

Presidential Advisory Committee
Department of Health and Human Services
Centers for Disease Control and Prevention (CDC)
National Institute for Occupational Safety and Health
(NIOSH)
Advisory Board on Radiation and Worker Health

The verbatim transcript of the Meeting of the
Advisory Board on Radiation and Worker Health held
telephonically on December 12, 2002.

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P R O C E E D I N G S

1:00 p.m.

1
2
3 **DR. ZIEMER:** Cori, would you go ahead and do
4 a roll call of the Board members, please.

5 **MS. HOMER:** Okay. Henry Anderson?

6 (no response)

7 Tony Andrade?

8 (no response)

9 Dr. DeHart?

10 **DR. DEHART:** Yes.

11 **MS. HOMER:** Richard Espinosa?

12 **MR. ESPINOSA:** Yes.

13 **MS. HOMER:** Michael Gibson?

14 **MR. GIBSON:** Yes.

15 **MS. HOMER:** Mark Griffon?

16 **MR. GRIFFON:** Yes.

17 **MS. HOMER:** Dr. Melius?

18 **DR. ZIEMER:** He was on I thought.

19 **DR. MELIUS:** I'm still here.

20 **MS. HOMER:** Okay. Wanda Munn?

21 **MS. MUNN:** Yes.

22 **MS. HOMER:** Charles Owens?

23 **MR. OWENS:** Present.

24 **MS. HOMER:** Robert Presley?

25 **MR. PRESLEY:** Here.

1 **MS. HOMER:** And Gen Roessler?

2 **DR. ROESSLER:** Here.

3 **MS. HOMER:** Okay. And Dr. Ziemer.

4 **DR. ZIEMER:** Here. And Larry Elliott's
5 aboard.

6 **MR. ELLIOTT:** I'm here.

7 **DR. ZIEMER:** And who of your staff, Larry,
8 is on deck here?

9 **DR. NETON:** Jim Neton's here.

10 **MR. SUNDIN:** And Dave Sundin.

11 **DR. ZIEMER:** Okay. And in D.C. we have?

12 **MS. HOMOKI-TITUS:** Liz Homoki-Titus and
13 David Naimon.

14 **DR. ZIEMER:** Okay.

15 **MR. KATZ:** And in Atlanta you have Ted Katz.

16 **MS. HOMER:** And Cori Homer and Twila Saitow.

17 **DR. ZIEMER:** Okay, and we have our recorder
18 aboard, right?

19 **MS. HOMER:** Yes.

20 **DR. ZIEMER:** And let's see, we have some
21 members of the public.

22 **MS. TOUFEXIS:** Oh excuse me, this is Rose
23 Toufexis from the Department of Labor.

24 **DR. ZIEMER:** Oh good, there's some other
25 federal people. Any other fed --

1 **MR. KOTSCH:** Jeff Kotsch is here from the
2 Department of Labor.

3 **DR. ZIEMER:** Thank you. Any others?

4 Let me ask any members of the public who are
5 on the call to please identify themselves.

6 **MR. MAURO:** My name is John Mauro. I'm a
7 health physicist. I'm with Sanford Cohen and
8 Associates.

9 **DR. ZIEMER:** Thank you.

10 **MS. KIEDING:** Sylvia Kieding with PACE
11 International.

12 **DR. ZIEMER:** Okay.

13 **DR. MAKHIJANI:** Arjun Makhijani with the
14 Institute for Energy and Environmental Research.

15 **DR. ZIEMER:** Thank you.

16 **MR. BISTLINE:** This is Bob Bistline from the
17 Department of Energy, Rocky Flats field office.

18 **DR. ZIEMER:** Okay.

19 **MR. POTTER:** Herman Potter, from PACE
20 International.

21 **MR. MILLER:** Richard Miller from GAP.

22 **DR. ZIEMER:** Okay.

23 **MR. KLEMM:** Jeff Klemm, SAIC.

24 **MR. TABOR:** Bob Tabor, from Fernald Public
25 Trade and Labor Council.

1 **DR. ZIEMER:** Any other members of the public
2 aboard?

3 Okay, someone just came online. Is Tony
4 Andrade or Henry Anderson on yet, either?

5 **WRITER/EDITOR:** May I have the name of the
6 first person from the Department of Labor, please,
7 the woman?

8 **MS. TOUFEXIS:** Yes, that's Rose Toufexis.

9 **WRITER/EDITOR:** How do you spell your last
10 name, please?

11 **MS. TOUFEXIS:** It's T-O-U-F-E-X-I-S.

12 **WRITER/EDITOR:** Thank you very much.

13 **MS. TOUFEXIS:** You're welcome.

14 **DR. ZIEMER:** Okay.

15 **MR. ELLIOTT:** Dr. Ziemer, would you like me
16 to have my secretary try to reach Tony and Henry?

17 **DR. ZIEMER:** Yes, I think it would be good
18 if we try to call both of them and see if there's a
19 problem with them getting on the line.

20 Let me, in case some weren't on the line at
21 the time, announce Sally Gadola has resigned from
22 the Board at the -- I would say basically at the
23 request of White House legal counsel who has -- were
24 concerned about potential or perceived conflicts of
25 interest, and so Sally resigned just within the last

1 two or three weeks. Whether she will be replaced
2 right away or later is up in the air. That's the
3 White House's call.

4 Let me make sure that everyone is aware of
5 the agenda. The agenda as distributed is a one-item
6 agenda and that is to discuss the scope of work and
7 evaluation plan for the procurement of technical
8 consultation to the Board on dose reconstruction. I
9 would like to add that we will provide, following
10 that, a period for public comment so that you can
11 consider that an agenda item. It didn't show up on
12 the published agenda, but we do always allow time
13 for public comment.

14 And then, with the permission of the Board,
15 I'd like to just add -- at the end of the meeting,
16 also -- just take a few minutes and make you aware
17 of the proposed agenda for the January meeting.
18 That agenda is -- we'll try to finalize it this week
19 and then it'll be published, but I just want to
20 raise a question or two about the content of the
21 agenda and get the Board's advice. So we'll do all
22 of those things, but the main thing is this work
23 scope item that's before us.

24 **BOARD DISCUSSION**

25 Now I want to be sure that all of us are

1 looking at the same documents, and the documents
2 that we should be looking at today were the ones
3 that were publicly distributed. They are on the web
4 site and they should all have -- the first document
5 is called actually Attachment A --

6 **UNIDENTIFIED:** No, I think it's Attachment C
7 is --

8 **DR. ZIEMER:** Well, okay, depending on which
9 one you call first.

10 **UNIDENTIFIED:** Okay, I'm sorry.

11 **DR. ZIEMER:** There is an Attachment C which
12 is the Statement of Work and that is the main
13 document. There is an -- there is an Attachment D
14 and E, which are two examples that follow Attachment
15 C, and then there is an Attachment A called
16 Technical Evaluation Criteria. Does everybody have
17 copies of those -- and the copy -- if you have the
18 correct copy, every page is stamped as "Draft." If
19 you do not have a copy whose page has stamped on it
20 "Draft as of 12/9," you may not have the right copy.
21 And I know that there were some materials that some
22 folks were looking at that included some boilerplate
23 that's used in the request for contract that NIOSH
24 or CDC uses, and some of those pages are not part of
25 what we have to deal with today. So if any of you

1 don't have what I just described, then you should
2 pull them down immediately from -- on your -- either
3 your e-mail or your web site.

4 Now, with that as background, let me first
5 express my appreciation to Mark Griffon and the work
6 group for the -- and the NIOSH staff for the time
7 and effort they put in in pulling this material
8 together for us. I know it was a substantial task
9 and we appreciate the work they've put in on this.

10 What I'd like to do here is outline what I'm
11 proposing as our method of reviewing this. I'd like
12 to --

13 **DR. ANDERSON:** Hi, it's Henry Anderson.

14 **DR. ZIEMER:** Okay, Henry, we -- this is
15 Ziemer here. We just got underway. We took the
16 roll call and we now will add you to the roll here.

17 **DR. ANDERSON:** Yeah, I had a little trouble
18 dialing in. I don't know what was going on.

19 **DR. ZIEMER:** Yeah. Just making sure that
20 everybody has the documents to review that were --

21 **DR. ANDERSON:** I do.

22 **DR. ZIEMER:** -- distributed. These should
23 all be marked as "Draft," if you have copies that
24 are stamped "Draft," that's the right version --
25 draft of 12/9/02.

1 I'm going to ask Mark to kind of give us an
2 overview of everything, just -- Mark, if you would
3 be willing to do that, and then after we do the
4 overview we'll go back and go through in detail,
5 section by section, to try to identify issues or
6 concerns that individuals might have. And then if
7 there are proposed changes, we need to see if we can
8 come to agreement, if there are such, what those
9 changes should be. And then having identified any
10 issues or concerns and tried to outline any proposed
11 changes, the hope would be to come to final approval
12 on the document by the end of this conference call.

13 I do want to ask one question and that is --
14 and I ask this of the Board and of the staff -- is
15 there any reason why additional changes could not be
16 made at the January meeting of the Board if we
17 decide there are additional tweaks that need to be
18 made?

19 **MR. ELLIOTT:** This is Larry Elliott. There
20 is certainly opportunity for the Board to make
21 changes in January at its meeting. I think what the
22 goal --

23 **DR. ZIEMER:** We don't want them to be
24 substantial at that point.

25 **MR. ELLIOTT:** No, we don't want them to be

1 substantial because what the goal of today is is to
2 try to get Board's consensus agreement on the
3 statement of work and a technical evaluation
4 criteria that we can start the procurement process
5 with.

6 **DR. ZIEMER:** Right.

7 **MR. ELLIOTT:** We won't have -- it'll be at a
8 point in the procurement process in January 7th and
9 8th when you meet here in Cincinnati that you can
10 still make some changes, but they have to be --

11 **DR. ZIEMER:** They couldn't be major changes.

12 **MR. ELLIOTT:** They couldn't be major
13 changes.

14 **DR. ZIEMER:** Right.

15 **MR. ELLIOTT:** They couldn't -- a major
16 change in direction would be problematic.

17 **DR. ZIEMER:** Right.

18 **MR. ELLIOTT:** A language change here or
19 there which retained the same direction of the scope
20 is no problem.

21 **DR. ZIEMER:** Right. Okay. Everybody okay
22 on that?

23 **DR. MELIUS:** This is Jim Melius. Just to
24 clarify and -- I really don't have an example in
25 mind, but what extent would we be able to, if we

1 needed to, to modify the evaluation criteria in
2 January? When you say scope, Larry, I'm just a
3 little unclear about what parts of the proposal
4 you're --

5 **MR. ELLIOTT:** Okay, I will try to clarify
6 that. The statement of work is what I meant by
7 scope. You certainly would be able to revisit the
8 technical evaluation criteria and make changes to it
9 in January.

10 **UNIDENTIFIED:** (Inaudible)

11 **DR. ZIEMER:** What's that?

12 **UNIDENTIFIED:** Did everyone hear me or --

13 **DR. ZIEMER:** No, you got a blast of static
14 there for a minute.

15 **MR. ELLIOTT:** Well, the scope that I
16 referred to is in the statement of work. Major
17 directional changes to that would be problematic.
18 You will have the ability and the opportunity at
19 your January meeting to make changes to the
20 technical evaluation criteria.

21 **DR. ZIEMER:** That would be easier to change,
22 in other words, is what you're saying.

23 **MR. ELLIOTT:** Yes. Yes.

24 **DR. ZIEMER:** Okay. Is everybody okay on the
25 proceeding and the method that I've just described?

1 Any concerns on following that approach? This is
2 just a suggested approach for getting through the
3 document, so if somebody has a better idea, we're
4 open to hearing that.

5 **UNIDENTIFIED:** Good.

6 **DR. ZIEMER:** Okay. Then Mark, if you want
7 to proceed and I -- of course, the main thing that
8 we're focusing on here is Attachment C, the
9 Statement of Work, but Attachment A, the Evaluation
10 Criteria, is also important.

11 **MR. GRIFFON:** Right, I was just going to
12 say, just to put this -- this whole thing in
13 context, maybe -- the boilerplate language that I
14 did send out in Word format to the Board initially,
15 that -- that was boilerplate from a previous task
16 order contract and some of it wasn't applicable and
17 so NIOSH is working with -- with me and with the
18 working group to modify that as we need to. But
19 that really --

20 **DR. ZIEMER:** That's really not the scope of
21 work.

22 **MR. GRIFFON:** Yeah, but in that boilerplate
23 language it cites Attachment A, B and C, and D and E
24 as the two examples.

25 **DR. ZIEMER:** Right.

1 **MR. GRIFFON:** Attachment A is the evaluation
2 plan, as we said --

3 **DR. ZIEMER:** Right.

4 **MR. GRIFFON:** -- and it specifies how the
5 review panel will evaluate the bidders, what
6 criteria, what percentages and so forth. Attachment
7 B is actually not -- we haven't done anything with
8 that, but it is a list of potential bidders, I
9 believe. And then Attachment C is the actual -- as
10 Larry and Paul pointed out correctly, is the main
11 body the statement of work. And D and E are sample
12 tests which the bidders will be asked to bid -- bid
13 against. And they're not necessarily the tests that
14 will be issued once the contractor is selected, but
15 they're just sample, representative tests, sort of.

16 **DR. ZIEMER:** Right.

17 **MR. GRIFFON:** And that's the overview. And
18 I was going to also recommend that we probably
19 should start discussions with Attachment C --

20 **DR. ZIEMER:** Right.

21 **MR. GRIFFON:** -- and then Attachment A,
22 which on our working group we have had some things
23 that we could not resolve on Attachment A --

24 **DR. ZIEMER:** Okay.

25 **MR. GRIFFON:** -- and we -- you know, they

1 may be more substantial, to the point where we may
2 need to, you know, redraft some language and bring
3 it up at the January meeting.

4 **DR. ZIEMER:** Okay.

5 **MR. GRIFFON:** So I think that might be a...

6 **DR. ZIEMER:** Right. So Mark, are there some
7 overview things that you'd like to talk about in
8 terms of Attachment C or any sort of general
9 statement before we go through it in detail?

10 **MS. MUNN:** This is Wanda. I'd like to ask
11 one question of Mark before we go on. I don't know
12 whether I was dreaming, but I wanted to make sure
13 that the Attachment B that I had is the Attachment B
14 you were talking about. How did you describe it?

15 **MR. GRIFFON:** Attachment B is actually -- it
16 doesn't exist. We didn't -- we didn't -- it's
17 referenced in the initial scope as a list of
18 potential bidders.

19 **MS. MUNN:** Oh, so --

20 **DR. ZIEMER:** And Wanda, we won't be
21 reviewing anything today called Attachment B --

22 **MR. GRIFFON:** Right.

23 **DR. ZIEMER:** -- so that's not on the table.

24 **MS. MUNN:** So the Attachment B that I have,
25 which is the site profile and worker profile review,

1 is not applicable to our conversation today?

2 **MR. GRIFFON:** That's actually Part B of
3 Attachment C.

4 **MS. MUNN:** Okay.

5 **MR. GRIFFON:** Right. And that is on the
6 table today, yeah.

7 **DR. ZIEMER:** Yes, don't confuse "attachment"
8 with "part."

9 **MR. GRIFFON:** Yeah.

10 **MS. MUNN:** Oh, I see. I see what I'm
11 looking at. Yes, all right.

12 **MR. GRIFFON:** Okay, I'm sorry about that.

13 **MS. MUNN:** That's why B was not where B was
14 supposed to be. Okay, thank you.

15 **MR. GRIFFON:** I can just -- I can give you
16 an overview of (inaudible) focused on Attachment C,
17 which is --

18 **DR. ZIEMER:** Yeah, give us an overview of
19 that, Mark.

20 **MR. GRIFFON:** -- statement of work. Just to
21 go through the sections, the front end is really
22 background information -- purpose of the contract
23 and then background and need.

24 **DR. ZIEMER:** That's all historical stuff.

25 **MR. GRIFFON:** Right. If you go down to page

1 three, that's really where we start talking about
2 the contract tasks, and A, B and C are the primary
3 tasks. There is one difference that we -- from our
4 -- from my presentation in Santa Fe. I believe I
5 had another task D, which included a review of
6 methods and procedures. And we haven't eliminated
7 that. We've sort of rolled it into --

8 **DR. ZIEMER:** Tried to incorporate it.

9 **MR. GRIFFON:** Incorporate it in sections A
10 and B, right. So you'll see some of the same
11 language from the previous draft that we discussed
12 in Santa Fe included -- incorporated in sections A
13 and B.

14 Section A, as we've discussed it the past
15 couple of meetings, is the individual dose
16 reconstruction review. And if we go down to page
17 four, we've broken this down to basic review, which
18 -- all the criteria laid out for the basic review.
19 And advanced review is on page five and then at the
20 very bottom have a blind dose reconstruction review
21 -- blind dose reconstruction.

22 Going on to page six, just to overview this
23 whole document, page six is the NIOSH OCAS site
24 profile and worker profile review. And site
25 profile, if we all remember these definitions, NIOSH

1 is -- as part of their database they're putting
2 together profiles on all the sites which would
3 incorporate other data other than personal dosimetry
4 data, which may be needed during dose reconstruction
5 activities. And the worker profile -- and I guess
6 they all link to the same database -- would include
7 more of a -- sort of coworker analysis of if they
8 had job exposure, a matrix sort of data where they
9 might need to use where an individual didn't have
10 much of their personal available. They might rely
11 on coworker data, so those are the site profile and
12 worker profile, and Section B talks about the review
13 of those by the -- this independent review team.

14 **DR. ZIEMER:** Right.

15 **MR. GRIFFON:** At the bottom of that page is
16 the review of SEC petitions, and this language at
17 this point, for Section C -- which goes from the
18 bottom of page six onto page seven -- is very broad
19 and intentionally so because the regulations, as we
20 know, are not finalized yet, so -- but we felt that
21 it was an important thing to at least keep as a
22 placeholder in the future so that, you know -- we
23 know that the Board is going to need technical
24 assistance in reviewing some of these petitions, so
25 we have this scope item left there.

1 And then Section C.4, which starts in the
2 middle of page seven -- all this is work assignment,
3 sort of the requirements of the contractor on
4 submittals and paperwork, and a lot of this is from
5 boilerplate language from previous task order
6 contracts with NIOSH. On to C.5 the same way,
7 preparation of reports -- modified slightly, but for
8 the most part boilerplate language.

9 **DR. ZIEMER:** Okay.

10 **MR. GRIFFON:** And then we get on to page 10
11 has Attachment D and then Attachment E is page 12, I
12 guess, and there are two different examples for them
13 to bid against. One is a basic review and the other
14 one is an advanced review and, you know, tried to
15 give them specific information on number of cases
16 and what types of cases.

17 **DR. ZIEMER:** And Mark -- Ziemer here again
18 -- these two are intended simply to help the bidders
19 understand what we're asking for. Is that correct?

20 **MR. GRIFFON:** Right, and also to evaluate
21 their approach and their personnel, you know,
22 expertise --

23 **DR. ZIEMER:** In terms of being able to do
24 these.

25 **MR. GRIFFON:** Right.

1 **DR. ZIEMER:** Yeah. Okay.

2 **MR. ELLIOTT:** Dr. Ziemer, this is Larry
3 Elliott. If I might, what Example 1 and 2 in
4 Attachment D and E provide is a level playing field
5 for the proposers to bid their work against.

6 **MR. GRIFFON:** Right.

7 **DR. ZIEMER:** Sure.

8 **MR. GRIFFON:** Thank you, Larry.

9 **DR. ZIEMER:** Okay. Shall we go ahead with
10 Attachment C then, or do you want to say anything
11 about A at this point?

12 **MR. GRIFFON:** Well, yeah, Attachment A, if
13 you want to just flip through that, I suppose. It's
14 the evaluation plan. It's very much like the
15 previous one we looked at. The only additions is
16 Section A has conflicts of interest language in
17 there to -- that they would be evaluated against,
18 and I should say that there were a couple of items
19 in here that the working group couldn't -- that we
20 couldn't resolve, couldn't come to consensus on --

21 **DR. ZIEMER:** Okay.

22 **MR. GRIFFON:** -- and therefore needed to
23 come to the full Board for these.

24 **DR. ZIEMER:** So when we get to that point --

25 **MR. GRIFFON:** Yeah.

1 **DR. ZIEMER:** -- we can just raise those.

2 **MR. GRIFFON:** Right.

