We had hardly finished typing the last article on timekeeping "challenges" and associated legal settlements when we learned that our old friend, the Department of Energy's Hanford Site, had generated yet another legal settlement. The DoJ **press release** reported that—

Bechtel National Inc., Bechtel Corporation (Bechtel), AECOM Energy & Construction, Inc. (AECOM), and their subsidiary Waste Treatment Completion Company, LLC (WTCC), **agreed** to pay $57,750,000 to the U.S. Department of Justice (DOJ) to resolve claims that Bechtel and AECOM fraudulently overcharged the U.S. Department of Energy (DOE) in connection with its operation of the Hanford Waste Treatment Plant (WTP) project.

Yep, that was a nearly $58 million settlement.

The latest settlement is in addition to a 2016 settlement of $125 million, in which the DoJ **reported** —

Bechtel National Inc., Bechtel Corp., URS Corp. (predecessor in interest to AECOM Global II LLC) and URS Energy and Construction Inc. (now known as AECOM Energy and Construction Inc.) have agreed to pay $125 million to resolve allegations under the False Claims Act that they made false statements and claims to the Department of Energy (DOE) by charging DOE for deficient nuclear quality materials, services, and testing that was provided at the Waste Treatment Plant (WTP) at DOE's Hanford Site near Richland, Washington. The settlement also resolves allegations that Bechtel National Inc. and Bechtel Corp. improperly used federal contract funds to pay for a comprehensive, multi-year lobbying campaign of Congress and other federal officials for continued funding at the WTP.

So $58 + $125 = $183 million in WTP-related legal settlements, and that figure excludes such additional costs as unallowable legal fees and the time and expense of internal resources being focused on non-value-added activities such as defending themselves. That's obviously a lot of money, and where does it come from? It comes from the corporate shareholders, of course. And at the same time, the Bechtel team received $5 million in award fees associated with its 2019 performance—"the best performance evaluation in three years," according to **this** news article. We suspect that big award fee payout didn't make up for the costs of the legal challenges.

Anyway, back to the current settlement. This one is a bit harder to understand; it's not black and white as most timekeeping "challenges" are. In this case, the government alleged that "Bechtel

and AECOM management were aware of and failed to prevent inflated labor hours being charged to DOE, and for falsely billing DOE for work not actually performed." But when you dig a bit deeper, those "inflated labor hours" and the "work not actually performed" were related to craft employees' "idle time."

Idle time is time spent not working. Often, it's for legitimate reasons, such as waiting for paint to dry or for a weld to cure. Maybe somebody is waiting for an inspector to show up before moving on to the next operation. Most construction contractors (including shipbuilders) have some amount of idle time. It's a known and accepted thing. Obviously, from a schedule management perspective it should be minimized, but there is really no way to get it to zero.

In this case, the government alleged that—

Between 2009 and 2019, Bechtel and AECOM admitted to overcharging DOE for unreasonable and unallowable idle time experienced by craft personnel. Bechtel and AECOM further admitted to failing to schedule and carry out adequate work to keep craft personnel sufficiently occupied and productive, resulting in excessive idle time. Bechtel and AECOM also admitted that Bechtel and AECOM management knew that craft personnel were experiencing idle time due to management's failure to assign sufficient work, and that this idle time could, at times, last 'several hours.' Finally, Bechtel and AECOM admitted that they improperly billed DOE labor costs for the unreasonable idle time and continued doing so for years, even after Bechtel and AECOM knew they were under investigation for the improper billing practices.

Based on the foregoing, we can see that the basis of the allegations was that the cost of idle time was "unreasonable." Costs that are unreasonable are unallowable. The concept of "reasonableness" is discussed in the FAR at 31.201-3. It's a bit long-winded and nuanced; but it has to be, because it's inherently a subjective standard. Despite the subjective nature of the evaluation, the FAR states that "no presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable."

Thus, when challenged, the burden was on the Bechtel team to show why the incurrence (and amount) of idle time was reasonable and normal for the type of project. Apparently, the Bechtel team couldn't make a case for the idle time or else couldn't show that they were actively trying to minimize it. Because the team couldn't meet their burden of proof, the "unreasonable" idle

time costs became unallowable labor costs, and the team was then on the hook for having invoiced unallowable costs to DOE, which led to the allegations that the False Claims Act was violated.

A critical point was that (allegedly) the Bechtel WTP team was on notice that the DOE considered the idle time costs to be unreasonable and unallowable, but kept billing the idle time anyway. The DoJ announcement quoted the DOE Inspector General as saying "[the Bechtel team] engaged in a massive scheme to submit tens of millions of dollars of false claims to the U.S. Government for unallowable and unjustified costs over a period of years – a pattern of conduct that continued even after U.S. authorities notified the defendants that these costs were unallowable." There is a way to continue to claim disputed costs but, apparently, the Bechtel team didn't follow it. (See FAR 31.201-6(b).)

In addition to the $58 million settlement, the DoJ reported that—

Bechtel and AECOM also entered into a 3-year independent corporate monitor **agreement** , which requires Bechtel and AECOM to pay for a full-time independent monitor and assistant monitor selected by the USAO. These monitors will enjoy broad access to Bechtel's and AECOM's systems, meetings, personnel, and other information pertaining to labor charging. The monitors will also report directly to the United States. Bechtel and AECOM face additional liquidated damages of up to $10 million if they violate the terms of the monitoring agreement, provide false information, or fail to immediately correct any identified DOE contract issues.

As with many False Claims Act settlements, this one started with *qui tam* relators filing suit on behalf of the U.S. Government. In this particular matter, the four relators will split $13,750,000—which is about 23 percent of the total amount of the Bechtel team's settlement.