



Internal Audit: Management of Conflicts of Interest of Technical Support Contractors being used on GDA work

Status: Final

Issue Date: September 2010

Background

This audit was carried out in response to a request¹ from the Director of Generic Design Assessment (GDA) of the Nuclear Directorate (ND). This audit is being undertaken concurrently with another audit (Audit number 31 – Management of Technical Support Contractors being used on GDA work) these two audits although looking at the same area will offer discrete and independent (of each other) assurance.

In January 2008 the Government announced its support for the building of a new generation of nuclear power stations in the UK. HSE and the Environment Agency have a key role in the nuclear power programme; by ensuring that any new nuclear power station meets the highest standards of safety, security, environmental protection and waste management. The GDA initiative has a remit to be an open and transparent process and this is achieved by frequent public updates on progress, consultations and reports being posted on the GDA website [UUUUhttp://www.hse.gov.uk/newreactors/index.htm](http://www.hse.gov.uk/newreactors/index.htm).

Design assessments are being carried out by HSE and Environment Agency regulators, elements of the design's safety cases are being issued to Technical Support Contractors (TSCs) for scientific and technical advice as discrete packages of work² but the responsibility for that work remains with the regulators. TSCs will provide regular updates on the progress of their work. TSCs may also be contracted by the Requesting Parties (RPs)³ or by potential licensees to carry out work related to the GDA process, it is such circumstances that a potential conflict of interest can arise.

Key Risks

We identified the following risks to the business objective:

- Procedures and policies in place to support effective management of conflicts of interest (real and potential) are insufficient, inaccurate, not communicated or not understood so that a conflict of interest can arise, compromising the integrity of the work of the TSC and HSE; and
- ND technical assessors, contract managers and HSE Procurement Unit do not follow agreed and documented procedures and processes and fail to ensure that TSCs are aware of and comply with the policy in relation to potential conflicts of interests, this may damage HSE's credibility as an independent regulator if such a conflict be identified and disclosed.

¹ The GDA process review board identified a concern with control of conflicts and recommended that Internal Audit review this area.

² As part of a framework agreement

³ Designers of proposed new reactors

Business Objective

HSE's objective for ND GDA management of conflicts of interest is that all reasonable measures are taken to ensure conflicts of interest (real or perceived) are managed in a transparent fashion, such that HSE can have confidence that the technical and scientific advice from the TSCs is (and is seen to be) independent and unbiased.

Audit Objective and Scope

The objective of the audit was to:

- deliver reasonable assurance to the Accounting Officer and the Director of GDA that the key risks to the achievement of the business objective were being effectively managed; and
- to make practical recommendations for improvement in the management of business risk, control and governance where appropriate with due regard to value for money.

The Audit looked at:

- How the management of conflicts of interest of TSC contractors was set up including:
 - Framework agreements;
 - Procedures, Policies and Processes;
 - Governance; and
 - Controls in place to ensure conflicts of interest are effectively managed.
- How the management of conflicts of interest for TSC contracts was operating including:
 - Compliance with procedures and policies;
 - Governance operating as intended and is adequate; and
 - Controls and mitigations operating effectively and not being bypassed.
- Was there sufficient monitoring and review built into the process to ensure that GDA management have assurance over the management of conflicts of interest in relation to TSC contracts.

The audit did not look at:

- the work of the Environment Agency; or
- the technical aspects of any assessment.



