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DOE boosts Yucca team

Second major legal firm hired for waste project

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WASHINGTON -- With work piling up toward a June deadline, the Department of Energy has hired a second major law firm at a potential cost of \$109 million to handle legal matters for the Yucca Mountain Project.

Morgan, Lewis & Bockius LLP was awarded a contract Sept. 26 to prepare and defend a formal license application for the government to build the Nevada nuclear waste site, DOE officials confirmed.

One attorney said it has the potential to become the richest legal contract ever for a nuclear project, and signals a new level in the Energy Department's resolve to complete the project.

It also began raising questions as to whether Nevada should beef up its own legal resources as it fights plans to bury high-level nuclear waste 100 miles northwest of Las Vegas.

"That certainly is a bit more money than we were planning to spend or have available to spend, but despite that I feel very confident about our chances," said Bob Loux, director of Nevada's Agency for Nuclear Projects.

The state has been budgeting between \$2 million and \$3 million annually for legal help, and had been looking to increase that amount after DOE enters a critical licensing phase of the Yucca project in summer 2008.

The Energy Department and Morgan, Lewis signed for an initial contract period that runs through Dec. 31, 2011, for \$47.7 million, with five succeeding one-year options, according to information supplied by DOE.

If carried to the full term, the company could earn up to \$108.89 million. DOE authorized an initial payment of \$400,000.

Morgan, Lewis, which describes itself as one of the world's largest law firms and has a thriving nuclear practice, becomes the second big firm working for the Energy Department on the Yucca project.

Hunton & Williams, LLP already is on the job. The firm based in Richmond, Va., was hired in 2004 on a five-year contract paying \$45 million.

Legal sources said for the amounts being paid to the firms, about 30 lawyers or more could be assigned to the Yucca project, in addition to Energy Department in-house counsel.

By contrast, the state of Nevada is represented by a three-person firm, Egan, Fitzpatrick & Malsch, plus resources within the state attorney general's office.

DOE officials declined to supply a copy of the Morgan, Lewis contract pending review of a request filed under the Freedom of Information Act.

Besides providing more specifics of the work arrangements, the contract also would be expected to detail how DOE and Morgan, Lewis might be handling potential conflicts of interest.

Morgan, Lewis, one of only a handful of major law firms with nuclear expertise, represents more than a dozen utilities in separate nuclear waste lawsuits against the Energy Department.

Now Morgan, Lewis is working for DOE as well. Lawyers consulted Tuesday said it is probable but not known for certain that safeguards against conflict of interest were written into the contract.

Defending the contract, a DOE official who spoke on the condition of not being identified said the department approached three firms for the job and demanded "very strict and very specific requirements" to avoid conflicts.

Morgan, Lewis has erected a "Chinese wall" between its litigation practice that represents utilities, and the nuclear regulatory practice that is working for DOE, the official said.

"There are different attorneys and the file systems are segregated and they even have different locations and different computer systems," the official said.

Morgan, Lewis did not comment Tuesday on its arrangements or the contract in general.

Joseph Egan, Nevada's lead outside counsel, said the Morgan, Lewis contract could become the richest payday for lawyers working on a nuclear energy matter.

"I am not aware of anything that even comes close," Egan said, except perhaps for the DOE contract awarded to Hunton & Williams three years ago.

Rep. Shelley Berkley, D-Nev., said she has asked the Energy Department to detail the contract, saying it sends "red flags" concerning potential conflicts of interest.

"In the past, DOE has said that law firms handling cases for nuclear power plant operators should not be allowed to also represent the Energy Department during the licensing process for Yucca Mountain," Berkley said.

"I would hope that the prohibition on these potential conflicts of interest is still in place and that those who entered into this contract are not actively involved in such litigation," Berkley said.

Berkley added she was "staggered by the sheer dollar amount contained in this contract."

Part of the job for the attorneys is harmonizing the Energy Department's planned 7,000-page repository application with federal laws and technical regulations.

Another part consists of defending the application in courtroom-style hearings before the Nuclear Regulatory Commission.

DOE sources said it became clear the department needed more lawyers for the undertaking, and that Morgan, Lewis was perceived as having more current nuclear licensing experience than Hunton & Williams.

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