



U.S. Department of Energy
Office of Inspector General
Office of Audits and Inspections

SPECIAL REVIEW

Issues Pertaining to the Termination of Ms.
Donna Busche, a Contractor Employee at the
Waste Treatment Plant Project

DOE/IG-0923

October 2014



Department of Energy
Washington, DC 20585

October 17, 2014

MEMORANDUM FOR THE SECRETARY

FROM: 
Gregory H. Friedman
Inspector General

SUBJECT: Special Review of "Issues Pertaining to the Termination of Ms. Donna Busche, a Contractor Employee at the Waste Treatment Plant Project"

On March 6, 2014, the Office of the Secretary of Energy requested that the Inspector General review the circumstances surrounding the February 18, 2014, termination of the employment of Ms. Donna Busche by URS Energy and Construction, Inc. (URS). URS is a major subcontractor under the Department of Energy's contract with Bechtel National, Inc. (Bechtel) to design and construct the multi-billion dollar Waste Treatment and Immobilization Plant (WTP) at the Department's Hanford Washington Site. Ms. Busche asserted whistleblower status based on the disclosure of what she believed to be technical and safety concerns regarding the WTP. She also asserted that her termination was in retaliation for these disclosures.

Because of a material scope limitation, we were unable to reach a conclusion in this matter. In short, Bechtel and URS told us that they could not provide access to several thousand contractor-generated emails and other documents that we believe were necessary to perform our examination of the Busche termination. On the advice of outside counsel, both contractors took the position that the documents in question were subject to either attorney-client or attorney work product privilege. Also, URS made a unilateral determination that certain documents were not relevant to our examination. Specifically, Bechtel withheld 235 documents and URS withheld 4,305 documents. Of the 4,305 withheld documents, URS' attorney eventually agreed to provide access to a portion of the 2,754 documents that URS had concluded were non-responsive but which were not subject to the asserted attorney-client privilege.

Attorneys representing both Bechtel and URS stated that the assertion of privilege was necessary given the likelihood of litigation regarding the Busche matter. Their basic concern was that releasing the documents to the Office of Inspector General would constitute a waiver of privilege in future proceedings.

In this engagement, our document request relied on specific terms of the contract between Bechtel and the Department and the related contract between Bechtel and URS. The contract clauses to which we refer required both Bechtel and URS to, among other things, produce for government audit all documents acquired or generated under the contract, including those for which attorney-client and attorney work product privilege was asserted. It was the position of counsel for both Bechtel and URS that these clauses were too broad and that they were unenforceable, specifically in situations where litigation was either in process or was likely.

In this matter, it became apparent that there was a fundamental conflict between the need of the Office of Inspector General to have full, unfettered access to all information it deemed relevant to its examination and the position taken by Bechtel and URS and their respective outside attorneys to protect their legal interests. However, at the end of the day, despite efforts by senior Department officials, we did not have access to the full inventory of documents which we felt were necessary to conduct our review. Thus, we were unable to complete our inquiry and accordingly disclaim any opinion regarding the circumstances of Ms. Busche's termination.

cc: Deputy Secretary
Chief of Staff