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DIVISION OF CONTRACTS  
U.S. NUCLEAR REGULATORY COMMISSION  
WASHINGTON, DC 20555

## NOTIFICATION OF CONTRACT EXECUTION

John D. Evans, Director

(Title)

Planning and Program Analysis Staff  
Office of Nuclear Material Safety & Safeguards

(Organization)

DM: *Mary Little*  
Mary Little  
Contract Administrator

APR 8 1987

(Date)

Contract Administration Branch  
Division of Contracts, ARM

INTRACTOR (Name &amp; Location)

Council on Environmental Quality  
Washington, DC 20006

CONTRACT NUMBER

NRC-02-87-003

MODIFICATION NUMBER

2

☐ NEW☒ MODIFICATION

OTHER (Specify)

CONTRACT BASED ON

AUTHORIZATION NUMBER

RFPA NMS-87-003

DATE

4/8/87

CONTRACT CHANGES PER THIS ACTION

Recognize administrative  
changes due to NRC  
reorganization.

EXECUTION DATE

APR 8 1987

TYPE OF CONTRACT

Interagency Agreement

PERIOD OF PERFORMANCE

11/24/86 - 11/23/88

PRINCIPAL INVESTIGATOR

Lucy Schwartz

NRC AUTHORIZED REPRESENTATIVE

Ken Kalman

PROJECT TITLE

Support for Negotiated Rulemaking

B711030395 B71030  
PDR FOIA  
BAUMANB7-660 PDR

APPN

B&amp;R NUMBER

50-14-03-01

FIN NUMBER

D1056-7

AMOUNT

FUNDING

NEW NRC FUNDS

\$ N/A

TOTAL FY — FUNDING

\$ N/A

TOTAL NRC OBLIGATIONS

\$ N/A

GOVERNMENT PROPERTY

ATTACHMENT(S)

CONTRACT DOCUMENT 1

SUPPORT FOR NEGOTIATED RULEMAKING

FIN: D1056-7

B&amp;R: 50-19-03-01

1.0 BACKGROUND

The Nuclear Waste Policy Act (NWPA) provides three years for the NRC to reach a decision on construction authorization for a high-level waste repository. In order for the NRC to be able to make its decision within the allotted time, ready access to all pertinent records must be assured to all parties in the licensing proceeding. The NRC will therefore issue a rule establishing the use of an electronic information management system to be used in support of the licensing of the first high-level waste repository. Any application of this rule to the licensing of a second repository will have to be considered when the prospects for the second repository are more concrete. This rule would require the DOE license application and all supporting records to be provided in a standardized electronic format. All parties to the licensing proceeding would be required to submit all relevant data to this system. In turn, all parties would have access to the data base. The DOE has committed to develop an electronic information management system to be used for the licensing proceeding.

NRC Staff intends to use the process of negotiated rulemaking to develop a proposed rule that would revise the Commission's discovery procedures and motion practice in 10 CFR Part 2 for the high-level waste licensing proceeding. In an interagency agreement, the DOE has agreed to support NRC's efforts in considering a negotiated rulemaking for licensing records management to facilitate the hearing process.

2.0 WORK REQUIRED

Certain contractual support will be required for the NRC to revise 10 CFR Part 2 through the use of negotiated rulemaking. This contractual support includes the role of the convenor, facilitator, an instructor for training the negotiating group on the principles of negotiation, and provision of information to the negotiating committee on the legal and technical constraints of this rulemaking. Contractual support will also be needed for a variety of administrative and logistical tasks throughout this rulemaking effort. This work is detailed in the following subtasks.

## 2.1 Convenor Tasks

The convenor assists the agency prior to beginning negotiations. The Administrative Conference of the United States (ACUS) recommends using a convenor who is rigorously neutral in respect to the subject matter. The role of the convenor should be distinguished from the role of the facilitator (described in Subtask 2) however, one person or organization can function to fulfill both roles.