Executive Summary

Audit Opinion	Commentary
<p>Due to the strengths identified we can provide substantial assurance⁴ that the risks to the achievement of the business objectives are being adequately managed.</p>	<p>Overall, we found effective controls in place and operating to ensure that conflicts of interest are being properly managed. Strong governance and active management by a designated conflicts manager, the Conflicts of Interest Panel and the GDA Project Directors Board ensure that conflicts management is given due priority. Our opinion has been informed by interviews with relevant staff and management in GDA and a review of documentation and files. This has provided evidence of effective control. Areas of particular strength are identified below, as well as some areas where improvements could be made or lessons learned for future activities. None of the areas identified for improvement give us cause for concern or have any significant effect on our assurance opinion.</p> <p><u>Areas of Particular Strength and Good Practice</u></p> <ul style="list-style-type: none"> • The framework agreement – conflicts are explicitly covered, as is the requirement for Technical Support Contractors (TSCs) to confirm arrangements within their bid; • Documented system for managing conflicts; • Designated Conflicts of Interest Manager; • Strong governance - Conflicts of Interest Panel, which reports directly to the GDA Project Directors Board; and • Good understanding by all GDA staff of the importance of managing conflicts. <p><u>Areas for Potential Improvement</u></p> <ul style="list-style-type: none"> • TSCs to reaffirm conflicts of interest obligations for each future work package that is commissioned; • Conflicts of Interest Panel review forms should contain evidence of approval (date and name); • Formalise the requirement for representation from HSE’s Procurement Unit on the Conflicts of Interest Panel; and • Widening of the scope of the conflicts of interest panel to include consideration of the potential impacts to other parts of ND who may be engaging TSCs.

⁴ See Annex A



Key Findings

Audit Objective	Commentary
<p>How the management of conflicts of interest of TSC contractors was set up</p>	<p>Framework agreements</p> <p>In order to comply with UK government procurement rules, it was decided to identify a number of potential Technical Support Contractors (TSCs) that could be called off to assist with specific work packages for the GDA programme; this is known as the framework.</p> <p>The documents sent to all potential bidders for inclusion in the framework required that submissions should include details of how they proposed to manage conflicts of interest. We confirmed that these measures were evaluated by the tender board, which had representatives from HSE’s Procurement Unit and GDA staff, in identifying potential TSCs. Our sample test confirmed that appropriate documentation was in place.</p> <p>Procedures, Policies and Processes</p> <p>In commissioning a specific package of work there is no additional requirement for the TSC to declare potential or actual conflicts of interest in relation to that package. Since the bidding process to join the framework it is possible that circumstances, including organisational changes, may have impacted on the original submission.</p> <p>In our opinion, control would be enhanced by a requirement that, as part of their bid for an individual package of work, the TSC should re-affirm that they understand their general obligations regarding conflicts of interest. In addition they should also be required to identify any existing or potential conflicts in relation to that package, or confirm that none exist. (Recommendation 1)</p> <p>The current procedure for managing conflicts of interest is contained in “Supplier Conflict of Interest Protocol”. This is a comprehensive document and it details the course of action to be taken following the discovery of a potential or actual conflict. All TSCs have been sent this document for information.</p>

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	<p>Governance</p> <p>A project manager has been given responsibility for actively managing the conflicts of interest process within the GDA project; this role has been clearly communicated across the GDA project.</p> <p>Declared conflicts of interest are subject to evaluation at a Conflicts of Interest Panel, comprising representatives from GDA and HSE’s Procurement Unit. This panel produces reports for consideration and approval by the GDA Project Directors Board.</p> <p>All those we interviewed as part of the audit demonstrated a clear understanding of the importance of identifying conflicts of interest, the process to manage them, and the potential damage that a conflict of interest could have on the integrity of the GDA process.</p> <p>Controls in place to ensure conflicts of interest are effectively managed.</p> <p>In our opinion the controls in place, as identified above, provide an effective control framework.</p>
<p>How the management of conflicts of interest for TSC contracts was operating</p>	<p>Compliance with procedures and policies</p> <p>The guidance document covering the day to day managements of conflicts of interest (Supplier Conflict of Interest Protocol) is subject to ongoing review and refinement.</p> <p>The protocol requires that TSCs submit a form declaring any conflict and their proposed mitigation; this is then subject to an internal review in GDA that tests the completeness and adequacy of the declaration. These declarations are then subject to assessment by the Conflicts of Interest Panel, where a review form is completed for each declaration. This review form then is sent to the GDA Project Directors Board for consideration and approval.</p> <p>We reviewed a sample of completed forms; these contained all the information required and were fully completed.</p> <p>There is a single electronic folder that contains all of the conflicts of interest documentation, including full audit trails. We do note, however, that the review forms, following submission to the GDA Project Directors Board, do not provide</p>