3 **DR. ZIEMER:** Very good. Well, let's go back
4 then and proceed with Attachment C, and if it's
5 agreeable then, let me just walk us through this
6 section by section and ask for issues or comments or
7 questions that any of the Board members may have,
8 and if there are not any, just move ahead.

9 **MR. ELLIOTT:** Dr. Ziemer, this is Larry
10 Elliott again. If I could just suggest this --

11 **DR. ZIEMER:** Is there a phone ringing in the
12 background or is that --

13 **MR. ELLIOTT:** There sure is, but it's not
14 here.

15 **DR. ZIEMER:** Okay.

16 **MR. ELLIOTT:** In addition to what your
17 proposed process, I would ask that any typographical
18 items or, you know, editorial items, if you -- we
19 could just agree to send those in to us --

20 **DR. ZIEMER:** Absolutely.

21 **MR. ELLIOTT:** -- we'll attend to those. If
22 there are issues regarding language, like a word
23 that means something to somebody but may not mean
24 the same to somebody else, we should take those up.

25 **DR. ZIEMER:** Right. We won't discuss commas

1 and dangling participles. Okay.

2 **MR. ELLIOTT:** And so anybody that has
3 editorial or -- you know, they caught
4 typographicals, if you would just get those --

5 **DR. ZIEMER:** Send those in, right.

6 **MR. ELLIOTT:** -- to Cori Homer, she'll make
7 sure that we get those and we'll collate them and
8 put --

9 **DR. ZIEMER:** Very good. Okay. Then let's
10 start with C.1, Purpose of Contract. Any issues
11 there for anyone? Fairly straightforward.

12 (No responses)

13 **DR. ZIEMER:** C.2, Background and Need. And
14 that's a number of paragraphs on page one and page
15 two. Anything in Section C.2?

16 **MS. MUNN:** This is Wanda. The only comment
17 that I have on that page was the next to last
18 paragraph, just following the quotes "at least as
19 likely as not." I didn't go back and check the
20 actual language of the regulations, but what I
21 thought it related to, I reacted to it negatively.
22 I thought we were after only causation, and I'm not
23 sure that "related to" is one of those words which
24 you just mentioned, which may mean one thing to one
25 person and something to somebody else. Am I -- am I

1 --

2 **DR. ZIEMER:** You're saying that the language
3 may have said "at least as likely as not caused by"
4 rather than "related to"?

5 **MS. MUNN:** Yes, uh-huh. I thought that that
6 was the language of that --

7 **DR. ZIEMER:** Well, it is a probability of
8 causation.

9 **MR. GRIFFON:** But I thought it was -- I -- I
10 check that, although you can -- we can double-check
11 it, but I -- I checked with the statute.

12 **DR. ZIEMER:** Yeah, your quote doesn't
13 include the word "related" so --

14 **MS. MUNN:** No, it doesn't.

15 **DR. ZIEMER:** -- I think Wanda's asking if
16 the --

17 **MR. GRIFFON:** Yeah, okay.

18 **DR. ZIEMER:** -- if the original does use the
19 word "caused by," then we should use that.

20 **MR. GRIFFON:** It's worth checking.

21 **MS. MUNN:** Yeah, and I haven't checked it
22 personally. It's just a question in my mind.

23 **DR. ZIEMER:** And maybe that's -- Mark, you
24 could either check that or maybe the staff could.

25 **MR. GRIFFON:** Okay.

1 **DR. ZIEMER:** Just make sure --

2 **MR. NAIMON:** This is David Naimon. We have
3 the statute in front of us if you're interested in
4 hearing what the statute --

5 **DR. ZIEMER:** Yeah, what does it say?

6 **MS. MUNN:** Thanks, Dave.

7 **MR. NAIMON:** Individual with cancer
8 specified in sub-clause et cetera, et cetera, shall
9 be determined to sustain that cancer in the
10 performance of duty for purposes of the compensation
11 program if and only if the cancer specified in that
12 sub-clause was at least as likely as not related to
13 employment at the facility specified -- specified in
14 that sub-clause as determined in the course of the
15 guides established under subsection --

16 **DR. ZIEMER:** Okay, the "related" there is to
17 the employment.

18 **MS. MUNN:** To the employment, yes, not to
19 the dose.

20 **MR. GRIFFON:** That's true, yeah. I remember
21 "related" then, and -- but that's right, it's to the
22 employment.

23 **MS. MUNN:** Yeah.

24 **DR. ZIEMER:** So I think probably that
25 sentence needs to be fixed up so it parallels --

1 will be changing because this was lifted out of
2 language that was used in a contract that we had, I
3 believe, because the fourth paragraph down, "On May
4 2nd," we'd like to put that in the proper tense,
5 that the rule is being used here. The second
6 sentence, the methods are not proposed. They are as
7 they are.

8 **DR. ZIEMER:** The methods, cite rather than
9 proposed.

10 **MR. GRIFFON:** Oh, yeah, I did try -- I did
11 edit that a little bit, but I missed some of the
12 tense there, yeah.

13 **MR. ELLIOTT:** So we'll work to put it in the
14 proper tense.

15 **DR. ZIEMER:** Okay. Thank you.

16 **MR. GRIFFON:** I put the final rule citings
17 in there, but I missed some of the other occasions.

18 **DR. ZIEMER:** Right, okay.

19 **MR. GRIFFON:** Okay.

20 **DR. ZIEMER:** Thank you. Okay. Ready for
21 Section C.3, Contract Tasks, any --

22 **UNIDENTIFIED:** But have we done A on page
23 three yet?

24 **DR. ZIEMER:** No, we're still on -- we're on
25 the top of page three.

1 **UNIDENTIFIED:** Okay.

2 **DR. ZIEMER:** Item C.3, Contract Tasks.

3 **UNIDENTIFIED:** Okay.

4 **DR. ZIEMER:** Any -- and that's just the top
5 -- oh, two-thirds of the page, I guess. Any issues
6 there?

7 (No responses)

8 **DR. ZIEMER:** Okay. Are you ready for
9 Section A under C.3, individual dose reconstructions
10 review?

11 **UNIDENTIFIED:** I have one -- I don't think
12 it's editorial -- in the second paragraph --

13 **DR. ZIEMER:** And everyone should identify
14 when they come on, but that's Gen Roessler, I
15 believe.

16 **DR. ROESSLER:** This is Gen. Second
17 paragraph under A, second line, we list one, two,
18 three -- one, two or three. Should that be and? I
19 think we're asking for all three and they don't have
20 a choice.

21 **DR. ZIEMER:** On a given case, it's -- it's
22 one of three.

23 **MR. GRIFFON:** Yeah, I thought it was --
24 yeah, I see what you're saying. I thought that was
25 on a single case they would be asked to do one type

1 of review or another.

2 **DR. ROESSLER:** Okay. Okay.

3 **MR. ELLIOTT:** This is Larry Elliott. In the
4 paragraph above that that started this Part A, that
5 first paragraph, where it reads in the
6 parenthetical, "at least as needed to determine
7 eligibility," I think that the word "determine" is
8 -- is -- it should be evaluate rather than
9 determine. You're going to have this contractor
10 evaluate for you, the Board --

11 **DR. ZIEMER:** And the eligibility's already
12 been determined is what you're saying.

13 **MR. ELLIOTT:** Right. And I would also
14 propose that that parenthetical would -- should read
15 "as needed to adjudicate the claim." Eligibility
16 has got a definition here meaning the claimant --
17 it's an eligible claim, not a compensable claim, so
18 we would be making those edits.

19 **DR. ZIEMER:** Okay, everybody understand
20 that? The intent has not changed, but you're making
21 the wording more legally correct I think here.
22 Right?

23 **MR. ELLIOTT:** Yes, we'd change "determine"
24 to "evaluate" and that one -- that parenthetical
25 would read "as needed to adjudicate the claim."

1 **DR. MAKHIJANI:** This is Arjun Makhijani, I
2 have a question about the last sentence in that
3 first paragraph, "Contractor shall determine whether
4 or not the dose reconstruction was performed fairly
5 and in a manner consistent with other cases." Now
6 if your opinion is that other cases may not be
7 properly done, other cases in this particular dose
8 reconstruction or other jobs of dose reconstruction?
9 It's not clear to me.

10 **DR. ZIEMER:** They're comparing to others,
11 but --

12 **MR. ELLIOTT:** Dr. Makhijani, this is Larry
13 Elliott --

14 **DR. ZIEMER:** Let me insert at this point
15 before you answer -- I'll let you answer this one,
16 Larry -- but we've not asked the members of the
17 public to participate in the discussion --

18 **DR. MAKHIJANI:** Oh, I'm sorry. I'm sorry.

19 **DR. ZIEMER:** -- but you're certainly welcome
20 at the public comment period to make any comments or
21 questions. We're not -- but --

22 **DR. MAKHIJANI:** Sorry about that.

23 **DR. ZIEMER:** -- the rules of the game here
24 require this to be the Board's discussion.

25 **DR. MAKHIJANI:** I'm sorry.

1 **DR. ZIEMER:** That's all right. But Larry,
2 maybe you -- I don't object to answering that
3 question if you wish to.

4 **MR. ELLIOTT:** Well, you've answered it. And
5 just so everybody understands the ground rules here,
6 the Board needs to hold their discussion on these
7 draft documents and make their decision about moving
8 them forward or not, and if there's anybody in the
9 -- in attendance from the public here that has
10 questions or concerns, they certainly can express
11 those during the public comment period. But you
12 should be aware that you might not receive an answer
13 -- you probably should not receive an answer at this
14 time for your questions --

15 **DR. ZIEMER:** If they're on the document.

16 **MR. ELLIOTT:** -- if they're on the document.
17 This is predecisional effort and once the document
18 is formalized into a procurement, then there will be
19 an opportunity for individuals to raise questions
20 regarding the procurement -- regarding the intent of
21 the procurement.

22 **DR. ZIEMER:** Thank you for that comment. I
23 have -- I want to ask an additional question -- this
24 is Ziemer again -- Mark or a member of the working
25 group. It seems to me that part of what we're doing

1 here, since this is a sort of quality control issue,
2 and I don't see this item that I'm going to raise
3 explicitly mentioned, but maybe -- maybe it is
4 covered indirectly. And that is, is there included
5 in the determination the issue of whether or not
6 NIOSH in fact followed its own guidelines in the
7 reconstruction? Do you know what I'm asking here?
8 You've said -- okay, you're going to determine
9 whether they did it fairly, you're going to
10 determine whether they had appropriate data and so
11 on. My question is, are we also looking at whether
12 or not NIOSH in fact followed their own guidelines?

13 **MR. GRIFFON:** Right, I think --

14 **DR. ZIEMER:** Is that inherently built in or
15 --

16 **MR. GRIFFON:** Yeah, I'm looking for -- and I
17 remember actually having a clause at one point, but
18 maybe it got lost in the various drafts, where we
19 said was -- you know, was done in a manner
20 consistent with a, you know, CFR, blah, blah, blah.
21 And I'm missing it now --

22 **DR. ZIEMER:** Yeah, that's exactly what I'm
23 asking.

24 **MR. GRIFFON:** Yeah.

25 **DR. ZIEMER:** As part of the quality control,

1 it seems to me that we have to -- have to step back
2 and say and in fact did they follow their own
3 procedures, which is not necessarily the same
4 question as saying yeah, they had enough data and
5 they did this and that, but maybe they still did it
6 differently than the -- than the regs call for. So
7 is that something that should be added?

8 **MS. MUNN:** This is Wanda. I think, if
9 memory serves correctly, I think that Mark and his
10 group culled that out under the SEC portion, but
11 perhaps not in the general dose reconstruction
12 reviews. I remember --

13 **MR. GRIFFON:** True, at least -- I know
14 you're right, Wanda, it is still in the SEC.

15 **MS. MUNN:** Yeah, I saw the reference to --

16 **MR. GRIFFON:** Right.

17 **MS. MUNN:** But I guess I didn't probably see
18 it in --

19 **MR. GRIFFON:** Yeah.

20 **DR. ZIEMER:** Well, I'm wondering if anyone
21 would object to us making it explicit. I know you
22 haven't intentionally excluded it, and maybe in a
23 sense it's kind of built into the other questions
24 because they are based on the guidelines, but I'm
25 wondering if it wouldn't be useful to have it

1 explicit.

2 **DR. DEHART:** I don't know if this answers
3 the question under basic review, which is a few
4 pages -- Roy DeHart.

5 **DR. ZIEMER:** Roy.

6 **DR. DEHART:** And it says "review the NIOSH
7 methods, procedures and performance in evaluating,
8 analyzing and validating all contractor work
9 products."

10 **DR. ZIEMER:** Well, let's see -- where are
11 you?

12 **DR. DEHART:** That would be on page five, I
13 believe, top of the page.

14 **MS. MUNN:** Perhaps all that would be
15 necessary is to add the specific reference of the
16 CFR and then --

17 **MR. GRIFFON:** Yeah, we could say regulation,
18 methods and procedures.

19 **MS. MUNN:** Right.

20 **MR. GRIFFON:** Yeah, that would be easy
21 enough. Either way I think --

22 **DR. ZIEMER:** Where would you be putting
23 that?

24 **MR. GRIFFON:** We could put it in the -- we
25 could put it in the front end, or I think better

1 would be to put it in the basic review, part 5(h).

2 **DR. ZIEMER:** 5(h)?

3 **MR. GRIFFON:** I think, yeah.

4 **DR. ZIEMER:** Okay. Can you again suggest a
5 wording?

6 **MR. GRIFFON:** Review the NIOSH dose
7 reconstruction regulations and then -- I don't know
8 the citation, comma, methods, comma, procedures --
9 you know, add in -- after "review the NIOSH" I would
10 add in dose reconstruction regulations.

11 **DR. NETON:** Mark, this is Jim Neton. I
12 thought item (h) addressed a different issue, which
13 was us overseeing the contractor, the quality
14 control aspects of the contractor. That was my
15 take.

16 **MR. GRIFFON:** Oh, yeah, you're right.
17 You're right. So it shouldn't go in (h).

18 **DR. NETON:** Not really. It's similar to but
19 not --

20 **MR. GRIFFON:** You're right. You're right.

21 **DR. NETON:** You know, we're supposed to have
22 strict control over our contractor, and I think just
23 to go in there and make sure that, you know, we've
24 done what we've said we're going to do in that area.

25 **MR. GRIFFON:** Maybe it should go in item 5

1 then, right before all the (a) through (h).

2 **DR. NETON:** Yeah, I think it should go
3 higher up and just change --

4 **MR. GRIFFON:** Yeah, in item 5, you're right,
5 Jim. I'm sorry, I was reading quickly on my brain
6 here.

7 **MS. MUNN:** Mark, this is Wanda again.
8 Should it appropriately go in the introductory
9 verbiage that we were -- we had on page three and
10 the top of page four so that it would cover not only
11 basic review but --

12 **MR. GRIFFON:** That's fine, yeah.

13 **DR. ZIEMER:** I think you could state it
14 actually in that first paragraph after A., just as
15 one of the -- you're talking about the things you're
16 going to determine. It's more generic.

17 **MR. GRIFFON:** All right, I'll add that.

18 **DR. ZIEMER:** So maybe something like -- and
19 let me just give you a phrase here and you can
20 wordsmith it, but the contractors -- in the last
21 sentence in that paragraph after A., the contractor
22 shall determine whether or not the dose
23 reconstruction was performed fairly and in a manner
24 consistent with other cases, comma, and whether
25 NIOSH followed its own guidelines in the dose

1 reconstruction. Would that do it? Did you catch
2 that?

3 **MR. GRIFFON:** And whether NIOSH followed
4 its --

5 **DR. ZIEMER:** What's that?

6 **MR. GRIFFON:** This is Mark Griffon. And
7 whether NIOSH followed its own guidelines?

8 **DR. ZIEMER:** In the dose reconstruction.
9 Something, I'm -- and you know, you can wordsmith
10 that. That's -- that would be the intent.

11 **MR. GRIFFON:** Yeah, I think that's a
12 reasonable first draft, yeah.

13 **DR. ZIEMER:** Yeah. Now let me ask you, is
14 there any objection to that or concern with adding
15 that anyone has?

16 **MR. ELLIOTT:** Just change "determine" to
17 "evaluate."

18 **DR. ZIEMER:** Whether or not --

19 **MR. ELLIOTT:** Contractor shall evaluate
20 whether or not the dose reconstruction was performed
21 fairly and in --

22 **DR. ZIEMER:** Yeah, evaluate.

23 **MR. ELLIOTT:** -- (inaudible) and whether
24 NIOSH followed its own --

25 **DR. ZIEMER:** It's own guidelines in the dose

1 reconstruction. That gives the intent and maybe,
2 again, we can tweak it a little bit later, but if
3 there's no objection, let's add that then and make
4 it explicit.

5 (No responses)

6 **DR. ZIEMER:** Okay. Let me ask if -- are
7 there other items under that big section, individual
8 dose reconstruction review?

9 (No responses)

10 **DR. ZIEMER:** Okay. Let's move on a little
11 bit, under Basic Review, anything under -- this is
12 item 1 under that section, the basic review, A, B, C
13 and so on? Any items? None?

14 **MS. MUNN:** This is Wanda.

15 **DR. ZIEMER:** Yes?

16 **MS. MUNN:** I don't know whether it's a valid
17 point, but in reading C.1 --

18 **DR. ZIEMER:** C.1 on the middle of page four?

19 **MS. MUNN:** -- middle of page four. When I
20 go to the phrase "if and to what extent the benefit
21 of the doubt was resolved in favor of the claimant,"
22 my first thought was that's a good thing to do. If
23 I were asked to do it I'm not sure I would be able
24 to identify to what extent the benefit of the doubt
25 was resolved, other than high/low, somewhere in the

1 medium. And as I said, I don't even know if it's a
2 --

3 **DR. ZIEMER:** In other words, are there
4 degrees of that or it either was or wasn't? Is that
5 what you're saying?

6 **MS. MUNN:** Yeah. I guess I'm not sure
7 whether we're asking them to quantify it or whether
8 we're asking just...

9 **DR. ZIEMER:** Mark, can you respond?

10 **MR. GRIFFON:** Maybe -- I mean I don't think
11 I'd have an objection to saying "if the benefit of
12 the doubt was resolved in favor of the claimant."

13 **MS. MUNN:** Uh-huh.

14 **DR. ZIEMER:** That's really what you're
15 asking.

16 **MR. GRIFFON:** Yeah.

17 **MS. MUNN:** That's --

18 **MR. GRIFFON:** Yeah, I (inaudible) --

19 **DR. ZIEMER:** It either was or it wasn't.

20 **MR. GRIFFON:** -- point and to what extent,
21 how do you -- how do you, you know --

22 **MS. MUNN:** Yeah, I didn't know how to do it.

23 **MR. GRIFFON:** Yeah.

24 **DR. ZIEMER:** Any objection then to just
25 deleting that phrase?

1 **MS. MUNN:** Or changing it?

2 **MR. GRIFFON:** So it should read --

3 **DR. ZIEMER:** It should say "if the benefit
4 of the doubt is resolved in favor of the claimant."
5 Just delete the words "and to what extent."

6 **MS. MUNN:** Yeah.

7 **DR. ZIEMER:** Okay. Thank you. Okay, let's
8 continue down that page. Any other questions or --

9 **MR. NAIMON:** Dr. Ziemer --

10 **DR. ZIEMER:** Yes?

11 **MR. NAIMON:** -- before you continue down the
12 page, could I ask a question about B.2?

13 **DR. ZIEMER:** Yes.

14 **MR. NAIMON:** B.2 says "Assure that interview
15 information is consistent with data used for the
16 dose estimate." I was under the impression that the
17 data used for the dose estimate comes from a number
18 of places and not just from the interview
19 information, so I'm wondering whether it's possible
20 to assure that and whether that's even a -- you
21 know, whether that's a goal.

22 **DR. ZIEMER:** Yeah, I think we'll let Mark
23 answer that, but it seems to me that they're only
24 asking -- they're not asking whether -- clearly the
25 dose estimate comes from a lot of places. They're

1 asking whether or not it's also consistent with
2 what's in the interview, as in --

3 **MR. GRIFFON:** What was that again? I'm
4 sorry, I was --

5 **DR. ZIEMER:** B.2, I think, on -- near the --
6 toward the top of page four. It currently says
7 "Assure that the interview information is consistent
8 with data used for dose estimate." That's not to
9 say that the dose --

10 **MR. GRIFFON:** Right.

