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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

GABRIELLE A. BATKIN, STAFF DIRECTOR
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June 24, 2014

The Honorable Ernest Moniz
Secretary
U.S. Department of Energy
1000 Independence Ave., SW
Washington, DC 20520

Dear Secretary Moniz:

As you are aware, the Subcommittee on Financial and Contracting Oversight has been investigating reports of whistleblower retaliation at the Department of Energy's Hanford Nuclear Site. I appreciate your staff's testimony at the Subcommittee's March 11, 2014, hearing on this topic following our March 4, 2014, invitation. I also thank you for the documents, information, and briefings your staff has since provided. I am writing today to renew my requests for responses to questions asked for the hearing record.

At the hearing, I expressed my concerns that the Department of Energy (DOE) may be providing an incentive to contractors to engage in protracted litigation with whistleblowers by reimbursing the contractors' legal expenses. I have since learned that that Bechtel and URS have been reimbursed by \$500,000 and \$3 million, respectively, by DOE for the costs of their litigation against two Hanford whistleblowers.¹ As I asked the Department in my questions for the record, I would like to understand the criteria used by the contracting officer to determine that this expenditure was allowable and reasonable.

I also asked whether the contractors' expenses associated with testifying at the Subcommittee's hearing might be paid by the government. In response to questions asked for the hearing record, URS answered that it intended to seek reimbursement for more than \$650,000 in such expenses to be paid by DOE, including lawyers who would effectively be billing the government almost \$1,300 per hour.² After the Subcommittee notified URS that it would publish that response in this letter, URS updated its response to indicate it had not made a determination whether it would seek reimbursement or not.³ Bechtel has declined to seek reimbursement for such expenses.⁴ I would like to know whether DOE regularly reimburses contractors for costs associated with responding to congressional requests and preparing for hearings, and whether the Department would reimburse URS for its expenses associated with the Subcommittee's requests and hearing.

I also questioned whether the contractors' Non-Disclosure Agreements (NDAs) with their employees, a condition of employment, may have a chilling effect on reporting safety and environmental concerns. As you know, reporting those concerns, including to Congress, is protected by law.⁵ I have since learned that the NDAs

¹ Letter from Thomas L. Strickland, WilmerHale, to Senator Claire McCaskill (April 2, 2014); Email from Bob DeGrasse, Bechtel, to Subcommittee on Financial and Contracting Oversight (May 2, 2014).

² Letter from Thomas L. Strickland, WilmerHale, to Senator Claire McCaskill (April 2, 2014).

³ Briefing by Elisebeth Cook, WilmerHale, to Subcommittee on Financial and Contracting Oversight (June 19, 2014).

⁴ Email from Bob DeGrasse to Subcommittee on Financial and Contracting Oversight (May 2, 2014).

⁵ Whistleblower Protection Enhancement Act of 2012, Pub. L. No. 112-199.

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used by URS and Bechtel provide no exception for protected disclosures.⁶ The NDA used by Bechtel requires the employee to agree “not to disclose Confidential Information outside Bechtel without authorization to do so...,” with no named exceptions. URS’s NDA is similar.⁷ I have enclosed both NDAs for your review. As I previously asked, I would like to know how DOE has determined that these NDA agreements do not impact whistleblowers’ rights.

These questions, and others, were provided to DOE on March 26, 2014, and I asked that DOE provide answers for the hearing record on or before April 30, 2014. It has now been almost two months since that deadline and almost three months since DOE has been in receipt of the QFRs, and the Subcommittee has yet to receive any response.

I request that you provide complete responses to all the questions asked for the hearing record as soon as possible. I also request that you provide a briefing to Subcommittee staff regarding your completed responses on or before **July 11, 2014**.

The jurisdiction of the Subcommittee on Financial and Contracting Oversight is set forth in Senate Rule XXV clause 1(k); Senate Resolution 445 section 101 (108th Congress); and Senate Resolution 64 (113th Congress).

I appreciate your assistance. Please contact Jackson Eaton with the Subcommittee at (202) 224-6579 with any questions. Please send any official correspondence relating to this request to Kelsey_Stroud@hsgac.senate.gov.

Sincerely,



Claire McCaskill
Chairman
Subcommittee on Financial and Contracting Oversight

cc: Ron Johnson
Ranking Member
Subcommittee on Financial and Contracting Oversight

Enclosure

⁶ *Bechtel*, Agreement Regarding Employment Terms (March 10, 2014); *URS*, Employee Intellectual Property Agreement (May 9, 2014).

