Department of Energy
National Nuclear Security Administration
Washington, DC 20585

March 17, 2022

MEMORANDUM FOR MATTHEW B. MOURY
DIRECTOR FOR ENVIRONMENT, HEALTH, SAFETY AND SECURITY

FROM: DANIEL SIGG
COGNIZANT SECRETARIAL OFFICER

Digitally signed by DANIEL SIGG
Date: 2022.03.17 18:10:00 -04'00'

SUBJECT: **ACTION:** Recommendation for Approval of Worker Safety Variance to Use California's Division of Occupational Safety and Health Safety and Health Regulations in Lieu of Specific Provisions of Title 10, Code of Federal Regulations, Part 851, *Worker Safety and Health Program*, for Construction of the Digital Infrastructure Capabilities Expansion at the Lawrence Livermore National Laboratory

ISSUE: Whether to approve a worker safety variance requested by Lawrence Livermore National Security, LLC (LLNS) as operators of the Lawrence Livermore National Laboratory (LLNL), from specified provisions in 10 Code of Federal Regulations, Part 851, *Worker Safety and Health Program* (10 CFR Part 851), Subparts B and C, and Appendix A. LLNS requests this variance from certain requirements of Title 10, Code of Federal Regulations (CFR), Part 851, Worker Safety and Health Program solely for the construction of the Digital Infrastructure Capabilities Expansion (DICE) Line-Item Pilot project at the Lawrence Livermore National Laboratory (LLNL), to allow the project's contractors to comply with the State of California's Division of Occupational Safety and Health (CAL OSHA) regulations in lieu of complying with certain requirements of Title 10, Code of Federal Regulations (CFR), Part 851, Worker Safety and Health Program. (Attachment 1)

The Manager, Livermore Field Office, endorses this worker safety variance request by LLNS for the construction of DICE. (Attachment 2)

BACKGROUND: The NNSA has a mission to build facilities supporting our national security and to do so in a timely and cost-effective manner. Construction projects have a history of delays and cost increases that have affected this mission. To address this, NA-50 is implementing a pilot to improve project completion.

This pilot, authorized by, the fiscal year (FY) 2018 National Defense Authorization Act (NDAA), under Section 3111, *Nuclear Security Enterprise Infrastructure Modernization Initiative*, streamlines the Administrator's ability to effectively and efficiently carry out the construction of non-nuclear facilities that have a total estimated project cost of less than $100M.

In support of that pilot, in June 2020, the Administrator approved a worker safety variance from certain requirements of Title 10, Code of Federal Regulations (CFR), Part 851, Worker Safety and Health Program 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 approved 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.

DISCUSSION: The Under Secretary of Nuclear Security, who has primary line management responsibility for NNSA contractors, is authorized to approve variances requested by those contractors, consistent with the procedures provided in 10 CFR Part 851, Subpart D, *Variances.* The regulation also requires the Associate Under Secretary for Environment, Health, Safety and Security (AU) to provide a recommendation to approve, approve with conditions, or deny the variance. I recommend that the Under Secretary approve the variance requested by LLNS, with the conditions outlined below.

- Consistent with the previously approved LLNL EOC variance.

- Maintain an effective Injury and Illness Protection Program (IIPP), as required by 8 CCR, section 3203, using a combination of applicable Cal-OSHA regulations and by incorporating existing contract provisions and certain provisions of 10 CFR Part 851 into the IIPP, as needed to provide project "workers a place of employment which is as safe and healthful as would result from compliance with the standard from which the variance is sought" as required by 10 CFR § 851.31(d)(2)(ii).

- The IIPP would be approved by the appropriate Head of DOE Field Element.

- LLNS' agreement to include variance requirements in the contract provisions for the DICE subcontractor(s).

- LLNS will work closely with Livermore Field Office (LFO) staff to implement the provisions of the variance.

SENSITIVITIES: Use of the success of the LLNL EOC variance approval as a basis for the LLNS DICE construction project worker safety variance approval to apply CAL-OSHA for comparable work demonstrates DOE support for cost effective alternatives that provide equal or more safety to workers.

POLICY IMPACT: None.

URGENCY: Approval of the variance is needed so that LLNS can rapidly begin soliciting bids and construct the DICE, using a larger pool of highly qualified contractors that are already familiar with the Cal-OSHA Standard for the conduct of work at LLNL.

To support the pilot's success and to meet contract deadlines, please forward your recommendation on the variance by April 14, 2022. This is to support the final approval by the Under Secretary for Nuclear Security by April 29, 2022. I appreciate your review and recommendation regarding the variance to support this.

RECOMMENDATION: That you recommend approval to the Under Secretary for Nuclear Security with the conditions as noted of this worker safety variance.

APPROVE:_____DISAPPROVE:____NEEDS DISCUSSION:____DATE: __

cc:
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