



Job No. 14501, FUSRAP Project  
USACE Contract No. DACW45-98-D-0028  
WBS-191  
February 23, 2004

U.S. Army Corps of Engineers  
Attn: Mr. Doug Hadley, CENO-CT-H  
Contracting Officer  
106 S. 15<sup>th</sup>. Street Federal Building  
Omaha, NE 68102-1618

Subject: Envirocare Lawsuit for Bonding Costs, S/C 499 – Wayne, N.J. Site

Dear Mr. Hadley:

Presented below for your review is a summary of the facts and circumstances of the subject lawsuit. Additionally, to assist you and your staff with the particulars of the lawsuit and proceedings, I have also enclosed a binder containing copies of the pertinent documentation.

Request your earliest review and approval of the enclosed settlement agreement and authorization to present our invoice for \$250,000.

**Background:**

Envirocare's lawsuit was filed pursuant to a Subcontract Agreement between BNI and Envirocare for excavation, transportation, storage and disposal of contaminated wastes from the FUSRAP Wayne site in Wayne, New Jersey. Envirocare was required by the terms of the Subcontract to provide BNI with performance and payment bonds, each in full value of the work to be performed. Envirocare would be reimbursed its costs to procure the bonds at an agreed to rate in the Subcontract. Envirocare procured payment and performance bonds for the full amount of the base work.

Envirocare informed BNI that it was unable to purchase and therefore could not provide performance and payment bonds for the optional work. Envirocare was in breach of the Subcontract. Being unable to cure the breach, Envirocare requested that a Pledged Collateral Account in the amount of \$6,000,000 be allowed to satisfy the payment and performance bond requirements. Under the circumstances, BNI was left with accepting Envirocare's offer of Pledged Collateral or terminating the Subcontract and attempting to find another subcontractor to complete Envirocare's Subcontract. The latter option was thought to have the potential of extending the schedule and increasing the cost due to the time involved in reprocurement and potential rework. In a good faith effort to meet the Government's needs, complete the project within budget and to remedy Envirocare's breach, BNI accepted Envirocare's offer of Pledged Collateral, thereby modifying the original terms of the Subcontract. The Pledge Collateral, however, is not equivalent of the required bonds. Despite the fact that Envirocare was no longer required to incur

costs and purchase bonds, Envirocare demanded payment for performance and payment bonds as if they had been purchased.

**Summary:**

The Subcontract established the agreed to rates for reimbursement of Payment and Performance bonds at \$25 per \$1,000 of Optional Work performed. See Subcontract Table III, Pay Item 4.0 for Optional Work No. 1, Table IV Pay Item Nos. 5.1 and 9.0 for Optional Work No. 2; and Table IV for Optional Work No. 13.0. (Tab 1)

Envirocare was unable to obtain Payment and Performance bonds to cover the value of the Optional Work. Bechtel and Envirocare entered into a separate 1998 Security Agreement whereby Envirocare's Mr. Khosrow B. Semnani set aside personal securities and funds as pledged collateral in an account with Prudential Securities Incorporated. (Tab 2) Bechtel accepted the pledge collateral to enable Envirocare to meet their bonding obligation and perform the Optional Work. Bechtel, in accepting the pledged collateral in lieu of bonds did not expect to be billed or to reimburse Envirocare any costs associated with the pledge collateral account. Allowing Envirocare the opportunity to meet the bonding requirements through pledge collateral and continue performance of the subcontract was considered adequate compensation or consideration.

Envirocare submitted a Partial Release of Claims and Certificate of Payment, dated September 24, 1999 for Subcontract 499. Included and attached to the Partial Release of Claim document was a listing of additional items that Envirocare was seeking equitable adjustment. The cost of Payment and Performance bonds were listed as \$150,000. (Tab 3)

Numerous discussions were held and many letters were exchanged, with Envirocare attempting to substantiate their request for payment and Bechtel denying payment.

Envirocare filed a lawsuit in the United States District Court For the District of Utah, Central Division on November 18, 2002, seeking reimbursement of the bonding fees and applicable interest. (Tab 4). Bechtel responded to the complaint on January 3, 2003. (Tab 5) Motions and Cross Motions for Summary Judgment were filed by Envirocare and Bechtel. (Tabs 6-10)

The Court issued its Order and Opinion on December 22, 2003, granting Envirocare's Motion for Summary Judgment. (Tab 11) The Judge found that Envirocare is entitled to \$25 for every \$1,000 of worked performed for the Optional Work. However, Bechtel still had a dispute with Envirocare as to the final price of the Optional Work. Envirocare stated the value of the Optional Work to be \$10,529,056.00, but Bechtel records reflected the value to be \$9,777,505.47. Based on the value of work, the payment owed Envirocare for the bonding costs were either \$263,226 (25 x \$10,529,056) or \$244,437 (\$25 x \$9,777,505).

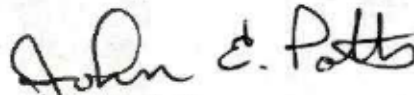
Although the Order on the summary judgment was filed with the Clerk of Court, the judgment could not be filed until there was a determination on the final amount of the optional work. Bechtel 's options were to either reach an agreement with Envirocare on

the value of the optional work or go to trial to determine the final cost of the optional work. Bechtel chose to enter negotiations in an effort to minimize further litigation costs and to reach a final settlement with Envirocare on the amount owed for bonding and for any other issues or claims. Accrued interest for the bonding costs being one such issue.

Negotiations with Envirocare were initiated in early January 2004 and concluded with a final settlement being reached and formalized in a Mutual Release and Settlement Agreement dated February 17, 2004. (Tab 12) Final settlement check of \$250,000 was issued on February 18, 2004.

If you have any questions or require further information, please call me at 865-220-2309 or contact me by email at [jepotts@bechtel.com](mailto:jepotts@bechtel.com)

Sincerely,



John E. Potts  
Project Manager – FUSRAP

cc: B. Hebel (w/encl)  
A. Roos (w/encl)