11 **DR. ZIEMER:** -- estimate is based on
12 interview data. It's asking whether or not there's
13 something in the interview that does not sort of
14 match up with --

15 **MR. GRIFFON:** Right, right. And maybe --

16 **DR. ZIEMER:** In other words, if the person
17 says, you know, I was involved in a serious
18 criticality accident, and there's nothing in the
19 dose data to indicate that, that would be an
20 inconsistency. Is that the sort of thing --

21 **MR. GRIFFON:** Maybe we need to just clarify,
22 like -- and if inconsistent -- inconsistencies were
23 justified or evaluated or considered, you know. I'm
24 not sure of the words right now, but --

25 **DR. ZIEMER:** The original question was what?

1 Can you give your original question again? Was it
2 Dave or --

3 **MR. NAIMON:** Yeah, my question was whether
4 that was -- I mean I think that Mark has kind of
5 gotten the gist of it, whether that was an
6 appropriate goal that it be consistent because there
7 may be situations where it's determined that it's
8 not consistent and there's a reason --

9 **MR. GRIFFON:** There's a reason for it,
10 right, right. Right, I get your point.

11 **MR. NAIMON:** It could be a survivor who does
12 the interview and just is misinformed.

13 **MR. GRIFFON:** Right.

14 **DR. ZIEMER:** So it's more determine if it's
15 consistent, and if not, you either find that there's
16 a justifiable reason that it isn't or something,
17 huh?

18 **MR. GRIFFON:** Yeah, there -- yeah,
19 reasonable justification or something like that.
20 We'll work on the language, but --

21 **DR. ZIEMER:** Okay.

22 **MR. GRIFFON:** -- I think it's --

23 **DR. ZIEMER:** Okay, everybody understand the
24 issue there? That needs to be clarified. Right?
25 Okay, good. Good point. Is that something we can

1 do right now or everybody understand we're just
2 going to try to clarify that?

3 **MR. GRIFFON:** I don't know if --

4 **DR. ZIEMER:** We're not required to assure
5 that they're consistent. We're trying -- we're --
6 we want to determine, if they're not, why they're
7 not. Right?

8 **MR. GRIFFON:** Yeah.

9 **DR. ZIEMER:** Or -- or --

10 **MR. GRIFFON:** Not only why not, but that
11 there was reasonable justification why the --

12 **DR. ZIEMER:** Right, right.

13 **MR. GRIFFON:** Yeah. So for now I just said
14 assure the interview information is consistent with
15 data used for dose estimate and, if not, there is
16 reasonable justification. I'm not sure I'm --

17 **DR. ZIEMER:** I think that --

18 **MR. GRIFFON:** -- stuck on those words.

19 **DR. ZIEMER:** -- covers the intent, does it
20 not?

21 **MR. GRIFFON:** Yeah.

22 **DR. ZIEMER:** Everybody okay on that?

23 (No responses)

24 **DR. ZIEMER:** Okay, good.

25 **MR. GRIFFON:** At least for a placeholder.

1 **DR. ZIEMER:** Okay, let's proceed. Any
2 others through that section on page four?

3 (No responses)

4 **DR. ZIEMER:** I hear none. Let's -- ready to
5 go to page five, basically to the Advanced Review?
6 Okay, questions on Advanced Review, or issues?

7 I want to raise -- well, I have a question
8 on item B for the subcommittee. There's -- in 1 and
9 in 2 they're talking about interviewing the
10 individual.

11 **MR. GRIFFON:** Right.

12 **DR. ZIEMER:** And I guess in my mind, I'm
13 wondering if that is an appropriate role for an
14 audit, as opposed to ascertaining that the interview
15 -- from the record that the interview was properly
16 conducted. In other words, I can see going to the
17 interview, which we have a record of, and
18 ascertaining whether or not the questions were the
19 right ones and so on. So I'm -- maybe you could
20 help me understand why we would interview the
21 individuals.

22 **MR. GRIFFON:** Well, I think part of -- part
23 of this was to test whether the tool was capturing
24 all relevant information that the claimant was
25 provid-- you know, with -- capturing all relevant

1 data the claimant or widow was trying to provide and
2 if, you know -- initially I was thinking if these --
3 if there was transcripts of all of these, then
4 reviewing the transcript was a means to achieve
5 that. But I know at least in the earlier interviews
6 that wasn't done. And the other part is the -- the
7 satisfaction. I think that's an important part of
8 this process is to determine whether the claimant
9 feels that they got -- that -- that NIOSH fully
10 explored all avenues in their -- in their
11 occupational history -- relevant -- relevant
12 avenues.

13 **MR. ELLIOTT:** This is Larry Elliott. I
14 would -- I know we talked about this in the working
15 group, Mark. I know you all know my position on
16 this. I don't see how we can accommodate this and
17 make this happen. We're going to protect
18 confidentiality and the privacy of these
19 individuals. We're not going to institute a -- a
20 way to seek release. All the claimant population
21 knows that they have recourse to express their
22 concerns or issues in writing to the Advisory Board
23 or present it in public comment. This -- I see no
24 need for this, to interact with the interviewees.
25 If that -- they sign the OCAS-1 form informing us

1 that they have provided us all necessary information
2 and that is all captured in the interview report
3 that is part of the administrative record. And so I
4 think this is a moot --

5 **MR. GRIFFON:** Oh, and you know my feeling,
6 too. I mean I edited it back in because I thought
7 it was more of a -- what we were running up against
8 was sort of a -- a Privacy Act restriction and --
9 but I think if we request consent through NIOSH,
10 NIOSH contacts the individuals and says that this
11 independent review process is going on, they're
12 doing your case --

13 **MR. ELLIOTT:** Well, there's more than
14 Privacy Act issues here. There's the fact that it's
15 a obligation burden that is put back on the claimant
16 population, and we'd have to go before the Office of
17 Management and Budget and get a review and a
18 clearance to interact this way.

19 **MR. GRIFFON:** Well, okay, I think --

20 **MR. ELLIOTT:** There's many issues --

21 **MR. GRIFFON:** Larry, I think -- I think one
22 is this is an important item, you know, and the
23 other is the burden, I guess. That seems like it's
24 -- it may be a burden that we have to go over that
25 hurdle to get that approval and all that, but the

1 first question, in my mind, anyway, is -- is this
2 something that we -- that the review team -- that
3 the independent auditor needs to be looking at. And
4 you know, I think it is. I'd like --

5 **DR. ZIEMER:** Well, maybe we should get some
6 views of the other Board members. I don't know what
7 satisfaction here is -- in other words, if -- if a
8 person's claim is unsuccessful, there's I suppose a
9 high likelihood that they might not be satisfied
10 with the interview process. If their claim is
11 successful, then probably for them it's a moot
12 point. And I'm not sure how you evaluate
13 satisfaction on an interview proc-- in other words,
14 it's one thing to say yes, I was treated -- people
15 were nice to me. I gave them all the information.
16 Versus I was treated rudely, the pro--

17 **MR. GRIFFON:** Oh, but I think -- you know,
18 there's -- there's the question as to whether they
19 -- they had a lot of information to give --

20 **DR. ZIEMER:** That wasn't taken?

21 **MR. GRIFFON:** -- that wasn't taken because
22 it didn't specifically fit into the form and the
23 person that interviewed me was sticking to the form
24 and I didn't really give them a chance to tell them
25 about this, this, this, this or this, you know. And

1 I think also -- Paul, your point's well-taken that
2 if someone's claim is denied, they're likely to be
3 not satisfied. But I also -- you know, you've got
4 to remember --

5 **DR. ZIEMER:** Yeah, I'm more asking that --
6 is -- is the process -- is the interview process
7 such that we can determine whether or not there was
8 a thorough opportunity for the person to vent or air
9 their views or give their concerns or not? Can we
10 do that without going back to the person, that's
11 what I'm asking. I know that --

12 **MR. GRIFFON:** Yeah, I know.

13 **DR. ZIEMER:** I know that, for example, when
14 I get my car fixed, a few days later I get a call
15 from somebody and they call me to ask me if I'm --
16 if I am happy with the way the dealership handled my
17 repair.

18 **MR. ELLIOTT:** If we're talking customer
19 satisfaction here, that's --

20 **DR. ZIEMER:** Yeah.

21 **MR. ELLIOTT:** -- something we're interested
22 in very much here at NIOSH.

23 **DR. ZIEMER:** Right.

24 **MR. ELLIOTT:** But people handle that through
25 another mechanism.

1 **DR. ZIEMER:** Yeah.

2 **MR. ELLIOTT:** And certainly report it to the
3 Board. I don't see it as being a part of review of
4 scientific validity and quality of dose
5 reconstruction.

6 **DR. ZIEMER:** Well, it would be if in fact
7 the interview process did not in fact get at the
8 right information --

9 **MR. GRIFFON:** That's exactly what I was --

10 **DR. ZIEMER:** -- as opposed to the person's
11 treated nicely. My -- I can be treated very nicely
12 when I take my car in, and if they don't get it
13 fixed, I don't care how nicely they treated me. I'm
14 not happy with -- with the situation, you know --

15 **MR. ELLIOTT:** Well, that's what we were
16 trying to -- that's what I was trying --

17 **DR. ZIEMER:** So I can't -- I wish we could
18 do an audit without having to go back to the person.
19 In other words, if there's -- if we don't have
20 sufficient records to ascertain whether or not the
21 right information is being extracted, then -- then
22 I'm thinking there must be a flaw in the interview
23 process to start with.

24 **DR. NETON:** I think, Dr. Ziemer -- this is
25 Jim Neton, and I'd like to reiterate what Larry

1 said, and maybe elaborate on it a little more. The
2 OCAS-1 form was specifically designed to capture the
3 claimant's agreement that we addressed every single
4 piece of evidence that they brought forward during
5 the interview process, or at any time during the
6 dose reconstruction process, and they -- they review
7 the draft dose reconstruction before it's ever moved
8 forward. And once they sign that, they have agreed
9 that we have captured in essence everything that
10 they've said. Not necessarily that we've addressed
11 it to their satisfaction in a dose reconstruction
12 manner, but we've at least brought it up in the dose
13 reconstruction itself. So I think that aspect is
14 covered.

15 **DR. MELIUS:** This is Jim Melius. I would I
16 guess sort of agree, in the sense that -- I think
17 we're putting a -- this process puts a lot of burden
18 on the claimants who are not the -- sticking to dose
19 reconstructors, and they are going to have, I think,
20 difficulty understanding what is important
21 information, what may not be important information.
22 I think they're going to have difficulty
23 understanding, in some cases, the process. And this
24 is not to say that NIOSH's interviewers or the
25 contract interviews are treating them in a wrong

1 fashion or anything like that. I think it's just
2 the nature of any encounter with any sort of health
3 professional or other professional. It intimidates
4 and it's difficult for a lot of people to, you know,
5 handle that encounter and understand what is
6 important and what is not important in terms of what
7 should be told. And I think having some process
8 that would allow -- because the history -- pieces
9 where -- we know that there'll be many cases where
10 there will not be complete information or records
11 may be missing and so forth, so I think it is a
12 critical part of the dose reconstruction process,
13 and we ought to have some evaluation method in place
14 in order to determine, you know, was the appropriate
15 information sought from the person, was it
16 appropriately followed -- followed up on. And I
17 can't see -- be able to do that without a -- without
18 going back -- and at least having the opportunity to
19 go back and interview the person.

20 **MR. GIBSON:** Well, this is Mike Gibson. I
21 don't think I agree with Jim that -- you know, just
22 being a worker at a site, I know workers get forms
23 from the company, their annual dose statements, a
24 lot of different things on RWP's that -- they
25 basically don't even understand them after RAD-2

1 training and everything else, so you know, I'm not
2 sure that they would be bringing all the relevant
3 information to the table in an interview, would be
4 my concern.

5 **DR. ZIEMER:** And how would that be solved by
6 this process? If they don't know that to start
7 with, if you go back to them and say did you bring
8 all the relevant information, are you suggesting
9 they suddenly now will have -- they will have that
10 information?

11 **MR. GIBSON:** No, but once maybe they start
12 getting these site profiles built stuff, we would
13 have some inherent knowledge that we could say, you
14 know, were you involved in this thing in this area
15 or, you know.

16 **MR. GRIFFON:** And I think -- I mean -- this
17 is Mark Griffon -- the way I was envisioning this,
18 too, also, was, you know, in a similar way, that if
19 -- if the -- and you know, the -- I'm hoping that
20 the interviewers, you know, are going to be astute
21 at this, but -- and they may capture all this, and
22 we hope they do. But you know, it may be that we
23 interview -- if the interviews go forward, they may
24 say hey, listen, I told the person on this phone
25 interview that I worked in such and such building

1 and such and such building and, you know, they have
2 this -- there is a listing of radionuclides in part
3 of the questionnaire and maybe they might not
4 mention anything there, they weren't sure, but they
5 mention two buildings which end up being, you know,
6 very high potentials for exposures that weren't
7 really considered in the form at all. And we want
8 to make sure at least to track that back to make
9 sure that that was considered in the overall
10 reconstruction.

11 **DR. NETON:** Mark, I don't want to be
12 overbearing, but I -- we do provide the interview
13 draft to the claimant after the interview for them
14 to completely review and add additional information
15 they think is missing. We send them --

16 **MR. ELLIOTT:** All the OMB-approved scripts
17 are out there, and if there's an issue, you know --
18 the way the scripts are developed as, you know,
19 identified in the review of a dose reconstruction,
20 that could -- that could be identified, I think,
21 readily and changed. I don't think -- I just --
22 this is --

23 **DR. ZIEMER:** Well, my view of an auditor was
24 more like that, but you're looking at the process
25 and identifying -- if there are weaknesses in the

1 process -- how you correct them, as opposed to going
2 back in -- we look at specific cases, but you're
3 looking at those in order to evaluate the process.
4 We're not looking at those in order to specifically
5 redo individual claims per se. So in other words,
6 it seems to me we shouldn't be -- we're not -- we're
7 not recalculating these things in order to redo
8 people's claims because in many cases they will have
9 already been adjudicated. But we are looking for
10 something in this system that's not working right,
11 and --

12 **MR. ELLIOTT:** In all cases you will only
13 look at adjudicated --

14 **DR. ZIEMER:** That's right, the decision has
15 already been made.

16 **MR. ELLIOTT:** Right.

17 **DR. MELIUS:** But the interview -- this is
18 Jim Melius. The interview is, you know, a critical
19 part of the process and it needs to be evaluated.

20 **DR. ZIEMER:** To what?

21 **UNIDENTIFIED:** Somebody just opened a door
22 and --

23 **DR. ZIEMER:** Background noise, I couldn't --
24 Jim, could you repeat what you just said?

25 **DR. MELIUS:** That the interview -- I mean I

1 agree with what you were saying, Paul, in the sense
2 that we're not re-adjudicating the claims, but the
3 interview is a critical part of the process that's
4 going on and we need to be able to evaluate the
5 interview in some way.

6 **DR. ZIEMER:** Yeah, I agree with that. I'm
7 trying to see if there's a way of doing that without
8 necessarily going back to the claimants. They end
9 up getting the feeling that somehow that we're
10 redoing their case or something like that. I think
11 you can open some Pandora's boxes if you're not
12 careful there, too. I don't know how to do this at
13 this point.

14 **MR. ELLIOTT:** I think it's pretty -- this is
15 Larry Elliott. It's very straightforward in our
16 mind. You have the interview questionnaires that
17 are standardized, these are what are used. The
18 report of the interview is in draft form, given back
19 to the claimant. They review that. That draft, as
20 well as the final version, as well as the OCAS-1
21 form that they sign off on, is in the administrative
22 record. And those are your tools to make use of and
23 evaluate. You'll -- you may gain additional
24 information in some cases that might go through an
25 appeal process. And if -- you know, in that process

1 they identify -- one of their -- their complaints is
2 the interview was not completed satisfactorily or
3 the information they provided was not used
4 appropriately, there's another indication to you
5 that something's afoul. But again, you --

6 **DR. ANDERSON:** To me, one of the questions
7 is are we involved in validating the tool? I mean
8 is the tool effective at capturing all available
9 information? Now you have a process for the
10 claimant to look at it and say yes, that's what I
11 said or yes, that captures what I said. But it --
12 the question really comes down to do you have a
13 different process to interview an individual to see
14 whether or not -- would trigger some additional
15 memory that the current structured interview does
16 not do and whether the person's signed or not, the
17 issue is how does one improve the questionnaire, how
18 does one validate that in fact it had all the bells
19 and whistles in it so that it will trigger every
20 possible memory the individual may have and has a
21 mechanism to capture their -- those thoughts. So I
22 don't know what your -- you know, your validation
23 process -- what that is, but it seems to me --
24 that's how I was looking at this, is that we may go
25 back to some individuals and, after having all the

1 information, one might ask some additional questions
2 or in a more free form interview see whether
3 anything else comes out of it.

4 **DR. ZIEMER:** Okay, Roy (sic), this is Ziemer
5 again. It seems to me that if you do something like
6 that, you're saying well, actually the interview
7 process then should have contained those questions.

8 **DR. ANDERSON:** Well, that's right, you -- we
9 -- that's -- I don't know how else you'd go about
10 trying to improve the questionnaire without
11 having --

12 **DR. ZIEMER:** But my -- see, my question is
13 how do you know which questions those should be to
14 start with, a priori? If you can think of those
15 questions now as part of the review process, then
16 you can put them in the process.

17 **DR. ANDERSON:** Well, we don't have any
18 experience up to this point.

19 **MS. MUNN:** Well, this is Wanda. I have
20 considerable sympathy with the point that I think
21 Larry is trying to make, which is this is not just a
22 simple question of interviewing anyone. My
23 assessment from here is, if one can believe even
24 one-fourth of what is reported in the newspapers,
25 we're going to have people who want to go back over

1 and over and over again on the one hand, and on the
2 other hand we're going to have people -- especially
3 survivors -- who insist that they know absolutely
4 nothing about anything that happened to their family
5 member. And if -- I don't have the OCAS-1 form in
6 front of me. I remember looking at it at one time
7 and I felt that it was very comprehensive at the
8 time that I first looked at it, many, many months
9 ago.

10 If there is in fact a final section there
11 that says do you feel that -- that everything that
12 needs to be covered has been covered or do you have
13 suggestions, would you like the interview to have
14 been conducted some other way -- if there is that
15 kind of question that a person signs off on, then at
16 some juncture we have to accept what we have. And
17 if that -- if the person who is making the claim has
18 in fact agreed that they've done the best they could
19 and they don't have any suggestions, otherwise
20 they've had full opportunity to say anything they
21 wanted to say, then I am not at all sure that there
22 is any way that one can verify that -- reverify that
23 statement, short of going back to them, and going
24 back to them is not desirable. Larry has pointed
25 that out and I think he's absolutely accurate. Most

1 people I think would resent being called back to
2 talk about it again.

3 **DR. ZIEMER:** This is Ziemer again. Let me
4 add one other thing. If you want to validate the
5 interview, it seems to me you ask the same questions
6 and see if you get the same answers.

7 **MS. MUNN:** Uh-huh.

8 **DR. ZIEMER:** If you are going to ask
9 different questions under the sort of guise that
10 maybe -- or you know, if you're saying we're not
11 sure the right questions were asked, therefore we're
12 asking -- we're going to ask some different
13 questions, it's quite true you might get different
14 information. But my point is that if we can think
15 of those questions ahead of time, whatever they
16 might be, and if we think they're important
17 questions to ask, then that should be part of the
18 process. So what is it we're trying to validate?
19 And it shouldn't be that if we go back six months or
20 a year later that the person now has remembered
21 something they didn't remember before. That can
22 always happen, but that's not how you validate a
23 system.

24 **MR. GRIFFON:** Right, that -- I mean there's
25 two things, Paul. This is Mark Griffon again. One

1 -- one is that we did roll in the idea from methods
2 and procedures review and one -- one arguably
3 procedure or -- or, you know, process is this
4 interview process and use -- and the use of the
5 questionnaire.

6 **DR. ZIEMER:** Right.

7 **MR. GRIFFON:** So I think to an extent we do
8 want to evaluate that tool for the effectiveness and
9 whether it gets at everything that's relevant for a
10 dose reconstruction.

11 The second is, I think if -- you will want
12 to evaluate, also, whether the report that's created
13 by the operator, the interviewer, matches up with
14 the answers that you get as an independent auditor
15 when you ask the same questions 'cause I --

16 **DR. ZIEMER:** Yeah, that becomes an audit
17 versus --

18 **MR. GRIFFON:** Right.

