



December 19, 2014

The Honorable Ernest J. Moniz
Secretary
U.S. Department of Energy
1000 Independence Ave. SW
Washington DC 20585

Email: The.Secretary@hq.doe.gov

Re: Sandia Corporation's award fees for FY 2014

Dear Secretary Moniz:

On December 3, 2014 the Project On Government Oversight and Nuclear Watch New Mexico wrote to you urging that the FY 2014 performance fee award for Los Alamos National Security, LLC (LANS) be cut at least in half. We believe this is merited because of substandard performance that resulted in the closure of the Waste Isolation Pilot Plant and a halt to operations at LANL's main plutonium facility.

In this letter we urge you to consider not granting any of the available \$9.8 million in FY 2014 performance incentive fees awards to the Sandia Corporation, wholly owned by the Lockheed Martin Corporation. We also argue that \$2.8 million for "Home Office And Other Corporate Support" should not be paid to Lockheed Martin because it failed in the subcategory "Provision of Corporate Ethics."¹ We think fee denials are merited because of past improper lobbying of Congress for contract extensions that appears to violate both federal law² and the Sandia Corporation's management contracts with the federal government.

¹ Award fee amounts are from Contract No. DE-AC04-94AL85000 Modification No. M202, pages 6, 7 and 25. "Provision of Corporate Ethics" under Home Office And Other Corporate Support is found at page 25 as well. [http://nnsa.energy.gov/sites/default/files/nnsa/06-14-inlinefiles/201406-24%20\(C\)%20%20SectionB-H\(ContractConformedToM0541dtd4.30.14\).pdf](http://nnsa.energy.gov/sites/default/files/nnsa/06-14-inlinefiles/201406-24%20(C)%20%20SectionB-H(ContractConformedToM0541dtd4.30.14).pdf)

² Specifically, 31 U.S. Code § 1352 - Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, (a) (1) None of the funds appropriated by any Act may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action described in paragraph (2) of this subsection. <http://www.law.cornell.edu/uscode/text/31/1352>

As you are no doubt aware, this improper lobbying has been documented in two recent Department of Energy Inspector General reports. The first report concluded that Sandia had improperly paid ex-Congresswoman Heather Wilson around \$226,000 in consulting fees to lobby for additional work for the Sandia Labs, beginning right after she stepped down from office in January 2009. Sandia had to reimburse the government for the monies it paid Wilson.³

The second DOE IG report concluded:

We believe that the use of federal funds for the development of a plan to influence members of Congress and federal officials to, in essence, prevent competition was inexplicable and unjustified... The evidence indicated that SNL and LMC [Lockheed Martin Corp.] officials had conversations with members of Congress and federal officials to convince the department, NNSA and Congress of the merits of contract extension without competition.⁴

We are concerned that the Sandia Corporation does not fully recognize or accept the seriousness of its offense, and instead suggests that this extraordinary circumstance will somehow just be papered over. For example, media reported that a Labs spokesperson called the DOE IG conclusions “allegations” rather than findings, and said, “Sandia is confident that the company and the DOE will be able to resolve these issues.”⁵

In part because of this presumptive attitude, with no public acknowledgment of responsibility or remorse, we believe it is imperative that the Department of Energy seriously reduce the Sandia Corporation’s FY 2014 financial award. This is perhaps even more important than the case with LANS, although its substandard performance clearly deserves fee reduction. But at least LANS’ behavior did not involve blatant disregard of federal law, as did the Sandia Corporation, and therefore the latter must be dealt with decisively.

We also note the Sandia Corporation’s previous display of arrogance in the face of potential fee reduction. In 2012, Ms. Neile Miller, then-NNSA Principal Deputy Administrator (and soon to be Administrator), proposed to reduce performance fee awards because of an accident in Alaska involving Sandia personnel. Dr. Paul Hommert, who serves both as Labs Director and the president of Sandia Corporation, responded in a 7-page letter arguing that Sandia should not be penalized for its negligent performance, concluding:

I have an additional concern with your proposed actions [to penalize Sandia Corp.] that has the potential to have negative implications far beyond allowability and challenges to fee... These implications are significant to the nature of the Laboratories and our ability

³ *Concerns with Consulting Contract Administration at Various Department Sites*, [Inspection Report: DOE/IG-0889](#), June 7, 2013

⁴ *Alleged Attempts by Sandia National Laboratories to Influence Congress and Federal Officials on a Contract Extension*, [Special Inquiry: DOE/IG-0927](#), November 2014

⁵ *DOE says Lockheed broke rules*, James Monteleone, Albuquerque Journal, November 13, 2014, <http://www.abqjournal.com/495513/news/doe-says-lockheed-broke-rules.html> (subscription needed).

to support national security... First and foremost among the challenges that will be impacted are the needs of our nation's nuclear deterrent.⁶

Thus, apparently Dr. Hommert conflates the well-being of the for-profit Sandia Corporation with the well-being of the U.S. nuclear weapons stockpile, or in other words any reduction to Sandia's profits threatens national security. This arrogance and implicit threat apparently extends to the point where Sandia management thinks it can flout legal prohibitions against lobbying and get away with it, which might explain its noncompetitive extensions since 1998. In the interests of greater contractor accountability, this behavior cannot go unpunished, and should be corrected through written reprimand and nonpayment of awards for the performance incentive fee and Home Office And Other Corporate Support. Moreover, DOE should deny the Sandia Corporation another one-year contract extension, and put the management contract out for bid as was previously planned.

To sum up, as a matter of good governance, proper federal oversight and contractor accountability, we urge you to cut Sandia Corporation's performance award fee for FY 2014. Its improper behavior cannot go unpunished.

Should you have any questions, please don't hesitate to contact us at:
pstockton@pogo.org or 703.589.1718
jay@nukewatch.org or 505.989.7342.

Thank you for your consideration.

Sincerely,

Peter Stockton
Senior Investigator
Project On Government Oversight

Jay Coghlan
Executive Director
Nuclear Watch New Mexico

Cc:

Gen. Frank G. Klotz, NNSA Administrator, NA-1, frank.klotz@nnsa.doe.gov

Senator Tom Udall

Senator Martin Heinrich

⁶ Officials letters between Ms. Neile Miller, NNSA Principal Deputy Administrator, and Sandia Director Paul Hommert, April 10, May 10, and November 21, 2012,
<http://nukewatch.org/importantdocs/resources/SNL2012-Fee-Determination.pdf>