United States Senate
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

January 23, 2019

The Honorable Rick Perry
Secretary
Department of Energy
1000 Independence Ave., SW
Washington, D.C. 20585

Dear Secretary Perry:

I have significant concerns with the Department of Energy's (DOE) recent notice of intent[1] to award a no-bid contract to a subsidiary of Centrus Energy Corporation (Centrus). The $115 million, three-year, no-bid contract intends to (1) deploy an enrichment technology by October 2020 and (2) demonstrate the ability to produce advanced nuclear fuel for use in research and development. Congress did not authorize or fund this project in the 2019 annual budget and appropriations process. This contract appears to use American taxpayer funding to bailout Centrus, an unsuccessful business that relies on commercial relationships with Russian state-owned corporations to stay in business.

The federal government has a long history with Centrus and its predecessor, the United States Enrichment Corporation (USEC). In 1992, Congress created a government-owned corporation, known as USEC, to operate the nation's two enrichment facilities. Four years later, Congress established USEC as a private entity to enrich uranium for both civilian and defense needs. USEC ceased enrichment activities in 2013. That same year, USEC declared bankruptcy and, in 2014, changed its name to Centrus. In 2015, Centrus hired Daniel Poneman as its President and Chief Executive Officer. Mr. Poneman served as President Obama's Deputy Secretary of Energy from 2009 through 2014.

More recently, Centrus has served as a salesman of Russian enriched uranium for Russia's state-owned nuclear fuel supplier, known as TENEX. In 2011, USEC entered into a contract with TENEX, "for the 10-year supply of low enriched uranium (LEU) beginning in 2013 that will build on USEC's long-term relationship with TENEX."[2] The contract provided "USEC with continued access to Russian enriched uranium," which constituted about one-half of USEC's supply in 2011.[3] Centrus recently reaffirmed its ongoing relationship with Russian businesses. In addition to continued receipt of taxpayer funding, Centrus publicly stated that it can only

[1] Department of Energy Notice of Intent to Sole Source, "Solicitation Number: 89303519CNE000005," published January 7, 2019. Accessible at: https://www.fbo.gov/spg/DOE/PAM/HQ/89303519CNE000005_AddQA/listing.html

[2] Business Wire, "USEC Signs Multi-Year Contract with Russia's TENEX for Low Enriched Uranium Supply," March 23, 2011. Accessible at: https://www.businesswire.com/news/home/20110323006720/en/USEC-Signs-Multi-Year-Contract-Russia's-TENEX-Enriched

[3] *Id.*

maintain its operations "by also using revenues from selling imported enrichment – from Russia and elsewhere – to its U.S. nuclear reactor customers."[4]

For years, USEC/Centrus played a central role in advocating for and benefiting from illegal policies undermining our nation's uranium market. Specifically, DOE used publicly-owned uranium to pay USEC for environmental cleanup activities. The Government Accountability Office (GAO) repeatedly found DOE's transfers of uranium circumvented Congress' power of the purse and violated federal law.[5] DOE's uranium barters were also harmful to America's uranium producers. They artificially depressed the uranium market and resulted in cancelled projects and lost jobs in Wyoming and other western states.

DOE continues to fund environmental cleanup activities at the site of USEC's former facility, known as the Portsmouth Gaseous Diffusion Plant. It has historically been difficult for DOE and Congress to provide an adequate funding level for the facility's remediation in the absence of additional uranium barters. DOE's Office of Environmental Management oversees the costly and complex environmental remediation project. American taxpayers have paid about $4.5 billion over the last two decades to cleanup the site and DOE estimates the site needs an additional $13 billion of funding through 2040 to complete the task.[6]

I was pleased Congress and DOE were able to reach agreement to provide $30 million above the President's 2018 budget request and $60 million above the 2019 request to fully fund the Portsmouth environmental cleanup program. These funding levels assured DOE would not need to rely on the illegal uranium barter program for two years. I hope your 2020 budget proposal will reflect recent Congressional appropriations and fully fund Portsmouth cleanup activities through the appropriations process. If DOE is interested in spending additional funding at the Portsmouth site, that funding should be spent expediting environmental cleanup activities rather than rewarding Centrus with a no-bid contract.

