

MONITOR

WEAPONS COMPLEX

Waste Management ♦ Clean Up

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— INSIDE HIGHLIGHTS —

After restarting operations following the recent government shutdown, DOE's Office of Environmental Management is now examining its options given the bill's funding cuts and restrictions. 2

In the wake of the controversial RTP for the new Paducah deactivation contract, DOE plans to take "lessons learned" from the Paducah procurement and apply them to future contracting activities. 3

DOE's delays in completing a final fee determination for CH2M-WG Idaho's first seven years of work at the Idaho Cleanup Project may be impacting the work currently underway at DOE's Idaho site. 5

DOE does not view the upcoming deactivation contract for the Paducah site as a "successor" to the cleanup contract currently in place 6

Idaho Treatment Group, LLC has permanently lost \$100,000 in fee for the early departure of a previous PM. 6

Tightening federal budgets and increased Congressional scrutiny are likely to lead to a more combative relationship between DOE and its contractors, according to a prominent procurement lawyer 7

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TOP PROCUREMENT LAWYER WARNS OF FUTURE DOE, CONTRACTOR RELATIONS

AMELIA ISLAND, Fla.—Tightening federal budgets and increased Congressional scrutiny are likely to lead to a more combative relationship between the Department of Energy and its contractors, according to a prominent procurement lawyer. Speaking at the *Weapons Complex Monitor* Decisionmakers' Forum this week, Kenneth Weckstein, a partner in Brown Rudnick's Government Contracts and Litigation Group, painted a disconcerting picture of relations between industry and DOE that he suggested would be fraught with more protests of government contract awards, increasing claims by the government against companies and vice versa, and more investigations and audits of government work. "If your customer, Energy, gets increased scrutiny from Congress, from the [Inspector General], from [the Government Accountability Office], it's going to bubble down to you in one form or another and you better be prepared for it," Weckstein told industry at the 25th annual conference. "There's going to be more audits. There's going to be more disallowances of cost. There is going to be more claims against contractors."

'Don't Be Fat, Dumb and Happy'

Weckstein has been practicing procurement law for more than three decades and has been involved in some of DOE's most high profile protests, including the latest challenge pitting a team led by Babcock & Wilcox against the National Nuclear Security Administration on the Y-12/Pantex combined management and operating procurement. Weckstein represents the B&W team, which has twice protested the NNSA's selection of Bechtel-led Consolidated Nuclear Security. The B&W team successfully forced the agency to reopen the procurement and seek more information from bidders this summer. The NNSA is

still evaluating proposals by bidders after the GAO last month largely brushed aside a second protest by B&W, calling many of the issues it raised premature.

The Y-12/Pantex protest greatly emphasized cost cutting, which Weckstein suggested would likely continue to become more prominent as federal budgets shrink. But he warned that cost cutting is likely to take many other forms, starting with the cancellation of programs and Requests for Proposals and changes to work scope. "If you think that there are not going to be reduced budgets, you may be right. This year. Maybe even next year," he said. "But in the long term budgets are going to be reduced and that is going to impact your customer and you better start preparing for it. These things have long cycles. It's very political and it's going to happen. It's reality."

Claims against contract work are also likely to become a greater reality. The NNSA, for instance, has been taking a harder stance against contractors and in recent years has fought to get fee back for projects like the Waste Solidification Building at the Savannah River Site and a nuclear materials security upgrade project at Los Alamos National Laboratory. It has also deferred work on projects, including the multi-billion-dollar Chemistry and Metallurgy Research Replacement-Nuclear Facility. "Don't be fat, dumb and happy and think it's not going to happen to you, that the DOE is a different animal that's not going to have this kind of pressure," Weckstein said.

Emphasis on Price, Technical Acceptability to Increase

The government is also likely to begin pursuing contract vehicles that weigh cost over quality, like fixed-price contracts or contracts that are evaluated based on the lowest price that is technically acceptable. The government could also revive proposals to federalize certain work that

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is currently being done by contractors. “If you’re faced with budget crunches and concerns and decreased appropriations it’s something an agency has to consider and it’s happening all over the government,” he said. “We’re seeing more and more low-priced technically acceptable procurements. Which probably results in lower quality but lower prices.”

Companies can prepare for possible belt tightening by being more proactive in pitching work to the government, Weckstein said, and in trying to provide value through things like cost ceilings, cost sharing, and price guarantees. “You need to think outside the box,” he said. “You have to think of ways you can add value to your customer where you are going to make them look good and you are going

to enhance their reputation, you are going to make their life easier, you’re going to help them work within their budgets.”

And there’s also the protest route, which Weckstein said doesn’t have to be acrimonious, despite the perception among many in the industry that protesting companies are frowned upon in future procurements. “It depends on how you do it,” Weckstein told *WC Monitor*. “You don’t bring up things that are frivolous. If you protest it should be for a meritorious reason or because they haven’t given sufficient information and you need to ascertain what really happened. You’re entitled to that.”

—Todd Jacobson

Calendar

November

- 12-14 Conference: 14th Annual Business Opportunities Conference—Linking Businesses with Opportunity; Energy, Technology, and Environmental Business Association (ETEBA); Knoxville Convention Center, Knoxville, TN.; Info: www.eteba.org.
- 13 Conference: UK Nuclear Decommissioning Authority Estate Supply Chain Event 2013; Manchester, U.K.; Info: www.decommsupplyevent.co.uk.
- 13 Meeting: Oak Ridge Citizens Advisory Board; DOE Information Center, Oak Ridge, Tenn.
- 13 Meeting: Idaho Citizens Advisory Board; Hilton Garden, Idaho Falls, Idaho.
- 19 Meeting: Savannah River Site Citizens Advisory Board; Augusta, Ga.
- 28-29 EM PUBS CLOSED FOR THANKSGIVING

December

- 11 Meeting: Oak Ridge Citizens Advisory Board; DOE Information Center, Oak Ridge, Tenn.

23-Jan. 1 EM PUBS CLOSED FOR HOLIDAYS

February

2014

11-14

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(Changes from previous Calendar in Bold)

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The *WC Monitor* is a weekly publication devoted to providing intelligence and inside information on cleanup and waste management within the Department of Energy’s Nuclear Weapons Complex. Includes firsthand reports from Washington, the major DOE sites and the national laboratories; interviews with top-level officials; and market analysis.

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