

United States Government

Department of Energy

memorandum

Rocky Flats Field Office

DATE: **JAN 27 2000**

REPLY TO:
ATTN OF: CMD:CD:00-01206

SUBJECT: Requested Contracting Officer Clarifications, Contract DE-AC34-00RF01904

TO: Robert G. Card
President
Kaiser-Hill Company, L.L.C.

Mr. Martinez's January 4, 2000, letter to Frazer Lockhart requested certain clarifications from the Contracting Officer regarding the negotiations for a new Rocky Flats Closure Contract DE-AC34-00RF01904. The following is my response:

- **Fee Funding.** The referenced letter suggests that existing contract provisions impose an obligation for the Government to apply best efforts to "fund all K-H potential and actual fee payments." The government's signature of the contract will evidence its intent and legal obligation to fulfill the contract, including the payment of any cost or fees required under the contract.
- **Inflation Consideration.** While we appreciate your concerns in this area, we believe the concerns can be adequately addressed within the contract's provisions. If your concerns arise in the future, we will be pleased to discuss the matter more specifically.
- **Equitable Adjustments.** We take no issue with the referenced letter on this point. All contractor requests for equitable adjustment will be considered in accordance with contract provisions.
- **Laws, Regulations and Orders.** The referenced letter suggests that the contract pricing is based on laws, regulations and Orders in effect on the contract award date. However, the contract identifies specifically the dates of the Federal Acquisition Regulations, Department of Energy Acquisition Regulations, DOE Orders and other directives that apply to the contract. The potential exists that new laws may be enacted or new regulations may be promulgated which could affect and apply to the contract. It should be noted that requests for equitable adjustments related to changes in laws, regulations and directives may be addressed in other contract provisions, such as Clause I.115, "Laws, Regulations and DOE Directives," and that those relevant provisions, in addition to the "Changes" clause, will be considered.

- **K-H Use of Unpaid Fee.** The referenced letter seeks assurance that fee amounts not invoiced by K-H will be available to fund work activities. We note that this issue is addressed, to a certain extent, in subparagraph (c) of Clause B.6, "Fee Payment Schedule and Fee Payment Withholdings." Beyond this, as set forth in Clause B.3, "Obligation of Funds," the Government will obligate specific amounts to the contract. Clause I.62, "Limitation of Funds," clarifies the contractor's contractual duties related to the obligation limits. You may perform up to the limits of the amounts obligated to the contract. That obligated amount will be used to pay both allowable cost and fee payments. To the extent that the amount of obligated funds is not needed to pay fee (because you have decided not to invoice the amount allowed by the contract in accordance with Clause B.6(c)), it may be available to pay allowable costs.

If you have any questions regarding these matters, please contact me.



Paul Golan
Acting Manager

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