I would also note that DOE's January 7th notice of intent contradicts congressional direction relating to Centrus' enrichment activities. In 2015, DOE terminated the Centrus demonstration project, known as the American Centrifuge Project. Since then, DOE has not sought nor has Congress provided funding to advance the demonstration project. The fiscal year 2019 appropriations bill did not authorize or fund this no-bid contract.[7]

DOE, through the National Nuclear Security Administration (NNSA), provides a fundamental service to support our nation's national security. NNSA manages the stockpile of enriched uranium for national defense needs, such as maintaining our nuclear deterrent, providing

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[4] Steptoe and Johnson, LLP, on behalf of Centrus, letter to U.S. Department of Commerce, "Comments in Section 232 National Security Investigation of Imports of Uranium (BIS-2018-0011), September 25, 2018. Accessible at: https://www.regulations.gov/document?D=BIS-2018-0011-0729

[5] Government Accountability Office testimony before the Committee on Environment and Public Works, "Department of Energy: Excess Uranium Transfers," March 8, 2017, GAO-17-472T. Accessible at: https://www.gao.gov/assets/690/683764.pdf

[6] Department of Energy FY 2019 Budget Justification, "Volume 5: Environmental Management," p. 98-99, 110. Accessible at: https://www.energy.gov/sites/prod/files/2018/03/f49/DOE-FY2019-Budget-Volume-5_0.pdf

[7] P.L. 115-244.

enriched material for international nonproliferation programs, and fueling our nation's nuclear-powered submarines and aircraft carriers.

In March 2017, NNSA issued a request for information[8] (RFI) to understand the need and opportunities to develop enrichment services for national defense purposes.[9] NNSA's RFI states "[t]he Department is conducting a thorough study of a wide range of options to ensure an enduring supply of enriched uranium to meet long-term national security and non-proliferation requirements and other Departmental needs."[10] The NNSA RFI specifically identifies the need for enriched uranium for the production of high-assay, low enriched uranium (HALEU).[11] This is the same stated purpose of the Centrus no-bid contract. I am at a loss why DOE's recent notice of intent does not align with NNSA's existing RFI process or stated enrichment requirements.

The notice does not acknowledge NNSA's solicitation or the fundamental difference between civilian and defense purposes. While DOE's *civilian* nuclear energy program would fund the award, the announcement implies the program would provide enrichment for *defense* purposes. The ambiguity resulting from this notice undermines DOE's critical and fundamental national security mission.

To provide a better understanding regarding the nature of DOE's notice of intent, please answer the following questions:

1. The notice states, Centrus "is the only U.S. owned and controlled entity with an existing NRC license that would enable it to meet DOE's schedule for the demonstration." According to Nuclear Regulatory Commission (NRC) documents, in fiscal year 2018, Centrus did not pay an annual fee, as required by law, to the NRC to maintain the license for the Gaseous Enrichment Demonstration Project. [12]

   Prior to issuing the notice, was DOE aware Centrus did not pay its 2018 annual fee to the NRC? If so, did DOE establish any requirements relating to the status of Centrus' NRC license to secure this no-bid contract?

2. Did DOE take into consideration Centrus' close commercial ties and business relationships with Russia's state-owned and state-subsidized nuclear corporations? If so,

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[8] Department of Energy, "Request for Information, DE-SOL-0008552 For Supply of Enriched Uranium," March 16, 2017. Accessible at: https://www.fedconnect.net/FedConnect/default.aspx?ReturnUrl=%2Ffedconnect%2F%3Fdoc%3Dde-sol-0008552%26agency%3Ddoe&doc=de-sol-0008552&agency=doe

[9] GAO recently found NNSA does not have a clearly defined need for enriched uranium. See: Government Accountability Office, "*Nuclear Weapons: NNSA Should Clarify Long-Term Uranium Enrichment Mission Needs and Improve Technology Cost Estimates,*" GAO-18-126. February 16, 2018. Accessible at: https://www.gao.gov/products/GAO-18-126 [Hereinafter GAO NNSA Cost Estimates]

[10] DOE RFI DE-SOL-0008552.

