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ONE HUNDRED TENTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
Washington, DC 20515-6115

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August 1, 2007

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GREGG A. ROTHSCHILD, CHIEF COUNSEL

The Honorable Samuel W. Bodman
Secretary
U.S. Department of Energy
1000 Independence Ave., S.W.
Washington, D.C. 20585

Dear Secretary Bodman:

The Committee on Energy and Commerce and its Subcommittee on Oversight and Investigations have been informed by Energy Solutions and the United States Enrichment Corporation (USEC) that they submitted a \$9.5 billion sole source contract proposal to the Department of Energy (DOE) for the decontamination and decommissioning (D&D) of DOE's Portsmouth, Ohio, and Paducah, Kentucky, uranium enrichment plants.

This proposal calls for the modification of the lease between USEC and DOE for the gaseous diffusion plants to include Energy Solutions as an additional party to this lease. The lease would then be used as a vehicle to award a 15-year, \$9.5 billion D&D contract. A draft of a modified lease has reportedly been submitted to DOE for its consideration. A key element of this proposal includes the complete assumption of the Government's liability for D&D, by Energy Solutions, at these two facilities.

We have been advised that if Energy Solutions were awarded the sole source D&D contract, they would then make a tender offer for USEC's stock. After taking over USEC, Energy Solutions claims it would deploy the uranium enrichment centrifuge technology that USEC is currently testing at the Portsmouth, Ohio facility.

Awarding a \$9.5 billion contract on a non-competitive basis is deeply troubling since there are numerous qualified firms who could compete for this work. How can DOE assess if taxpayers are receiving the best price for D&D? Moreover, what is the urgency of awarding a contract for D&D at Paducah, Kentucky, when the plant is still operating and there are no specific plans for its closure?

Full and open competition is the only way to objectively assess if the Government is receiving the best value. Moreover, modifying a lease between DOE and USEC as a tool to award a sole source D&D contract would impermissibly circumvent the Competition in Contracting Act.

Lastly, if this sole source D&D contract were approved, would the contract price paid to Energy Solutions constitute an indirect subsidy to fund a takeover of USEC and the financing of the centrifuges plant?

There are a number of troubling parallels between the Energy Solutions proposal and DOE's last sole source D&D contract involving uranium enrichment facilities. In August 1997, DOE awarded a \$238 million contract to British Nuclear Fuels (BNFL) for the 3-building D&D project at the East Tennessee Technology Park (ETTP) (formerly the K-25 uranium enrichment plant) in Oak Ridge, Tennessee. DOE bypassed competitive bidding claiming that the approach would save \$500 million compared with DOE's baseline cost estimate. BNFL asserted it had unique technology, which would allow it to safely recycle radioactively contaminated nickel, and could save money based on its expertise from decommissioning a uranium enrichment plant in Sellafield, England. DOE issued a justification for other than full and open competition, and assured Congress that the \$238 million price tag was fixed.

Throughout the D&D project, BNFL submitted numerous change orders and requests for equitable adjustment. During the June 22, 2000, hearing before the Subcommittee on Oversight and Investigations, DOE provided assurances that "this department will not financially bail out fixed price contractors from risks they have assumed under the contract."¹

By 2005, however, the story had apparently changed. On February 9, 2005, the U.S. and British Governments agreed that DOE would pay BNFL \$500–\$550 million in supplemental payments, including "equitable adjustments" for BNFL's cost overruns at Oak Ridge and another radioactive waste project in Idaho.

BNFL, which is wholly owned by the Government of the United Kingdom, described the government-to-government agreement as follows:

"The contract modifications provide for the settlement of a number of Requests for Equitable Adjustment and additional potential claims between DOE and BNFL Inc. at both projects, the completion of the ETTP contract [in Oak Ridge], a payment to BNFL Inc. of around US\$500 million, and the transfer of the Advance Mixed Waste Treatment (in Idaho) facility to DOE on May 1, 2005."

¹ Testimony of T.J. Glauthier, Deputy Secretary of Energy, June 22, 2000, Hearing before the Subcommittee on Oversight and Investigations, *DOE's Fixed Price Contracts: Why are Costs Still Out of Control?*, Serial 106-137, pp. 23.

The Committee needs assurance from you that the same problems, which arose in the BNFL D&D contract, will not be repeated. For that reason, the Committee plans to take a number of steps to better understand how DOE is approaching this proposal, and whether legislative action is appropriate to protect taxpayer interests.

