-reimbursement type contract.
 3. Even if protester's allegation regarding change in agency's requirements during negotiations with other offeror is correct, rejection of protester's proposal without negotiation is not objectionable since rejected offer was outside competitive range for reasons which remain basic to procurement.
 4. Although awardee performed literature search in support of another firm's prior contract to develop reliability standard and such standard was to be evaluated under awardee's subsequent contract with agency, no objectionable conflict of interest is perceived in award of subsequent contract. In addition, conflict of interest is not apparent from fact that awardee's board of directors includes individuals involved in regulated industry generally affected by contract and fact that awardee has had prior dealings with firms in such industry.
 5. Allegation, filed after contract award, that consideration should have been given to issuance of requirement as small business set-aside is untimely filed and therefore dismissed.

B-185843

This is a protest filed by Columbia Research Corporation (Columbia) under request for proposals No. RS-76-12, issued by the U.S. Nuclear Regulatory Commission (Commission).

The procurement stems from the Commission's review of an application for a permit to construct the Clinch River Breeder Reactor, a Demonstration Liquid Metal Fast Breeder Reactor. The applicant has submitted a Preliminary Safety Analysis Report which contains technical information related to the design and construction of the facility and which serves as a primary source of information in assessing the radiological health and safety and environmental aspects of the proposed facility. The instant negotiated procurement was initiated to satisfy the Commission's need for technical assistance by an independent contractor in reviewing the Clinch River applicant's Reliability Program.

The procurement was negotiated and contemplated award of a cost-plus-fixed-fee contract. Proposals were to be evaluated by numerical and narrative scoring techniques against certain evaluation factors listed in their relative order of importance. On the basis of the numerical scoring of the weighted evaluation factors, the evaluation panel determined that three firms, including the protester, could be considered to be within the competitive range. However, the solicitation also contained certain unweighted additional criteria which were to be considered in the selection process, including the contractual and organizational relationships which might give rise to an apparent or actual conflict of interest. (The Commission believes it is not possible to weight this factor to properly account for the infinite range of conflict of interest situations which may exist.) The panel ultimately decided to eliminate Columbia from the competitive range because of an organizational conflict of interest. It determined that Columbia would be placed in a conflicting role of evaluating a reliability standard included in the Clinch River Preliminary Safety Analysis Report which Columbia's principal investigator had developed. It was concluded that such a situation could affect the firm's ability to render independent, unbiased judgment and advice to the Commission. The panel believed that this conflicting role could not be eliminated without a major revision of Columbia's proposal.

Essentially, the protester believes that the solicitation's evaluation criterion concerning conflicts of interest may have been misapplied in excluding the protester and that this criterion was erroneously applied in selecting NUS Corporation (NUS) for award. Columbia alleges that it was improperly denied the opportunity to negotiate and to submit a best and final offer, as

contemplated in Federal Procurement Regulations (FPR) § 1-3.805-1. The protester believes that negotiations would have been beneficial to the Government and that an award to Columbia would have resulted in a \$14,974 savings, the difference between its offer and the award price.

Regarding the rejection of its proposal, Columbia argues that there is no conflict of interest when an individual who has participated in the preparation of a Government standard assists the Government in judging the degree to which an applicant had conformed to that standard. The firm contends that such individual is highly qualified to ascertain the degree of compliance of third parties by virtue of the individual's exposure. However, the Commission was unwilling to permit the originator of a reliability standard to evaluate for the Commission the adequacy and applicability (among other aspects) of that standard. In this connection, the solicitation's statement of work provided in part:

"TASK 2. * * *The contractor shall perform independent reliability analyses for these critical areas, taking into account the scope of this contract. The analyses will be based on, but not limited to, the data in the [reliability standard, among other documents]."

Contrary to the protester's understanding, the conflict as explained by the Commission did not concern the originator's evaluation of compliance with the proposed reliability standard. Rather, the Commission reports that although this reliability standard has been adopted by the Energy Research and Development Administration, it has not yet been accepted by the Commission and its acceptability for purposes of compliance with its licensing regulations must still be determined through this review process. In our opinion, it was not unreasonable to perceive a conflict in Columbia's proposal since analysis of the reliability standard would have been performed by the originator of that standard.

