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National Nuclear Security Administration
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MEMORANDUM FOR DANIEL SIGG
COGNIZANT SECRETARIAL OFFICIAL FOR SAFETY,
NATIONAL NUCLEAR SECURITY ADMINISTRATION

FROM: PETER D. RODRIK PETER RODRIK Digitally signed by PETER RODRIK Date: 2022.03.17 10:27:30 -07'00'
MANAGER

SUBJECT: ACTION: Approval of a Worker Safety Variance for the Digital Infrastructure Capability Expansion Line-Item Pilot Project at the Lawrence Livermore National Laboratory

ISSUE: Whether to approve a worker safety variance for the Digital Infrastructure Capability Expansion (DICE) Line-Item Pilot project at the Lawrence Livermore National Laboratory (LLNL), allowing the project's contractors to comply with the State of California's Division of Occupational Safety and Health (CAL OSHA) regulations as a means to comply with requirements of Title 10, Code of Federal Regulations (CFR), Part 851, *Worker Safety and Health Program*.

BACKGROUND: In June 2020, the Administrator approved a worker safety variance for the Emergency Operations Center (EOC) Line-Item project at LLNL in furtherance of streamlining processes for commercial-like, low-risk, low-cost construction using the International Building Code, Federal Safety Regulations, and the Federal Acquisition Regulation framework.

Experience gained in the construction of the new LLNL EOC under the granted variance is very encouraging. While detailed analysis will be forthcoming after that project is completed, there are strong indicators that LLNL benefited by the subcontractors executing the work under CAL OSHA regulations. The variance has permitted local/regional construction businesses and lower tier subcontractors to bid, operate, execute, and comply with safety and health standards they utilize outside of the Department of Energy (DOE) Complex. The subcontractors were able to avoid confusion, additional cost, and inefficiencies associated with complying to an unfamiliar regulatory spectrum while maintaining compliance to health and safety standards at least as protective as 10 CFR 851. Safety and health performance on the EOC construction project, including the number of inspection and surveillance issues, is comparable to other subcontractors and projects at LLNL executed under 10 CFR 851.

DISCUSSION: The Department's worker safety and health program, with 10 CFR 851 as its basis, effectively promotes a safe working environment across the Department, as well as at the National Laboratories. The Department's prime contractors adhere to 10 CFR 851 requirements and have trained their workforces to comply with its provisions. However, some of the Department's prime contractors have faced significant challenges when hiring subcontractors to perform work. Subcontractors are frequently unfamiliar with 10 CFR 851 requirements as they typically operate under OSHA standards, or their OSHA-approved State worker safety programs. This unfamiliarity may narrow the pool of qualified candidates, thereby potentially reducing competition and driving up costs. In addition, the Department's prime contractors must train subcontractors to comply with 10 CFR 851, resulting in a significant time commitment and increased costs.

Lawrence Livermore National Security, LLC, is now submitting an application for a variance for use of CAL OSHA regulations in combination with Federal OSHA standards to maintain a workplace as safe and healthful as under 10 CFR 851, for the construction of the DICE. This application for DICE is virtually identical to the application previously submitted for the construction of the EOC. A variance is defined in 10 CFR 851 as an alternative method to comply with some part of a safety and health standard granted by the appropriate Under Secretary to a contractor. Construction standards and selected elements of 10 CFR 851, Subpart B, Subpart C and Appendix A, as implemented through a new Injury and Illness Prevention Program, will incorporate CAL OSHA regulations, Federal OSHA standards for construction as necessary, and portions of 10 CFR 851, were not entirely or adequately, addressed by CAL OSHA requirements.

COST(S): There will be no additional cost to implement this variance.

SENSITIVITIES: Substituting 10 CFR 851 worker safety standards that were instituted in 2006 for CAL OSHA standards would continue to be a significant initiative.

RECOMMENDATION: Approve a worker safety variance for the DICE Line-Item project at LLNL, allowing the project's contractors and subcontractors to comply with CAL OSHA regulations as a means to comply with requirements of 10 CFR 851, *Worker Safety and Health Program*.

Attachment: ES&H-2022-005 (L. Woodrow/P. Rodrik), *Lawrence Livermore National Security, LLC (LLNS) Request for Variance From 10 CFR 851 for Construction of the Lawrence Livermore National Laboratory (LLNL) Digital Infrastructure Capabilities Expansion*, dated March 10, 2022

cc:
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