⁷ *Id.*



Agreement Regarding Employment Terms SIGN, DATE AND RETURN ENTIRE DOCUMENT

The purpose of this Agreement is to ensure that you understand and agree to certain matters regarding your employment with a Bechtel company. For purposes of this Agreement, "Bechtel" means the Bechtel group of companies, including the Bechtel company by whom you are being employed, as well as any other Bechtel companies for which you may work in the future.

CONFIDENTIALITY

"Confidential Information" means and includes all non-public information of any nature that Bechtel considers to be confidential or private information or that Bechtel has a duty to treat as confidential, whether or not marked as confidential. Many kinds of information, in both electronic and hard-copy forms, can be considered Confidential Information. By way of illustration but not limitation, Confidential Information includes financial reports, cost information and estimates, design templates, trade secrets, know-how, proprietary work processes, procurement bid evaluations, proposals, contract analyses, customer information, business plans, computer program source code, and personnel data.

As an employee of Bechtel, you will have access to Confidential Information belonging to Bechtel. You will also have access to Confidential Information belonging to Bechtel's customers, suppliers, and other third parties. It is critical to Bechtel's reputation and continued business success that all Bechtel personnel take care to treat Confidential Information appropriately. As a Bechtel employee you agree to use Confidential Information only for its intended purposes and only as part of your duties at Bechtel. You agree not to disclose Confidential Information to anyone outside Bechtel without authorization to do so from the person within Bechtel who is responsible for the Confidential Information, and you agree to share Confidential Information within Bechtel only on a need-to-know basis.

When you are aware that Bechtel is subject to an agreement with a customer, supplier, or other outside party regarding such party's Confidential Information, you agree to comply with the obligations imposed on Bechtel in such agreement.

Bechtel does not want you to breach any duty of confidentiality you may owe to a former employer. You understand and agree that you are not to disclose to Bechtel, or use in the performance of your duties for Bechtel, any confidential information belonging to a former employer or any other person that is not generally available to the public, unless such use is authorized by such former employer or third party.

You agree to observe Bechtel policies and instructions relating to Confidential Information, including those contained in **Bechtel Policy 102 (Standards of Conduct)**, **Bechtel Policy 104 (Secrecy Agreements)**, **Information Use Agreement**, and **Records & Information Management (RIM) Management Instruction No. 120 (Designation of Responsibilities for Information Security)**.

You agree that your obligations with respect to Confidential Information continue after you cease to be a Bechtel employee. Upon termination of your employment, you must deliver to Bechtel all files, documents, computers, electronic storage devices, recordings, and any other media in your possession by which, through which or on which Confidential Information has been recorded or stored. You further agree that you will not retain copies, notes, or abstracts of Confidential Information, or send any Confidential Information to yourself or others when your employment with Bechtel concludes.

INTELLECTUAL PROPERTY

"Invention" means and includes any original idea, invention (whether or not patentable), discovery, work of authorship, formula, algorithm, design, specification, method, process, technique, know-how, software, database, user interface, and documentation, and any improvement to or derivative from any of the foregoing.

“Trade Secret” means a compilation of information used in Bechtel’s business that gives Bechtel an economic advantage over a competitor by virtue of being kept confidential; for example, the know-how of experienced Bechtel specialists related to a particular technical process, or an historical cost database used in estimating.

“Copyright” means the exclusive right of the author of an original work to reproduce the work, prepare derivative works, distribute or display copies of the work, and license such rights to others.

Intellectual property which is conceived or created by Bechtel employees is the property of Bechtel, except as otherwise provided for under this Agreement and **Bechtel Policy 110 (Development, Protection and Use of Bechtel Intellectual Property)**. You hereby irrevocably grant and assign to Bechtel the exclusive ownership of and your entire right, title, and interest (including Invention, Trade Secret, Copyright and any and all other applicable intellectual property rights) in and to all Inventions conceived or made or reduced to practice by you (whether alone or jointly with others) during the period of your employment with Bechtel. You agree both during and after your employment with Bechtel, if requested by Bechtel, to promptly execute any documents confirming assignment of title to Bechtel, and to do whatever else is deemed necessary or appropriate by Bechtel to secure, perfect, and maintain Bechtel’s intellectual property rights, in the United States and in foreign countries, in and to any and all such Inventions.

You acknowledge that any original work you create as a Bechtel employee is a “work made for hire” and that Bechtel owns the Copyright to all such work from the moment of its creation.

The foregoing assignment does not apply to an Invention (a) that you develop entirely on your own time without using Bechtel’s equipment, supplies, facilities, computers, software, network, or Trade Secrets; *and* (b) that does not relate to Bechtel’s business, or to actual or demonstrably anticipated research or development of Bechtel, at the time of the Invention’s conception or reduction to practice; *and* (c) that does not result from any work performed by you for Bechtel or from know-how acquired during your employment at Bechtel.

