



Office of the Secretary

March 26, 2020

MEMORANDUM FOR: DEPARTMENT OF ENERGY SENIOR PROCUREMENT EXECUTIVE
NATIONAL NUCLEAR SECURITY ADMINISTRATION
PROCUREMENT EXECUTIVE

FROM: DAN BROUILLETTE 

SUBJECT: Secretarial Determination Authorizing Public Law 85-804
Indemnification for Contractors Engaged in Activities Responding to
COVID-19

Attached is my determination authorizing Departmental contracting officers to extend Public Law 85-804 indemnification to contractors and their subcontractors engaged in tasks or activities directed or authorized by the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), in response to COVID-19.

This determination should be further disseminated to relevant DOE/NNSA procurement personnel to ensure appropriate implementing action is taken should the above-described contractors seek indemnification under Public Law 85-804 in accordance with the Federal Acquisition Regulation. This determination represents approval to include an indemnification clause in appropriate contracts and authorization for deviations from the Federal Acquisition Regulation as necessary to effectuate such inclusion without further approval by me. This authorization for indemnification is retroactive in applicability with respect to tasks or activities on or after March 13, 2020, and may be extended to tasks or activities undertaken by DOE contractors in response to COVID-19 now and through June 30, 2020, and covers work done by DOE Contractors for others such as the Department of Health and Human Services and its various sub-agencies, the Federal Emergency Management Administration, other federal entities, state and local governments and departments, and non-profit and for-profit entities. This indemnification authorization covers DOE contractors and their subcontractors, and accordingly contracting officers are authorized to approve indemnification of subcontractors.

Also attached is the description of the activities covered by this indemnification for incorporation into the appropriate clauses in the affected contracts.

Attachments

cc: S-3
S-4
NA-1

ATTACHMENT

The following language shall be added to the appropriate clause in the affected contract to describe the activities covered by the indemnification:

"Participation in tasks or activities by the Contractor or its subcontractors on or after March 13, 2020 through June 30, 2020 that is directed or authorized by the U.S. Department of Energy or the U.S. Department of Energy National Nuclear Security Administration, including work for others, as an element of activities taken now and through June 30, 2020 in response to COVID-19, including but not limited to efforts to test for the presence of COVID-19, to provide equipment and resources to address COVID-19, and to develop treatments and vaccines for COVID-19, to the extent the task or activity is not exempt from liability under the Public Readiness and Emergency Preparedness Act (PREP Act) or other law, or the exemption under the PREP Act or other law is limited in scope or amount which is not sufficient to provide complete protection against the liability to which the contractor is exposed."