Although the NRC staff have already completed some of the work traditionally assigned to the convenor, such as preliminary identification of negotiating parties, identification of several issues for negotiation and the feasibility of proceeding with negotiated rulemaking, the performance of selected convening tasks is required.

The convenor should have significant experience in multi-party negotiations, including experience in evaluating the feasibility of conducting negotiated rulemakings. The convenor should have experience in interactions with the affected States or Indian Tribes, and DOE on sensitive policy issues, and have established credibility with these parties. The convenor should also be knowledgeable of the National High-Level Waste Repository Program, the Nuclear Waste Policy Act, State and Tribal responsibilities and authorities, the Administrative Procedures Act, the NRC/DOE Licensing Support System (LSS), and a general knowledge of electronic information management systems. The convenor will be required to perform the following subtasks.

Subtask 2.1.1 In consultation with the project staff, identify parties and interests that may be affected by the rulemaking.

Subtask 2.1.2 Make preliminary contact with potential participants to provide background information on the negotiated rulemaking, assess their willingness to enter into negotiations, and identify any issues that the participants believe should be addressed in the negotiations.

Subtask 2.1.3 Provide NRC Project Officer with report on parties contacted, parties interest in negotiating, issues raised, and convenors recommendations as to what parties and issues should be included in the negotiations.



Subtask 2.1.4 Develop preliminary ground rules to guide the negotiations in the following areas:

Participants

Inclusion of additional parties after negotiations have begun, attendance by senior representative of each party at the negotiating sessions, responsibility of participants to ensure any agreement developed by the negotiating committee will be acceptable to organization from which the participant comes.

Decisionmaking

Definition of consensus, the use of working groups and caucuses, development of agendas for negotiating sessions.

Agreement

Commitment of the agency to use any consensus reached, form that consensus will take, provisions for terminating negotiations if they are not proceeding successfully.

Safeguards

Assurance that all participants act in good faith, right to withdraw, contact with the press, protection of confidences revealed during negotiating sessions.

Subtask 2.1.5 Support facilitator in running the organizational meeting for this negotiated rulemaking.

2.2 Facilitator Tasks

The facilitator assists the negotiating group in arriving at consensus. It is the facilitators responsibility to move the discussion toward consensus and act as the custodian of the negotiating process so the participants in the negotiation can devote their attention to the substance of the negotiation. The facilitator must have demonstrated skills and competence in facilitating

negotiation as well as the ability to get along with different types of people, an instinctive awareness of group dynamics, and the ability to move a group toward closure. Previous experience in facilitating multi-party negotiations is required. The facilitator must have the ability to establish credibility with the affected parties and remain neutral on the substantive negotiating issues. The facilitator should also be knowledgeable of the National High-Level Waste Repository Program, the Nuclear Waste Policy Act, State and Tribal responsibilities and authorities, the Administrative Procedures Act, the NRC/DOE Licensing Support System (LSS), and have a general knowledge of electronic information management systems. The facilitator will be required to perform the following subtasks.

- Subtask 2.2.1 Preside over organizational meeting and assist negotiating group in reaching consensus on the ground rules for the negotiation, and refining and distributing written protocols reflecting this consensus.
- Subtask 2.2.2 Chair all meetings of the full negotiating group (under the Federal Advisory Committee Act (FACA)) and assist parties in articulating their positions, identifying areas of agreement, and developing consensus solutions to the problems that divide them.
- Subtask 2.2.3 Communicate with negotiating parties between negotiating sessions to ensure issues have been accurately addressed and that the parties are prepared for the next meeting.
- Subtask 2.2.4 Report and evaluate progress of each negotiating sessions
  - Subtask 2.2.4.1 Prepare minutes of each meeting and distribute to the parties for their signed approval.
  - Subtask 2.2.4.2 Assess the progress of each negotiating session and recommend whether to continue or abort negotiations.
- Subtask 2.2.5 Upon successful completion of negotiations, provide Consensus Document and evaluation of negotiations to the NRC Project Officer.
- Subtask 2.2.5(alternate) If negotiations were unsuccessful (consensus not achieved), provide detailed evaluation of negotiations to NRC Project Officer. Evaluation should include detailed identification of issues that could not be resolved, reasons why

these issues could not be resolved, and an assessment of any possible actions that could overcome these obstacles to consensus.