If you conceive or make or reduce to practice an Invention during your employment at Bechtel, you are obligated promptly to disclose such Invention to Bechtel, using the Invention disclosure form issued from time to time by Bechtel or by your functional organization.

If you believe you have any Inventions, patented or unpatented, that you made or conceived (alone or jointly with others) prior to your employment at Bechtel and that are therefore to be excluded from assignment to Bechtel under this Agreement (“Prior Inventions”), you are strongly encouraged to notify Bechtel of such Prior Inventions as soon as practicable after you begin employment. You must not disclose to Bechtel any information about any such Prior Invention that would violate any confidentiality obligation you have to a former employer or other third party, but you are to disclose the name and, to the best of your knowledge, the owner of each such Prior Invention, and any continuing obligations you have with respect to such Prior Inventions. You agree not to incorporate any Prior Invention into your work at Bechtel without clear authorization from its owner to do so.

PROFESSIONAL CONDUCT AND BUSINESS ETHICS

You agree to observe the policies and procedures that Bechtel publishes from time to time for Bechtel employees. These include the requirement that you act ethically and in compliance with applicable law. You are expected to read and comply with **Bechtel Policy 102 (Standards of Conduct)** and the **Bechtel Code of Conduct booklet**. Among your professional and ethical obligations as a Bechtel employee is your duty to avoid doing anything that could create a conflict of interest with your responsibilities as a Bechtel employee. During your employment with Bechtel, you agree not to engage in any other employment, occupation, consultation, or other activity that relates to any actual or anticipated business, research, development, product, service or activity of Bechtel, or that otherwise conflicts with your obligations to Bechtel, without obtaining the specific written permission of the appropriate Bechtel manager as provided in **Policy 102**. If such permission is given and a conflict later develops, you understand that Bechtel may require you to resign from the other employment, occupation, consultation, or other activity.

CONSENT REGARDING BECHTEL'S PROCESSING AND TRANSFER OF HR-RELATED DATA

Bechtel respects the rights and interests of all of all Bechtel workers and adheres to the principles for processing HR-related Data in accordance with Bechtel's Global Privacy of Personal Data Policy. Bechtel will only process HR-related data where there is a legitimate purpose for doing so, including to select, set up relationships with and maintain its workforce, run its operations, and ensure the safety and protection of Bechtel workers and its resources. Bechtel may transfer HR-Related data amongst its various affiliates, divisions, business units and subsidiaries, where there is a business need to do so for the purposes described above and as otherwise set out in Bechtel's Global Privacy of Personal Data Policy. In very limited circumstances, Bechtel may need to process sensitive HR-related data where it is strictly necessary for the purposes identified above and as otherwise set out in Bechtel's Global Privacy of Personal Data Policy. From time to time, Bechtel may also transfer HR-related data outside of Bechtel where required by law (e.g., to tax authorities), to protect its legal rights (e.g., to defend litigation) or in an emergency (e.g., in a workplace accident where a Bechtel employee's health or security is at risk). In certain limited circumstances Bechtel may transfer HR-related data to select service providers that have been engaged to provide HR-related services to or on behalf of Bechtel (including payroll and benefits services), or to select Bechtel customers that require specific information concerning Bechtel workers involved in providing Bechtel services to the customer. Bechtel is committed to taking appropriate technical, physical and organizational measures to protect HR-related data against: unauthorized or accidental destruction, alteration or disclosure; accidental loss; unauthorized access; misuse; unlawful processing; and damage. HR-related Data will not be provided to any service provider or customer who is not Bechtel's agent unless they provide the same levels of protection as required under Bechtel's Global Privacy of Personal Data Policy.

CONSENT TO EMPLOYEE DISPUTE RESOLUTION ("EDR") PROGRAM

Bechtel values each of its employees, but even in the best of relationships, misunderstandings and concerns may arise. Bechtel has developed the **EDR Program** to address those employment-related issues that require a more in-depth or formal review. **By accepting employment with Bechtel, you agree that the EDR Program shall be the exclusive means of resolving any and all disputes, claims or controversies between you and Bechtel (or its officers, directors, managers, supervisors, employees, or agents) that may arise out of or relate to your employment (or its termination) ("EDR claims"), to the extent permitted by law.** Under the EDR Program, Bechtel and you agree to waive our respective rights to have EDR claims regarding legally protected rights (as defined in the **EDR Program Booklet**) decided in a court of law before a judge or jury, to the extent permitted by law. Instead, you and Bechtel are accepting the use of alternative dispute resolution mechanisms, up to and including final and binding arbitration, to resolve all claims that may legally subject to Bechtel's EDR Program. A full description of the terms of the EDR Program is included in your new hire materials and is incorporated by reference into this Agreement. You acknowledge that you have read the EDR Program Booklet before consenting to the Program.