19 **DR. ZIEMER:** -- a review of (inaudible) --

20 **MR. GRIFFON:** (Inaudible)

21 **DR. ZIEMER:** (Inaudible) -- and we do that
22 in the dose reconstruction. If two different people
23 do it, do they get the same results. And I think in
24 principle that's what you would say about an audit,
25 do you get the same results.

1 Now one of the sensitivities is that it's
2 one thing to mechanically, on paper, to do a dose
3 reconstruction, have two people do it from the same
4 database or checking each other. It's quite another
5 thing to go back to a person and ask them the same
6 questions over again. That can in fact be very
7 irritable or a point of irritation. Wait a minute,
8 I already asked -- answered these question; why are
9 you back here asking me again, didn't you believe
10 me? I -- you know.

11 **MR. GRIFFON:** I know, I -- it --

12 **DR. ANDERSON:** I think -- this is Andy
13 again. I mean the way you do that is like you -- we
14 do with all these. You call a person and you say we
15 have this function that is an audit function. Part
16 of that -- it involves asking you the same questions
17 again. Are you --

18 **DR. ZIEMER:** Or some of the same question.

19 **DR. ANDERSON:** Some of the -- are you
20 willing to go through that? You get an informed
21 consent. They aren't going to be -- you aren't
22 going to be calling them and telling them they have
23 to do this, this has to be a voluntary activity.
24 And you say, you know, as part of our trying to
25 improve this system, you know, we're going through

1 this again and are -- you've been selected randomly
2 or whatever and would you be willing to be re-
3 interviewed? And if they say no, I am fed up with
4 it and don't call me again, fine, that's -- that's
5 that. So I don't -- I wouldn't worry about them
6 saying you've asked me this before, because I would
7 tell it to them up front. I wouldn't do it as a
8 here we are calling you again, and then they -- I
9 would certainly think they'd be angry. They'd say
10 well, you already got that, somebody did that and
11 you must have, you know -- rather than explain what
12 -- what this is, why we're doing it. I think many
13 of them would say gee, I'm glad, you know, you're
14 going to the exhaustive extent.

15 **DR. DEHART:** This is Roy. We have discussed
16 this two previous times in some depth with more or
17 less the same conclusions, but I strongly feel that
18 this is a critically important area to audit and
19 audit directly with the claimant. Filling out
20 paperwork, whatever, has a certain depressing mood
21 to it. People oftentimes aren't as forthcoming as
22 they might be. But with an oral interview that's
23 structured, it's much more highly valuable. And to
24 go back and ensure that we are hitting the high
25 points I think is really important. We're not

1 talking about that many as we go through. But I do
2 think there should be a method found to satisfy this
3 requirement.

4 **DR. ZIEMER:** Mark, could you clarify -- this
5 is Ziemer again. Could you clarify -- or others on
6 the subcommittee -- on this -- your thinking on
7 this? Were you thinking in fact of confirming the
8 thing by asking the same questions over again, which
9 would be more like an audit function? It seems to
10 me if you ask different questions, you're not
11 auditing.

12 **MR. GRIFFON:** I was thinking of both, but in
13 a broad sense right now because I think, you know,
14 we have -- under this task order approach we have a
15 opportunity to refine this task when it goes out to
16 the -- select a contractor, you know. That's the
17 way I understand it. But I was thinking of the
18 review of the method, but also the review of the
19 specific -- you know, and so the first question
20 asks, you know, does the questionnaire ask the right
21 -- did it get at the right stuff. And I think --
22 you know, that is a valuable tool for the overall
23 process because if you get considerable feedback
24 from the auditor that it doesn't ask the right
25 questions, then that can be modified and as you move

1 on with the program.

2 The second is to say did the interviewer
3 capture the relevant information from the
4 interviewee during the questions asked. You know,
5 so go down their form and make sure that the report
6 matches with what the interviewee had -- how it had
7 answered and the relevant information that they had
8 answered in those questions. And you know, that
9 could maybe -- maybe that could -- you can get
10 around that if there were transcripts of the
11 interview, if it was a phone interview and there
12 were transcripts, you maybe able to review and just
13 say wait a second, you know, here's an instance
14 where they talked about something and it didn't make
15 it into the final summary report of the interview
16 and we think it's pretty important. I mean it
17 wasn't captured in the -- in the final report. So
18 that's the question of whether the -- you know. So
19 I think both, to answer your first question, Paul,
20 that...

21 **MR. ELLIOTT:** This is Larry Elliott.

22 **DR. ZIEMER:** Go ahead, Larry.

23 **MR. ELLIOTT:** Let me -- point of
24 clarification. There will not be any transcripts --

25 **MR. GRIFFON:** Oh, okay.

1 **MR. ELLIOTT:** -- of these interviews.
2 There's not any recordings going to be captured of
3 these interviews.

4 **MR. GRIFFON:** Okay, I thought it was brought
5 up as an option, but I --

6 **MR. ELLIOTT:** Well, current policy and
7 decision on that is no.

8 **MR. GRIFFON:** Okay.

9 **MR. ELLIOTT:** That's been informed by legal
10 counsel.

11 **MR. GRIFFON:** Okay.

12 **DR. ANDERSON:** Larry, this is Andy. I mean
13 one -- if we only want to do this once, I mean one
14 option would be to -- to preselect some of these for
15 that audit function and again explain to the
16 individual would they mind having it recorded
17 because of this audit function.

18 **MR. ELLIOTT:** No. No, we're not --

19 **DR. ANDERSON:** And it would only be those
20 that were part of our audit.

21 **MR. ELLIOTT:** We're not going to use
22 transcripts to record the interviews. We have this
23 system in place. I appreciate the Board's debate on
24 this. My advice to the Board at this juncture would
25 be to -- for you to delete in B.1 and B.2 the

1 parenthetical, and in B.1 delete from the point of
2 "transcript" on.

3 Now I'm proposing that because if you leave
4 it in here, I'm afraid it's going to take us longer
5 to get this into the procurement process because I'm
6 not sure that we're going to get sign-off in the
7 Department to do this piece this way. You can make
8 this -- you can put this statement of work out as a
9 scope of work without that, and you can add it as a
10 task later once we work out these details on if and
11 how and whether or not claimants may be recontacted
12 regarding their interviews. That's my -- that's my
13 suggestion and proposed solution on handling this at
14 this time.

15 **DR. ZIEMER:** Thank you. Any other comments
16 by any of the Board members on this issue, pro or
17 con? Clearly you have a number of different views
18 on this and various gradations. Some of you we
19 haven't heard from. Do you have any points to add,
20 anyone?

21 **MR. PRESLEY:** This is Bob Presley.

22 **DR. ZIEMER:** Bob.

23 **MR. PRESLEY:** I agree with -- as somebody
24 that sat in the committee that went through here, I
25 would like to see it done. But I can see what Larry

1 has, too. We're getting ready to probably open a
2 bigger Pandora's box than we think here on this if
3 we don't work it out.

4 **DR. ZIEMER:** Anyone else?

5 **MR. ESPINOSA:** Yeah, this is Rich Espinosa.

6 **DR. ZIEMER:** Rich, uh-huh.

7 **MR. ESPINOSA:** The audit should be done from
8 beginning to end, in my opinion, including the
9 interview.

10 **DR. DEHART:** This is Roy DeHart. The
11 proposal by Larry of being able to re-establish a
12 specific task order to develop this would satisfy --
13 satisfy me without delaying the procurement process.
14 That's a major concern I think that we all feel,
15 that time is critical. We need to do it, we need to
16 do it right. But with the task order system we can
17 always come back in and plug in things that we feel
18 are not properly addressing the issue. So I would
19 suggest going with what Larry has suggested.

20 **MR. GIBSON:** Well -- this is Mike Gibson. I
21 guess my question would be if NIOSH is so opposed to
22 that in this particular document, why would they be
23 willing to reconsider at a later point in time,
24 inserting it somewhere else in the task order?

25 **DR. ZIEMER:** I thought Larry was just saying

1 it would take longer. Larry, do you want to clarify
2 what --

3 **MR. ELLIOTT:** Yeah. Well, you certainly can
4 sense my reluctance to do this, Mike, and it's based
5 on a number of sensitivities that I tried to cover
6 in the working group discussions. First of all, the
7 sensitivity that we have here about going back onto
8 the claimant population with another burden. That
9 is one sensitivity. But we have sensitivities
10 beyond that. For example, if we make a call back
11 after the claim is adjudicated and the person that
12 was interviewed is deceased, and you talk to the
13 wrong person, we have already experienced this in
14 this program. We have made contact and realized
15 that the person has passed away, and it's not a very
16 pleasant experience. It is fraught with
17 difficulties, as well. For you to do something like
18 this takes and OMB clearance, and I can't guarantee
19 that OMB will even support this because it is an
20 obligation placed upon a public population. So my
21 proposed solution allows us to proceed with this --
22 putting this into the procurement process and at the
23 same time exploring the -- for everybody interested
24 and concerned, exploring the sensitivities of doing
25 so, weighing out the advantages and the

1 disadvantages of doing so, and having the
2 opportunity that if it is something that needs to go
3 forward, we don't lock ourselves into something
4 right now that will delay this procurement for an
5 OMB clearance.

6 **DR. MELIUS:** This is Jim Melius. I'm -- I
7 think this -- doing these interviews is a very
8 important part of this review process, and I think
9 it's important that the Board go on record up front
10 as seeing this as integral to being able to do a
11 satisfactory and appropriate review of the dose
12 reconstruction process. And I'd be very reluctant
13 for us to send something forward at this point
14 without the interviews in it. I'd much rather see
15 -- get a response from the Department saying they
16 don't want to do that or whatever, rather than us
17 sending forward a incomplete and inadequate dose
18 review -- dose reconstruction review process. So I
19 would really strongly object to taking that --
20 compromise it in the way that it was suggested.

21 **DR. ZIEMER:** Okay. Any other comments, pro
22 or con, anyone?

23 **WRITER/EDITOR:** Who was just speaking?

24 **DR. ZIEMER:** That was Jim Melius.

25 **DR. ROESSLER:** And this is Gen asking the

1 question.

2 DR. ZIEMER: Gen Roessler.

3 DR. ROESSLER: Yeah. Okay.

4 DR. ZIEMER: Did you have a comment, Gen?

5 DR. ROESSLER: No, I just -- I wanted to
6 make sure it was a member of the Board.

7 DR. ZIEMER: Oh, yeah.

8 DR. ROESSLER: Okay.

9 DR. ZIEMER: I'm looking down the list to
10 see if there's -- has everyone had a chance to give
11 their view on this?

12 DR. ANDERSON: This is Andy. It seems to me
13 we still will have January. I mean it would be nice
14 to move the procurement forward, but we're really
15 setting up a system that's going to operate for a
16 long time and so I guess I wouldn't -- you know, the
17 question, to me, would be can we get further
18 information at the January meeting that will help
19 us? I mean at this point we're hearing from Larry
20 and we're trying to second-guess OMB and other
21 legal-related issues, so I don't know, is there
22 something that could be done between now and then
23 that would -- might get us some more information as
24 to, one, can we do this; does in fact it require, as
25 part of its function, to have an OMB approval of

1 this. You know, we have worker representatives on
2 this Board so we could certainly say well, how would
3 your membership react to this added burden, or is it
4 a burden if it's a voluntary thing? Most of the
5 other paperwork is not voluntary. I mean if we
6 could get some more information on it, that would be
7 helpful. And then we could have further discussion
8 in January. The option would be write a letter to
9 the Secretary and say, you know, here's some of the
10 Board issues and NIOSH is strongly opposed to us
11 moving forward and would like to get your opinion on
12 this.

13 **MR. ELLIOTT:** This is Larry Elliott again.
14 Let me provide some clarification here. First of
15 all, I'm speaking for the Department. The
16 Department has concerns about this interview that
17 you're proposing. Secondly, for clarification,
18 there's not a question on the table as to whether
19 this would require OMB approval. It will require
20 OMB approval, and that will take time. How much
21 time, I don't even want to hazard a guess.

22 **DR. ANDERSON:** You also said that your
23 impression was they would not approved (sic) it.
24 That was my understanding of what you said as oppo--

25 **MR. ELLIOTT:** I said I don't know whether

1 they'll approve it or not. I can't second-guess
2 OMB. I know there is concern about claimant burden
3 at OMB. There's concern about claimant burden in
4 the Administration. That's all I can tell you.
5 Whether I can have a decision for you on behalf of
6 the Department on whether they'll even put this up
7 in front of OMB by January, I can't predict.

8 **MR. OWENS:** Dr. Ziemer?

9 **DR. ZIEMER:** Yes.

10 **MR. OWENS:** Leon Owens.

11 **DR. ZIEMER:** Leon, go ahead.

12 **MR. OWENS:** A comment I'd like to make.

13 **DR. ZIEMER:** Yeah.

14 **MR. OWENS:** We are faced with calling
15 survivors all the time here in Paducah. We have
16 retirees who do follow-ups in conjunction with the
17 Worker Health Protection Program. They call to see
18 if a physical was satisfactory, call and see if the
19 early lung detection scan was satisfactory. We're
20 faced all the time with similar situations where
21 individuals have passed on. My experience is, even
22 though it causes grief for a lot of these survivors
23 and the widow, they are most appreciative that we
24 have at least called. And that also gives us an
25 opportunity to ensure that they have been treated

1 satisfactorily and to ask if there is any additional
2 information or anything else that we might be able
3 to provide to them. That's been our experience in
4 regard to follow-ups. I think that it is very vital
5 that a follow-up is provided. I think we all need
6 to keep in mind the clientele that we will be
7 working with or that will be worked with in this
8 program. The longer that we wait, promulgating
9 rules and regulations, the more that people are
10 getting older and they're dying. So it's very
11 important that they have credibil-- that the program
12 have credibility and that they also have a sense of
13 fair play in this process.

14 **DR. ZIEMER:** Okay. So Leon, you're speaking
15 in favor of some sort of an interview follow-up, it
16 sounds like.

17 **MR. OWENS:** Yes, sir, I am.

18 **DR. ZIEMER:** Yeah. And we need to keep in
19 mind that there has been -- the process itself has a
20 fairly extensive interview follow-up process. That
21 is, not as quality control, but as part of the
22 interview. Larry, is this not a correct statement
23 that there is -- there is the follow-up with the
24 individual to try to confirm that they have provided
25 all the information that they think is critical and

1 so on, leading to the signing of the document?

2 **MR. ELLIOTT:** Yes, that is correct. There's
3 actually --

4 **DR. ZIEMER:** So --

5 **MR. ELLIOTT:** -- two times that we talk to
6 the person being interviewed; once when the
7 interview is done, and then after the interview
8 report has been drafted and sent to the individual,
9 another follow-up call is made to verify that all
10 the information that they shared was -- was captured
11 and recorded in the questionnaire and in the
12 interview report. If they have -- they're given
13 another opportunity to provide additional
14 information at that time if they know of any that's
15 come to light. They're walked through the OCAS-1
16 form and asked to sign it if they are so ready.

17 **DR. ZIEMER:** Let me ask a question then.
18 Let me -- I'm going to ask this in the framework --
19 'cause I don't know the answer to it, but number
20 one, if we did this, we're talking about a small
21 enough sample that from a scientific point of view
22 I'm not sure how valid our results would be in terms
23 of saying whether or not the interviews were in fact
24 effective. In terms of -- for example, if you asked
25 the same questions, do you get the same answers.

1 Are there studies -- I would think somebody would
2 have made a study on these kinds of procedures or
3 processes as to eliciting interview information from
4 people, what -- what works, what doesn't and how
5 repeatable it is and so on. Is there anything in
6 the literature that we could use as a benchmark to
7 see whether or not our interview process meets some
8 kind of a gold standard for eliciting such
9 information? Seems to me that that might be an
10 indirect way to get at the question, because I would
11 -- I would guess if you were to take the number of
12 follow-ups we propose and were to go to the folks
13 and ask the questions over and determine, you know,
14 how good a match did we get on eliciting the same
15 information and then tried to publish that in a
16 journal, they'd probably tell us we didn't have a
17 big enough sample size or something like that.

18 **MR. ELLIOTT:** This is Larry Elliott --

19 **DR. ZIEMER:** So would we really do a proper
20 quality control on that with this very limited
21 sample?

22 **MR. ELLIOTT:** There is a literature of
23 research on this type of question, how survey
24 instruments are used and their effectiveness. And
25 we certainly can provide references to that for you

1 all if you wish.

2 **DR. ZIEMER:** I'm just wondering if this is a
3 question we could at least leave open until January
4 and get some additional -- I'd like some additional
5 background information that would tell us how -- how
6 effective and reliable, if we did do this, and what
7 -- you know, did -- went through all the hoops with
8 OMB and so on, if in fact we will be able to elicit
9 the information that we're really after with this
10 small sample size with any degree of confidence.

11 **MS. MUNN:** This is Wanda. I'd like to
12 comment on that. I think that Paul's suggestion is
13 probably the best one that I've heard so far. I
14 trust Larry when he says OMB is going to throw us
15 out, and if OMB is not going to -- it doesn't make
16 any difference how right we feel we are. If we hit
17 the iron wall in terms of approval to do what we'd
18 like to do, then it's not going to be possible for
19 us to do it. If, on the other hand, as Paul points
20 out, there is a gold standard against which we can
21 assess the value of what's been done, then if we
22 incorporate that into what we anticipate from an
23 advanced review, then we could even change the
24 sample size at will without any great grief to
25 anyone, and probably with a minimum cost, certainly

1 far less cost than will be required to return to the
2 individuals who were interviewed in the first place.

3 **MR. ELLIOTT:** Let me -- this is Larry
4 Elliott again. You know, we've been -- we've been
5 going round and round on this and let me see if I
6 can provide a proposal for your consideration
7 that'll work us around the OMB issue, the going back
8 afterwards to claimants. What if your technical
9 consultation contractor here reviewed an interview
10 while it was in progress, while it was happening,
11 and then that case would become one of the cases
12 that you would identify for that person, that
13 contractor, to evaluate under your criteria here,
14 after it was finally adjudicated? You have this
15 interview piece done up front, and nothing further
16 would happen till the dose reconstruction was
17 completed and the case was adjudicated. Then he
18 would be able to put the piece together with the
19 remainder of his review effort.

20 In other words, we could have your
21 contractor provide -- looking over the shoulder of
22 the interviewer, observing.

23 **MR. GRIFFON:** Someone would have trouble
24 publishing that paper. Seems like it wouldn't be
25 very representative. This is Mark Griffon. I mean

1 I -- if you have an auditor over your shoulder, I'm
2 not sure that the end -- the way they're con-- the
3 interview's conducted would necessarily be
4 representative of the way it's conducted every day.

5 **DR. NETON:** Mark, you know --

6 **MR. GRIFFON:** I mean that would be one
7 question.

8 **DR. NETON:** Mark, I've got another issue,
9 though.

10 **MR. GRIFFON:** What?

11 **DR. NETON:** If you go back and you interview
12 someone who's claim's been adjudicated and then been
13 denied, you think (inaudible) --

14 **MR. GRIFFON:** Oh, I know -- yeah.

15 **DR. NETON:** That's hardly representative, in
16 my opinion.

17 **DR. ANDERSON:** What about the option of
18 recording and then having somebody at a later time
19 listening to it and then filling out the form?

20 **DR. ZIEMER:** We have the issue on recording
21 them already that's been --

22 **DR. ANDERSON:** Yeah, I mean it's not the
23 same as a transcript. I mean if you just record
24 it --

25 **MR. ELLIOTT:** We're not recording any

1 interviews.

2 **DR. ZIEMER:** Okay. Maybe we should --
3 again, we may not be able to come to closure on this
4 today, but maybe could have that on the table and
5 consider that. I think it's a suggestion -- we
6 might look at how that might be done in a way that
7 preserves the randomness of a -- of a review
8 process, does not at the front end give the
9 interviewer a heads-up that somehow this -- you
10 know, that they're somehow going to do this one
11 differently. I don't know if that --

12 **MR. GRIFFON:** To put -- I mean -- this is
13 Mark Griffon again. One response to Jim, I agree
14 that that's a potential, but that's a potential that
15 you, as an independent auditor, you can account for
16 that if you review 40 cases and 20 of them were
17 awarded and they're all happy, and 20 were not
18 awarded and they're all angry, you know, obviously
19 you're going to take that into account. I mean we
20 -- we're hiring a group that's pretty astute in --
21 you know, we --

22 **MR. NETON:** Right, but I would -- I would
23 submit --

24 **MR. GRIFFON:** But on the other hand, the
25 other, when you're over the shoulder, you don't have

1 that other pool to look at is my point, I guess, you
2 know.

