

United States Government

Department of Energy
Richland Operations Office**memorandum**

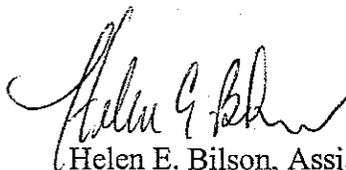
DATE: **MAY 15 2003**
REPLY TO
ATTN OF: ERD:JDG/03-ERD-0119

SUBJECT: SECRETARY APPROVAL CORRESPONDENCE FOR THE EXEMPTION OF
EXECUTIVE ORDER 13202/13208 FOR THE AWARD OF THE RIVER CORRIDOR
PROJECT CONTRACT

TO: IPT Members

Attached is the signed Determination and Findings in Support of an Exemption from Executive Order 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects" to Require Incorporation of the Hanford "Site Stabilization Agreement" into the River Corridor Contract and Solicitation.

If you have any questions, please call me at (509) 376-6628.



Helen E. Bilson, Assistant Manager
for the River Corridor

Attachment

cc w/attach:

WW Ballard, AMI
KL Flynn, SES
RG Hastings, OOD
BL Holloway, OCC
RA Holten, BPD
AE Lorenz, PRO
M Marvin, COM
JG Morse, AMCP
SJ Olinger, AMSE
LL Piper, AMC
GH Sanders, WMD
JF Schwier, AMA
RM Tibbatts, FMD
SH Wisness, CLO/SSD

~~Administrative Record (RC Contract)~~

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EDMC

Addressees -- Memorandum dated
03-ERD-0119

MAY 15 2003

KD Bazzell, FTD
HE Bilson, AMRC
ST Burnum, SSD
SO Branch, AMSE
GF Champlain, PRO
KV Clarke, COM
DM Collado, SED
EB Dagan, RCA
Evans, FTD
JA Frey, SPD
JD Goodenough, ERD
L Guzman, FMD
HB Hathaway, CLO
EW Higgins, AMI
JJ Hruska, FMD
RM Irwin, OOD
KA Klein, MGR
RW Mayo, SES
SM McDuffie, OOD
GZ Morgan, ABD
JP Neath, FTD
PM Pak, BPD
AS Powell, COM
RA Pressentin, FTD
RO Puthoff, PRO
EJ Rasmussen, BPD
OC Robertson, ERD
JP Sands, FTD
MH Schlender, DEP
JB Schroeder, OCC
FR Serier, BPD
YT Sherman, COM
DS Shoop, SHQ
SA Sieracki, PRO
GL Sinton, WMD
DC Smith, ERD
DW Templeton, FTD
KM Thompson, WMD
JL Tokarz-Hames, SES
JJ Waring, OOD
RN Warren, FTD
KR Westover, ERD
BD Williamson, OCC
JH Zeisloft, ERD

**DETERMINATIONS AND FINDINGS
 IN SUPPORT OF AN EXEMPTION FROM
 EXECUTIVE ORDER 13202, "PRESERVATION OF OPEN COMPETITION AND
 GOVERNMENT NEUTRALITY
 TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND
 FEDERALLY FUNDED CONSTRUCTION PROJECTS"
 TO
 REQUIRE INCORPORATION OF THE HANFORD "SITE STABILIZATION
 AGREEMENT" INTO THE RIVER CORRIDOR CONTRACT AND SOLICITATION**

The primary mission of the Hanford Site was for many years the production of nuclear weapons for the national defense. Since the end of the Cold War, the principal mission of the Hanford Site has become the environmental restoration, waste management, and stabilization of the nuclear materials and facilities remaining on site after completion of the Site's defense mission. These activities are currently the responsibility of two site management contractors, Fluor Hanford Inc. and Bechtel Hanford Inc. The Department has identified those aspects of the current environmental remediation effort (i.e., tasks being performed by the two site management contractors) that most directly affect the area on the Hanford site adjacent to the Columbia River and has issued a Request for Proposals (RFP) for a contract to continue and complete the restoration of 210 square miles of the Columbia River Corridor. The objective of the contracting action is completion of the remediation and restoration of radiological and chemical contamination -- including high level radiological waste -- on or near the Columbia River that threatens the soil, groundwater, or the river itself. Thus the contemplated contract's object is the completion of certain aspects of the same "project" (environmental remediation and restoration of a portion of the site) that has been the object of the preexisting Fluor Hanford Inc. and Bechtel Hanford Inc. contracts.

