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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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November 12, 2008

DENNIS B. FITZGIBBONS, CHIEF OF STAFF
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AND CHIEF COUNSEL

Raynard Kington, M.D.
Acting Director
National Institutes of Health
9000 Rockville Pike
Bethesda, MD 20892

Dear Dr. Kington:

Under Rules X and XI of the U.S. House of Representatives, the Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations are examining management and oversight of federally funded research and development centers (FFRDCs). Of particular interest to us is the National Cancer Institute's FFRDC contract with Science Applications International Corporation (SAIC)-Frederick, Inc. (SAIC-F), the largest contract of a private entity with the Department of Health and Human Services (HHS).

At our request, the Government Accountability Office (GAO) recently issued a report on the management and oversight of FFRDCs. GAO found that although the Department of Defense and the Department of Energy require FFRDC contractors to ensure that employees of FFRDCs are free from personal conflicts of interest, HHS does not have policies requiring such safeguards. Of the four agencies included in GAO's review, only HHS does not create a separate annual research plan for its FFRDC.

These findings raise questions about the adequacy of HHS management and oversight of its FFRDC contract with SAIC. We also have concerns, however, raised by the decision of the National Cancer Institute (NCI) to award a contract valued at over \$5.2 billion over 10 years on a sole source basis to SAIC-F, a subsidiary of SAIC, to provide operations and technical Support (OTS) at the NCI FFRDC in Frederick, Maryland.

The circumstances of this award are questionable. As GAO noted in its report, HHS has conducted full and open competition on the contract for its cancer research lab since its establishment in 1972, resulting in some change in contractors. GAO added that HHS took the non-competitive route because the last time this contract was competed in 2001, SAIC-F was the only bidder. NCI published a special notice on October 4, 2006, however, stating its intention to award the multi-billion dollar OTS contract with SAIC-F on a sole source basis, but noted that other contractors expressed an interest in providing OTS services to NCI. In fact, NCI published this special notice just days before SAIC's initial public offering (IPO). The timing of NCI's notice is curious, given that it took NCI nearly 2 more years to get the clearances to announce the sole source award to SAIC-F.

Given the oversight issues identified by GAO and the circumstances of the sole source award, we are concerned about the integrity of the award process and whether conflict-of-interest issues involving SAIC-F and its employees were adequately handled. Please respond to the following questions in writing and provide all supporting records:

1. Please provide a copy of the OTS contract, and all related records between NCI and SAIC-F, for OTS services at NCI.
2. Who initiated the sole source negotiation for OTS services at NCI Frederick—SAIC-F or NCI? Please provide the name, title, organization name and address, and contact information of all staff participating in the discussion to initiate the sole source negotiation and all related records.
3. Did any of the SAIC staff participating in the decision to initiate the sole source negotiation for OTS services have a financial interest that would be substantially affected by the IPO? Did NIH take any steps to evaluate contractor and contractor-employee conflict-of-interest issues before NCI's intention to pursue a sole source award with SAIC-F?
4. Please provide all records relating to the decision to issue the October 4, 2006, special notice on the OTS contract.
5. The special notice regarding the OTS of the NCI anticipated the contract would consist of a base period of 3 years, five 1-year award term options, and one 2-year option for a potential 10-year period of performance, which was the contract awarded to SAIC-F. Why did NCI choose to structure the term of the contract this way?
6. The special notice stated that the OTS services provided by SAIC-F were of such an outstanding technical level, and at a cost that is fully reasonable and in accord with the technical performance, that meaningful improvement in performance could not be achieved through solicitation and award to another source. How did NCI evaluate SAIC-F's prior performance as a contractor for OTS services? How was NCI able to

determine other contractors would not be able to provide a similar quality of service at an equivalent cost without allowing other contractors to bid?

7. The special notice stated that other contractors expressed interest in providing OTS services to NCI. Please list the names of all contractors, including company name and address, point of contact, and contact information who expressed such an interest. Please list the names of all contractors, including company name and address, point of contact, and contact information who submitted a capability statement. Please provide a copy of all capability statements received.
8. The special notice stated that it must be readily apparent from the capability statement that an organization can provide a meaningful improvement to SAIC-F's performance level. How did or would NCI measure "meaningful improvement"? Did "meaningful improvement" ensure a contractor would be awarded the contract? If not, why not?

Please deliver copies of the requested records to the Subcommittee on Oversight and Investigations of the Committee on Energy and Commerce, Room 316, Ford House Office Building, no later than two weeks from the date of this letter. Please note that for the purpose of responding to this request, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter. After review of the records, we may require additional records and staff interviews with HHS and NCI staff.

Thank you for your prompt attention to this matter. If you have any questions related to this request, please contact us, or have your staff contact John F. Sopko of the Majority Committee staff at (202) 225-2927, or Alan Slobodin of the Minority Committee staff at (202) 225-3641.


Sincerely,




John D. Dingell
Chairman



Joe Barton
Ranking Member



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations



John Shimkus
Ranking Member
Subcommittee on Oversight and Investigations

ATTACHMENT

1. The term "records" is to be construed in the broadest sense and shall mean any written or graphic material, however produced or reproduced, of any kind or description, consisting of the original and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) and drafts and both sides thereof, whether printed or recorded electronically or magnetically or stored in any type of data bank, including, but not limited to, the following: correspondence, memoranda, records, summaries of personal conversations or interviews, minutes or records of meetings or conferences, opinions or reports of consultants, projections, statistical statements, drafts, contracts, agreements, purchase orders, invoices, confirmations, telegraphs, telexes, agendas, books, notes, pamphlets, periodicals, reports, studies, evaluations, opinions, logs, diaries, desk calendars, appointment books, tape recordings, video recordings, e-mails, voice mails, computer tapes, or other computer stored matter, magnetic tapes, microfilm, microfiche, punch cards, all other records kept by electronic, photographic, or mechanical means, charts, photographs, notebooks, drawings, plans, inter-office communications, intra-office and intra-departmental communications, transcripts, checks and canceled checks, bank statements, ledgers, books, records or statements of accounts, and papers and things similar to any of the foregoing, however denominated.
2. The terms "relating," or "relate" as to any given subject means anything that constitutes, contains, embodies, identifies, deals with, or is in any manner whatsoever pertinent to that subject, including but not limited to records concerning the preparation of other records.