



Department of Energy
Washington, DC 20585

May 9, 2007

The Honorable John D. Dingell
Chairman, Committee on Energy and Commerce
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

Your letter to Secretary Bodman of April 3, 2007 requested by April 10, 2007 copies of two identified documents prepared for the Department's use in a pending competitive procurement action involving a so-called "A-76 study" of the functions currently performed by the Department's Radiological and Environmental Sciences Laboratory in Idaho. As requested, I responded for Secretary Bodman on the specified date of April 10, 2007. In that response, I advised the Committee that the particular documents that had been requested contained source selection information under the Procurement Integrity Act, and therefore the Department was not in a position to provide them at this time during the pendency of the ongoing procurement because doing so could jeopardize the integrity of the competitive procurement process now under way.

On Saturday, April 21, 2007, Mr. Miller of the Committee staff sent a message to a Departmental congressional liaison specialist requesting arrangement of a meeting in which Mr. Miller could examine the documents "page by page" to understand "why they cannot be provided to a committee of jurisdiction." The short answer to Mr. Miller's question is that the legal constraints on revelation of "source selection information" imposed by the Procurement Integrity Act are grounded on the need for competitive procurement decisions to be wholly merits-based and free of extraneous influence during the procurement process. This principle, reflected in the restrictions of the Procurement Integrity Act, is designed to permit the Government to fashion and conduct competitive solicitations that both preserve the Government's bargaining ability and assure a "level playing field" to all potential competitors. Although the prohibitions of disclosure of information contained in the Procurement Integrity Act do not apply with respect to communications with jurisdictional committees of Congress, the principles they reflect counsel against providing source selection information to jurisdictional committees during the pendency of a competitive solicitation absent circumstances indicating a particular legislative need.

For all the reasons stated above, the Department adheres to its position as stated in my letter of April 10, 2007, and Mr. Miller's suggestion that he be afforded access to the requested documents cannot be agreed to at this stage in the procurement process.



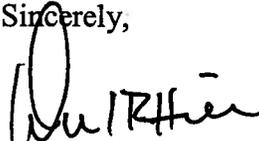
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Your letter of April 3, 2007 indicated that the Committee seeks the requested documents in order to evaluate whether the functions of this laboratory are inherently governmental and whether qualified firms exist that would not have potential conflicts of interest. The Federal Activities Inventory Reform ("FAIR") Act requires agencies to conduct and publish inventories of the functions performed by their workforces, identifying those that are inherently governmental and those that are commercial in nature. That was done in 2005 for all the functions conducted at this laboratory, and on March 15, 2006 the DOE website published the 2005 inventory identifying all current functions at the laboratory that are involved in the A-76 study, and classified each as either inherently governmental or commercial. No written inventory challenges were filed regarding the 2005 FAIR Act inventory classifications of the functions performed by the laboratory. A copy of that inventory is enclosed.

The Federal Acquisition Regulation requires agency contracting officers to identify and evaluate potential organizational conflicts of interest as early in the procurement process as possible. The object is to avoid, neutralize or mitigate potential organizational conflicts before contract award. The draft Performance Work Statement that was issued February 26, 2007 for this acquisition indicates how the Department proposes to accomplish this in the Radiological and Environmental Sciences Laboratory procurement. A copy of that draft Performance Work Statement is enclosed.

I hope this additional information will be useful to you and the Committee.

Sincerely,



David R. Hill
General Counsel

Enclosures

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

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