Subtask 2.2.6 Assist with any follow-up work needed to secure Commission's approval of Proposed Rule.

### 2.3 Instructor on the Negotiating Process Task

Inasmuch as negotiated rulemaking is a relatively new concept, instruction will be needed for the negotiating committee. Instruction should cover the theory, objectives, procedures, processes, and tactics of regulatory negotiation as it applies to Federal rulemaking.

The Staff believe the group dynamics of the negotiating sessions would be enhanced if the instructor was not the same person as the facilitator. However, this factor is secondary to the instructors knowledge of the pertinent information and the instructors ability to teach students with diverse backgrounds. Staff anticipates the duration of the training session to be approximately one or two (1 or 2) days.

### 2.4 Instructor on the Technical and Legal Aspects of this Rulemaking Task

The proposed rulemaking addresses the use of an electronic information management system in the Commission's high-level waste licensing proceeding. This effort will therefore require an understanding of the technical aspects of electronic information management systems as well as the legal aspects of the discovery process. The instructor for this task will therefore be required to be well versed in both of these areas and have the ability to present this complex information to a diverse audience. Staff anticipates the duration of this training session to be approximately two or three (2 or 3) days. Additional support from this instructor may be required on an ad hoc basis.

### 2.5 Support Task

Support will be needed for administration of the negotiated rulemaking. The nature of this support is described in the following subtasks.

#### Subtask 2.5.1 Logistics

Logistical support may include procuring meeting facilities and equipment, arranging travel and accommodations for the



participants in the negotiating sessions, scheduling, and notifying parties.

Subtask 2.5.2 Documentation

Documentation may include taking transcripts or minutes of negotiating sessions or subgroup meetings, typing, copying and distributing background documents for the negotiating committee, and other similar tasks.

3.0 REPORTING REQUIREMENTS

The following reports will be required.

3.1 Bimonthly Progress Reports

Beginning within 40 days start of this project, and following on a bimonthly basis, the performing organization shall submit a progress report in letter format which summarizes the following for each major task and subtask:

1. Work performed during the previous period.
  - A. Key milestones achieved
  - B. Meetings attended with reference to letter trip reports submitted.
2. Significant Accomplishments. For the purpose of this discussion, DWM considers the resolution of any programmatic or staffing problems to be an accomplishment. For example, the fact that the negotiating team reached a consensus on an issue could be an accomplishment, since it could represent several weeks of research and discussion culminating the best possible approach for the implementation of the activity/task.
3. Cost expenditures for the period, including cumulative cost expenditures to date.
4. Personnel assigned and their time expenditures including cost expenditures, listed separately for each person during the previous period and cumulative time expenditures to date.

5. Projection of costs by month to completion of work effort for the current fiscal year (October 1 through September 30).

The report shall also state the amount of cumulative cost expenditures to date and the percent that amount bears to the total funds which have been allotted to this contract.

The first bimonthly letter progress report shall provide the cost projection and detailed schedule of work. Subsequent reports shall either indicate revised projections or indicate no change in cost and project schedules.

6. Identification of all significant problems and resulting actions associated with any aspect of the project. "Problem" refers to any programmatic or staffing issue, either anticipated or unanticipated, which has or may affect the process and end results of the project. The impact of the problems will affect at least one of the following categories: (1) performance, (2) cost, and (3) timing. This report should (a) describe the problem, (b) suggest causes of the problem, (c) if resolved during the reporting period, how and by whom, (d) if unresolved, proposed remedies and their schedules; (e) actions to be taken by NRC and/or the contractor to resolve the problem, and (f) assessment of the actual and/or potential impact of the problem on the project.

