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

CHAIRMAN

November 19, 1981

The Honorable John C. Danforth, Chairman
Subcommittee on Federal Expenditures,
Research, and Rules
Committee on Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

At your Committee's invitation, the NRC would like to comment on S. 719, the proposed "Consultant Reform and Disclosure Act." Although the NRC agrees with the basic purposes behind this legislation - to maximize competition, to consider organizational conflicts of interest, and to provide a documented record of government contracts for public information, it does not believe that enactment of S. 719 would be appropriate at this time. Further comments, both in general and on specific sections, are provided in the enclosed attachment.

Sincerely,

Nunzio J. Palladino

Enclosure:
As stated

cc: The Honorable Lawton Chiles
United States Senate

NRC COMMENTS ON S. 719, "CONSULTANT REFORM AND DISCLOSURE ACT"

This bill appears to be overbroad in treating contracts for management data collection services, program management support services, and system engineering services the same as consultant contracts. Contracts of the former types have not been subject to the same abuses as consultant contracts, and putting them within the scope of this legislation is unwarranted.

It is also unclear that legislative action in this area is necessary in light of recent initiatives undertaken by the Office of Management and Budget (OMB) which may well achieve many of the bill's objectives. Specifically, on April 14, 1980, OMB issued Circular A-120, "Guidelines for the Use of Consulting Services," which provides both policy and guidelines to be followed in the use of consulting services. Additionally, the requirements of the Office of Federal Procurement Policy letter 81-1 for advance procurement planning (beginning with the budget process) and the highlighting of "high waste vulnerability projects" such as consultant contracts promise to improve the management of contracts within the scope of S. 719. Further, objectives of S. 719 such as its requirement for a written evaluation of the contractor's performance may already be achieved simply through Executive Branch action.

In addition to these general comments, the NRC would like to make the following comments on specific sections. The effect of this bill on the activities of the Advisory Committee on Reactor Safeguards (ACRS), which reviews and reports to the Commission on the hazards and adequacy of reactor facilities and safety standards, is unclear. While the Committee itself is created by statute so that its members, who serve four-year terms, apparently do not fall within the requirements of S. 719, the Committee carries out its functions through the use of consultants who apparently do fall within the coverage of S. 719. The ACRS, which deals with constantly changing technological problems, utilizes mainly two types of consultants to provide the necessary expertise to deal with these technological issues: (1) It uses individuals in areas of concern for one-year terms as special government employees, and (2) it utilizes consultants from the DOE contractor organization as the need arises through its DOE-NRC Memorandum of Understanding, reimbursing DOE for their use. First, S. 719 does not specifically deal with such Memoranda of Understanding, and it is unclear under the bill what the relative reporting requirements, if any, of DOE and NRC would be. This should be clarified. Moreover, although NRC does not read this bill as applying to ACRS members, it should be stated, either in the bill or in a Statement of Considerations, that the provisions of this bill do not apply to statutorily created advisory committees such as the ACRS. As to the special government employees used by the ACRS, the NRC understands that they would fall under Title I of S. 719, relating to the appointment of consultants, but that they would not fall under Title II as they are not hired to provide a single

special study or report, which seems to be the focus of Title II. Again, however, the NRC believes that this understanding should be stated specifically either in the bill itself, or in a Statement of Considerations, by adding explanatory language that Title I was intended to cover the general employment of experts and consultants, while Title II was intended to cover a contract to procure a single specific individual report, special study, etc.

Section 202 requires agencies to notify the Secretary of Commerce when it estimates that a contract for covered services will exceed $10,000, and section 207 has a list of requirements for contracts in excess of that amount. Section 204 similarly provides for a contract evaluation only when the total amount of the contract exceeds $50,000. However, the other sections of Title II have no such dollar limitations. Some of the specific requirements of Title II are onerous by their nature and might inhibit individuals from seeking such contracts, particularly when small amounts of money are involved. In order to address this problem and to simplify and reduce the amount of reporting required under Title II, the NRC suggests that there be a dollar limit below which the requirements contained in Title II would not be applicable. This would alleviate excessive paperwork and resultant expense in minor contracts which do not warrant such extensive reporting and other requirements. The NRC recommends that contracts for less than $10,000 be exempted from the requirements of Title II.

Section 202(b) provides that justifications for contract modifications which increase the amount of the award by at least $25,000 must be transmitted to the Inspector General or comparable official. Such a procedure is far outside normal procurement channels, and if this provision is read as requiring that the Inspector General approve the justification, it could well prove unworkable.

Section 208(a)(1) requires compilation of a publicly available list of the names of the individual employees who authorize a government contract and administer the program under any given contract. The NRC is concerned that providing this list of individuals will allow potential contractors to easily contact the technical representatives who are involved in a particular program area. Technical representatives, because they are not trained in discerning whether particular information is authorized for public release, may be more likely to release unauthorized information than the contract specialists with whom contractors normally deal. Given this concern, the NRC believes that names of the technical representatives should not be made publicly available absent some compelling need.

Section 208(b) provides that contracts shall be considered public information unless prohibited by law or unless of a classified nature. It appears that this public disclosure is intended to apply to all aspects of a contract, including personnel-related information such as

direct labor rates, overhead costs, general administration rates and a listing of key persons performing the contracts. The availability of such information could provide a convenient vehicle for competitors bidding on a contract in the same area to exploit the bidding process by using the financial information provided in a similar contract. The NRC believes that standards for public disclosure of such financial, personnel and proprietary-type information should be consistent with the terms of the Freedom of Information Act.