



DIVISION OF  
CORPORATION FINANCE

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549-4561

March 30, 2012

John Chevedden

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

Re: Fluor Corporation  
Incoming letter dated March 6, 2012

Dear Mr. Chevedden:

This is in response to your letters dated March 6, 2012 and March 7, 2012 concerning the shareholder proposal submitted to Fluor by James McRitchie. We also have received a letter on behalf of Fluor dated March 12, 2012. On January 11, 2012, we issued our response expressing our informal view that Fluor could exclude the proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your letters, we find no basis to reconsider our position.

Sincerely,

Jonathan Ingram  
Deputy Chief Counsel

cc: Ronald O. Mueller  
Gibson, Dunn & Crutcher LLP  
shareholderproposals@gibsondunn.com

March 12, 2012

VIA EMAIL

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

Re: *Fluor Corporation*  
*Stockholder Proposal of James McRitchie*  
*Securities Exchange Act of 1934—Rule 14a-8*

Ladies and Gentlemen:

On January 11, 2012, the staff of the Division of Corporation Finance (the “Staff”) issued a letter (the “No-Action Response”) advising our client, Fluor Corporation (the “Company”), that the Staff would not recommend enforcement action against our client if, in reliance on Rule 14a-8(i)(9), the Company omitted from its proxy statement and form of proxy for its 2012 Annual Meeting of Stockholders (collectively, the “2012 Proxy Materials”) a stockholder proposal (the “Proposal”) and statements in support thereof received from James McRitchie, who named John Chevedden as his designated representative (the “Proponent”). The Proposal relates to the right to call special meetings of stockholders.

On March 7, 2012, the Proponent submitted a letter to the Staff, in which he disputes language that was included in the Company’s preliminary proxy statement regarding the Company’s proposal to allow stockholders to call special meetings of stockholders (the “Company Proposal”).

Rule 14a-8(i)(9) authorizes the exclusion of a stockholder proposal “[i]f the proposal directly conflicts with one of the company’s own proposals to be submitted to shareholders at the same meeting.” The Company will include the Company Proposal in its 2012 Proxy Materials and will submit the Company Proposal for a stockholder vote at the 2012 Annual Meeting of Stockholders. Therefore, exclusion of the Proposal is appropriate.

As stated in the proxy statement, the Board has declared the Company Proposal advisable and is recommending that stockholders vote for it. The language that the Proponent cites is consistent with Section 242(c) of the Delaware General Corporation Law and was included in the preliminary proxy statement simply to reflect what is permissible under state law. Nevertheless, to resolve the Proponent’s concern, the Company will not reserve that right in

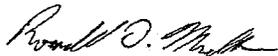
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its definitive proxy statement. Attached as Exhibit A is the complete text of the Company Proposal as it will appear in the definitive proxy statement.

Based upon the foregoing analysis, we believe that there is no need for the Staff to reconsider its decision set forth in the No-Action Response. We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to [shareholderproposals@gibsondunn.com](mailto:shareholderproposals@gibsondunn.com). If we can be of any further assistance in this matter, please do not hesitate to call me at (202) 955-8671 or Carlos M. Hernandez, the Company's Chief Legal Officer, at (469) 398-7375.

Sincerely,



Ronald O. Mueller

Enclosures

cc: Carlos M. Hernandez, Fluor Corporation  
James McRitchie  
John Chevedden

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**EXHIBIT A**

**AMENDMENT OF CERTIFICATE OF INCORPORATION TO  
GRANT HOLDERS OF AT LEAST 25% OF THE COMPANY'S OUTSTANDING SHARES OF  
COMMON STOCK THE RIGHT TO CALL A SPECIAL MEETING OF STOCKHOLDERS**

**Proposal 3**

Our Board of Directors has unanimously adopted a resolution for approval by our stockholders proposing amendments to our Amended and Restated Certificate of Incorporation (as amended to date, the "Certificate") to allow holders of at least 25% of the company's outstanding shares of common stock the right to call a special meeting of stockholders, subject to limitations and procedures described below.

Article Eleventh of the Certificate currently provides that special meetings of the stockholders may only be called by the Board or a Board committee and states that special meetings may not be called by any other persons except to the extent provided in the Certificate. Section 2.02 of our Amended and Restated Bylaws (as amended to date, the "Bylaws") contains an identical provision. Thus, stockholders do not presently have the right or ability to call a special meeting of the stockholders.

