



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR: FRANK G. KLOTZ
UNDER SECRETARY FOR NUCLEAR SECURITY/
ADMINISTRATOR FOR THE NATIONAL NUCLEAR
SECURITY ADMINISTRATION

FROM: SUSAN F. BEARD *Susan F Beard*
ASSISTANT GENERAL COUNSEL FOR GENERAL LAW
AND DESIGNATED AGENCY ETHICS OFFICIAL
OFFICE OF THE GENERAL COUNSEL

SUBJECT: Limited Waiver of Paragraph 2 of the Ethics Pledge for
Specific Party Matters Involving Bechtel National Corporation

Pursuant to the authority delegated under Section 3 of Executive Order 13490 "Ethics Commitments by Executive Branch Personnel" (January 21, 2009) and after consultation with the Office of the Counsel to the President, I hereby certify, for the reasons stated below, that it is in the public interest for you to receive a limited waiver of the restrictions in paragraph 2 of the Ethics Pledge with respect to Bechtel National Corporation (Bechtel).

Background

The Under Secretary for Nuclear Security serves also as the Administrator for Nuclear Security (NNSA), a separately organized agency within the Department of Energy. *See* 50 U.S.C. 2402; 42 U.S.C. 7132(c)(3). The Under Secretary for Nuclear Security has authority over, and is responsible for, all NNSA programs and activities (with the exception of the functions of the Deputy Administrator for Naval Reactors). NNSA is responsible for the management and security of the nation's nuclear weapons, nuclear non-proliferation, and naval reactor programs. It also responds to nuclear and radiological emergencies in the United States and abroad. Additionally, NNSA federal agents provide safe and secure transportation of nuclear weapons and components and special nuclear materials along with other missions supporting the national security.

Prior to your appointment as Under Secretary for Nuclear Security, you provided consulting services to Bechtel through the Klotz Consulting Group, LLC, related to Bechtel's proposal for the management and operating (M&O) contract procurement for the Y-12 National Security Complex and Pantex Plant, identified as procurement action DE-SOL-001458 (the Y-12 M&O contract). You did not provide any other consulting services to Bechtel.

Bechtel has a number of large contracts with DOE, including NNSA, and operates facilities dedicated to critical DOE programs. Bechtel is a partner in the M&O contracts for two out of the three DOE weapons laboratories (i.e., Los Alamos National Laboratory and Lawrence Livermore National Laboratory). The Y-12 M&O contract on which you consulted was recently awarded to Bechtel. The Bettis Atomic Power Laboratory, dedicated to the joint Navy-DOE program



responsible for nuclear-powered warships, is managed and operated by Bechtel Marine Propulsion Corporation which is a subsidiary of Bechtel. The Deputy Administrator for Naval Reactors, who oversees the Bettis Lab, reports to the Secretary of Energy through the Under Secretary for Nuclear Security. *See* 50 U.S.C. 2406.

In light of the critical services that Bechtel provides the Department with respect to national nuclear facilities, it is necessary that you participate in matters in which Bechtel is a party or represents a party in order for you to perform your duties as Under Secretary for Nuclear Security.

Waiver Pursuant to Executive Order 13490

Executive Order 13490, "Ethics Commitments by Executive Branch Personnel," Section 1 (Ethics Pledge), requires all covered political appointees to abide by certain commitments. Paragraph 2 of the Ethics Pledge provides that a covered appointee may not for a period of two years from the date of appointment participate in any particular matter involving specific parties that is directly and substantially related to a former employer or client. For purposes of applying this restriction, the term "particular matter" includes "meetings or other communications relating to the performance of one's official duties with a former employer or client." E.O. 13490, Sec. 2(h).

The Executive Order provides for waiver of the recusal provisions by the Director of the Office of Management and Budget (OMB) or his designee, in consultation with the Counsel to the President or his designee. E.O. 13490, Sec. 3(a). The Director, OMB, has designated the Designated Agency Ethics Official (DAEO) of each executive branch agency to exercise the Section 3 waiver authority, in writing, and in consultation with the Counsel to the President. A waiver of the restrictions contained in paragraph 2 of the Ethics Pledge may be granted upon a certification either that the literal application of the restriction is inconsistent with the purpose of the restriction or that it is in the public interest to grant the waiver. *Id.*, Sec. 3(b).

Absent a waiver, you would be prohibited by paragraph 2 of the Ethics Pledge from participating in any particular matter involving specific parties in which Bechtel is or represents a party. As discussed above, it is necessary that you participate in matters in which Bechtel is a party or represents a party in order for you to perform your duties as Under Secretary for Nuclear Security. After consultation with the Office of the Counsel to the President, I have determined that it is in the public interest for you to participate in matters relating to Bechtel. Substantial national security challenges require your expertise and judgment in making sound decisions on major defense and public security programs, several of which involve Bechtel or one of its subsidiaries.

Your extensive knowledge of and experience in managing complex national nuclear weapons and security programs, including an expertise in the geopolitical landscape associated with nuclear weapons, their production and deployment, and nuclear non-proliferation will be critical to the success of NNSA. Prior to your appointment as Under Secretary for Nuclear Security, you served in the United States Air Force for 38 years, retiring as Lieutenant General, and served as Commander of the Global Strike Command in which you were responsible for organizing, training, equipping and maintaining all U.S. intercontinental ballistic missile and nuclear-capable bomber forces. In this role, you led more than 23,000 professionals operating at various locations

around the world who operated the nation's inventory of ballistic missiles and nuclear-capable bomber aircraft. You have served at NATO Headquarters, at the American Embassy in Moscow, and as Director for Nuclear Policy and Arms Control for the National Security Council at the White House. Your experience with nuclear weapons command, maintenance, diplomacy and policy uniquely qualify you for this position, and the government will benefit greatly from your expertise. With regard to the consulting services you provided to Bechtel, I understand the services were limited to a single procurement (the Y-12 M&O contract), and you provided actual services to Bechtel on only 10 days in 2012.

Accordingly, I hereby waive the requirements of paragraph 2 of the Ethics Pledge as it pertains to your future involvement in particular matters involving Bechtel or any of its divisions or subsidiaries. A separate determination has been made under 5 C.F.R. § 2635.502 that the Department's interest in your ability to participate in these matters, given the critical responsibilities associated with your position, outweighs any possible concern that a reasonable person may question the integrity of DOE programs and operations.

This waiver does not affect your obligation to comply with other provisions of the Ethics Pledge and all other applicable government ethics rules.