Some of the work that will be performed under the River Corridor Contract is construction. Construction work at the Hanford Site has historically been subject to the requirements of a project labor agreement known as a site stabilization agreement (SSA). This requirement was instituted pursuant to a Determination issued on January 16, 1985, by Secretary of Energy Donald Hodel, pursuant to Public Law 85-804, 50 U.S.C. §§ 1431 et seq., authorizing the manager of the Hanford Site to include a clause in all contracts and subcontracts that requires all contractors and subcontractors performing Davis-Bacon covered work at the Hanford Site to adhere to certain conditions of employment set forth in the SSA (including, where applicable, the requirement set forth in that agreement to become signatory to the agreement). At that time the SSA was executed by: (1) all prime contractors that perform construction work for the Department of Energy (DOE) at the Hanford Site, (2) the Building and Construction Trades Department, AFL-CIO, and its affiliated international unions, and (3) the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. The SSA provides the Hanford Site with a common application of: 1) a grievance procedure; 2) work rules and practices; 3) work hours; 4) overtime; and 5) holidays. The Bechtel Hanford contract was awarded in 1993 pursuant to an RFP that required all bidders to agree to sign the SSA if they won the award. The Fluor Hanford contract was awarded in 1996 pursuant to an RFP that

contained the same condition. Both contracts require the contractor to sign the SSA, and both contractors have done so. The RFP for the contract at issue here similarly required bidders to commit that they would adhere to the SSA if they received the award.

Executive Order 13202 of February 17, 2001, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," as amended by Executive Order 13208 of April 6, 2001 (Executive Order), provides generally that government agencies shall neither prohibit nor require the use of project labor agreements in government contracts for construction. At the time Hanford issued the RFP for this contract, the Order had been suspended as a result of the ongoing litigation over its validity. Accordingly Hanford did not have occasion at that time to consider the applicability of the Order to this contract. The Supreme Court has now upheld the validity of the Order, and the Order is applicable to this contract.

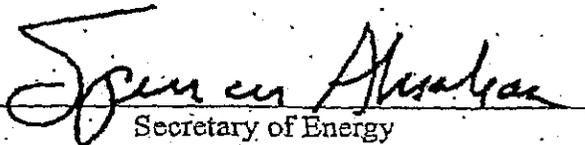
The Executive Order, however, also contains a procedure, set forth in section 5(c), under which the head of an executive agency may exempt a particular project from the requirements of the Order if he determines "(i) that the awarding authority . . . had issued . . . as of the date of this order, bid specifications, project agreements, agreements with one or more labor organizations, or other controlling documents with respect to that particular project, which contained any of the requirements or prohibitions set forth in sections 1(a) or (b) of this order; and (ii) that one or more construction contracts subject to such requirements or prohibitions had been awarded as of the date of this order." The Hanford Site Manager has requested that I grant an exemption to the River Corridor project that would allow inclusion of the requirement that the awardee sign the SSA in the contract for that project. I have determined that the project satisfies the 5(c) requirements and that an exemption should be granted in this instance.

First, the project meets the 5(c) requirements. As section 5(c)(i) of the Order specifies, the Hanford Site Manager, who is the "awarding authority" for this contract, "had issued . . . as of the date of" the Executive Order, "bid specifications," i.e., the RFP issued by the Department and resulting contracts awarded to Fluor Hanford and Bechtel Hanford, for a "particular project," i.e., the environmental remediation of the River Corridor that has been ongoing under the preexisting contracts and will be continued by the new contracts. Moreover, those prior RFPs and contracts "contained . . . requirements or prohibitions set forth in" the Executive Order, i.e., a requirement that the awardees of these contracts become signatories to the SSA. In addition, as required by section 5(c)(ii), Fluor Hanford and Bechtel Hanford had been awarded "construction contracts subject to such requirement[s]" as of the date of the Executive Order, in that their contracts include responsibility for construction activities they may perform themselves as well as for managing construction performed by their subcontractors. The work being performed under these contracts and subcontracts for remediation and restoration of the River Corridor is not yet complete. The purpose of the pending contract action is to complete that effort.

Second, the Hanford Site Manager recommends an exemption for this project because he believes granting one is in the best interests of the Department of Energy and will facilitate

expeditious award and completion of the project, which is part of one of the Department's top environmental priorities. Where the prerequisites for granting an exemption are met, I believe it is appropriate for me to give substantial weight to the judgment of the Site Manager in determining whether to grant one. I also believe his judgment is well-founded.

Accordingly, I hereby grant the Hanford Site Manager's request to exempt the River Corridor solicitation and resulting contract from the requirements of the Executive Order as authorized by section 5(c) of the Order.


Secretary of Energy

4/22/03

Date