

From: John Cook
To: Robert Webber
Date: 3/30/06 9:39AM
Subject: Re: Chairman Paper for "Spent Fuel Transport Risk Assessment" Acquisition

Robert-

Please find our input to the OEDO questions on the subject Paper attached. We understand that you will provide the response to OEDO. Please call if you have any questions, or need assistance with incorporating the responses into the Memo and SOW.

Thanks.

-John

>>> Joyce Fields 03/28/06 5:09 PM >>>
John:

The subject paper is currently under review by OEDO. The following questions/comments require NMSS' response for completion of OEDO's review/ concurrence. Please provide an e-mail to Robert Webber (acting for Mary Lynn Scott) with your responses, as soon as possible. DC (Robert Webber) will provide a consolidated response to OEDO. You may contact me (x6564) if there are any questions. Thanks!

Chairman Review - Spent Fuel Transport Risk Assessment (ML053320276)

Based on recent feedback from the Chairman's office, a description of the work to date and the reason for sticking w/SNL should be added to the transmittal memo. Also, the description/scope indicates there is a related but separate acquisition (#4) - a recent paper w/the Chairman required an explanation of the interrelationship of related acquisitions; can you add a sentence or two to the transmittal memo explaining this. The commencement date of the period of performance has passed - this always causes concern w/the Chairman's staff when the paper is submitted for review, as the Chairman wants to know the impact of not having approval (even though it's a review in this case) in time. Can you easily change the commencement date or indicate in some way that it was an estimate that will be revised to reflect the real date as the process progresses? Please note beginning on page 8 (pgs 8-10) of the SOW the dates have passed too. Also, page 11 of the SOW indicates the period of performance of the existing mod as being April but the transmittal memo says June. The FY 06, 07, and 08 funding does not equal the total funding (it's only off by \$30K but the Chairman's staff will notice this). Is it the program offices that determine OCOIs?

CC: Dave Pstrak; Elise Heumann; Joyce Fields; Julia Barto; Penelope Kinney; Robin Baum; Rx11

Responses inserted in blue:

Chairman Review - Spent Fuel Transport Risk Assessment (ML053320276)

Based on recent feedback from the Chairman's office, a description of the work to date and the reason for sticking w/SNL should be added to the transmittal memo.

Work to date has focused on the Transport Safety Visualizations described in Task 2 of the Draft Statement of Work. Only minimal effort has been expended on the Spent Fuel Transport Risk Assessment to conserve Task 1 resources pending outcome of this memorandum. This modification requires an update of a contractor report SNL previously prepared for NRC (NUREG/CR-6672). As the "Expertise and Disciplines Required" section of the Draft Statement of Work and Sole Source Justification indicate, staff is of the view that SNL is the only group qualified to perform this follow-on analysis.

Also, the description/scope indicates there is a related but separate acquisition (#4) - a recent paper w/the Chairman required an explanation of the interrelationship of related acquisitions; can you add a sentence or two to the transmittal memo explaining this.

The separate acquisition refers to an independent technical peer review of the work SNL performs under this modification. Staff believes that it might appear inappropriate to contract the same organization to conduct its own peer review, hence a separate acquisition will be pursued for a different organization.

The commencement date of the period of performance has passed - this always causes concern w/the Chairman's staff when the paper is submitted for review, as the Chairman wants to know the impact of not having approval (even though it's a review in this case) in time. Can you easily change the commencement date or indicate in some way that it was an estimate that will be revised to reflect the real date as the process progresses?

As the paper states, this is a proposed modification of an existing agreement for a project that began on June 23, 2005. The scope for the initial project had only a small dollar amount. It is the modification (significant expansion) of that initial project that requires Chairman review. The commencement date of the modification has not passed. To clarify this, the phrase "Commencement date: February 2006" should be changed to "Commencement date of modification: May 2006".

Please note beginning on page 8 (pgs 8-10) of the SOW the dates have passed too.