3 **DR. NETON:** I would suggest that the
4 interview, if there were to be a second interview --
5 I'm not sure that's even on the table -- if it were
6 to be conducted before the claim is adjudicated.

7 **MR. GRIFFON:** Yeah.

8 **DR. NETON:** One would call up the claimant
9 within a week 'cause these things take time. Those
10 dose reconstructions take time, and say hi, I'm
11 following up. I'm doing quality control as a
12 contractor, and then you're going to get --

13 **MR. ELLIOTT:** That -- if the OMB clears --

14 **DR. NETON:** I'm not saying that that's the
15 solution, but I'm saying it may be a more fair
16 process --

17 **MR. GRIFFON:** I agree with that if that's --
18 do it -- yeah, I agree.

19 **UNIDENTIFIED:** If you're going to do it,
20 you've almost got to do it before the claims been --

21 **MR. GRIFFON:** I don't disagree with that.

22 **DR. ZIEMER:** It seems to me we have a number
23 of ideas on the table, some of which -- or partially
24 -- some of which might meet the -- I think we have
25 to address both the concerns of the Agency and the

1 concerns of the Board in terms of getting the proper
2 audit. And there probably is a way to address both
3 concerns in a -- in a way that protects from the
4 potential that we see in both areas. So I'm
5 wondering if we could for the moment just leave this
6 issue and look at what else we have and then use --

7 **MR. GRIFFON:** Well, I just -- this is Mark
8 Griffon. Just one final point on this, Paul, 'cause
9 you mentioned this and I just wanted to remind --
10 you know, the idea that this sample's awful small to
11 make any conclusions on --

12 **DR. ZIEMER:** Yeah.

13 **MR. GRIFFON:** -- the effectiveness of a
14 tool, and it just reminded me, as I go through these
15 drafts of this thing, how -- how I was persuaded to
16 eliminate the first test, which was a review of the
17 methods and procedures, which in fact was going to
18 cover the method for the interview process overall,
19 not -- and I rolled it into individual cases, you
20 know, and therefore -- okay, you're right. But if
21 I'd kept that first tack where we specifically were
22 reviewing the overall method, then we would, you
23 know, might (inaudible) -- you know, that sort of --

24 **DR. ZIEMER:** Yeah, yeah, I see what you
25 mean.

1 **MR. GRIFFON:** Just as a historical --

2 **DR. ZIEMER:** Yeah.

3 **MR. GRIFFON:** -- context --

4 **DR. ZIEMER:** Yeah.

5 **MR. GRIFFON:** -- then I agree with you, we
6 should move -- probably move through --

7 **DR. ZIEMER:** Yeah, let's see what other
8 issues we have and we can either come back to this
9 yet this afternoon or -- or as a possibility, say
10 okay, this is an item we're going to have to -- we
11 all need to give it some additional thought and
12 think about some of the options that have been
13 raised here. And some of these have been off the
14 top of our heads and I think we all need to think
15 about them. And I would like to see us come to some
16 kind of closure that is -- you know, we're not going
17 to be able to maybe fully satisfy, but we may become
18 -- we might be able to come pretty close.

19 **MR. GRIFFON:** Okay.

20 **DR. ZIEMER:** But that takes -- that always
21 takes some creativity -- say okay, how can you --
22 how can you accomplish this in a way that meets all
23 the concerns that -- we've -- we hear what the
24 concerns are. I think we all have to be sensitive
25 to those issues, whether they are regulatory, the

1 Agency's sensitivity, our need to do a good job and
2 meet our charge to, you know, to be faithful to our
3 -- our responsibilities, so --

4 **MR. NAIMON:** Dr. Ziemer?

5 **DR. ZIEMER:** Yeah.

6 **MR. NAIMON:** This is David Naimon. I just
7 wanted to add one more possible consideration --

8 **DR. ZIEMER:** Yeah, uh-huh.

9 **MR. NAIMON:** -- and that is, I wasn't sure
10 when we talked about the claim being adjudicated if
11 we're talking about all the way through any possible
12 court challenges.

13 **DR. ZIEMER:** Well, I think in general we
14 have talked about our process.

15 **MR. NAIMON:** The reason why I mention that
16 is that I think there might be some legal issues
17 about contacting people who are involved in
18 litigation --

19 **DR. ZIEMER:** Uh-huh, sure.

20 **MR. NAIMON:** -- without their attorneys
21 being involved.

22 **DR. ZIEMER:** Sure. Right, right. Right.
23 Thanks for adding that into the mix, as it were.

24 I'm going to suggest that we move on and see
25 what the rest of the document looks like. Is that

1 agreeable?

2 (No responses)

3 **DR. ZIEMER:** We go to item B, which is the
4 site profile and worker profile review. And let's
5 open this up for questions or comments or concerns.

6 **MS. MUNN:** Larry, before we go there, one
7 last final question with respect to the advanced
8 review --

9 **DR. ZIEMER:** Okay, this is Wanda, I think.
10 Right?

11 **MS. MUNN:** This is Wanda. -- under A.3.

12 **DR. ZIEMER:** Uh-huh.

13 **MS. MUNN:** Where we indicate the folding in
14 of records, research programs, research
15 publications, et cetera. When I hit that, my first
16 thought was how and who is going to do that? I know
17 there is all sorts of additional reports and
18 research that's been done at various sites around
19 the country, and can I safely assume that there will
20 be a special team somewhere who will already have
21 this data accumulated at the time any advanced
22 review is taking place?

23 **DR. ZIEMER:** This is B.3?

24 **MS. MUNN:** A.3.

25 **THE COURT:** Oh, A.3.

1 **MS. MUNN:** Yes.

2 **DR. ZIEMER:** On page five?

3 **MS. MUNN:** On page five. That's a lot of
4 stuff.

5 **MR. ELLIOTT:** This is Larry Elliott. I
6 think, Wanda, your question gets at whether or not
7 -- well, the dose reconstruction is completed, and
8 what this gets at is was all of the information that
9 is available, that's identifiable, was it used.

10 **MS. MUNN:** Yeah.

11 **MR. ELLIOTT:** And that -- if we -- if we
12 felt we had found everything that is necessary to
13 adjudicate the claim, then that's the boundary that
14 is put upon it.

15 **MS. MUNN:** Yeah, I guess my -- you can
16 understand why I'm -- I quail at the prospect of
17 having to identify all relevant sources of data.
18 It's -- it's an overwhelming task, and especially
19 once we get outside of the realm of official records
20 and go into other research programs, et cetera. So
21 I guess my -- my bottom line question here was will
22 we be looking -- is this expectation that it will
23 relate to data which has been accumulated and which
24 was used, and if so, I guess the wording is to
25 determine whether all relevant sources of data were

1 used. I'm not at all sure how --

2 **DR. ZIEMER:** How do you ever know whether
3 you --

4 **MS. MUNN:** How do I identify whether all
5 relevant sources of data were identified? How do I
6 determine that? And it's -- it may be just a
7 rhetorical question, but it's one that came to my
8 mind and I would not like to go --

9 **DR. ZIEMER:** It's an interesting question to
10 raise, though, and I guess you never know whether
11 it's all, but I --

12 **MS. MUNN:** No.

13 **DR. ZIEMER:** -- I'm wondering if we're
14 really asking whether sufficient sources have been
15 used.

16 **MS. MUNN:** I think -- I was wondering
17 whether adequate would be a better --

18 **DR. ZIEMER:** A better word, yeah.

19 **MS. MUNN:** -- than having all.

20 **DR. ZIEMER:** Mark, you want to --

21 **MR. GRIFFON:** I'm just laughing at the words
22 "sufficient" and "adequacy." Boy, that -- that
23 rings a bell from somewhere, sufficiently --
24 adequately sufficient.

25 **MS. MUNN:** Yeah.

1 **MR. GRIFFON:** And how do we know that?

2 **MS. MUNN:** I know.

3 **MR. GRIFFON:** I guess I -- I guess what I
4 was --

5 **DR. ZIEMER:** Yeah.

6 **MR. GRIFFON:** -- what I was struggling -- I
7 mean maybe "all" isn't appropriate in there, but --

8 **DR. ZIEMER:** 'Cause you never know if it's
9 all.

10 **MR. GRIFFON:** Yeah, I mean I guess what I
11 was trying to get at was the term whether a
12 reasonable effort was made to get at -- to get at
13 all those relevant data.

14 **DR. ZIEMER:** Yeah, that's --

15 **MR. GRIFFON:** And I think that first word,
16 "determine," I mean maybe it's evaluate, as Larry
17 has brought up before.

18 **DR. ZIEMER:** Mark, maybe those words could
19 be tweaked a little bit.

20 **MR. GRIFFON:** I'll take a crack at that,
21 yeah.

22 **DR. ZIEMER:** It's sort of asking an
23 impossible question, have you identified every
24 source.

25 **MS. MUNN:** Yeah.

1 Again I'll address this to Mark or to the
2 subcommittee. The second paragraph, first sentence,
3 says (reading) The contractor shall investigate the
4 conditions, processes, practices and incidents at
5 DOE sites.

6 Is there an expectation here that they would
7 -- when I -- when I see the word "investigate," I
8 envision somebody going out to a site and doing a
9 site investigation. Is that --

10 **UNIDENTIFIED:** (Inaudible)

11 **DR. ZIEMER:** Is that what we're talking
12 about here?

13 **MR. GRIFFON:** No, no, not -- on-site
14 investigation wasn't the intent. That word might
15 not be the best.

16 **DR. ZIEMER:** It's to review?

17 **MR. GRIFFON:** Review -- yeah, I was thinking
18 review might be a possible word there or the whole
19 sentence might need wordsmithing, but...

20 **DR. ZIEMER:** It's not the investigation.
21 You're really reviewing what has been uncovered
22 already.

23 **MR. ELLIOTT:** This is Larry Elliott. I
24 think the second sentence feeds from the first and
25 actually says --

1 **MR. GRIFFON:** Yeah, it does say it --

2 **MR. ELLIOTT:** -- "review."

3 **MR. GRIFFON:** Yeah, "investigate" was a bad
4 -- yeah, that was a -- and on-site was never the
5 intent, as we've discussed before.

6 **MR. ELLIOTT:** Here on this second sentence,
7 we will edit this to read: The review should focus
8 on whether the approach NIOSH assured completeness.

9 **MR. GRIFFON:** Okay, yeah.

10 **MR. ELLIOTT:** We'll strike out "/and
11 contractor" -- "/contractor."

12 **DR. ZIEMER:** Okay. But then at the end of
13 that paragraph there is a task that looks like
14 you're going back to talking to employees and
15 contractors and so on, and my question is at what
16 point is the -- is our Board audit doing the work
17 that should have been done by the -- by the
18 contractor? In other words --

19 **MR. ELLIOTT:** By NIOSH.

20 **DR. ZIEMER:** Or by NIOSH directly, yeah.

21 **MR. GRIFFON:** So they're trying to find out
22 if this work was done, I suppose. And what I -- I
23 clarified this on another conference call that the
24 meeting -- that these meetings -- it -- they -- "on-
25 site" I think I struck, because on-site had

1 everybody thinking that -- you know -- yeah, these
2 could be meetings conducted in the area of the site,
3 you know, or at a hotel, for instance, not
4 necessarily on a DOE facility site. This is -- this
5 is to determine if -- if they, you know -- they made
6 that reasonable effort to find all relevant reports
7 to include in the site profile. That's sort of the
8 intent.

9 **DR. ZIEMER:** Yeah. Yeah.

10 **MR. GRIFFON:** And you know, if they miss
11 something, may -- I mean, it -- and you know, what
12 they may conclude is hey, you missed this small
13 report, but it really was a, you know -- I mean I
14 think the word's reasonable are important to put in
15 there. Obviously you're never going to get 100
16 percent, as we've discussed many times, but --

17 **MS. MUNN:** Yeah, this is Wanda. This is the
18 same kind of issue that we had with the preceding
19 page --

20 **MR. GRIFFON:** Yeah.

21 **MS. MUNN:** -- with respect to what
22 constitutes all relevant data sources.

23 **MR. GRIFFON:** Right. Right.

24 **DR. ZIEMER:** Okay, I just want to make sure
25 that we're not doing the task of the staff. That

1 is, at some -- at some point -- if you're talking
2 about somehow doing a spot check is one thing, but
3 going in and saying okay, we're going to do our own
4 site profile and see how well they match up, that's
5 a daunting task.

6 **MR. GRIFFON:** No -- No, I --

7 **DR. ZIEMER:** Yeah, so -- okay, I just wanted
8 to make sure I understood what the subcommittee was
9 actually suggesting there. But you haven't really
10 fleshed out how that would be done, I guess. Right?

11 **MR. GRIFFON:** I think it's -- well, it's
12 fairly broad, yeah, both B and C are definitely
13 broader than -- than A -- A was fleshed out more.

14 **DR. ZIEMER:** And is this something that you
15 would do if there's some reason to believe when you
16 did the paper audit that there's holes or something?
17 Or how --

18 **MR. GRIFFON:** I think we were thinking of
19 that in both ways, but we left the selection of the
20 sites sort of up to the working group or the Board,
21 but we could -- we had some discussions where we
22 said it might be based on individual dose
23 reconstructions for review -- in other words, you
24 know, you might flag something that see -- you see a
25 trend where you might want to go to a certain site

1 and do a site profile review and/or, you know, a
2 random selection of certain sites or a non-random
3 selection of certain sites. So we -- we sort of
4 left that like that, but you know, with -- with --
5 we didn't think it needed to be part of the task
6 order contract necessarily.

7 **DR. ZIEMER:** Right.

8 **MR. GRIFFON:** And we didn't have all the
9 answers to that, but -- so -- and the language is
10 surely broad for that reason, too.

11 **DR. ZIEMER:** Okay.

12 **MR. GRIFFON:** We don't know exactly what
13 these profiles look like yet, either. They're --
14 NIOSH is beginning to --

15 **DR. ZIEMER:** Right.

16 **MR. GRIFFON:** -- put it together, but not --
17 you know.

18 **DR. ZIEMER:** Okay. So right now this again
19 is kind of a marker in here that alerts a contractor
20 that they might have to do something like this. Is
21 that where it stands at the moment?

22 **MR. GRIFFON:** Yeah, or with -- you know.

23 **DR. ZIEMER:** As far as this -- this --

24 **MR. GRIFFON:** With --

25 **DR. ZIEMER:** -- this statement of work?

1 **MR. GRIFFON:** With some indication on -- on
2 what kind of depth it might involve, you know,
3 trying to give them --

4 **DR. ZIEMER:** Yeah. When you talk about the
5 -- in the bottom paragraph, the site profile -- the
6 ten profiles, you're not necessarily saying that
7 they would do this on all ten.

8 **MR. GRIFFON:** Oh, I was, yes.

9 **DR. ZIEMER:** They would -- they would have
10 these sort of on-site or near-site reviews of ten
11 facilities?

12 **MR. GRIFFON:** Well, that -- on-site
13 interviews with the group is only one -- one part of
14 their review, you know.

15 **DR. ZIEMER:** Yeah.

16 **MR. GRIFFON:** But yes.

17 **DR. NETON:** Is that -- is that -- my -- I
18 would not -- that was not my understanding, Mark,
19 that you were going to do all ten site -- site
20 visits for each -- each of these -- so you're going
21 to do 20 site visits in the first year.

22 **DR. ZIEMER:** See, my impression was that --
23 is that is a really formidable task. First of all,
24 ten -- ten is a big -- there really are about 35
25 major DOE sites, so you're talking about almost a

1 third of them. And each of those sites is a big,
2 big facility.

3 **MR. GRIFFON:** Yeah, you're thinking DOE
4 sites, right.

5 **DR. ZIEMER:** Well, I think it says -- well,
6 let's see, there's ten and ten here, the number of
7 worker -- oh, worker profiles is ten. Oh, what is
8 the -- okay, my question is what's the distribution
9 between DOE and AWE site --

10 **MR. GRIFFON:** We didn't make that
11 distinction.

12 **DR. ZIEMER:** Oh, okay.

13 **DR. NETON:** But the thing I'd like to bring
14 up, though, for consideration is that we -- this is
15 Jim Neton. You know, I don't think that you should
16 be evaluating a site profile unless we're using --
17 doing dose reconstructions at that site. I mean
18 these things will be fleshed out as we go in a yet-
19 to-be-determined sequence. If you're going to start
20 doing ten, we might not even have ten that we've
21 actually, you know, felt we've had --

22 **MR. GRIFFON:** I know, Jim, that's -- yeah,
23 so in the first year maybe that's not realistic.

24 **DR. NETON:** My original thing was to make --
25 Mark, was down to five, but you know -- and just

1 because a site profile is not completely fleshed out
2 does not mean -- I think I brought this up at
3 previous Board meetings -- that we couldn't do dose
4 reconstruction. You know, the site profiles are --
5 are specific locations where we've got to go the
6 whole, you know, distance to evaluate a claim and --
7 and you know, the early ones are not being done in
8 that fashion. They're the ones that we can do
9 without site profiles, so --

10 **MR. GRIFFON:** Well, I think we -- that's --
11 maybe we need to -- I may need to look a little
12 closer at that language in here, but I -- you know,
13 I think the way we've addressed that in the past and
14 in discussions was that all relevant data necessary
15 to make a determination, you know --

16 **DR. NETON:** Right, but that -- that's when I
17 get confused when you say you're going to visit ten
18 sites. I mean you've already said -- we may not
19 even have to get to this site. We may have enough
20 profile information --

21 **MR. ELLIOTT:** You may want --

22 **MR. GRIFFON:** No, yeah, yeah, I -- I --

23 **MR. ELLIOTT:** You may want to -- this is
24 Larry Elliott. You may want to think about using
25 some phrases like "as needed" or "as necessary," "as

1 deemed appropriate" or whatever, but --

2 **DR. NETON:** Yeah, I --

3 **MR. GRIFFON:** Okay, I'll look at that.

4 **DR. ZIEMER:** And you're still going to have
5 individual task orders for these --

6 **MR. GRIFFON:** Right, right, that's right.

7 **DR. ZIEMER:** Is ten realistic for the first
8 year in any event, and that's sort of my starting
9 question.

10 **MR. ELLIOTT:** Yeah, I would suggest that
11 they -- these two sentences be struck out, because
12 you're -- the playing field that you set for the
13 proposers to this work is Attachment D and E.

14 **MR. GRIFFON:** That's right. And that's the
15 -- you make a good point, Larry. That's why I
16 didn't put examples for these two because I didn't
17 think we had them fleshed out enough to really make
18 bidders bid against them. So we can -- we can say
19 the number of profiles to be done. I don't know, I
20 thought it had to be included for the overall
21 budgeting process.

22 **DR. NETON:** No, no, no, no.

23 **DR. ZIEMER:** So we don't have to have the
24 number in here at this point.

25 **DR. NETON:** No.

1 **MR. GRIFFON:** But if we're going to have an
2 executive session discussing budget and we would at
3 least have to consider amongst ourselves a number on
4 that. Right?

5 **MR. ELLIOTT:** That's left for January 8th.

6 **MR. GRIFFON:** Yeah, it doesn't have to be in
7 this document is what you're saying.

8 **DR. ZIEMER:** Yeah.

9 **MR. GRIFFON:** Okay, that's -- I guess that's
10 reasonable to me.

11 **DR. DEHART:** Paul, this is Roy. I'm going
12 to have to back out. I have two attorneys waiting
13 to take a deposition. I'd rather stay with you
14 guys.

15 **DR. ZIEMER:** Well, I think you should if
16 you've got attorneys waiting.

17 **DR. DEHART:** I'll get back to you if I can.

18 **DR. ZIEMER:** Thank you. Okay. Any other --
19 any other comments on item B?

20 **MS. MUNN:** Only one suggestion -- this is
21 Wanda.

22 **DR. ZIEMER:** Uh-huh.

23 **MS. MUNN:** When, in the second paragraph,
24 you refer to site experts in quotes, and I -- again,
25 not now, but at some juncture, I think we're

1 probably going to have to identify what kind of
2 criteria we look at when we decide a person is a
3 site expert. That's a --

4 **DR. ZIEMER:** Yeah, I see where you're --

5 **MS. MUNN:** I know several people who
6 consider themselves experts on several items that I
7 don't believe they're expert in, so --

8 **MR. GRIFFON:** All right, yeah.

9 **DR. ZIEMER:** The intent there, as I
10 understand it, would be people who are pretty
11 familiar with the site. Right?

