Department of Energy  
Washington, DC 20585  
February 23, 2006

MEMORANDUM FOR THE SECRETARY

THROUGH: DAVID K. GARMAN
UNDER SECRETARY FOR
ENERGY, SCIENCE AND ENVIRONMENT

FROM: RAYMOND L. ORBACH
DIRECTOR
OFFICE OF SCIENCE

SUBJECT: ACTION: Authorize the Office of Science to Negotiate a New Lease for the Stanford Linear Accelerator and Initiate the Construction Phase of the Linac Coherent Light Source ("LCLS")

ISSUE: Whether you should authorize the start of construction of the LCLS while the Department continues to negotiate the terms of a new lease or lease extension of the underlying property with Stanford University?

BACKGROUND: DOE is proposing to build the LCLS at the Stanford Linear Accelerator Center ("SLAC") which is situated on Stanford University land that DOE occupies under a 50-year lease ("the Lease") that expires in 2012. Upon expiration of the Lease, title to DOE's SLAC facilities transfers to Stanford University.

The Federal Acquisition Regulation (FAR) requires that prior to constructing facilities on non-federal land, the Head of the Contracting Activity must determine that the underlying contract with the landowner contains a provision that the Agency Head considers adequate to protect the government's interests. (FAR Subsection 45.309(a))

Given the imminent expiration of the Lease and DOE's proposal to build the LCLS on the SLAC site, Stanford is offering to enter into a new long-term lease for the SLAC site subject to five specific conditions. Also, in order to keep the LCLS on schedule, initiation of construction would probably have to be authorized by the Department before a new lease could be negotiated. A detailed discussion of the issues is attached as Attachment 1.
DISCUSSION: Construction of the LCLS, a strategic and mission critical DOE investment, is slated to begin in March 2006. The facility is scheduled to become operational in the third quarter of FY2009. The LCLS will have no less than a 30-year beneficial operating life.

Due to the near-term expiration of the Lease (2012), DOE directed SLAC not to initiate the construction phase (Phase 2) of the LCLS construction subcontract without DOE approval. Separately, Stanford provided a letter of assurance (Attachment 2) stating that they would agree to enter into a new lease with DOE for that portion of the SLAC site necessary for the LCLS and current SLAC operations (the "required property") subject to five conditions.

The Office of Science ("SC") believes that four (4) of the five (5) conditions set out in the letter of assurance pose no significant risk to DOE and are acceptable as a basis for negotiating a lease. The major issue from DOE's standpoint, is agreeing to condition (4), the long-term cleanup standard, which Stanford officials have consistently stated is their major issue with respect to any lease extension or renewal.

While the cognizant environmental regulator has determined that the SLAC site should be cleaned-up to a "residential cleanup standards for un-restricted land use," (emphasis added) (see Attachment 3), it is not clear to what degree that standard would meet the unqualified "unrestricted" cleanup standard proposed by Stanford in the letter of assurance.

PROPOSED ACTION: Authorize SC to: 1) permit SLAC to initiate the construction phase of the LCLS construction subcontract; and 2) immediately begin negotiations with Stanford for a new Lease or Lease extension/renewal based on conditions 1, 3, and 5 of the letter of assurance that further provides that

(a) the lease term will cover at least the full 30-year anticipated operational life of the LCLS (i.e., at least thru 2039); and

(b) DOE's long-term cleanup obligations for the SLAC site shall be in accordance with the cognizant regulator's SLAC site cleanup Order.

Pros –

• The LCLS project could proceed with minimal schedule impact thereby maintaining the United States
projected 6-7 year head start in the global race underway with Korea, Japan, and the European Union.

- DOE’s obligations to clean up the SLAC site, including the establishment of cleanup standards would follow the conventional regulatory process.

Cons –

- Stanford’s Vice President and General Counsel has stated that Stanford’s Board of Trustees may refuse to agree to a new Lease or lease extension/renewal if DOE does not agree/commit to Stanford’s SLAC cleanup conditions.
- If negotiations fail to yield a satisfactory compromise, DOE terminates the project losing the benefits of the $59 million previously invested in the project.

SENSITIVITIES: Shutting down the LCLS would result in the loss of scientific leadership in photon science utilizing a free electron laser. Additional risk is the loss of the first of a kind light source that underpins the DOE mission in photon science. LCLS will be the largest Office of Science program supported at SLAC when LCLS becomes operational in 2009.

POLICY IMPACT: LCLS is critical to the future of the Physical and Energy Sciences in the United States, and it offers the advantage of a 5-6 year head start in the global race underway with Korea, Japan, and the European Union. Stopping LCLS would equate to relinquishing the U.S.’s lead and differentiation in the global science community. Finally, the ability of the United States to train and develop the best physicists in the world, and recruit the same from other countries would be compromised.

RECOMMENDATION: Authorize the proposed action and execute the attached Determination which will satisfy the requirements of FAR 45.309(a).

Attachments

CONCURRENCE:  General Counsel/ Hill  02/15/06
    Environmental Management/Levitan  01/31/06

APPROVE:  [Signature]
03/08/06

DISAPPROVE:  

DETERMINATION THAT ADEQUATE PROVISIONS EXIST TO PROTECT THE GOVERNMENT'S INTERESTS IN BUILDING THE LINAC COHERENT LIGHT SOURCE ON STANFORD UNIVERSITY LAND

As Head of an Agency (DOE) as defined in FAR 2.101, I have determined pursuant to FAR 49.309(a)(3), that the following provisions are adequate to protect the Government’s interests in constructing the Linac Coherent Light Source ("LCLS") at the Stanford Linear Accelerator Center ("SLAC"), which is situated on Stanford University land that has been leased to the Department under a long term lease.

DOE and Stanford University will enter into a new long-term lease or lease extension/renewal for that portion of the SLAC site necessary for the LCLS and current SLAC operations. Such lease will be in accordance with Stanford University’s November 18, 2005 letter (attached) to the DOE Stanford Site Office except as otherwise provided below:

1) The required property will be leased to DOE for a term that will cover at least the full 30-year anticipated operational life of the LCLS (i.e., at least thru 2039); and,

2) At closure, DOE will complete any remaining remediation in accordance with the cognizant regulator’s SLAC site cleanup Order.

Samuel W. Bodman
Secretary of Energy

March 8, 2006
Date