on need-to-know basis, and DOD has an almost parallel policy for nuclear design processes. A DOE Q clearance is specific to DOE. Mr. Griffon stated that this was not meant to conflict; but only to distinguish for key personnel, not all staff. Dr. Roessler reiterated her concern that this will make it difficult for the proposal reviewers to find a qualified person with this restriction, but this had been discussed before.

Mr. Elliott suggested, instead of a requirement, saying it would be 'advantageous' to have such a person who is also not conflicted. However, Mr. Presley noted that this will have to be a requirement, since such persons will certainly be needed for dose reconstructions done at site facilities. Although some non-Q cleared people can be escorted, at some sites the isotope/operation itself could be classified. It was agreed to leave this text as is.

B. **Management Approach/Understanding of the Requirement.** No comment/changes.

C **Technical Approach:** No comment/changes.

D **Past Performance:** No comment/changes

E. **Conflict of Interest.**

- To paragraph 3, after "Additionally, the offeror, teaming partners, and key personnel shall have no prior work history, while performing under contract with NIOSH or ORAU ..." then add the following text: **"... or the two ORAU "primary teaming partners (related to contract #200-2002-00593) in the past five years. Beyond this limitation, the offeror, teaming partners, and key personnel shall be evaluated for prior work history with NIOSH and ORAU for any appearance or actual conflict of interest, or other factors which could otherwise prejudice the independence of the offeror, teaming partners and key personnel. If the offeror, teaming partners, or key personnel have current or past work history with NIOSH or ORAU, the offeror should include a needs justification for the key personnel's participation in the project."**
  - By **general agreement, the five year term was changed to two years,** since there was no need seen for this to be more stringent than the individual dose reconstruction contract.

In the Paragraph 4 text regarding key personnel and staff members, Ms. Munn took exception to the exclusion of anyone who ever worked at a site being involved in any reviews related to that site. This was particularly relevant in light of the public comment at this meeting on the lack of understanding of the site's processes. While she understood that such persons might not be involved in the review itself, it would be counterproductive to not allow them to participate as a resource.

- Griffon: *What is ORAU's process?* Toohey: Such persons can serve as a dose reconstruction expert information resource, although they cannot participate in the dose reconstruction itself. They review the phone interview records to correct nomenclatures, for example.

- Melius: *What provisions ensure that the task does not overly rely on their information?* Toohey: The input is part of the administrative record, along with everything else, so it would be evident if too much weight was placed on any particular source. They are listed as site experts, but ORAU could work with OCAS on identifying their potential conflict of interest.
- DeHart: In Paragraph 5: To the last sentence, ***insert "will not perform reviews" rather than "be involved."*** The Board **agreed.**

DeHart: In paragraph 4, he **moved to change the previous paragraph's "any litigation defending worker compensation" to "any litigation concerning worker compensation," retaining "or other radiation related claims", and dropping the rest of the sentence.** Dr. Roessler seconded the motion. Discussion included:

- Munn: That is unfair. While some degree of restriction is necessary, it is difficult to imagine anyone would be able to find an expert witness in legal actions if it is known that this will exclude them from further employment.
- Ziemer: *Does this also apply to friends of the court brought in to testify to matters of fact?* DeHart: The parenthetical "(including non testifying witness)" would include that.
- Melius: If that includes testimony on other radiation-related exposures (e.g., hospitals) not associated with DOE, that would go far beyond those whom it is meant to rule out.
- Griffon: At the Santa Fe meeting, the Board heard that, if expanded in such a manner, Dr. Toohey would lose his two teaming partners and a large percentage of their pool of contractors.
- Gibson: In law suits, experts have testified in support of contractors for not monitoring employees, and later DOE acknowledged that that was true; it was not done. He personally would not believe anyone who would testify for DOE, and opposed the motion. Mr. Espinosa agreed, citing the Los Alamos workers' many claims against and distrust of DOE.
- Dr. Melius also spoke against the motion. The original language was directed to DOE to assure a fair process to the claimant; it is consistent with the ORAU's contract; and there are also provisions to site-specifically limit participation of individuals involved in litigation in the review of that site. At this general level, the idea is to limit the participation of people who were employed by the major "source" of exposure in this program. This is necessary to ensure the perception of equity and fairness in this process.

- Dr. Ziemer asked for a vote, reclarifying that a yes vote favored the change of the motion; a no vote would retain the current language.

Vote:

In Favor: Five.
Opposed: Five. The Chair then voted against the motion, totaling six opposed
Abstentions: Two, Drs. Roessler and Andrade.

The motion failed, and the original wording was retained.