12 **MS. MUNN:** That's my understanding, right.
13 I guess -- I just think we're --

14 **DR. ZIEMER:** They know what's -- what's gone
15 on there over a period of perhaps number of years or
16 decades, yeah.

17 **MS. MUNN:** Yeah, I think we have to
18 establish some minimum benchmark.

19 **DR. ZIEMER:** Yeah, okay. Shall we go on
20 with item C?

21 (No responses)

22 **DR. ZIEMER:** Now I had a general question
23 here, and let me address this first to the staff.
24 Can we include this in the statement of work even
25 though the rule is not in place? Can we have a

1 marker like this? It seems to me it's okay, I just
2 wanted to make sure.

3 **MR. ELLIOTT:** Are you at the top of page
4 seven?

5 **DR. ZIEMER:** Bottom of six, top of seven,
6 Review of SEC Petitions. Since the rule isn't in
7 place, we can't -- I think Mark said that this is in
8 here to sort of be a place-marker to give them a
9 heads-up that this is something coming down the road
10 that we may ask their assistance on, but we can't
11 flesh it out since the rule doesn't exist.

12 **MR. ELLIOTT:** That -- you're absolutely
13 right and this is -- this is appropriate and okay to
14 leave in here, except we will strike out number 2,
15 review of SEC petition to determine adequacy of
16 determination of health --

17 **DR. ZIEMER:** Since that doesn't exist at the
18 moment.

19 **MR. ELLIOTT:** Doesn't exist at the moment.
20 It just needs to say review SEC petitions that come
21 before the Board.

22 **DR. ZIEMER:** And that -- that just puts the
23 marker in. That means the intent. Mark, does that
24 -- does that sound okay to you?

25 **MR. GRIFFON:** Yeah, I guess it does. I was

1 trying to be more specific with the reference. I
2 know it --

3 **DR. ZIEMER:** It seems to me once the rule is
4 in place, you know, we can -- we can alter this
5 statement of work at any point, and then the task
6 will be very specific at that point. Right?

7 **MR. ELLIOTT:** That's right.

8 **MR. GRIFFON:** Yeah, that was -- that was
9 just to be more specific, I suppose, so I think
10 that's okay.

11 **DR. ZIEMER:** Well, and in fact, a point I
12 was going to make -- maybe I should have made it at
13 the beginning -- that even -- even if we were to
14 accept this whole document as it is today, we can
15 always -- the Board can -- this is not a rulemaking.
16 We could change it.

17 **MR. GRIFFON:** Yeah.

18 **DR. ZIEMER:** We can change it at our next
19 meeting. But in any event, Section C mainly becomes
20 a place-marker, and until the rule's in place, we
21 can't say that they -- that they're going to do
22 this --

23 **MR. GRIFFON:** All right.

24 **DR. ZIEMER:** -- since the rule doesn't
25 exist.

1 **MR. GRIFFON:** Right, right, right.

2 **DR. ZIEMER:** Yeah. Okay. Are you ready to
3 look at C.4, Work Assignments?

4 **MS. MUNN:** Uh-huh.

5 **DR. ZIEMER:** I think we were already told
6 that a lot of this is sort of boilerplate, but are
7 there any questions or issues on work assignments?

8 (No responses)

9 **DR. ZIEMER:** I -- this is Ziemer again. I
10 want to raise one. It's on the very last page, on
11 the reports. This requires the contractor to send a
12 copy of the report to the project officer and the
13 contracting officer. It seems to me that since this
14 is a contractor who is the Board's, quote,
15 contractor, I would like to see the Chair get a copy
16 of that report, as well. Is there any legal issue
17 with that? I'll ask Larry or --

18 **DR. NETON:** Yeah, this is Jim Neton, Larry,
19 there's -- no, there's no issue with that at all.
20 In fact, I think you can have the report sent
21 simultaneously to the project officer and the Chair.
22 I don't think there's an issue at all.

23 **MR. GRIFFON:** Well -- okay.

24 **DR. ZIEMER:** Mark, are you --

25 **DR. NETON:** Or whoever, I mean the Chair and

1 whoever on the Board.

2 **DR. ZIEMER:** Well, or -- yeah, and it could
3 go to the -- it could go to the head of the working
4 group, I just wanted to make sure we got direct
5 feedback --

6 **DR. NETON:** A copy does have to go to us,
7 though, as --

8 **DR. ZIEMER:** Yeah, it has to go to you, as
9 far as -- from the Federal point of view and the
10 legal point of view. But on the other hand, it is a
11 group that we're putting together on behalf of the
12 Board, so I think we want to get the report, too --

13 **MR. GRIFFON:** Yeah, I --

14 **DR. ZIEMER:** -- very directly.

15 **MR. GRIFFON:** Where did you add that in,
16 Paul? That's what I --

17 **DR. ZIEMER:** Well, it's on the last page,
18 C.5, preparation of report.

19 **MR. GRIFFON:** Oh, okay.

20 **DR. ZIEMER:** It says the report's due ten
21 days after the end of the -- I'm talking about the
22 monthly reports.

23 **MR. GRIFFON:** Yeah.

24 **DR. ZIEMER:** And it would be really -- those
25 monthly progress reports. It would really apply to

1 all reports, really, but I think we want to be
2 apprised ourselves directly of the progress.

3 Are there any other issues on this whole
4 section C.4 or C.5?

5 (No responses)

6 **DR. ZIEMER:** Okay. Now since -- since we
7 have some open issues and we have a few things we've
8 sort of brought to closure, but -- I think I'm not
9 going to ask and I don't think we have to, Larry,
10 that we approve this today. I think it's pretty
11 well spelled out, but let -- is it spelled out
12 enough, even with the parts that we have problems
13 with, for the thing to stay on track internally? Or
14 is the issue of the -- of the interviews going to
15 cause a problem at this point? Or is that an
16 answerable question?

17 **MR. ELLIOTT:** The interviews are -- this
18 matter of doing the interviews is a problem, and I
19 would not put this into the procurement process if
20 you voted on it today until I had a read on where
21 the Department stands --

22 **DR. ZIEMER:** Well, I'm really asking if we
23 don't -- if we don't vote on it today -- you know
24 the nature and -- I think I lot of things we sort of
25 -- the other changes we sort of know where we're

1 going on those. The big issue that we haven't
2 really fully resolved is this interview of the --
3 review of the interview process. We have some
4 possible solutions that we've been thinking about
5 and that we sort of agreed we would take up again in
6 January. My question is that -- does that mean that
7 nothing can happen in the meantime, or --

8 **MR. ELLIOTT:** Certainly there --

9 **DR. ZIEMER:** -- or can it go forward and --
10 with the caveat that that -- there's an item there
11 that either is going to be dealt with separately or
12 we're going to -- or what, I don't know how we can
13 -- I don't think we're ready to vote on the
14 document, but we seem to have general agreement on
15 most of the other stuff except for that.

16 **MR. ELLIOTT:** We certainly can go forward
17 and work with Mark in making the edits and putting,
18 you know, the changes that have been discussed.

19 **DR. ZIEMER:** Uh-huh.

20 **MR. ELLIOTT:** We'll have to identify this
21 one area that is an issue yet with regard to the
22 interviews. I can't -- I can't speak right now
23 whether or not that will be -- that will prevent us
24 from moving this into procurement or not. We can
25 put this back together, making all the edits and the

1 changes, and then I'm going to have to get some --

2 **DR. ZIEMER:** Yeah.

3 **MR. ELLIOTT:** -- direction from the
4 Department and from General Counsel on how we need
5 to deal with this.

6 **DR. ZIEMER:** But are you okay in proceeding
7 on that basis?

8 **MR. ELLIOTT:** I'm okay with -- I understand
9 -- I understand both sides of the argument. I have
10 heard them loudly and clearly, and I think I can
11 very fairly articulate.

12 **DR. ZIEMER:** Okay. Mark, are you
13 comfortable with that?

14 **MR. GRIFFON:** Yeah.

15 **DR. ZIEMER:** Okay. The rest of the
16 committee? We're not actually voting on the
17 document, but we sort of know what the issues are.
18 It's where we have to go with it.

19 **DR. MELIUS:** It's Jim Melius. And this may
20 not be the appropriate time, but I think we do need
21 to discuss exactly what we want to be on the agenda
22 for the next meeting in relationship to this issue
23 so that we're -- you know, that we can try to
24 resolve it at the next meeting and not --

25 **DR. ZIEMER:** Right.

1 **DR. MELIUS:** -- this off again.

2 **DR. ZIEMER:** Yeah, and I want to talk about
3 the agenda here in just a moment. Okay?

4 Now, let's see, how are we doing? Okay.
5 Can we move to Attachment A?

6 **MR. GRIFFON:** There's going to be -- we have
7 from 1:00 to 4:00 for this call? Is that --

8 **MS. HOMER:** That's correct.

9 **DR. ZIEMER:** I think we have -- yeah, and
10 it's just 3:00 here, right? A little after 3:00?

11 **MS. HOMER:** Uh-huh.

12 **DR. ZIEMER:** We okay still?

13 **MR. ELLIOTT:** Yes.

14 **MR. GRIFFON:** Yeah.

15 **DR. ZIEMER:** On Attachment A, are there any
16 issues on A on personnel?

17 (No responses)

18 **DR. ZIEMER:** B, management approach?

19 (No responses)

20 **DR. ZIEMER:** C, technical approach?

21 (No responses)

22 **DR. ZIEMER:** If I'm moving too fast, just
23 stop me. D, past performance?

24 (No responses)

25 **DR. ZIEMER:** E, conflict of interest?

1 **MR. GRIFFON:** I think the working group --
2 yeah.

3 **DR. NETON:** This is Jim Neton, I do have to
4 add, on past performance we are going to have to
5 change some of the boilerplate language in there to
6 be consistent with some guidance received under the
7 Federal acquisition regulations from procurement.
8 They had reviewed this and they made some
9 suggestions.

10 **DR. ZIEMER:** Anything substantive or --

11 **DR. NETON:** No, no, it has --

12 **MR. GRIFFON:** It wouldn't really change the
13 intent. Right?

14 **DR. NETON:** It wouldn't change the intent at
15 all.

16 **DR. ZIEMER:** Okay. You'll bring us the
17 right wording next time then.

18 **MR. GRIFFON:** Yeah, that's fine.

19 **DR. ZIEMER:** Okay. Then conflict of
20 interest. This was an area -- as I understand, now
21 there was some sort of non-concurrence within the
22 subcommittee or --

23 **MR. GRIFFON:** Yeah, yeah.

24 **DR. ZIEMER:** -- some different point of
25 view.

1 **MR. GRIFFON:** Yeah, and we'd --

2 **DR. ZIEMER:** Does that have to do with the
3 years of -- away from contractors or something like
4 that?

5 **MR. GRIFFON:** There -- I guess there were
6 two primary ones. One is the -- if you look at the
7 second paragraph --

8 **DR. ZIEMER:** Yeah.

9 **MR. GRIFFON:** -- at a minimum the contractor
10 and key personnel shall have no prior work history
11 and so on in the past five years. And then on down
12 where we talk about additionally no personnel may
13 have been employed under this contract who have
14 served as an expert witness, so I guess the work
15 history and the expert witness were the primary
16 areas of disagreement on our --

17 **DR. ZIEMER:** We'll look at the first one and
18 that -- it's the issue of the five years then, I
19 assume. Right?

20 **MR. GRIFFON:** I think so. I did -- I did
21 try to clarify a little from the previous draft,
22 just for the working group's information. I don't
23 know -- I don't know if this is going to resolve
24 people's concern on this, but I think -- I put in at
25 a minimum the contractor and key personnel, and I

1 have a note -- and actually started some draft
2 language on defining key personnel, but I underlined
3 key personnel for a reason, because, you know, the
4 idea was this provision would only be required of
5 the contractor and key personnel, and it would give
6 them --

7 **DR. ZIEMER:** The key personnel might not
8 necessarily be all the dose reconstructionists.

9 **MR. GRIFFON:** Right. They might -- the
10 flexibility -- for instance, if you need an expert
11 who -- for a neutron dosimetry or something --

12 **DR. ZIEMER:** Yeah.

13 **MR. GRIFFON:** -- it doesn't prohibit you --
14 it doesn't have a strong restriction on them being
15 (inaudible), so you know --

16 **DR. ZIEMER:** Is there -- I had made myself a
17 note, and does the five-year have any particular
18 basis? Is it semi-arbitrary? I would ask the
19 question why not say three years or --

20 **MR. GRIFFON:** Yeah, I --

21 **DR. ZIEMER:** -- or six or -- why five?
22 Where does that come from?

23 **MR. GRIFFON:** I think it's fair to say it's
24 semi-arbitrary. I mean recent work activity was
25 kind of in the --

1 **DR. ZIEMER:** Well, I would be nervous if
2 somebody just jumped off from let's say a DOE lab
3 and went to this, but when you -- and in fact,
4 sometimes there are restrictions the other way that
5 the Agency has on working on projects, also. But --

6 **MR. GRIFFON:** Yeah, I think we had -- in my
7 mind, Paul, I think I didn't -- you know, I said
8 ever worked at DOE, we were going to lose probably
9 every possible --

10 **DR. ZIEMER:** Oh, yeah, yeah --

11 **MR. GRIFFON:** -- and so I --

12 **DR. ZIEMER:** I think we all know that
13 there's just any number of people who had worked for
14 them in the past that don't feel any particular
15 loyalties or anything like that, and even some of
16 which have been working there recently. But again,
17 I would ask, where does the five-year come from? I
18 -- I might -- I personally would tend to relax that
19 a little bit, but I'm not -- you know, I'm not real
20 -- you know, I feel --

21 **MR. GRIFFON:** I probably --

22 **DR. ZIEMER:** I would feel comfortable with
23 two or three years, myself. But --

24 **MR. GRIFFON:** Five years is semi-arbitrary.
25 Part of the reason for even having any kind of year

1 minimum in there, I think you make a -- a good point
2 that --

3 **DR. ZIEMER:** Perception-wise it's good to
4 have --

5 **MR. GRIFFON:** Exactly, perception-wise, that
6 was the --

7 **DR. ZIEMER:** I just don't know what the time
8 should be.

9 **MR. GRIFFON:** Right.

10 **DR. ZIEMER:** How do others feel about that?

11 **DR. ROESSLER:** This is Gen. As Mark knows,
12 we discussed this during work group and I really
13 don't understand the purpose of the statement,
14 particularly with regard to that idea that -- I
15 understand perception, but I'm afraid that by
16 putting something out to give the perception that
17 we're trying to avoid conflict of interest, we may
18 eliminate the most technically up-to-date and
19 capable contractors, for really no valid reason.

20 **DR. ZIEMER:** Were you suggesting no
21 restriction, Gen, or a shorter time or --

22 **DR. ROESSLER:** Well, a shorter -- I guess I
23 would have to be convinced even on the shorter time.
24 Mark at one time had a statement I thought was
25 better in that it didn't have an actual restriction,

1 left it more up to the contractor to show that they
2 -- you know, to provide their conflict of interest
3 plan that could be evaluated with regard to this
4 particular point. I'm just afraid that by putting
5 in five years --

6 **MR. GRIFFON:** I think -- I know -- and I
7 certainly have spoken with Gen and on our working
8 group we spent about an hour and a half on this, so
9 we've been around on this. But I think part of it
10 was, you know, the notion of we could put something
11 in this document that said the bidder would be
12 evaluated on their previous work history with DOE,
13 et cetera, in the past five years. And that would
14 say -- well, that doesn't draw a hard line in the
15 sand. You know, it doesn't --

16 **DR. ZIEMER:** Exclude, but if they have in
17 the past five years --

18 **MR. GRIFFON:** Right.

19 **DR. ZIEMER:** -- you would really look at it
20 closely to see --

21 **MR. GRIFFON:** Right, and I guess the concern
22 that I had on that -- or one concern I had on that
23 was, you know, there is a concern that I've heard --
24 I mean I guess we just -- this notion of having this
25 independent reviewer be as squeaky clean as we can,

1 while being technically competent, also -- and the
2 other part of this is that NIOSH is doing the
3 hiring. And potentially the review panel is set up
4 by NIOSH, so to the extent that we can spell out the
5 criteria and be more proscriptive in the --

6 **DR. ZIEMER:** It may help.

7 **MR. GRIFFON:** It may help the public's
8 perception of the hiring process, you know. That
9 was part of why I was sort of proscriptive. I
10 understand the flip side, but that was part of the
11 thinking that went into that.

12 **DR. ZIEMER:** What about other members of the
13 Board? What are your feelings on this issue?

14 **MS. MUNN:** This is Wanda, and I agree that
15 five years is just simply too long. Even elected
16 officials are only proscribed for one year, are they
17 not, before they go to the legal firm that's going
18 to be filing the claims against. And I certainly
19 don't think any longer than two years is reasonable
20 at all, simply for the reason that Gen stated.
21 It'll eliminate the -- if not significant fraction,
22 probably the majority of the people who are best
23 qualified to do this work.

24 **DR. ZIEMER:** What about having something
25 where you had a -- at least the minimum of one or

1 two years, plus you had a statement similar to what
2 Mark talked about earlier where you also said but --
3 and we also want to look at the five years or
4 something? You know --

5 **DR. ROESSLER:** I like --

6 **DR. ZIEMER:** -- both ideas together?

7 **DR. ROESSLER:** Yeah, I like that approach.

8 **MR. PRESLEY:** This is Bob Presley. I went
9 back and looked at a couple of contracts we'd had
10 out here, and most of them are one year. But I like
11 what Paul just said.

12 **DR. ZIEMER:** You would have an absolute --
13 you know, there's got to be at least one or two
14 years, whatever the number is -- and again, I think
15 there's some arbitrariness -- but then you say --
16 and I forget what your words were, Mark, but you
17 would ask for some sort of review of anything in the
18 last five years or --

19 **MR. GRIFFON:** Yeah, that it would be
20 reviewed, right.

21 **UNIDENTIFIED:** Who would do the review?

22 **MR. GRIFFON:** It should be evaluated based
23 on the degree or extent of the work that has been
24 performed on behalf in the past five -- that's the
25 language I have written down here.

1 **DR. ZIEMER:** Well, let's get some other --
2 who else has input on this?

3 **DR. ANDERSON:** This is Andy. I guess I like
4 the -- that it would be considered. I mean the
5 other thing that I think is important --

6 **DR. ZIEMER:** You liked it what?

7 **DR. ANDERSON:** That you would look -- they
8 would list and you -- as part of the evaluation you
9 would consider it. The other thing we might -- and
10 I don't know what percentage you'd use, but for a
11 lot of people who are consultants, they might have
12 multiple contracts. And just because they have a --
13 you know, a minor component of their overall work is
14 a DOE contract, I think what we're looking for is
15 the conflict of if your major funder over the last
16 couple of years has been DOE, that is potentially a
17 conflict. Whereas you can get one or two short-
18 term, small projects out of, you know, 20 such
19 multiple projects, it's of less concern. So I think
20 to have it listed and then as part of the evaluation
21 it's considered, and I think -- back to what Mark
22 said earlier -- it's kind of who is going to be
23 vetting and choosing the contractor and what's going
24 to be the role if -- if the Board is only going to
25 have a minor role in that, then I would want to

1 have, whatever the selection is, a confidential
2 discussion with the rest of the Board as to the
3 rationale behind the selection of the person and
4 why, if they did have some potential or -- I would
5 do it as much as anything as a perceived conflict
6 rather than a -- an actual conflict.

7 **DR. ZIEMER:** Yeah.

8 **DR. ANDERSON:** But we would know why -- why
9 the decision was made to go one way or another.

10 **DR. ZIEMER:** Thank you. Any other views?

11 **MR. GIBSON:** Mike Gibson, and just --

12 **DR. ZIEMER:** Mike.

13 **MR. GIBSON:** -- speaking from the field and
14 from workers, people don't trust DOE. I mean that's
15 a -- I think I've said it before, that's why we're
16 -- we're all here, because they haven't monitored
17 and done doses right, but -- so since we've got --
18 you know, ORAU's the contractor that's going to do
19 the dose reconstructions, I just think it's real
20 important to have someone completely divorced of DOE
21 that's going to audit the work that this contractor
22 does for NIOSH. It's -- just add credibility for
23 the claimant's sake.

24 **DR. ZIEMER:** They certainly will be that. I
25 think the issue is here if they ever had any DOE

1 work in the past, how long ago does it have to be
2 and, you know, is it ever or is it a year ago or two
3 or five or what. See? And how much?

