

February 6, 2004

MEMORANDUM TO: William D. Travers
Executive Director for Operations

FROM: Stephen D. Dingbaum/**RA**
Assistant Inspector General for Audits

SUBJECT: MEMORANDUM REPORT: NRC CONTRACT FOR REVIEW OF
OFFICE OF INVESTIGATIONS' INVESTIGATIVE METHODS
AND TECHNIQUES (OIG-04-A-09)

As part of the Office of the Inspector General's (OIG) evaluation of the impact of the Office of Investigations' (OI) methods and techniques in addressing allegations of licensee discrimination, the evaluation team identified a contracting action that warrants your immediate attention. The Nuclear Regulatory Commission (NRC) authorized expenditures of about \$173,000 to Resolution Dynamics, Inc. to conduct, what has been described as, a research study¹ to provide a report on the possibility of a chilling effect from OI's investigative procedures. This agency action violates the Federal Acquisition Regulation and NRC's Management Directive and Handbook 11.1, "NRC Acquisition of Supplies and Services."

Specifically —

- Resolution Dynamics, Inc.'s research study is not within the scope of the basic contract (NRC-38-00-281) under which it was ordered.
- The proposed work seeks some information that NRC already possesses.
- The procurement action was not conducted under Federal Acquisition Regulation requirements for competition.

OIG briefed NRC senior managers prior to issuance of this report. NRC senior managers then took immediate action and terminated the work order that authorized Resolution Dynamics, Inc. to conduct its research study.

¹In an interview with OIG, a Resolution Dynamics, Inc. senior official termed his work a "research" study.

BACKGROUND

For the last several years, NRC has been reviewing its process for handling discrimination issues relating to nuclear industry workers coming forward with safety concerns. During this time, NRC stakeholders have also expressed their concerns with the process. One comment made by a number of stakeholders is that OI investigations can be intimidating to anyone potentially involved in the allegation process. As a result, the president/chief executive officer of the Nuclear Energy Institute (NEI) recommended that NRC use an *external* reviewer to perform an assessment that focuses on the effectiveness of using criminal investigative techniques to evaluate employee discrimination claims. In response, NRC staff engaged Resolution Dynamics, Inc. to conduct a review of investigative procedures used in dealing with discrimination complaints.

Resolution Dynamics, Inc. has been doing work for NRC for a number of years and currently has a contract with the agency. The contract is for Resolution Dynamics, Inc. to provide learning programs in the following three curriculum areas: 1) supervision and management, 2) organizational development, and 3) technical/professional human behavior programs. The contract was let on March 13, 2000, and is a one year contract with three option years. The estimated contract amount over the life of the contract is about \$2.8 million — see figure 1 for more detail.

Figure 1

Contract Year	Estimated Amount
Base Year 03/13/00 - 03/12/01	\$ 692,750
Option Year 1 03/13/01 - 03/12/02	\$ 692,750
Option Year 2 03/13/02 - 03/12/03	\$ 713,110
Option Year 3 03/13/03 - 03/12/04	\$ 713,110
TOTAL	\$ 2,811,720

FINDINGS

Management Controls Lacking

NRC's Management Directive and Handbook 11.1, "NRC Acquisition of Supplies and Services" provides guidance for NRC to achieve the best value for its acquisition of supplies and services. According to the Directive and Handbook, an existing NRC contract can be modified in accordance with a contract provision. However, new work must be within the scope of the basic contract. Furthermore, project officers may not authorize work outside the scope of the contract.

The statement of work in Contract No. NRC-38-00-281 describes NRC's need for instructional programs to enhance the skills and knowledge of its employees. Yet, under this contract, through two work order letters, the NRC *project officer* authorized Resolution Dynamics, Inc. to conduct a research study to determine if a chilling effect exists resulting from OI's investigative procedures. Because this work was outside the scope of the contract, the project officer had no authority to order this work from the contractor.

The two NRC work order letters authorizing the additional work to be completed under Contract No. NRC-38-00-281 are non-specific and refer to the additional work as organizational development intervention. While the work order letters do not detail the actual work to be done, a draft work plan (alluded to in the work order letters) developed by Resolution Dynamics, Inc. provided a detailed description of the research project it planned. The Division of Contracts, Office of Administration, gave the work order letters a " cursory " review to determine if the cost was reasonable — thus the work was allowed to continue even though the contractor's proposed work in its "draft work plan" was outside the scope of the contract. These actions demonstrate a lack of proper management controls to ensure that proposed work is within a contract's scope and authorized by the proper agency official.

Additional Work May Not Be in the Best Interest of NRC

The Federal Acquisition Regulation general standards (9.104-1) require that a contractor have the technical skills (or ability to obtain them) necessary to fulfill the work as described by the contract. Resolution Dynamics, Inc.'s draft work plan titles the work it plans to do as a "Review of Investigative Procedures in Dealing with Discrimination Complaints as Addressed Under Industry Standards for Maintaining Safety Conscious Work Environments." Yet, Resolution Dynamics, Inc. advised OIG that it does not have experience with investigative methods and techniques — a skill needed to perform a review of investigative procedures.

Under work order letters #275 and #316, NRC was to pay Resolution Dynamics, Inc. to prove if this chilling effect exists or not and report the results. Printed literature that is readily available on NRC's website and its Discrimination Task Group report already acknowledges the existence of a chilling effect. As a result, NRC could have paid about \$173,000 for some information that it already possesses. By the middle of January 2004, NRC obligated \$94,375 — paid \$7,426 to Resolution Dynamics, Inc. and had a pending invoice for an additional \$9,310.

CONCLUSION

Because the project officer exceeded her authority by requesting work outside the contract's scope, NRC is not in compliance with its own and Federal acquisition guidance. Further, NRC may not be getting the best value for its contract dollars because 1) the proposed work sought some information that NRC already possesses, and 2) the work was not subjected to Federal Acquisition Regulation requirements for competition.

RECOMMENDATIONS

OIG recommends that the Executive Director for Operations —

1. Immediately terminate the OI research project being conducted by Resolution Dynamics, Inc. [Recommendation closed as of January 23, 2004, when NRC terminated the work under Contract NRC-38-00-281.]
2. Re-evaluate the assessment to be conducted to ensure that NRC receives the information that it needs and expects.
3. Subject the procurement action to competition under Federal Acquisition Regulation procedures should you determine that an external assessment still needs to be conducted.
4. Determine if the lack of adequate management controls for issuing the OI work orders on this contract is an isolated event or a systemic problem.

AGENCY COMMENTS

At the exit meeting on January 30, 2004, OIG discussed the report's content with NRC officials. While NRC officials generally agreed with the report, they had some editorial suggestions which were incorporated, as appropriate.

METHODOLOGY

Upon evaluation of contract NRC-38-00-281 and its associated work order letters #275 and #316, OIG reviewed applicable Federal acquisition guidance. In addition, the OIG evaluation team discussed its findings with the Inspector General's counsel and legal counsel in the Office of the General Counsel — all agreeing that the work appears to be outside of the scope of the contract. The OIG team also talked with staff members in DC/ADM and the project officer for the contract. This work was conducted from December 2003 through January 2004 in accordance with generally accepted Government auditing standards.

Please provide information on the actions taken in response to the recommendations directed to your office by February 27, 2004. Actions taken or planned are subject to OIG followup. See Attachment A for instructions for responding to OIG report recommendations.

If you have any questions or concerns regarding this report, please contact Tony Lipuma at 415-5910 or me at 415-5915

Attachment: As stated

cc: Chairman Diaz
Commissioner McGaffigan
Commission Merrifield

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