The Board's proposal is a result of its ongoing review of our corporate governance principles and also in response to recent stockholder attention and stockholder proposals on this matter. In developing this proposal, the Board (including all members of the Governance Committee) carefully considered the implications of amending our Certificate to allow stockholders to call a special meeting.

The Board recognizes that providing for a stockholder right to call special meetings is consistent with best corporate governance practices and further recognizes that this practice can enhance stockholder rights and Board accountability. However, special meetings can cause the company to incur substantial expenses and can be potentially disruptive to its normal business operations. Accordingly, the Board believes that special meetings of the stockholders should be extraordinary events that should not be held in close proximity to an annual meeting or when the matters to be addressed have been recently considered or are planned to be considered at another meeting. The Board would continue to have the ability to call special meetings of stockholders when fiduciary obligations or strategic concerns require.

In addition, the Board believes that a small minority of stockholders should not be entitled to utilize the mechanism of special meetings for their own interests, which may not be shared by the majority of stockholders of the company. Likewise, the Board believes that only stockholders with a true economic interest in the company and full voting rights in company shares should be entitled to exercise the right to call a special meeting.

In light of these considerations, the Board believes that establishing an ownership threshold of 25%, along with certain procedural requirements and limitations, in order for stockholders to call a special meeting strikes a reasonable balance between enhancing stockholder rights and adequately protecting stockholder interests.

As a result, the Board has considered the matter, adopted resolutions setting forth the proposed amendment to the Certificate, declared such amendment advisable and unanimously resolved to submit such amendment to our stockholders for consideration.

**The Amendment and Related Changes**

If the amendment is approved, Article Eleventh of the Certificate would be amended to allow stockholders that own at least 25% of the outstanding shares of common stock of the company the right, subject to limitations and procedures set forth in our Bylaws, to require the Secretary of the company to call a special meeting of the stockholders.

In addition, the Board has voted to amend Section 2.02 of our Bylaws contingent upon stockholder approval and implementation of the Certificate amendment. The Bylaw amendment would establish the procedures by which stockholders may require the Secretary of the company to call a special meeting. In order to ensure that stockholders seeking to exercise the right to call a special meeting have a full ownership interest in the company's stock, a stockholder would only be considered to own shares for which the stockholder possesses both the full voting rights pertaining to the shares and the full economic interest in (including the opportunity for profit and risk of loss on) the shares. Under this "net long" provision, borrowed or hedged shares would not count as "owned" shares, but shares that are loaned may count as owned shares provided the stockholder has retained full economic and voting rights over the shares.

The Bylaw amendment would impose certain procedural requirements on stockholders requesting such a meeting (including the provision of the same information required for stockholder proposals at annual meetings under our advance notice Bylaw provisions). The Bylaw amendment would also impose qualifications designed to prevent duplicative and unnecessary meetings by disallowing requests that:

- are not proper subjects for stockholder action under, or involve a violation of, applicable law;
- are received during the period beginning 90 days prior to the first anniversary of the date of the preceding year's annual meeting of stockholders and ending on the date that is 90 days after the most recent annual meeting of stockholders; or
- relate to an item of business that is identical or substantially similar to an item of business that was presented or is to be presented at any meeting of stockholders held or to be held within six months of the receipt of the request.

The Bylaw amendment would provide that a special meeting must be called within 90 calendar days after the receipt by the Secretary of the company of valid requests by holders of the requisite number of shares.

The general description of the proposed amendment to the Certificate set forth above is qualified in its entirety by reference to the text of the proposed amendment, which is attached as *Annex A* to these proxy materials. Additions to the Certificate are indicated by underlining and deletions to the Certificate are indicated by strike outs.

If approved, the amendment will become effective upon the filing of a Certificate of Amendment to our Certificate with the Delaware Secretary of State.

#### **Board Recommendation**

The Board of Directors recommends a vote FOR the amendment of our Amended and Restated Certificate of Incorporation to grant holders of at least 25% of the Company's outstanding shares of common stock the right to call a special meeting of the stockholders.

JOHN CHEVEDDEN

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

March 7, 2012

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 2 Rule 14a-8 Proposal**  
**Fluor Corporation (FLR)**  
**Special Shareholder Meeting Proposal**  
**James McRitchie**

Ladies and Gentlemen:

This responds to the December 21, 2011 company request to avoid this established rule 14a-8 proposal and the related *Fluor Corporation* (January 11, 2012) which granted no action relief.