4 **MR. GIBSON:** Yeah, I guess I'm just -- I
5 don't think five's out of the question.

6 **DR. ZIEMER:** Uh-huh. Okay.

7 **DR. ROESSLER:** I guess the point that Mike
8 just brought up -- to me, the perception of mistrust
9 goes back. If we're going to say they're not
10 allowed to -- have no prior work history during the
11 past five years, it should go back more than that,
12 or maybe shouldn't even include the recent years.
13 It's back in the days when these workers were at the
14 facilities that the mistrust may have developed, not
15 the recent years. I don't quite --

16 **DR. ZIEMER:** Well, no, Gen, but they still
17 don't trust DOE now.

18 **DR. ROESSLER:** Well, I know that.

19 **DR. ZIEMER:** And now is when the dose
20 reconstructions are being done, so I think there is
21 that -- at least perceived in people's minds that if
22 they somehow have a close relation now, that you
23 still have a problem, real or not. But I think
24 Mike's probably correct in that issue.

25 **MR. GIBSON:** And I'll just --

1 **DR. ZIEMER:** It's true that the doses go
2 back that far.

3 **MR. GRIFFON:** Yeah.

4 **DR. ZIEMER:** I think reconstructions are
5 being done now.

6 **MR. GRIFFON:** Right, and Gen, I think, also,
7 part of it -- the -- you know, I agree, five was
8 rather arbitrary, but part of the rationale was also
9 that people that -- or key personnel contractors
10 that have recently been involved in other studies
11 where they may have done dose estimates for epi
12 studies or something like that, you know, if they --
13 and that's gone on fairly recently, so if they've
14 been involved in those activities recently, then,
15 you know, they may be conflicted.

16 **MR. ELLIOTT:** This is Larry Elliott. I'd
17 like to make two points of clarification for the
18 Board's understanding. One is that it's not ORAU
19 that you're evaluating. It is NIOSH.

20 **DR. ZIEMER:** Yeah.

21 **MR. GRIFFON:** Right.

22 **MR. ELLIOTT:** Okay? So back that -- back to
23 Mike's comment, it's NIOSH. Second point of
24 clarification is that there is -- on the evaluation
25 panel that will be formed, there will be one Board

1 member that will be designated by the Board to serve
2 in that -- in that role.

3 **DR. ZIEMER:** In the selection process.

4 **MR. ELLIOTT:** The selection process.

5 **DR. ZIEMER:** Right.

6 **MR. ELLIOTT:** And that --

7 **DR. ZIEMER:** So we will have that input.

8 **MR. ELLIOTT:** You can appoint that person
9 and that person can come back to the Board and
10 explain how the process worked. They will be --
11 they will be unable to speak to certain aspects of
12 what they -- you know, what they reviewed and what
13 they saw and how that decision came to be, but
14 that's -- that's your inside participant --

15 **DR. ZIEMER:** Right.

16 **MR. ELLIOTT:** -- in the evaluation panel.

17 **DR. MELIUS:** Jim Melius --

18 **DR. ZIEMER:** Jim.

19 **DR. MELIUS:** -- follow-up to those comments.
20 Two things. One is that there are perceived
21 conflicts of interest we have to worry about here.
22 One is the one Larry just pointed out, is that we --
23 this review will be reviewing -- evaluating NIOSH's
24 work, so having -- to the extent that NIOSH isn't --
25 selects the contractor who is doing this, without

1 criteria, opens up to a, you know, perception that
2 there was some bias in the way that that contractor
3 was selected, so we need to guard against that in
4 some way. Secondly is the perception of -- to the
5 extent that the contractor may have worked in the
6 past for Department of Energy, so I think it's very
7 tricky to come to a balance there that will meet the
8 test of perception, you know, albeit with the good
9 intentions of everybody involved. I would think
10 that if we go to the compromise language that Paul
11 put forward that we need to have some combination
12 of, you know, at least two years without having --
13 not having worked for DOE, but that -- it's their
14 history of having worked -- a longer period of time
15 than five years needs -- evaluated in terms of again
16 potential or perception of conflict of interest,
17 that we go back further in time. And I think we're
18 balancing the conflict of interest versus technical
19 expertise and the other criteria, so there will be a
20 balancing. I also think --

21 **DR. ZIEMER:** Jim, you're suggesting that you
22 could use a threshold like the two-year, and then
23 not put a time limit on -- and just say you would
24 look at other involvement. You could --

25 **DR. MELIUS:** Right.

1 **MR. GRIFFON:** This is Mark Griffon. As I
2 was drafting this, this -- and I had this compromise
3 sort of language written out to offer, but I was
4 thinking of the question of the review panel and the
5 composition of the review panel.

6 **DR. ZIEMER:** Uh-huh.

7 **MR. GRIFFON:** And I don't know if there's
8 any flexibility in having other government people --
9 other people on that review panel other than NIOSH
10 and one advisory committee member. I don't know if
11 that's even an option, but I -- I raise it as a
12 question to -- because that -- I think that might
13 help in assuring to the public that, you know, we --
14 we specify as best we can in this evaluation plan
15 and then this review panel is -- you know, we
16 created it and make it as dependent as we can, you
17 know, again, for the perceived -- perception.

18 **MR. ELLIOTT:** Well, Mark, this is Larry
19 Elliott, let me respond to that. It's -- yeah,
20 we're certainly sensitive to this issue you all are
21 talking about and have raised and very concerned
22 about, you know, maintaining our credibility and
23 integrity here. We plan to look at just -- your --
24 that, your proposal, but I need to offer this, that
25 the people who sit on the technical review panel,

1 that is usually maintained as confidential
2 information. Those names are not shared. In the
3 case of the Board member you appoint, that of course
4 will be known, but the other individuals who serve
5 on these evaluation panels, that's -- that's not
6 something that's made public. So -- but we hear
7 your suggestion --

8 **DR. ZIEMER:** But nonetheless, whoever we
9 have on the panel, the Board can charge them to, you
10 know -- particularly to assure us that this issue is
11 addressed, however we finally word it.

12 **MR. ELLIOTT:** Absolutely.

13 **DR. ROESSLER:** Well, since I brought it up,
14 I do like the -- what we might call the compromise
15 language, the one to two years, and as Mark -- I
16 think Mark had it worded really quite well. You
17 could read that again and we could discuss that
18 part.

19 **MR. GRIFFON:** The contractor and key
20 personnel shall be evaluated based on the degree or
21 extent of work that is or has been performed for DOE
22 or DOE contractor, AWE or AWE contractor to
23 eliminate the appearance of potential conflict of
24 interest.

25 That was sort of -- instead of putting in

1 the five -- five-year or two-year in there, that was
2 just -- you know, be evaluated --

3 **DR. ZIEMER:** But then you would still have
4 the minimum in there --

5 **MR. GRIFFON:** Yes, and your first --

6 **DR. ZIEMER:** -- and have a minimum --

7 **MR. GRIFFON:** I've edited that first -- what
8 we had in there already to say in the past two years
9 instead of five --

10 **DR. ZIEMER:** Okay.

11 **MR. GRIFFON:** -- and now is -- you know.

12 **DR. ZIEMER:** How do others feel about that?
13 Is that something that -- I'm trying to get a sense
14 of whether we would concur on that and that could
15 move it forward to a final adoption at our next
16 meeting.

17 **MR. GRIFFON:** I added another phrase onto
18 that last part, just as we were discussing here,
19 that the -- that the bidder -- and this is just to
20 get the concept out. The wording may not be very
21 good. The bidder should include justification for
22 key personnel in their conflict of interest plan, as
23 necessary. Meaning that if -- if key personnel had
24 an extensive work history with DOE in their recent
25 past, then they should --

1 **MR. GRIFFON:** Yeah, there --

2 **DR. ZIEMER:** We talked about this one of
3 previous litigation actions. Right?

4 **MR. GRIFFON:** Right.

5 **DR. ZIEMER:** And last time the question was
6 whether or not they -- did it cut both ways? What
7 about people who litigated for an individual? And I
8 thought we had sort of come to closure on that, but
9 maybe we hadn't. The idea -- well, let the Chair
10 express his view. I felt like since this is a --
11 it's sort of like DOE is the defendant here, that it
12 would be clear that they -- if they had adjudicated
13 for DOE, then they shouldn't be involved here. The
14 other side was always for an individual, and unless
15 they're -- unless they're an individual claim here
16 that someone has worked on that person's claim
17 before or been in adjudication for that person, then
18 they clearly have a conflict, but otherwise, what's
19 the problem if they testified for somebody that's --
20 that's a different person?

21 **MR. GRIFFON:** The same question was raised
22 for balance again. I -- I actually was of the
23 opinion that we had sort of vetted it through, too,
24 but --

25 **DR. ZIEMER:** Right.

1 **MR. GRIFFON:** -- I think Roy --

2 **DR. ZIEMER:** Is it still an open issue?

3 **MR. GRIFFON:** Is Roy on the phone still?

4 **DR. ROESSLER:** No, I don't think Roy's on,
5 and I think he was the one that --

6 **DR. ZIEMER:** Roy felt there should be sort
7 of parity, I think.

8 **MR. GRIFFON:** Right, right, and he raised --
9 I think the same concern this time in the working
10 group.

11 **DR. ZIEMER:** Yeah, and we want to honor
12 that. I just wanted to get a feel for --

13 **MR. GRIFFON:** Right.

14 **DR. ZIEMER:** -- how -- is that -- how do
15 others feel, though? I mean is -- is the parity
16 issue a significant one for others or is it just --
17 was it for Roy?

18 **MS. MUNN:** Well, this is Wanda. I have
19 trouble with the entire concept of automatically
20 eliminating -- I don't know how many people this is
21 likely to affect in terms of actually finding the
22 folks that we want, but I would -- I -- I was a bit
23 appalled when I first read this, thinking that any
24 litigation, any time in which you served as a key
25 witness, or even if you were a non-testifying expert

1 witness, why would we want to eliminate such people
2 simply because they have come forward on behalf of
3 anybody with respect to science? That seems -- I
4 guess it just seems like an automatic dismissal of
5 -- of credentialed people, to me.

6 **MR. GRIFFON:** Well, I -- part -- part of the
7 rationale also here is that ORAU has adopted this
8 language and they have 90 people on staff, as I
9 understand, that met this criteria. And -- and --

10 **DR. ZIEMER:** And indeed it's more
11 perception, Wanda. I think all of us feel that
12 probably for most part those individuals who
13 testified are honest scientists. But if they
14 testified in behalf of the DOE, there is a
15 perception --

16 **MR. GRIFFON:** Right, right.

17 **DR. ZIEMER:** -- out there that they are the
18 -- I don't know, the lackeys of the DOE or however
19 somebody characterizes it.

20 **MS. MUNN:** Well, I guess --

21 **DR. ZIEMER:** And that's really what the
22 problem was. It's a -- clearly a perception problem
23 rather than a real one.

24 **MS. MUNN:** If we have a perception problem,
25 then I guess I would agree that if an individual has

1 testified on behalf of an individual who is making a
2 claim -- of that individual, or anything that
3 referred to that individual or group that individual
4 was involved in, then I can see that that person
5 should be excused from any participation. But if
6 the preceding case was 25 years ago and it had to do
7 with something at -- Kerr-McGee, for goodness sake -
8 - then I -- it is difficult for me to see that even
9 if someone complains about that that it's a valid
10 rejection of that individual. I can understand if
11 it were -- if it were in any way coordinated or had
12 -- had any connection with the claim that is before
13 us now, but I -- otherwise, I can't see that.

14 **MR. GIBSON:** Well -- this is Mike Gibson --
15 on the other hand, from my point of view, if there
16 was someone involved at Kerr-McGee 25 years ago with
17 Karen Silkwood, I'd still have a problem with that
18 person, even on a case that's unrelated today. So
19 there's --

20 **DR. ZIEMER:** If they were -- if they were
21 testifying for the Agency is what you're saying,
22 Mike. Right?

23 **MR. GIBSON:** Right.

24 **DR. ZIEMER:** Yeah.

25 **MR. GIBSON:** I mean, you know, there's --

1 those who witnessed in the past on behalf of DOE or
2 its contractors or AWE's in dose -- this would be in
3 dose-related or radiation-related claims. There
4 could be cases that had nothing to do with radiation
5 doses where they were somehow in the legal system,
6 but this specifically has to do with claims, that
7 they would be excluded. That's how it reads right
8 now. It does not exclude individuals who testified
9 on behalf of other individuals.

10 **MR. GRIFFON:** And Paul, again -- I mean I
11 know that -- you know, I know we -- this auditor
12 will be auditing NIOSH --

13 **DR. ZIEMER:** Right.

14 **MR. GRIFFON:** -- ORAU being the contractor
15 for NIOSH. I understand that we're -- that would be
16 an audit of NIOSH.

17 **DR. ZIEMER:** Right.

18 **MR. GRIFFON:** But ORAU has accepted these
19 criteria, and part --

20 **DR. ZIEMER:** Right.

21 **MR. GRIFFON:** -- of my thinking in this was
22 that this auditor should be at least as stringent in
23 their -- in their selection as the initial or -- you
24 know, the initial contract.

25 **DR. ZIEMER:** Right.

1 **MR. GRIFFON:** So that's -- you know, not
2 that that --

3 **DR. ZIEMER:** The language.

4 **MR. GRIFFON:** Right or wrong, thought that
5 that -- you know --

6 **DR. ZIEMER:** Right.

7 **MR. GRIFFON:** That was part of the
8 rationale.

9 **DR. ZIEMER:** Yeah.

10 **MS. MUNN:** That's a good rationale.

11 **DR. ZIEMER:** My sense of it is at this point
12 that probably the current language can go forward.
13 We may hear from Roy again on the issue in January.

14 **MR. GRIFFON:** Yeah, I think we should --

15 **DR. ZIEMER:** But you know, unless there was
16 some indication that the majority of the committee
17 felt that we needed some kind of parity here, I --
18 and I don't sense that at the moment -- that we
19 probably can let it go forward as it is.

20 Those were the two main issues I guess under
21 conflict of interest. Are there any other issues in
22 this section, which is Attachment A, that anyone
23 wishes to raise?

24 (No responses)

25 **DR. ZIEMER:** It appears that there are not.

1 Do we need to do anything with the other two
2 attachments, which are simply examples?

3 **MR. GRIFFON:** D and E?

4 **DR. ZIEMER:** Yeah, D and E are simply
5 examples.

6 **MR. GRIFFON:** They were fairly -- you know,
7 cut and paste from the basic criteria and the
8 advanced criteria, and I just outlined a number of
9 cases and sites where they would -- the proposers
10 would be bidding against --

11 **DR. ZIEMER:** Yeah. I just have one issue on
12 item E, and I think this is clarification. I think
13 it meets your intent, but in the footnote on page
14 12, which is Attachment E, where it says (reading)
15 Review the entire administrative record to determine
16 if relevant information exists which was not
17 considered by NIOSH.

18 Keep in mind that there -- in fact, we have
19 been shown cases where there's relevant information
20 which is not considered, and it doesn't have to be.
21 For example -- and the one example, the person who
22 was in the criticality accident where the dose from
23 the criticality accident itself --

24 **UNIDENTIFIED:** Alone was enough.

25 **DR. ZIEMER:** -- was enough. So there's a

1 lot of -- there's a lot in the record that was nota
2 considered. So I think --

3 **MR. GRIFFON:** You understand the intent --

4 **DR. ZIEMER:** Yeah -- what is needed here is
5 was not considered but should have --

6 **MR. GRIFFON:** Should have been, right.

7 **DR. ZIEMER:** That's what we're after here.

8 Is there --

9 **MR. GRIFFON:** Give me that -- Paul, tell me
10 where that was again, I'm sorry.

11 **DR. ZIEMER:** It's on page 12, it's the
12 footnote 1, review data gathering.

13 **MR. GRIFFON:** All right, I'll find it and
14 I'll make --

15 **MS. MUNN:** This is Wanda, so that the end of
16 the first line after "exists" you should --

17 **DR. ZIEMER:** Determine if there's relevant
18 information that was not considered. Well, the
19 issue's not whether it was considered --

20 **MR. GRIFFON:** Right.

21 **DR. ZIEMER:** -- but whether it was
22 considered and is -- was not considered but should
23 have been.

24 **MS. MUNN:** Exists or --

25 **DR. ZIEMER:** I think that's what you meant.

1 **MR. GRIFFON:** Yes, that's true. Yes.

2 **MS. MUNN:** Or should have been considered
3 but which was not.

4 **MR. GRIFFON:** I'll change that in the above
5 statement of work.

6 **DR. ZIEMER:** Right. And then the other
7 thing is recognizes that on page 13 in -- on item B,
8 all of the words about the interview reappear there
9 --

10 **MR. GRIFFON:** Right.

11 **DR. ZIEMER:** -- so that will depend on how
12 we resolve the interview issue, but that would have
13 to be parallel to whatever --

14 **MR. GRIFFON:** A lot of duplication, yeah,
15 yeah.

16 **DR. ZIEMER:** Everybody recognize that. Are
17 there any other items on the attachments that we
18 need to look at?

19 **MR. GRIFFON:** No, I don't think so.

20 **DR. ZIEMER:** Now with that then is everybody
21 in agreement that we will revisit all these
22 documents at our next meeting. We've identified
23 that the primary issue that we're going to have to
24 wrestle with is that issue of the critiqueing of the
25 interview process. We have some other items that we

1 identified but I think we have agreed as to how they
2 might be reworded and Mark will develop a revision
3 for us that we'll have at our next meeting. Can we
4 --

5 **MR. GRIFFON:** Yeah, I'll work with NIOSH --

6 **DR. ZIEMER:** Yeah.

7 **MR. GRIFFON:** -- to have the (inaudible).

8 **DR. ZIEMER:** Right.

9 **MR. GRIFFON:** Okay.

10 **DR. ZIEMER:** So hopefully we'll have the
11 wording in all the other items and then we'll have
12 to deal with the -- again with the issue of the
13 interview critiqueing process.

14 Now let me just tell you -- is that
15 agreeable with everyone and so -- we're not voting
16 on the document today, but we're trying to move it
17 forward. And Larry understands the issues and
18 internally we'll try to keep things on track as far
19 as the procurement process is concerned. Is that --
20 are we on the same page there, Larry?

21 **MR. ELLIOTT:** Yes, sir.

22 **DR. ZIEMER:** Yeah. Now -- so if that's
23 agreeable, we'll leave this topic then and quickly
24 just transition into a brief discussion of the
25 agenda for the January 7th and 8th meeting. I've

1 talked with Larry about some -- we'll have a program
2 status report. We'll have an update on dose
3 reconstruction. We'll have the latest version of
4 this -- these documents we've just been reviewing,
5 and then we'll have to spend some time working on
6 those and come to closure on this whole set of
7 documents that is -- the work statement
8 particularly.

9 The other thing that I'd like to have us
10 consider if we can come to closure -- we may need
11 more time than I think on this issue, but if we're
12 able to come to closure on this issue on the first
13 day, I'd like to have us set aside a fair amount of
14 time on the second day to go over -- going over as a
15 group with the NIOSH staff the -- some of the dose
16 reconstructions that NIOSH has finished in the
17 meantime, and maybe -- and I know that, you know,
18 the contractor's just getting up to speed, but in
19 the meantime NIOSH has gone ahead -- Larry, how many
20 dose reconstructions do we have done now, 1,000 or
21 more?

22 **MR. ELLIOTT:** What I think you're talking
23 about there is the Board reviewing those dose
24 reconstructions that have -- have gone through the
25 adjudication process.

1 **DR. ZIEMER:** Right, that are really
2 completed.

3 **MR. ELLIOTT:** Are really completed, we're
4 not prepared to give a number on that right now. It
5 could be as -- it may be seven that we have DOL
6 decisions on out of -- out of the 13 we sent over
7 there. By the time January 6th, 7th, and 8th rolls
8 around, numbers may grow. I don't know.

9 **DR. ZIEMER:** Okay. Well, let me ask the
10 Board, would --

11 **MR. ELLIOTT:** (Inaudible) dose
12 reconstructions that have had a final decision
13 levied.

14 **DR. ZIEMER:** And maybe this would even be a
15 good transition into the process that we're working
16 on here, which is the -- sort of the review process.
17 But would the Board be interested in having NIOSH go
18 through those dose reconstructions that have been
19 adjudicated to date, just giving us a complete
20 review of those? It would be -- they'd have to be
21 de-identified. Right, Larry?