[11] High-assay, low enriched uranium is uranium enriched above five percent, which is currently used for commercial nuclear energy generation, but below 20 percent.

[12] Nuclear Regulatory Commission, "Revision of Fee Schedules; Fee Recovery for Fiscal Year 2018," NRC-2017-0026, June 25, 2018. See table VII and VIII. Accessible at: https://www.govinfo.gov/content/pkg/FR-2018-06-25/pdf/2018-13320.pdf

how will DOE assure American taxpayer dollars will not directly or indirectly support Centrus' relationship with Russian corporations?

3. Centrus will require uranium to demonstrate its enrichment technology.

    a. How much uranium will be necessary to complete the proposed demonstration project?
    b. Will the proposed contract require Centrus to purchase all needed uranium on the market?
    c. Will DOE require that Centrus purchase only American produced uranium for the project?
    d. Will DOE require that any successor commercial venture, which may extend from the demonstration project, use only American produced uranium?

4. Will the contract explicitly prohibit any funding or other form of compensation for any aspect of this no-bid contract to be derived from DOE uranium barters?

5. DOE previously assessed the value of Centrus' enrichment technology. According to GAO, a September 2015 DOE memorandum determined "the department had obtained the testing data it needed and determined that there was 'minimal incremental value' in continuing demonstration operations."[13] Further, since the 2015 termination of the demonstration project, Centrus has not been able to attract private investment to continue work on the project, thus demonstrating a lack of commercial viability of the technology.

    a. Has DOE reversed its 2015 determination?
    b. Has DOE reassessed the technology to determine the enrichment process would be commercially viable?
    c. Please provide a copy of the 2015 memorandum referenced by GAO. Please also provide any subsequent determinations or assessments relating to the memorandum.

6. The proposed demonstration facility is co-located with the Portsmouth Gaseous Diffusion Plant. DOE's notice of intent states the demonstration would be undertaken at a facility that Centrus is currently subleasing from DOE.

    a. How will DOE assure that Centrus, not American taxpayers, shall be responsible for any decontamination and decommissioning (D&D) costs associated with this demonstration or any ensuing commercial project that may take place at the site?
    b. Prior to conducting any activities at the site, will DOE conduct a full analysis of expected D&D costs associated with the demonstration project or any ensuing commercial project and provide the analysis to Congress?

7. The original notice of intent stated "[d]emonstrating the capability of U.S.-origin enrichment technology for the production of HALEU is the objective *because only U.S.-*

[13] GAO NNSA Cost Estimates, *supra* note 9.

origin technology would be capable of producing HALEU for use in any type of advanced reactor application, civilian or defense-related" (emphasis added).

On January 14, DOE issued a clarification that states the "the objective of this procurement is to demonstrate the capability of U.S.-origin enrichment technology for the production of HALEU because such HALEU could be used in any type of advanced reactors, *including defense reactors that require the use of HA-LEU produced using U.S.-origin technology*" (emphasis added).

a. What does the term "defense reactors" mean?
b. Please provide the Department of Defense (DOD) regulations that necessitate only U.S. nuclear technology for electricity procurement or civilian energy use at DOD installations.
c. Does the "U.S.-origin" requirement for nuclear technology extend to the entirety of the nuclear fuel supply chain, including American uranium production, conversion, and fuel fabrication activities? If not, how are the national security impacts of importing uranium from America's adversaries, like Russia, consistent with DOE or DOD's policy?

8. If the purpose of the contract is to meet enrichment needs for *defense* purposes, as referenced in the notice, why is DOE using *civilian* nuclear energy program funding?

9. How will DOE and NNSA consider Centrus' no-bid contract for civilian enrichment purposes as part of NNSA's ongoing solicitation to meet defense enrichment needs? Will Centrus be permitted to compete for funding under NNSA's solicitation while also spending the funding from this no-bid award?

10. How will DOE assess the success or failure of the demonstration project? For example, will demonstrating the enrichment technology be adequate to provide a long-term, durable supply of nuclear fuel, even if the fuel costs are not competitive with other NRC-licensed, civilian enrichment companies?

Thank you for your attention to this matter, and I respectfully request a response no later than February 8, 2019.

Sincerely,

John Barrasso, M.D.
Chairman