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# FLUOR

April 26, 2005

Fernald Closure Project  
Letter No. C:BSOP(CA/PC)2005-0027

Mr. Ralph E. Holland, Contracting Officer  
U. S. Department of Energy  
Ohio Field Office - Fernald Closure Project  
175 Tri-County Parkway  
Cincinnati, Ohio 45246

Dear Mr. Holland:

**CONTRACT DE-AC24-01OH20115, RESPONSE TO DOE LETTER, EMCBC-0026-05,  
"LETTER OF DIRECTION"**

- Reference:
- 1) DOE Letter EMCBC-0026-05, R. Holland to D. Sizemore, "Letter of Direction," dated April 22, 2005
  - 2) Fluor Fernald Letter C:BSOP(CA):2005-0042, R. Norton to R. Holland, "Request for Consent - Interim Storage and/or Permanent Disposal of Silos 1 and 2 Waste Materials," dated February 14, 2005

Fluor Fernald, Inc. (Fluor Fernald) acknowledges receipt of the Reference 1 letter advising that "...the Government is decreasing the Government Furnished Services/Items...." and directing Fluor Fernald to "... immediately proceed with the award of the subcontract action for interim storage of Silos 1 and 2 waste."

Fluor Fernald will initiate the actions needed to comply with the unilateral direction contained in the Reference 1 letter. However, as noted in the Reference 2 letter, Fluor Fernald believes that this direction imposes risk on Fluor Fernald beyond that accepted under the subject contract. Fluor Fernald's willingness to undertake the tasks directed in the Reference 1 letter does not constitute any agreement or admission that interim storage of Silos 1 and 2 waste material at a commercial facility is within the scope of the subject contract.

At the present time, the prime contract requires disposal of the Silos 1 and 2 waste material and, as acknowledged by the Reference 1 and 2 letters, no means of disposal currently exists for this waste stream. This creates an "impossibility of performance" situation that must be resolved by a modification to the prime contract. Fluor Fernald has provided suggested language to DOE for a modification to the subject contract to

5928

incorporate the interim storage of Silos 1 and 2 wastes at a licensed commercial facility into the contract scope of work in lieu of the current disposal requirements.

Fluor Fernald anticipated that this prime contract modification would incorporate in advance a mutually agreeable resolution of the issues concerning the additional risk that this expanded scope of work will impose on Fluor Fernald. Even if it is no longer feasible to complete the appropriate prime contract modification before the award of the interim storage/disposal subcontract, Fluor Fernald believes that it is still desirable to negotiate a mutually acceptable contract modification as soon as possible. This modification should incorporate the direction contained in the Reference 1 letter, provide Fluor Fernald with appropriate adjustments to the contract terms and conditions to reflect the increased risks, and redefine "physical completion" to accommodate the changed circumstances that now exist. However, in the event these negotiations are not successful, Fluor Fernald hereby reserves any and all rights it may have, whether through an equitable adjustment to the subject contract or otherwise, as a result of the performance of the work directed by the Reference 1 letter.

If you have any questions regarding this matter, please call me at 648-3358.

Sincerely,



Dennis Sizemore, Manager  
Prime Contract

DS:jmb

c: John S. Brown, DOE-OH  
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