



DOE, contractor tried to shift IWTU costs

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A recent court ruling shows the U.S. Department of Energy tried to “creatively” allocate costs related to the beleaguered Integrated Waste Treatment Unit when it became clear the project could exceed its budget.

The court ruling regarded a contractor-filed claim to recover Idaho Cleanup Project fees perceived to be withheld by DOE, including nearly \$8 million related to IWTU. The first-of-its-kind processing plant was built to convert into solid form some 900,000 gallons of high-level liquid sodium-bearing waste at DOE’s desert site west of Idaho Falls.

After several years of construction, the facility’s startup was delayed in 2012 because of design issues. The project has run several hundred million dollars over budget since then and IWTU remains inoperable amid remaining technical problems and lapsed 1995 Settlement Agreement deadlines.

Local DOE and CWI officials were weary of budget concerns earlier in the project’s history, and subsequently tried to create savings by reallocating expenses in a way ultimately deemed wrongful by other DOE offices.

In late 2009, DOE officials asked employees of then-contractor CH2M-WG Idaho, also known as CWI, to review costs CWI had previously charged to IWTU’s capital project line, according to a Sept. 7 ruling by the federal Civilians Board for Contract Appeals.

DOE already had identified problems with IWTU, according to the ruling, and if the department and CWI could shift construction costs to other operational expense lines, there would be more wiggle room in a congressional budget cap to get the facility up and running.

In March 2010, after DOE and CWI officials developed lists of potential expenses to move from the IWTU capital budget, DOE-Idaho Manager Richard Provencher wrote CWI asking for more items, the ruling said.

“We need to more creatively find scope to pull off the line and fund as operations project...” Provencher said, before acknowledging that asking Congress for more money was “not in the cards.”

Eight expenses previously charged to the IWTU capital line totaling \$13.1 million were ultimately identified. Expenses would shift to operating budgets for IWTU and the Idaho Nuclear Technology and Engineering Center, which is the desert site’s main spent nuclear fuel storage facility.

In December 2010, DOE and CWI modified the multibillion dollar Idaho Cleanup Project contract to set a \$533.3 million reimbursement cap on the IWTU project. CWI would be eligible for incentives if

the facility could be built for less money, but the contractor would be responsible for any costs exceeding that amount as well.

Internally, DOE recognized the department “achieved a substantial breakthrough by negotiating a cap to limit the (IWTU project) cost liability at \$533M,” according to the ruling.

The following year, in 2011, DOE-Idaho Contracting Officer Maria Mitchell-Williams tentatively approved the eight previously discussed cost transfers pending a final contract closeout audit.

Other DOE divisions analyzed the IWTU cost transfers shortly after, however, and came to a different conclusion.

DOE Office of Engineering and Construction Management Director Paul Bosco wrote “the reallocation of previously expended costs is contrary to project management best practices and improperly transfers base lined scope and costs... without proper change control.”

In 2013, the DOE Office of Inspector General reviewed seven of the cost transfers and determined three were “direct costs” of IWTU’s construction phase and were not “appropriately transferred” to other operational budgets, according to the ruling.

The three transfers, totaling \$7.9 million, included a test related to an IWTU waste processing issue, installation costs for a waste transfer line and tie-in as well as portable bathroom expenses. The same transfers were identified as potentially problematic by independent legal counsel hired by CWI in 2011 to review the transfers.

In her final 2013 fee determination for the Idaho Cleanup Project contract, Mitchell-Williams followed the Office of Inspector General’s report and reclassified the three transfers as direct IWTU construction costs.

CWI had surpassed the IWTU budget cap at that time, so the \$7.9 million wasn’t reimbursed by DOE.

The contractor filed a \$40-plus million dollar claim in 2014 seeking reimbursement for the three cost transfers, as well as money related to other budget allocations. CWI officials said the transfers were permitted under accounting standards and DOE “breached the implied covenant of good faith and fair dealing” by rejecting them.

The court disagreed, and ruled CWI officials made no effort while negotiating the IWTU cap to consider the cost transfers, which at that point hadn’t been formally approved.

“Correspondence from the contracting officer indicated that she was comfortable with the cost transfers, but was reserving a right to have them audited,” the ruling said. “It was only after other DOE entities became involved that questions regarding the appropriateness of the cost transfers became an issue.”

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