### 3.2 Updated Timetable/Milestone Chart

If any major changes or slippages are proposed affecting the overall task schedule, a revised timetable/milestone chart, clearly identifying changes, must be submitted to NRC Contracting Officer at least 7 working days prior to the slippage. The NRC Contracting Officer will provide NRC approval of any slippages to the contractor within 14 working days. If no major changes or slippages have occurred during the report period, the performing organization should so state.

### 3.3 Deliverable Products

The following summarizes the required report distribution under this contract. The NRC Project Officer shall provide the performing organization with the current NRC mailing addresses for this distribution:



	<u>Bimonthly Progress Reports</u>	<u>Convenors' Report on Parties and Issues</u>	<u>Convenors' Preliminary Ground Rules</u>
<u>Distribution</u>			
NRC Project Officer	1	1	1
Office of the			
Director, NMSS	1	0	0
(ATTN: PPAS)			
WM Div. Director	1	1	1
WM Branch Chief	1	1	1
WM Docket Control			
Center	5	5	5
Office of the General			
Counsel, OGC	1	1	1
(ATTN: C. Cameron)			
Rules and Procedures	1	1	1
Branch, ADM			
(ATTN: J. Philips)			
Contracting Officer	1	1	1
Information & Records			
Management Branch, TIDC	0	0	0
Policy & Publications			
Management Branch, TIDC	0	0	0

<u>Distribution</u>	<u>Facilitator's Minutes and Evaluation of Sessions</u>	<u>Facilitators' Consensus Document or Alternate Report</u>	<u>Draft/Final Formal Report or Letter Report</u>
NRC Project Officer	1	1	1
Office of the Director, NMSS (ATTN: PPAS)	0	0	0
WM Div. Director	1	1	1
WM Branch Chief	1	1	1
WM Docket Control Center	5	5	5
Office of the General Counsel, OGC (ATTN: C. Cameron)	1	1	1
Rules and Procedures Branch, ADM (ATTN: J. Philips)	1	1	
Contracting Officer	1	1	1
Information & Records Management Branch, TIDC	0	0	0
Policy & Publications Management Branch, TIDC	0	0	1

NOTES:

1. All NMSS technical high-level waste contractor documents are transmitted to the NRC Public Document Room (PDR) and appropriate Local Public Document Rooms (LPDR's) by the Division of Waste Management. All administrative documents, e.g., financial reports, should be submitted separately from technical reports.
2. Proprietary information must be properly identified by the performing organization in accordance with 10 CFR 2.790, Availability of Official Records, and will not be submitted to the PDR's.
3. The performing organization shall clearly identify, by FIN number, all documents transmitted to the NRC.



#### 4.0 MEETINGS AND TRAVEL

The anticipated schedule for this negotiated rulemaking provides for nine (9) 2-day meetings of the negotiating committee. The convenor will be present at the first and second meeting, and the facilitator will be present at all nine meetings. The instructor on the negotiating process will most likely be needed at the first meeting and the instructor on the legal and technical aspects will most likely be needed at the second and third meetings. The second, third, fourth and fifth meetings will be held in different locations (most likely in the states of Texas, Washington, and Nevada), the remaining meetings should be scheduled for Washington, D.C., unless the negotiating committee believes there are good reasons for holding these meetings elsewhere.

Travel associated with this statement of work need not be approved by the NRC Project Officer in advance, provided it will not result in charges in excess of those negotiated. The contractor shall provide a travel summary in the bimonthly progress letter to show number of trips, travel cost actual, and travel cost budgeted for this project.

#### 5.0 NRC FURNISHED MATERIAL

The NRC will provide all available documentation needed to support the tasks cited in this SOW.

#### 6.0 KEY PERSONNEL

The contractor shall submit a list of key personnel who are considered to be essential to the successful performance of the work proposed and shall not be replaced without the prior approval of the NRC Project Officer. In such event, the contractor agrees to substitute persons possessing substantially equal abilities and qualifications satisfactory to the NRC Project Officer.

#### 7.0 PERIOD OF PERFORMANCE

This contract shall become effective on the date of award and shall continue for a period of two years.