CONSENT TO DRUG AND ALCOHOL TESTING

Compliance with **Bechtel's Substance Abuse policy**, including consent to participate in substance abuse screening and search of property and persons, is a condition of your employment. Failure to comply with the policy, including refusal to participate in a search or screening or testing positive for the presence of a prohibited drug and/or alcohol, is grounds for termination of employment. For more information, please review the following documents, which are included in your new hire materials:

- Human Resources Policy 409**
- ES&H's Core Process 318**
- Drug & Alcohol FAQs**

If you still have questions after reading the materials listed above, please e-mail hrrpolicy@Bechtel.com or call the Bechtel Employee Service Center at 1-800-749-2372.

NON-SOLICIT

During the term of your employment with Bechtel and for two (2) years thereafter, you agree not to directly or indirectly solicit, induce, encourage, or attempt to solicit, induce, or encourage any employee or contractor of Bechtel to leave Bechtel for any reason; provided, however, that the foregoing shall not affect any responsibility you may have as a Bechtel manager in taking personnel actions.

AT-WILL EMPLOYMENT

Nothing herein constitutes a contract for continued employment. Your employment relationship with Bechtel will be "at-will", which means that either you or Bechtel may terminate the relationship at any time, for any reason, with or without cause or advance notice. No Bechtel manager, supervisor, or representative has authority to enter into any agreement, express or implied, for employment for any specific period of time, or to make any agreement for employment other than at-will. Your signature below certifies that you understand and agree that your employment will be "at will." This is the full and complete agreement between you and Bechtel on this term. This paragraph supersedes all prior and contemporaneous agreements, understandings and representations concerning the term of your employment with Bechtel.

ACKNOWLEDGMENT AND AGREEMENT

I acknowledge receipt of a copy of **this Agreement, Bechtel Policy 102 (Standards of Conduct), the Bechtel Code of Conduct booklet, the Bechtel Employment Dispute Resolution Program booklet, and all other policies referenced in this Agreement.** By signing this document, I acknowledge that I have read them, understand them to my satisfaction, and agree to comply with them and to be bound by their provisions. I understand and agree that this Agreement sets forth terms and conditions of my employment with Bechtel and that I may be subject to discipline or termination of employment if I fail to comply with them. Furthermore, I agree that any representations contrary to those contained herein that may have been made prior to signing this document or that may be made to me in the future are superseded by this document. I also understand that while other terms of employment, policies, or procedures may exist and be changed from time to time, the conditions set forth herein, including my status as an at-will employee and my agreement to drug and alcohol testing and the EDR Program, are not subject to change except by an instrument in writing signed by me and an officer of Bechtel.

Accepted and agreed:

Employee Signature

Print or Type Name

Date

EMPLOYEE INTELLECTUAL PROPERTY AGREEMENT

AGREEMENT made by and between Washington TRU Solutions (WTS) LLC., and

(Name of Employee)

(Social Security Number)

In consideration for my employment by WTS, and the wages or salary and other employee benefits in compensation for my services, I agree that:

1. I will not disclose to or induce WTS or companies which it owns or controls to use confidential information or trade secrets of others, unless authorized by the owner.
2. During my employment with WTS and thereafter, I will treat all Confidential Information as secret and confidential and I will never use or disclose or authorize anyone else to use or disclose such Confidential Information except as is expressly permitted by WTS in performance of my designated duties to WTS. I will diligently protect all Confidential Information against loss by inadvertent or unauthorized use or disclosure.

Since I have no right to use Confidential Information after termination of my employment with WTS, in addition to other rights or remedies WTS may have, WTS shall have a perpetual, royalty-free, nonexclusive license to fully utilize for any purpose all inventions, computer programs, copyright works, and mask works made, conceived, or authored by me, alone or jointly with others, within one year of termination of my employment with WTS, related to work I performed during my last year of employment with WTS, and which utilized Confidential Information.