Note that the Statement of Work necessarily describes both the initial project already underway as previously described, and the proposed modification that is the subject of the Chairman memo and that has yet to commence. The dates that have passed pertain primarily to Task 2 activities on Transport Safety Visualizations, that are not a component of the modification requested in the Chairman memo.

Also, page 11 of the SOW indicates the period of performance of the existing mod as being April but the transmittal memo says June.

The April date in the SOW refers to NRC's request for proposal; the SOW should be changed to June to conform with the date on page one of the memo.

The FY 06, 07, and 08 funding does not equal the total funding (it's only off by \$30K but the Chairman's staff will notice this).

The period of performance for this project began on June 23, 2005, and approximately \$30,000 was spent in FY 2005. Text on the costs incurred during FY 2005 had been deleted from the document, in response to previous comments; that text has been restored. The sum of the costs shown for FY 2005-FY 2008, equals the total estimated cost.

Is it the program offices that determine OCOIs?

For commercial contracts, it is the Contracting Officer in Division of Contracts who determines if an OCOI exists. However, for efforts with DOE laboratories, the program office (which has the authority under the Energy Reorg. Act to place agreements with DOE) must ask the following question in determining whether the potential for OCOI exists in conjunction with the NRC project the program office intends to place at the laboratory: "Are there conflicting roles that might bias a lab's judgment in relation to its work for NRC?" See, MD 11.7, page II-15, March 26, 2002.

The three most common standards we follow to determine whether there are conflicting roles for both commercial contracts and DOE lab agreements are: (1) work in same technical area concurrently for both NRC and an organization regulated by NRC; (2) work on the same or similar matter concurrently for both NRC and an organization regulated by NRC; (3) review of an organization's own work or product. (See first 3 bullet examples on pages II-15 of MD 11.7). Also a potential problem, is concurrent work at a licensee site for both NRC, and the licensee or licensee organization itself. If the lab discloses work in the same technical area, same/similar matter, potential review of own work, there indeed may be an OCOI and then the program office should contact OGC, and Division of Contracts so that a determination can be made as to if there is, in fact, an OCOI. This "tripod" (program office, OGC, DC) coordinate together from then on if an EDO waiver is to be sought. (Updated draft [not yet approved] of MD 11.7 will cover this procedure in more detail than the present March 26, 2002 MD.

To assist the program office in this regard, the following recently developed OCIO statement for DOE agreements should be added to the SOW:

ORGANIZATIONAL CONFLICT OF INTEREST DISCLOSURE

DOE recognizes that Section 170A of the Atomic Energy Act of 1954, as amended, requires that NRC be provided with disclosures on potential conflicts when NRC obtains technical, consulting, research and other support services. DOE further recognizes that the assignment of NRC work to DOE laboratories must satisfy NRC's conflicts standards. Accordingly, when NRC enters into an agreement with a DOE laboratory to perform work for NRC, and during the life of the agreement, the laboratory shall review its current work, planned work and where appropriate past work for DOE and others (meaning, organizations, in the same/similar technical area as the NRC project scope of work, e.g., (included but not limited to), NRC licensees, vendors, industry groups or research institutes that represent or are substantially comprised of nuclear utilities) to determine whether such work is in the same or similar area as the proposed NRC project. Should that review reveal current or planned work for DOE or others in the same or similar technical area as the proposed NRC work, the laboratory shall provide name of organization, dollar value, and period of performance of the work identified as well as descriptions of such potentially conflicting present/planned/past work to NRC. NRC

shall then determine whether a conflict would result and, if one does, determine, after consultation with the laboratory and DOE, the appropriate action NRC or DOE should take to avoid the conflict or when appropriate under NRC procedures, waive the conflict.

From: Joyce Fields
To: John Cook
Date: 3/28/06 5:10PM
Subject: Chairman Paper for "Spent Fuel Transport Risk Assessment" Acquisition

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CC: Penelope Kinney; Robert Webber