The Committee has made several inquiries to DOE about this proposal, and received no reply to our requests for a briefing. As such, outlined below are 10 questions that the Committee requests responses to regarding Energy Solutions's unsolicited proposal for D&D of the uranium enrichment plants in Ohio and Kentucky:

- 1) When did DOE receive the Energy Solutions-USEC proposal? Is DOE actively evaluating this unsolicited proposal? At what stage is DOE in the review process, and when does DOE anticipate it will complete this review?
- 2) Who is reviewing this proposal? Please provide their names and titles.
- 3) Has DOE been reviewing legal issues associated with modifying the DOE-USEC lease for purposes of using the lease as a vehicle for contracting D&D services? Has DOE been evaluating whether the Government can contract away its liabilities? If so, please provide a list of the legal issues DOE has been evaluating.
- 4) Has DOE prepared a defined scope of work for D&D at Portsmouth or Paducah?
- 5) Has DOE reviewed the economics and technical merits of this proposal? If so, what specific criteria is DOE using to evaluate this proposal?
- 6) Does DOE believe it will receive a better value through this unsolicited proposal than through solicited bids obtained via full and open competition?
- 7) Does DOE intend to solicit bids through full and open competition for D&D of the Portsmouth or Paducah plants?
- 8) In evaluating this proposal, is DOE considering the potential acquisition of USEC and the deployment of new centrifuge technology as added value to the Government?
- 9) Which DOE officials have been briefed by Energy Solutions or USEC on this proposal?
- 10) What are the names of all individuals working for or representing Energy Solutions, its subsidiaries, or financial backers who have met with or sought to meet with any DOE employees concerning the Energy Solutions-USEC proposal?

In addition, under Rules X and XI of the Rules of the House of Representatives, the Committee on Energy and Commerce and the Subcommittee on Oversight and Investigations request the following records related to the Energy Solutions-USEC proposal for D&D of the Portsmouth and Paducah uranium enrichment plants:

- 1) Energy Solutions-USEC proposal for D&D services;
- 2) Supplemental submissions made to DOE by Energy Solutions or USEC, including but not limited to, a proposal to modify the USEC-DOE lease for DOE's uranium enrichment plants;
- 3) The baseline cost estimate for D&D of the uranium enrichment plants in Ohio and Kentucky, including the scope of its evaluation. Reportedly, this was prepared by LMI Government Consulting;
- 4) Letters or e-mail communications received by DOE from Energy Solutions or USEC or their representatives regarding this proposal, or letters or e-mails sent by DOE to Energy Solutions or USEC concerning this proposal;
- 5) All notes, papers, memorandum, presentations, or other written materials relating to meetings involving this proposal;
- 6) DOE assessments or evaluations, including legal, technical, economic, and policy assessments;
- 7) Communications received from all parties outside of DOE concerning this proposal; and
- 8) A copy of the current lease between DOE and USEC, including all attachments and modifications.

The Committee was verbally advised that DOE was unable to provide the Energy Solutions proposal because it was procurement sensitive. Please be advised that DOE is obligated to provide procurement-related documents to Congress pursuant to the Procurement Integrity Act (41 U.S.C. 423). Specifically, the general restrictions on disclosing contractor bid or proposal information to the public precludes the Agency from withholding of procurement and source selection information from Congress or a committee or subcommittee of Congress. The "Savings Clause" (41 U.S.C. 423(h)(5)) states:

"This section does not... (5) authorize the withholding of information from, nor restrict its receipt by, Congress, a committee or subcommittee of Congress, the Comptroller General, a Federal agency, or an inspector general of a Federal agency."

The Honorable Samuel W. Bodman
Page 5

Please note that, for the purpose of responding to these requests, the terms "records" and "relating" should be interpreted in accordance with the attachment to this letter.

Please respond to the questions and request for documents by August 10, 2007. In addition, we would like to receive a detailed briefing on the criteria and process DOE is using to evaluate this proposal. If you have any questions, please contact us, or have your staff contact Richard Miller with Committee staff at (202) 226-2424.

Sincerely,



John D. Dingell
Chairman



Bart Stupak
Chairman
Subcommittee on Oversight and Investigations

Attachment

cc: The Honorable Joe Barton, Ranking Member
Committee on Energy and Commerce

The Honorable Ed Whitfield, Ranking Member
Subcommittee on Oversight and Investigations