Dr. DeHart **moved to accept Attachment A with the edits previously accepted,** and was seconded by Mr. Presley. All were in favor; and with no abstentions, the **motion passed.**

Public Comment

Dr. Mike Schaeffer, of DOD, Defense Threat Reduction Agency, applauded the Board's work to advance the dose reconstructions. He retained one concern, however, that this was still a NIOSH process, a NIOSH contract, and a NIOSH follow-up and evaluation, which could pose grave consequences to public confidence in this interview process. He had described his office's similar experience in a previous ABRWH meeting. The NAS has reviewed their process and would report on that later this year; he urged the Board to attend to those results. He suggested, to overcome that impediment, that NIOSH have an interagency agreement with another government agency (e.g., a state government also represented on the panel) to issue their own independent review panel.

Dr. Melius noted that some state radiation programs (e.g., his in New York) do not have the required level of expertise to do that and asked if Dr. Schaeffer knew of one. He replied that the state may not have that, but the states have the contracting vehicle in place to allow this to be done with this expert Board's oversight.

Mr. Richard Miller, of the Government Accountability Project (GAP) informed the Board that Mr. Jerry Tudor, an Oak Ridge Y-12 employee who had attended a previous Board meeting, had died of cancer on January 2 of this year.

He asked if: 1) the current Section C provides the option for the Board to contract for the source evaluation with multiple contractors; 2) if that was desired; and if so, 3) what the criteria would be to do so. A double blind review was originally discussed; or, with a large contract, smaller bidders could address half of it. Before discussion of this RFP ended, he asked that some direction be provided on this area of one versus two evaluations.

Mr. Griffon responded that the Board had discussed a double blind process early. In the selection process, the same case could be given to two contractors to do a double blind review. While this was not specified, it also is not prohibited. Dr. Ziemer added that double blinds can also be done with one contractor, using multiple teams.

Introduction of the members of the public attending, and who wished to introduce themselves, included:

Mr. Kenny Fleming, of Science Applications International Corporation (SAIC) Oak Ridge, which will bid on the evaluation project. He commented that, as now described, the project is small ($7 million, 2.5%) of the overall contract. He supported a pre-bid meeting, since matters discussed on this day indicate many pro's and con's related to the RFP that require clarification before bidding. He also noted that, as described, 2.5% of Dr. Toohey's 12 Q-cleared staff calculates out to less than one FTE, which could cause some problems with Q clearance.

Mr. Dave Stuenkel, of Trinity Engineering Associates of Cincinnati, related their interested in bidding as well.

Closing Comments.
The IREP workgroup (Dr. Anderson, Mr. Elliott, Drs. Ziemer and Melius) had prepared a document for the committee's review which will be on the next meeting's agenda. They hoped to identify scientific topics that might be discussed by the Board for addition to IREP. Eight topics were identified from meeting minutes, comments from public, etc., and listed in random order for future consideration, perhaps with speakers to present them. Dr. Melius reported that one aspect discussed was how to prioritize these. The list involves issues of science, of how other radiation compensation programs dealt with similar issues; and claimant issues raised that may trigger something for review. As a procedure for addressing these, he suggested that NIOSH conduct the topics' background work and present it to Board for its decision as to whether to pursue the topic, and perhaps prioritize some of them.

With no further comment, the meeting adjourned at 4:50 p.m.

JANUARY 8, 2003

Board Housekeeping
Future meetings. Committee Board management specialist Ms. Cori Homer confirmed that the next meeting will be held on **February 5-6 in Charleston, SC.** Dr. Melius asked that the next meeting agenda include an update on implementation of the conflict of interest policies.

Dr. Ziemer noted that the SEC rulemaking may be issued on the week of January 20, and the 30-day comment period ends February 21. A conference call may be needed on February 19 or 20, for 2-3 hours (e.g., 1:00-4:00 EST). Mr. Espinosa and Dr. Anderson had some conflicts on the 19th but the 20th was clear.

Future meeting dates to be held open by the members were: April 28-29; May 1-2 and 19-20 were also acceptable. Oak Ridge was thought to be the best site, but nearby Knoxville, TN, is most likely to have adequate and available meeting facilities.

Current and completed action/agenda items were in this meeting's book. Any comments or questions should be e-mailed to Ms. Homer or Mr. Elliott. Ms. Homer also asked the members to provide her by January 10 with a list of their time spent in meeting preparation and their preferred travel dates for the next meeting.

SOW Attachments. Mr. Griffon reported that, subsequent to informal discussions after the previous day's meeting, he had reconsidered his position. He had more concern about the modifications agreed upon than the original language on the 2-year limit for conflict of interest. While more flexibility was thought to be desirable, no one could generate any language that was workable. It was finally agreed that the 2 years was a compromise itself and remained acceptable.

IREP Workgroup Document. Dr. Ziemer asked for any comments or grouping of the initial topics described the previous day, but none were offered. The list will be discussed further at the February meeting.

Public Comment

Mr. Sam Ray asked for clarification of whether the interviewers will be site specific. Mr. Elliott said that the goal is for the interviewers be as knowledgeable as possible, but with 314 sites, accomplishing that except for the larger sites may not be possible. He also confirmed for Mr. Ray that the interviewer will have the site profile in hand during the interview, as well as the full case file and all available site- and worker profiles.