Audit Objective	Commentary
	<p>details of when a decision has been made and who made it. This would provide evidence of formal approval. (Recommendation 2).</p> <p>Governance operating as intended and is adequate</p> <p>Conflicts of interest are regularly discussed at the GDA Project Directors Board and supporting documentation is provided by the GDA monthly 'Dashboard'.</p> <p>The Conflict of Interest Panel has only been required to meet once and we confirmed that its decisions were suitably recorded. The guidance, though not prescriptive, suggests that representation should include, amongst others, HSE's Procurement Unit. When the panel met, we noted that Procurement Unit, who could have brought some independence and challenge to the meeting, were unable to attend. (Recommendation 3)</p> <p>The Conflicts of Interest panel considers potential conflicts within GDA. TSCs may also be engaged with other divisions of ND, and possibly with other parts of HSE; therefore, there may be benefit in widening the scope/role of the panel. This would ensure that all potential conflicts are identified (and considered) in a broader context. This is an observation, no formal recommendation has been raised.</p> <p>Controls and mitigations operating effectively and not being bypassed</p> <p>In our opinion, controls are operating as intended, with some minor weaknesses, but these do not affect the overall effectiveness of the management of conflicts of interest process within GDA.</p>



Recommendations and Action Plan

Rec	Findings & Risk Impact	Risk Category	Recommendation	Management Response	Agreed Implementation Date
1	<p><u>Findings</u></p> <p>Although TSCs have confirmed their arrangements for managing conflicts of interest at the start of the framework agreement, no specific further statements are currently requested for individual work packages.</p> <p><u>Risk Impact</u></p> <p>There is the potential for TSCs to overlook specific conflicts of interest relating to individual work packages.</p>	C	As part of their bid for an individual package of work, the TSC should re-affirm that they understand their general obligations regarding conflicts of interest. In addition they should also be required to identify any existing or potential conflicts in relation to that package, or confirm that none exist.	We will request TSCs to include a statement on Conflict of Interest in any proposals and identify when there is a potential conflict.	Implement immediately and formalise by 30/09/2010
2	<p><u>Findings</u></p> <p>Supplier Conflict of Interest Review Sheets, that details the decisions taken by the GDA Project Directors Board are not dated and "signed".</p> <p><u>Risk Impact</u></p> <p>Lack of transparent decision making.</p>	B	Supplier Conflict of Interest Review Sheets to record the name of the manager approving the decision and the date of approval.	Conflict of Interest Review Sheet to record approver and date of approval. An administrative compliance check will also be introduced.	30/09/2010

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3	<p><u>Findings</u></p> <p>Procurement Unit were invited to the meeting of the Conflicts of Interest Panel but were unable to attend. No alternative independent panel member was present.</p> <p><u>Risk Impact</u></p> <p>Governance of the Conflicts of Interest Panel may be undermined by the lack of an independent (of GDA) member.</p>	C	Formalise the requirement for independent representation on the Conflicts of Interest Panel, including contingency arrangements, should a representative from HSE's Procurement Unit not be available.	Terms of Reference for Conflict of Interest Panel to formally include need for independent representation in order to be quorate.	30/09/2010



Annex A

Audit Assurance

Opinion	Definition
Substantial Assurance	A basically sound system of internal control, but where there are a few minor weaknesses that may put achievement of some system objectives at risk
Adequate Assurance	A sound system of internal control that is satisfactory in the main (design and control)but which contains a number of weaknesses that are likely to undermine specific system objectives and leave it vulnerable to error or non compliance
Unacceptable	An unacceptable system of internal control (design or control) containing fundamental /serious weaknesses creating serious doubts about the achievement of system objectives and leaving open to significant error or abuse

Risk Categories

Risk Category	Definition
A	A weakness where there is a substantial risk of loss, fraud, impropriety, poor value for money, or failure to achieve the organisation's objectives. Such a risk could lead to an adverse impact on the business and standing of HSE and expose the Accounting Officer to criticism. Remedial action must be taken urgently
B	A weakness in control which, although not fundamental, relates to shortcomings which expose individual business systems to a less immediate level of threatening risk or poor value for money. Such a risk could impact on operational objectives and should be of concern to senior management and requires prompt specific action.
C	Areas that individually have no major impact, but where management would benefit from improved controls and/or have the opportunity to achieve greater effectiveness and/or efficiency. Potential for undesirable effects at the process level, which combined with other weaknesses could give cause for concern and require specific remedial action.