



Issue Date: 25 May 2005

CASE NUMBERS: 2005-SDW-004
2005-SDW-005
2005-SDW-006

In the Matter of :

**GREGORY A. DANN,
LON A. FULLER, and
THOMAS J. KOSCIK,**
Complainants,

v.

**BECHTEL SAIC COMPANY, LLC, and
BECHTEL NEVADA**
Respondents.

**ORDER GRANTING IN PART AND DENYING IN PART
BECHTEL SAIC'S MOTION FOR PROTECTIVE ORDER**

On April 6, 2005, Respondent Bechtel SAIC Co. (BSC) filed a motion asking for issuance of a protective order limiting the burden of responding to the Complainants' interrogatories, requests for admissions, and document production requests. A response from the Complainants was filed on April 25, 2005. In brief, BSC's motion contends that the Complainants' discovery requests of March 23, 2005 are so extensive that they are unduly burdensome and even verge on harassment. In contrast, the Complainants allege that their discovery requests are consistent with the broad scope of discovery allowed in similar whistleblower cases and are not unduly burdensome.

After reviewing each of the Complainants' discovery requests, it has been determined that BSC's request for a protective order must be denied insofar as BSC disputes the Complainants' document requests or requests for admission. In addition, BSC's request is rejected insofar as BSC contends that the Complainants have submitted an excessive number of interrogatories. Although it is true that Rule 33 of the Federal Rules of Civil Procedure normally limits parties in civil litigation to 25 interrogatories, Rule 33 also permits judges to authorize larger numbers of interrogatories in appropriate cases, as commonly occurs in whistleblower proceedings before the Office of Administrative Law Judges. Such an exception is appropriate in this case based on the Complainants' representations that the interrogatories are in lieu of depositions and because many of the interrogatories require only simple, short answers. It is further noted in this regard that the deadline for submitting responses to the Complainants' discovery requests has recently been extended to June 14, 2005.

However, some specific aspects of the Complainants' interrogatories do appear to impose unreasonable burdens on BSC. Accordingly, BSC may limit its responses in the following ways:

1. Obtaining Information from Third Parties. A number of the Complainants' interrogatories appear to require BSC to obtain information from third parties, such as Bechtel Nevada and possible third-party witnesses. Any such requirement would impose an unreasonable burden. Accordingly, BSC may limit its responses to interrogatories 20-24 to information now within its possession and will not be required to speculate concerning Bechtel Nevada's intentions or obtain any responsive information from Bechtel Nevada, which is a separate party to this proceeding. Likewise, BSC will not be required to interview witnesses to obtain information not already known to BSC in response to interrogatories 28, 35, 40, 45, 50, 55, 61, 66, 125, and 176.

2. Providing "Each and Every" Fact, Document, and Witness. A large number of the Complainants' interrogatories ask BSC to provide or identify "each and every" fact, document, and witness having knowledge concerning a particular topic. If these requests were to be interpreted literally, an unreasonable burden would be imposed on BSC. Accordingly, BSC may interpret such requests as calling only for each material fact, document containing material information, and witness with knowledge of material information. For purposes of this ruling, material facts and information are facts or information that could have probative value in this proceeding.

3. Specific Requests that Are Duplicative or Require Unduly Burdensome Responses. Because interrogatories 76 and 79 appear to seek the same information, BSC will be required to respond to interrogatory 76, but not interrogatory 79. In addition, interrogatories 133 and 137 ask BSC to provide information demonstrating the non-existence of alleged facts and are therefore unreasonably burdensome. Hence, BSC need not respond to either or those interrogatories.

4. Argumentative Interrogatories. Review of Complainants' interrogatories 165 to 173 indicates that these items are not in fact seeking relevant information, but are instead argumentative and rhetorical. Accordingly, BSC need not respond to any of these interrogatories.

Finally, it is noted that BSC has asked that it be awarded costs for the expenses involved in litigating this discovery dispute. It is concluded that BSC has not made a showing sufficient to justify the imposition of such a sanction.

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Paul A. Mapes
Administrative Law Judge