To give the Board the claimant's perspective, Mr. Ray outlined his claim process from its filing in July 2000 to its finalization 11 months and 2 weeks later. The claims examiner was nice, but he was unsure he knew much about the mill. He received NIOSH's notification that the claim was entering dose reconstruction and the recommended decision. But then the final adjudication Board had a different interpretation of the facts regarding his specified cancer. When his argument "hit a stone wall," he contacted his congressmen, the National Cancer Institute (NCI), and Mr. Miller of GAP. The case was resolved, but his experience could serve as a cautionary tale of the dose reconstruction process. He was now hearing comments from people that NIOSH is "a tool of the DOE".

He emphasized that the different culture of DOE 30-40 years ago must be worked into the equation. The 1981 document by NIOSH identified a hazard evaluation report done at the Portsmouth GDP that was "so bad as to make a reconstruction almost impossible." Nonetheless, he believed that this process can work if that is desired. He urged NIOSH to not be put in a position where it appears to be like DOE, or the program will fail. He would like to see it succeed and thought that it could.

Mr. Espinosa asked if NIOSH has bilingual staff engaged, and Mr. Elliott confirmed that, by both NIOSH and ORAU do so. Mr. Espinosa offered to refer NIOSH to Navajo translators if the need occurs, and Dr. Melius also suggested tribal councils as sources of help.

Mr. Miller asked if there is any plan for a public briefing on NIOSH's Residual Contamination Study report. Mr. Elliott noted that the Board was briefed on this at the last meeting in Santa Fe. It is a complex document with a format NIOSH has had difficulty in reconfiguring to place it on the Web, but it will be there. Mr. Miller then asked if any selection had been made of a Board member for the audit panel, and Mr. Elliott responded that the Chair will appoint that person.

Mr. Robert Tabor, of the Fernald Atomic Labor Council asked why Charleston was chosen for the next meeting, as opposed to Augusta, to accommodate the Savannah River Site (SRS) workers. Dr. Ziemer responded that Charleston was chosen in order to be close to the SRS. Mr. Elliott explained further that Aiken and Augusta were discussed as well, and added that the SRS Health Effects Subcommittee, supported by CDC, has held meetings all around the area that have been well attended.

The public portion of the meeting was adjourned at 9:25 a.m. After a short break, the Board met in Executive Session to discuss and review the development of the proposed independent government cost estimate for the contract discussed at this meeting. Since the line on which Ms. Munn was calling was not secure, she was unable to attend that portion of the meeting.

I hereby confirm that these Minutes are accurate to the best of my knowledge.

Paul L. Ziemer, Ph.D., Chair

2/17/23
Date

ATTACHMENTS

Draft Proposed Dose Reconstruction Methods/Procedures Review
January 7, 2003

The contractor shall review all relevant dose reconstruction methodologies and/or procedures employed by NIOSH / NIOSH contractors in conducting individual dose reconstructions and SEC petitions. The contractor shall determine whether methodologies and procedures are consistent with requirements under 42 CFR 82 and shall determine that there are sufficient procedures to achieve consistent application of the requirements in 42 CFR 82.

The contractor shall review all methods/procedures being used by NIOSH and the NIOSH contractor for the determination of a dose estimate (individual or SEC-related dose estimates). This includes but is not limited to:

1. Review the internal and external radiation dose reconstruction technical basis documents,
2. Review of methods for estimating "missed dose" and "un-monitored dose" (for cases related to monitoring technology and for cases where monitoring was not performed, monitoring data is not available or incomplete or otherwise inadequate),
3. Review of the statistical approaches developed for multiple dose reconstructions,
4. Review procedures used for determining whether data is sufficient to make a reasonable dose estimate,
5. Review methods or procedures used for substituting exposure information for unavailable or incomplete information
6. Review methods for estimating uncertainty in dose and uncertainty distributions surrounding internal and external dose reconstructions on a facility and time specific basis and determine whether, how, and to what extent the benefit of the doubt was resolved in favor of the claimant where there where uncertainties,
7. Review procedures and questionnaire used for work history phone interview,
8. Review the NIOSH methods, procedures and performance in evaluating, analyzing and validating all contractor work products.

Action Items of the Tenth ABRWH Meeting

NIOSH will provide the ABRWH with a list of the sites lagging in responding to records requests and a breakdown of the reasons why. Sundin will provide.

Mr. Elliott will check on whether the affiliation may be identifiable of the review panel members, other than the Board member, referenced in Attachment A.

An update on implementation of the conflict of interest policies was requested in the next meeting agenda.

The members favored selecting April 28-29 as the dates for the next meeting; May 1-2 and 19-20 were also acceptable. Oak Ridge, TN, is the best site, but Knoxville, TN, is most likely logistically.