In addition, we find no basis for objecting to the Commission's conclusion that the conflict could not be cured without replacing the individual involved and to its unwillingness to permit the major proposal alteration required to correct the situation. Since this individual was proposed as project manager and as principal investigator, it was not unreasonable for the Commission to reach this conclusion.

As to the significance attributed by Columbia to its lower estimated cost of contract performance, generally that fact should not be considered controlling in selecting the contractor for a cost-reimbursement type contract. FPR § 1-3.805.2. In this connection,

B-185843

we also note that in rebuttal to the agency report, Columbia questioned whether the Government's specification was revised during this procurement because of the cost increase negotiated with NUS. Although the record does not indicate the basis for the negotiated increase in cost, we would not in any event object to the rejection of a proposal without negotiation even if requirements were changed where, as here, the rejected offeror is considered to be outside the competitive range for reasons which remain basic to the procurement. Iroquois Research Institute, 55 Comp. Gen. ___ (1976), 76-1 CPD 123. For the reasons stated, it does not appear that negotiations with Columbia would have served any useful purpose.

Columbia also argues that the contract should not have been awarded to NUS because of a conflict of interest with that firm. The contractor, it is alleged, has obtained substantial revenues through its participation with applicants in the preparation of reliability or safety programs for submission to the Commission. It is further argued that NUS has had long standing identification and business dealings with the utility industry, of which the license applicant is a member. Columbia also questions the objectivity of NUS since the contractor's board of directors includes two retired chairmen of utility companies and the Executive Vice President of a construction firm with a substantial interest in the construction of nuclear power plants.

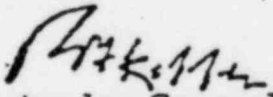
The Commission recognized that NUS has had numerous relationships with various organizations in the nuclear industry. It reports that NUS was under contract for less than \$10,000 with General Electric Company to conduct a general literature search pertaining to reliability failure rate data to be used by General Electric in support of its role as contractor to the applicant for the Clinch River Plant. During negotiations the firm advised the Commission that it would not enter into any additional contracts with General Electric, or with any other organizations, for work on the Clinch River Plant which would result in a conflict of interest. The Commission reports that it examined and evaluated the contractual relationship between NUS and General Electric. It considers its contractual relationship with General Electric as being remote from the substance of the work to be performed under the proposed contract and has concluded that this appearance of conflict is insignificant and too theoretical to warrant exclusion from the competitive range. It is aware of no current relationship, contractual or organizational, which would place NUS in a conflicting role and might result in biased judgment or advice under the instant contract or give it an unfair competitive advantage.

B-185843

We find the Commission's position to be persuasive since it appears that NUS's involvement with General Electric in the Clinch River project was in the nature of a literature search and support function and that NUS was not ultimately responsible for the reliability standard included in the Clinch River Preliminary Safety Analysis Report. As to the firm's prior business dealings with firms included in the utilities and nuclear power industries and the composition of its board of directors, we are not persuaded that such general considerations would call into question the objectivity of the firm's management in the absence of some more direct conflicting connection with the instant contract.

Finally, Columbia has objected to the Commission's alleged failure to determine the availability of the required services from small business concerns. The record, however, shows that a number of small business concerns submitted proposals for this procurement and each, including the protester, was evaluated by the Commission. To the extent that Columbia protests the Commission's refusal to permit a small business set-aside, the protest is dismissed as untimely raised since our Bid Protest Procedures require that any protest based upon an alleged impropriety apparent from the solicitation prior to the closing date for receipt of initial proposals must be filed prior to such date. 4 C.F.R. 20.2(b)(1976). In this case, the protest was filed after Columbia's proposal was rejected and this allegation is therefore dismissed as untimely filed.

Accordingly, the protest is denied.


Deputy Comptroller General
of the United States