



Department of Energy

Idaho Operations Office

1955 Fremont Avenue
Idaho Falls, ID 83415

March 31, 2020

Mr. Thomas M. Williams, Director
Prime Contract Management
Fluor Idaho, LLC
1580 Sawtelle Street
Idaho Falls, ID 83402

SUBJECT: Contract No. DE-EM0004083 – Public Law 85-804 Indemnification for Contractors Engaged in Activities Responding to COVID-19 (CLN200909)

REFERENCE: Memorandum, Dan Brouillette to Department of Energy Senior Procurement Executive, Subject: Secretarial Determination Authorizing Public Law 85-804 Indemnification for Contractors Engaged in Activities Responding to COVID-19, dated March 26, 2020

Dear Mr. Williams:

Per the enclosed, the Department of Energy (DOE) is extending Public Law 85-804 indemnification to contractors and their subcontractors engaged in tasks or activities directed or authorized by the DOE in response to COVID-19. This authorization is retroactive to March 13, 2020 through June 30, 2020. Fluor Idaho, LLC's (Fluor Idaho) contract will be modified to include this indemnification in the immediate future.

If you have any questions, please contact me at (208) 520-7136 or catejk@id.doe.gov.

Sincerely,

Jennifer K. Cate, Contracting Officer
Contract Management Division

Enclosures


cc: Fred Hughes, Fluor Idaho, LLC
Fawn M. Gosswiller, Fluor Idaho, LLC
ICP Correspondence Control



Office of the Secretary

March 26, 2020

MEMORANDUM FOR: DEPARTMENT OF ENERGY SENIOR PROCUREMENT EXECUTIVE
NATIONAL NUCLEAR SECURITY ADMINISTRATION
PROCUREMENT EXECUTIVE

FROM: DAN BROUILLETTE 

SUBJECT: Secretarial Determination Authorizing Public Law 85-804
Indemnification for Contractors Engaged in Activities Responding to
COVID-19

Attached is my determination authorizing Departmental contracting officers to extend Public Law 85-804 indemnification to contractors and their subcontractors engaged in tasks or activities directed or authorized by the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), in response to COVID-19.

This determination should be further disseminated to relevant DOE/NNSA procurement personnel to ensure appropriate implementing action is taken should the above-described contractors seek indemnification under Public Law 85-804 in accordance with the Federal Acquisition Regulation. This determination represents approval to include an indemnification clause in appropriate contracts and authorization for deviations from the Federal Acquisition Regulation as necessary to effectuate such inclusion without further approval by me. This authorization for indemnification is retroactive in applicability with respect to tasks or activities on or after March 13, 2020, and may be extended to tasks or activities undertaken by DOE contractors in response to COVID-19 now and through June 30, 2020, and covers work done by DOE Contractors for others such as the Department of Health and Human Services and its various sub-agencies, the Federal Emergency Management Administration, other federal entities, state and local governments and departments, and non-profit and for-profit entities. This indemnification authorization covers DOE contractors and their subcontractors, and accordingly contracting officers are authorized to approve indemnification of subcontractors.

Also attached is the description of the activities covered by this indemnification for incorporation into the appropriate clauses in the affected contracts.

Attachments

cc: S-3
S-4
NA-1

ATTACHMENT

The following language shall be added to the appropriate clause in the affected contract to describe the activities covered by the indemnification:

"Participation in tasks or activities by the Contractor or its subcontractors on or after March 13, 2020 through June 30, 2020 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration, including work for others, as an element of activities taken now and through June 30, 2020 in response to COVID-19, including but not limited to efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP Act) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed."



Department of Energy
Washington, DC 20585

SECRETARIAL DETERMINATION

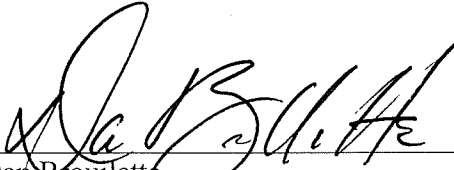
On March 13, 2020, President Trump declared a national emergency recognizing the threat that the novel (new) coronavirus known as SARS-CoV 2 poses to our national security. In recognizing the public health risk, President Trump noted that on March 11, 2020, the World Health Organization announced that the outbreak of COVID-19 (the disease caused by SARS-CoV-2) can be characterized as a pandemic. President Trump also noted that while the Federal government, along with State and local governments, has taken preventive and proactive measures to slow the spread of the virus and to treat those affected, the spread of COVID-19 within our Nation's communities threatens to strain our Nation's healthcare system.

As part of our Nation's response to COVID-19, DOE is making expertise and resources available to assess and address COVID-19. In this regard, DOE has significant and unique capabilities in areas such as responding to emergencies, evaluating and monitoring the presence and spread of pathogens, and providing scientific and computational resources to analyze and address complex and novel issues. Given the nature and magnitude of the threat presented by COVID-19, DOE assistance and expertise may be required for an extended period of time and involve varied activities on the part of DOE contractors and their subcontractors, including, but not limited to, testing for the presence of COVID-19, provision of equipment and resources to address COVID-19, and development of treatments and vaccines for COVID-19.

The unprecedented magnitude and challenges associated with responding to COVID-19 present significant potential - even if remote - liability risks to the Department's contractors and their subcontractors that have been or may be requested to assist in response activities and in related supporting roles. The nature and magnitude of the COVID-19 pandemic indicate that unusually hazardous risks are involved and that all actors, including the Department's contractors and their subcontractors, may be exposed to potentially large claims and legal liabilities for which no insurance is readily available. Furthermore, the nature and magnitude of the COVID-19 pandemic exposes all aspects of American society to potentially serious disruptions, including activities at DOE and elsewhere vital to national defense.

For the foregoing reasons, extension of indemnification under Public Law No. 85-804 to DOE contractors involved now and through June 30, 2020 in the response to COVID-19, including efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, would facilitate the national defense as specified in the Federal Acquisition Regulation, and is within the authority of the Department under that statute. Accordingly, appropriate Departmental contracting officers, when requested by a Departmental contractor engaged in tasks or activities directed or authorized by the Department in response to COVID-19 are authorized to modify the affected contracts to allow for the

indemnification of such contractors and their subcontractors for all liability sustained in consequence of performing such tasks or activities under a contract with the Department, including work for others, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP Act) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed. This authorization may be exercised retroactively in applicability with respect to tasks or activities on or after March 13, 2020 through June 30, 2020 and without further approval by me.



Dan Brouillette
Secretary of Energy

26 MAR 20

Date