22 **MR. ELLIOTT:** Yes, that's correct. You want
23 us to review them or do you want -- do you want to
24 review them?

25 **DR. ZIEMER:** Well --

1 **MR. ELLIOTT:** Using the criteria you've
2 established in this scope of work.

3 **DR. ZIEMER:** Well, that's a good question.
4 Maybe we could review them using our -- we could try
5 out our approaches, just as a straw man approach.

6 **MR. ELLIOTT:** I just --

7 **DR. ZIEMER:** We can break up into groups
8 and --

9 **MR. ELLIOTT:** I wanted to be clear on what
10 you were asking because the last Board meeting, as
11 you recall, we -- examples of completed dose
12 reconstructions in a summary for -- format, and we
13 could do that again, but --

14 **DR. ZIEMER:** Well, what about breaking up
15 into smaller groups and working with your staff
16 people to go through some of the individual ones?

17 **MR. ELLIOTT:** We can do that. We can have
18 the information that was used to do the dose
19 reconstruction for those claims that were -- that
20 have achieved a final adjudication. We can have a
21 staff member assisting your review.

22 **DR. ZIEMER:** Let me ask the Board if you
23 would like to set aside some time to do that. I
24 think we would have time. Let me just tell you why
25 I think that.

1 Currently as we've constructed the tentative
2 agenda, there is going to be the closed session, you
3 know, for going through the independent government
4 cost estimate on this material that we've just been
5 reviewing here. That is at a fixed time. It's 2:00
6 to 5:00 p.m. in the afternoon. That's fixed. It's
7 on the -- been publicized in the *Federal Register*.
8 Folks, that's a fixed time so we're locked into
9 that.

10 Most of the reporting and even the work on
11 this dose reconstruction contract support and the
12 scope of work is scheduled for the first day, the
13 7th. Currently I have set aside basically the whole
14 morning Wednesday morning for Board discussion
15 working session, and the question is, what is it
16 we're going to do? And so one of the ideas would be
17 to actually go through some dose reconstructions in
18 more detail.

19 I'd like to get some feedback from the Board
20 to see if this is something you would like to do at
21 this point. These would not be randomly chosen.
22 They would be the ones that have been adjudicated so
23 far. We would just have an opportunity to take a
24 look at them, maybe in subgroups of three or four
25 persons with a staff member and go through some of

1 those in detail.

2 **MR. GRIFFON:** I guess part of the quest--
3 this is Mark Griffon.

4 **DR. ZIEMER:** Yeah.

5 **MR. GRIFFON:** I guess (inaudible) to it if
6 -- is this something you envision doing at NIOSH,
7 since --

8 **DR. ZIEMER:** Yeah.

9 **MR. GRIFFON:** -- where we could see the
10 whole -- how they tied into the data, if they used
11 the site profile, if they --

12 **DR. ZIEMER:** Yeah, we could go out to the
13 site, couldn't we, Larry? Or could we?

14 **MR. ELLIOTT:** This is a little bit
15 complicated because it's a public meeting.

16 **DR. ZIEMER:** Contract-- oh, yeah, yeah,
17 that's right.

18 **MR. GRIFFON:** Yeah.

19 **MR. ELLIOTT:** Since it's a public meeting --

20 **DR. ZIEMER:** We'd have to have it such that
21 members of the public could join any subset group
22 that we did this with, that would be fine.

23 **MR. ELLIOTT:** You would have -- you would
24 have technical support from staff to answer
25 questions about well, what -- what level of site

1 profile did you use? We'd have that available, as
2 well. You'll have the whole administrative record
3 in a redacted form.

4 **DR. ZIEMER:** Is that something we could do
5 at the meeting site?

6 **MR. ELLIOTT:** I believe we can set it up and
7 arrange it so it could be done at the meeting site.

8 **DR. ZIEMER:** Well, let's ask the -- let me
9 ask the Board members, is this something you'd like
10 to do if it can be physically done? Yea or nay?

11 **MS. MUNN:** This is Wanda. Yes.

12 **MR. PRESLEY:** This is Bob. Yes.

13 **MR. GRIFFON:** Mark, yes.

14 **MR. ESPINOSA:** Rich Espinosa, yes.

15 **DR. ANDERSON:** That's fine with me, Andy.
16 It all depends on how long it'll take.

17 **DR. ZIEMER:** Well, we would -- we would set
18 aside a fixed amount of time. We have several hours
19 available.

20 **DR. ANDERSON:** Yeah, I think that -- I think
21 it would a useful --

22 **DR. ZIEMER:** I can't move the afternoon
23 session. That's fixed. It's locked in. It's been
24 scheduled and it's in the *Federal Register*, so --
25 now it may be that if we don't finish this scope of

1 work thing on Tuesday, if we go all Wednesday
2 morning, then we're not going to get to that, but
3 I'm hoping that, you know, if we can't solve that in
4 a few hours on Tuesday, then we've got a problem.

5 But if this is something the Board thinks
6 might be useful, we'll ask the staff to try to set
7 it up and give us a chance -- as I would envision
8 it, we'd be able to go into a little more depth than
9 the examples that were shown before, which are just
10 really summaries.

11 **MR. ELLIOTT:** Yes, you will. I would also
12 offer that it might be useful for you to work
13 through a couple of these in a review of your -- and
14 using your evaluation criteria that you've
15 established here and then deciding how you want to
16 report on your findings.

17 **DR. ZIEMER:** It might help us as we develop
18 procedures for ourselves. Yeah. I think there's a
19 general agreement that we might want to try to do
20 that then, Larry, it appears.

21 **MR. ELLIOTT:** Okay, we'll take that as a --
22 go ahead and try to figure out --

23 **DR. ZIEMER:** Go ahead and try to figure it
24 out if we can do it logistically.

25 **MR. NAIMON:** And Larry, this is David

1 Naimon, we're also going to talk about what it is we
2 can and can't discuss publicly from the
3 administrative record. Right?

4 **MR. ELLIOTT:** That's right.

5 **MR. NAIMON:** Okay. Thank you.

6 **MR. ELLIOTT:** We'll have to do that at the
7 start of the whole effort.

8 **DR. ZIEMER:** Okay. Okay, with that in mind
9 now, I now want to allow some time for any public
10 comment, so we'll open the floor for anyone from the
11 public who wishes to comment at this point. And if
12 you do want to comment, just give us your name and
13 proceed. We'd like to ask you to -- to some extent,
14 to be as concise as you can. We -- I don't know how
15 many members of the public do wish to comment, but
16 assuming that there may be others in addition to
17 yourself, why let's try to keep it as concise as you
18 can and still make your point. So who would like to
19 start? Don't be bashful, just jump in. Don't wait
20 --

21 **DR. MELIUS:** This is Jim Melius, can I --

22 **DR. ZIEMER:** Oh, Jim. Go ahead.

23 **DR. MELIUS:** -- on the agenda issue?

24 **DR. ZIEMER:** Yeah.

25 **DR. MELIUS:** I just want to make sure that

1 when we meet to discuss evaluation contract that we
2 -- two things included, and one Larry will have to
3 (inaudible), but there are legal issues that need to
4 be discussed in relationship to the interviews. I
5 would hope that somebody from the legal staff --
6 there to present those issues to us.

7 Secondly, I also think it would be helpful
8 for Larry or staff -- do for us what their current
9 plans are for phone evaluation of the interview
10 process. What is the internal evaluation process
11 that is currently underway for the interviews, both
12 when NIOSH does them and then when the contractor
13 does them, 'cause I think that would help to inform
14 our recommendation on this particular issue. So if
15 those two could be done, it would -- I think it
16 would be helpful.

17 Secondly, I --

18 **DR. ZIEMER:** Is that any problem there,
19 Larry?

20 **MR. ELLIOTT:** We'll try to do our best.

21 **DR. MELIUS:** And the other thing is, I'm
22 just assuming now that -- by the way you set up the
23 agenda that the SEC redraft is not going to be ready
24 for that?

25 **DR. ZIEMER:** Yes, I'm -- I didn't mention

1 that, but Larry's indicated to me that it may be the
2 end of the month -- Larry, is that correct?

3 **MR. ELLIOTT:** The NPRM on the SEC will not
4 be ready for the January 7th and 8th Board meeting.
5 No, it won't be.

6 **DR. MELIUS:** Just a follow-up, (inaudible)
7 rulemaking?

8 **MR. ELLIOTT:** Pardon me?

9 **DR. MELIUS:** There was an announcement of
10 (inaudible) making, as opposed to a final rule?

11 **MR. ELLIOTT:** We will be going out with a
12 notice of proposed rulemaking. We mentioned that at
13 the last Board meeting in Santa Fe.

14 **DR. MELIUS:** Okay, I apologize. I thought
15 there was some discussion it might go out as a
16 final.

17 **DR. ZIEMER:** Oh, you remember there was that
18 discussion about the interim final and so on, but --

19 **DR. MELIUS:** Exactly, exactly.

20 **DR. ZIEMER:** -- a lot of revisions, I
21 gather. Right, Larry?

22 **MR. ELLIOTT:** Yes, there is -- we have
23 addressed the public comments and the Board comments
24 and the comments we received from the town hall
25 meeting, and we feel that there has been -- because

1 of that, we have substantively changed the language
2 of the rule that was proposed this summer, and so we
3 have to go out with a new notice of proposed
4 rulemaking.

5 **DR. ZIEMER:** Okay? Now we're ready for
6 public comment. Any?

7 **PUBLIC COMMENT**

8 **MR. MAURO:** This is John Mauro. I have --

9 **DR. ZIEMER:** Okay, John. For the record,
10 identify if you're associated with any particular
11 group or just yourself.

12 **MR. MAURO:** It's John Mauro, M-a-u-r-o, and
13 I work at Sanford Cohen & Associates and I'm a
14 health physicist.

15 **DR. ZIEMER:** Thank you.

16 **MR. MAURO:** My interest is that it sounds
17 like there will be a procurement coming out sometime
18 in the early spring. Have you scheduled a date for
19 when this will be coming out?

20 **MR. ELLIOTT:** This is Larry Elliott. We
21 have not scheduled a date, but certainly any --
22 anyone who's interested in receiving the
23 announcement of this request for proposals can
24 simply call in here to the OCAS number or send us an
25 e-mail on the web site and we'll put you on the list

1 for notification.

2 **MR. MAURO:** Second question. Has any
3 consideration -- since this sounds like a task order
4 contract, has any consideration been given to
5 actually specifying in the RFP the level of effort,
6 the number of work hours, or is it going to be left
7 really open-ended for the bidder to just make his
8 best estimate of what it will cost to do various
9 tasks?

10 **MR. ELLIOTT:** It'll be a not-to-exceed, and
11 the Board will have a discussion about the
12 independent government cost estimate at its January
13 8th meeting in an executive session.

14 **MR. MAURO:** Thank you.

15 **MR. ELLIOTT:** Uh-huh.

16 **DR. ZIEMER:** Okay. Other comments?

17 **DR. MAKHIJANI:** This is Arjun Makhijani from
18 the Institute for Energy and Environmental Research.

19 **DR. ZIEMER:** Thank you. Go ahead.

20 **DR. MAKHIJANI:** I again think this
21 "performed fairly in a manner consistent with other
22 cases" is kind of ambiguous, especially given that
23 the official dose reconstructions of what the DOE
24 did or did not do is of -- often of indifferent
25 quality, so this is -- this is quite ambiguous as to

1 what -- what standard is going to be used to judge
2 this performance. I do think that there should be a
3 more scientifically thought through statement here.

4 Secondly, regarding the discussion about
5 what workers have to say in cases that they are
6 denied, I do think that if you look historically,
7 workers, veterans and so on have generally been more
8 right than the establishment when they have claimed
9 problems and that establishment had blanket denied
10 that there have been problems, and then decades
11 later have admitted that there have been problems.
12 Whereas people who have raised complaints have been
13 pretty consistent and in the end shown to be right.
14 So I think the amount of technical credibility given
15 to workers should be great and I believe that those
16 who don't have a history of giving credibility to
17 the complaints of the public and simply dismissing
18 the complaints of the public as paranoid or
19 hysterical or afraid of radiation, that should be a
20 pretty big issue in the evaluation of who's going to
21 do this. I think the process of evaluation should
22 recognize that the DOE has deserved the loss of
23 public trust because it's too late, after 50 years,
24 to say we screwed over 650,000 workers and put them
25 in harm's way, so -- and that is what has happened,

1 after repeated denials. And the same thing happened
2 with atomic veterans and so on. So I think the
3 amount of technical credibility given to workers and
4 what they have to say, what they did, should be, I
5 believe, higher than the amount of technical
6 credibility given to establishment views, and
7 sometimes to establishment measurements because even
8 officials have testified that some of them are
9 fraudulent.

10 Finally, I do thing that some -- some way
11 and criterion for establishing whether some of the
12 data are fraudulent, in the technical sense of --
13 scientific sense of the term, should be included
14 because I think there have been instances of data
15 fabrication and fraudulent data and Tower Two and
16 the GAO have found this. I myself have found this.
17 And so if it is not present, then I don't believe
18 that the process of dose reconstruction or its audit
19 can be very credible. I do -- I do think that a
20 more straightforward process of putting people in --
21 in the special cohort has to be considered in view
22 of this. Thank you.

23 **DR. ZIEMER:** Thank you for those comments.
24 Are there any others?

25 **MR. MILLER:** It's Richard Miller.

1 **DR. ZIEMER:** Richard.

2 **MR. MILLER:** And I'll be brief. I sent an
3 e-mail around in an effort to try to get to the
4 chase on this sort of small set of recommendations
5 on your technical qualifications, but in reviewing
6 the technical qualifications for the personnel, what
7 struck me was that nobody -- at least it appeared --
8 had to have done any dose reconstruction before.
9 And so we had suggested that whoever you select or
10 select -- I assume there's going to be more than one
11 auditor selected. Is that still a correct
12 assumption, given it is a blind review?

13 **DR. ZIEMER:** More than one --

14 **MR. MILLER:** One auditor selected, one audit
15 contractor -- more than one audit contractor, is
16 that still correct as an assumption?

17 **MR. ELLIOTT:** We can't -- we can't respond
18 to that.

19 **DR. ZIEMER:** No.

20 **MR. MILLER:** Okay. Can you tell us how a
21 blind review is going to get done if you don't have
22 more than one contractor who's -- who's performing
23 reviews? You don't have to answer it now, but it --
24 if you don't -- if you don't have more than one
25 contractor, I don't know how you're going to do a

1 blind review.

2 **DR. NETON:** Can I answer that?

3 **MR. ELLIOTT:** Yeah, go ahead, Jim.

4 **DR. NETON:** A blind review just means that
5 they're going to start from scratch and do a dose
6 reconstruction as if NIOSH had done it, without
7 having any prejudice up front as to what the outcome
8 is.

9 **MR. MILLER:** I thought --

10 **DR. NETON:** No report in front of them, it's
11 a carte blanche.

12 **MR. MILLER:** I get it. I thought the
13 purpose of a blind review was to have both auditors
14 simultaneously --

15 **MR. ELLIOTT:** No, that's a double blind.

16 **MR. GRIFFON:** That's a different question,
17 yeah.

18 **MR. MILLER:** Oh, I guess I'm out of the loop
19 then. So that's -- has that been put by the wayside
20 then, this concept of a double blind, as you label
21 it? Is that -- is that not going to be what the --
22 is that not going to take --

23 **DR. ZIEMER:** That was not the original --
24 it's not been put by the wayside; it never was on
25 the road to start with.

1 **MR. GRIFFON:** Oh, it was in an early draft,
2 Paul.

3 **DR. ZIEMER:** Oh, it was?

4 **MR. GRIFFON:** Yeah, we had talked about
5 multiple contractors.

6 **MR. MILLER:** Oh, yeah, this was very much on
7 the table. I honestly didn't make this up.

8 **DR. NETON:** Yeah, that -- you know.

9 **MR. ELLIOTT:** You -- let me -- this is Larry
10 Elliott, I need to jump in here --

11 **MR. MILLER:** Sure.

12 **MR. ELLIOTT:** -- for two reasons. One is,
13 we're past 4:00 o'clock. We're going to have --
14 we're going to be cut off if we don't cut ourselves
15 off. But secondly, we can't provide interpretation
16 at this point in the process of what this language
17 means or doesn't mean as we move forward to
18 preparing this full scope of work and the evaluation
19 guide. You can make your comments and the Board can
20 consider those, but we cannot enter into an
21 interacting debate about what should or should not
22 be here.

23 **DR. ZIEMER:** Yeah.

24 **MR. MILLER:** That's fine, Larry. I
25 appreciate that, but let me just lay it out on the

1 table then. It seems to me, given the huge scope
2 that's in front of the audit, and given the
3 desirability of a double blind audit to be done in
4 order to sort of test the veracity of your auditor,
5 in effect, and it provides a sort of level of QA
6 that almost makes it bulletproof, I would certainly
7 suggest that we have multiple contractors.

8 Secondly, as I mentioned and respectful of
9 your time, and you all will have this on your e-mail
10 and maybe you can take it up in January, one, I'd
11 really think somebody -- whoever gets selected
12 should have dose reconstruction experience, actual
13 experience and not just a sort of academic
14 understanding of it. Two, some experience dealing
15 with contradictory and suspect records. Fraud --
16 fraud is one, contradictory records is another.
17 We're discovering this in every dose reconstruction
18 we've looked at. And third, what's not included in
19 the key personnel criteria is people who have
20 experience in dealing with both uncertainty analysis
21 and bounding (inaudible), and I think that all of
22 those are germane to the -- what -- are in many ways
23 central to what has to be looked at here. So I
24 just would offer you those as three suggestions.
25 You can see them -- the wording in your e-mail and

1 if it's useful, please feel free to use it as you
2 see fit.

3 **DR. ZIEMER:** Thank you, Richard. Any other
4 comments?

5 **MR. KLEMM:** Jeff Klemm, SAIC.

6 **DR. ZIEMER:** Thank you.

7 **MR. KLEMM:** Under section E, conflict of
8 interest, assigned key personnel and contractor.
9 Does contractor mean the prime contractor or the
10 contractor affiliation (inaudible) team member?

11 **MR. ELLIOTT:** We cannot respond to your
12 question, Jeff. Once you see the RFP released on
13 the street, then that would be the time to ask those
14 kinds of questions.

15 **UNIDENTIFIED:** Excuse me just a second,
16 Larry. Did -- is Mark Griffon on the phone?

17 **MR. GRIFFON:** Yes.

18 **WRITER/EDITOR:** Who's that?

19 **UNIDENTIFIED:** You mentioned at the
20 beginning, around three hours ago --

21 **WRITER/EDITOR:** Could you please identify
22 yourself?

23 **UNIDENTIFIED:** -- key personnel?

24 **MR. GRIFFON:** I said that I had drafted
25 language defining key personnel, but it's not on the

1 table yet.

2 **DR. ZIEMER:** Any other comments?

3 **MR. KLEMM:** I have a comment, also.

4 **DR. ZIEMER:** Who is it?

5 **MR. KLEMM:** I was interrupted. Given rule
6 83 as proposed claims for which NIOSH finds dose
7 reconstruction to not be done should be reviewed by
8 the Board and its contractor (inaudible) claimants
9 the delay of the SEC petition process.

10 **DR. ZIEMER:** Okay. Is that a question or a
11 comment?

12 **MR. KLEMM:** Comment.

13 **DR. ZIEMER:** Okay. Thank you.

14 **WRITER/EDITOR:** Who was that, please?

15 **MR. GRIFFON:** That was Jeff Klemm. That was
16 a continuation, I believe.

17 **DR. ZIEMER:** Any other comments or members
18 of the public?

19 (No responses)

20 **DR. ZIEMER:** There appear to be no other
21 comments.

22 Let me thank all the Board members and the
23 staff people and the public participants for their
24 participation today, and we will look forward to
25 seeing many of you at the meeting in January and

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this session is adjourned. Thank you very much.

(Teleconference concluded at 4:05 p.m.)

C E R T I F I C A T E

STATE OF GEORGIA :
 :
COUNTY OF FULTON :

I, Steven Ray Green, Certified Merit Court Reporter, do hereby certify that I reported the above and foregoing on the 12th day of December, 2002; and it is a true and accurate transcript of the proceedings captioned herein.

I further certify that I am neither kin nor counsel to any of the parties herein, nor have any interest in the cause named herein.

WITNESS my hand and official seal this the 22nd day of December, 2002.

**STEVEN RAY GREEN,
CERTIFIED MERIT COURT REPORTER
CERTIFICATE NUMBER: A-2102**