3. All Developments are the property of WTS and I hereby assign to WTS all my rights to such Developments in all countries.
4. **I have these rights.** No provisions in this Agreement is intended to require assignment of any of my rights in an invention for which I can prove no equipment, supplies, facilities, or trade secret information of WTS was used and was developed entirely on my own time; and which I can prove (1) does not relate to the business of WTS or to the actual or demonstrably anticipated research or development of WTS; or (2) does not result from any work performed by me for WTS.
To the extent compatible with applicable state law, the provision of the preceding paragraph do not apply to an invention which is required to be assigned by WTS to the United States Government.
5. I will promptly submit to WTS written disclosures of all inventions, whether or not patentable, which are made or conceived by me, alone or jointly with others, while I am employed by WTS.
6. Upon request by WTS, at any time during my employment with WTS and thereafter, I will:
 - a. submit to WTS written disclosures of all intellectual property made, conceived, or authored by me, alone or jointly with others, while employed by WTS; and
 - b. provide proper assistance and execute all papers deemed by WTS to be necessary to preserve legal protection for all Developments
without charge to WTS, but at the expense of WTS.
7. All written materials and other tangible objects, including copies, made or compiled by me or made available to me in the course of my employment, shall be the property of WTS and shall be delivered to WTS upon termination of my employment or at any other time upon request.
8. For the purpose of this Agreement, the following words shall have the following meanings:
 - a. "Confidential Information" means information which is disclosed to me, known by me, or generated by me as a consequence of or related to my employment with WTS, which is not generally known outside WTS, and which related to WTS' business. "Confidential Information" is intended to include, but is not limited to, trade secrets, inventions, processes, formulas, systems, computer programs, plans, programs, studies, techniques and business information.

NONDISCLOSURE AGREEMENT

The U. S. Department of Energy ("DOE") has entered into Contract No. DE-AC27-01RV14136 with Bechtel National Inc. (BNI) for the design and construction of the Hanford Tank Waste Treatment and Immobilization Plant (WTP). Washington Group International (WGI), doing business as the Washington Division of URS Corporation, has entered into an agreement as the teaming subcontractor with BNI, subcontract No. 24590-100-SC-W000-00003. Section H.31 of the WGI contract provides that WGI shall obtain the written agreement of each WGI employee permitted access to confidential or proprietary business, technical or financial information belonging to DOE, BNI or other companies performing work on the WTP project, to treat such information as confidential and not to appropriate such information to the use of the employee or of WGI, and not to disclose such information to third parties unless specifically authorized in writing by BNI. In performing work on the WTP project, there is the potential for WGI personnel to have access to BNI confidential or proprietary information, which information includes but is not limited to: employee information; proprietary cost and pricing data; technical data developed for the WTP project; and proprietary business tools and procedures ("Information").

As a WGI employee performing work on the WTP project, I agree that I will handle and protect this Information in accordance with the terms of this Agreement and that I will refrain from any unauthorized use or disclosure of this Information as long as it remains proprietary information in accordance with the following conditions:

- A. The documents and data that I access through WTP systems, processes and personnel will all be considered Information subject to this Agreement, and will be used solely in connection with the performance of work on the WTP project. The Information will not be discussed, divulged or disclosed to any person or entity except BNI, persons specifically authorized by BNI, and those persons within the WGI organization directly involved with the performance of the WTP project, and specifically will not be discussed, divulged or disclosed to any parent or affiliated company of WGI.
- B. The Information will not be copied in any manner excepting solely where such copies are necessary in connection with performance of work on the WTP project, with all such copies to be destroyed, or returned to BNI, upon completion of such services.
- C. By signing a copy of this agreement, I agree to abide by the terms of this agreement with respect to the Information, and agree that I will not use or disclose the Information in any manner inconsistent with this agreement.
- D. I understand that I shall not be liable for use or disclosure of any such Information if the same:
 - a) Is in the public domain at the time it is received by WGI; or
 - b) Is published after receipt by WGI or otherwise becomes part of the public domain through no fault of WGI; or
 - c) Is Information WGI can demonstrate was in its possession at the time of receipt and was not acquired directly or indirectly from DOE, BNI or other companies performing work on the WTP project; or
 - d) Is Information WGI can demonstrate was received from a third party that did not require WGI to hold it in confidence; or

- e) Is disclosed under legal compulsion (in which event it is agreed that WGI will provide BNI with prompt notice of any such request and afford BNI the opportunity to seek appropriate protective orders).
- E. Upon completion of the earlier of the WTP project, or the performance of services on WTP matters, I shall ensure that I have not retained any documentation or copies thereof of the disclosed Information.
- F. BNI does not grant permission for me to review any cost information that would reveal or describe the makeup of BNI direct labor rates, payroll additive overhead and G&A pools.
- G. This Nondisclosure Agreement shall be governed by applicable Federal law and the laws of the State of Washington, and venue for any action brought hereunder shall be within a court of competent jurisdiction in the State of Washington.

WGI employee name (printed)

Signature

Date