The company March 2, 2012 preliminary proxy now states on page 63: "The Board retains discretion under Delaware law not to implement the proposed amendment [which resulted in this no action relief], even if approved by our stockholders."

The company no action request failed to disclose that the company proposal would be a lame op-out proposal.

In fact the no action request by Gibson Duun said exactly the opposite:  
"If the Company Proposal is approved by shareholders, the Company will make a conforming amendment to its Amended and Restated Bylaws."

The company preliminary proxy is thus a blatant last-minute breach of the company commitment.

Therefore due to this blatant breach of the company commitment at the very last minute, when it is most likely to escape timely detection, this is to urge that the Division of Corporation Finance allow this resolution to stand and be voted upon in the 2012 proxy.

Sincerely,



John Chevedden

cc: James McRitchie

Carlos M. Hernandez <carlos.hernandez@fluor.com>

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Division of Corporation Finance  
December 21, 2011  
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The Company's Board of Directors has approved submitting a Company proposal at its 2012 Annual Meeting of Shareholders requesting that the Company's shareholders approve an amendment to the Company's Amended and Restated Certificate of Incorporation. The amendment to the Amended and Restated Certificate of Incorporation would allow holders of 25% of the Company's outstanding common stock to call a special meeting of shareholders (the "Company Proposal"). If the Company Proposal is approved by shareholders, the Company will make a conforming amendment to its Amended and Restated Bylaws.

Pursuant to Rule 14a-8(i)(9), a company may properly exclude a proposal from its proxy materials "if the proposal directly conflicts with one of the company's own proposals to be submitted to shareholders at the same meeting." The Commission has stated that, in order for this exclusion to be available, the proposals need not be "identical in scope or focus." Exchange Act Release No. 40018, at n. 27 (May 21, 1998).

The Staff has stated consistently that where a shareholder proposal and a company proposal present alternative and conflicting decisions for shareholders, the shareholder proposal may be excluded under Rule 14a-8(i)(9). See *Danaher Corp.* (avail. Jan. 21, 2011) (concurring with the exclusion of a shareholder proposal requesting that the holders of 10% of the company's outstanding common stock be able to call a special meeting when a company proposal would allow the holders of 25% of outstanding common stock to call such meetings); *FirstEnergy Corp. (Rossi)* (avail. Feb. 23, 2011) (same); *Yum! Brands, Inc.* (avail. Feb. 15, 2011) (same); *Textron, Inc.* (avail. Jan. 5, 2011, recon. denied Jan. 12, 2011, recon. denied Mar. 1, 2011) (same); *Fortune Brands, Inc.* (avail. Dec. 16, 2010) (same); See also *ITT Corp.* (avail. Feb. 28, 2011) (concurring with the exclusion of a shareholder proposal requesting that the holders of 10% of the company's outstanding common stock be able to call a special meeting when an articles of incorporation amendment proposed by the company would allow the holders of 35% of outstanding common stock to call such meetings); *Liz Claiborne, Inc.* (avail. Feb. 25, 2010) (concurring with the exclusion of a shareholder proposal requesting a bylaw amendment to provide that the holders of 10% of the company's outstanding common stock be able to call a special meeting when a certificate of incorporation amendment proposed by the company would allow the holders of 35% of outstanding common stock to call such meetings); *Southwestern Energy Co.* (avail. Feb. 28, 2011) (concurring with the exclusion of a shareholder proposal requesting that the holders of 10% of the company's outstanding common stock be able to call a special meeting when a bylaw amendment proposed by the company would allow the holders of 20% of outstanding common stock to call such meetings); *Marathon Oil Corp.* (avail. Dec. 23, 2010) (same).

The Staff previously has permitted exclusion of shareholder proposals under circumstances almost identical to the instant case. For example, in the situation addressed in *Danaher Corp.* (avail. Jan. 21, 2011) cited above, the Staff concurred in excluding a proposal

**JOHN CHEVEDDEN**

\*\*\* FISMA & OMB Memorandum M-07-16 \*\*\*

March 6, 2012

Office of Chief Counsel  
Division of Corporation Finance  
Securities and Exchange Commission  
100 F Street, NE  
Washington, DC 20549

**# 1 Rule 14a-8 Proposal  
Fluor Corporation (FLR)  
Special Shareholder Meeting Proposal  
John Chevedden**

Ladies and Gentlemen:

This responds to the December 21, 2011 company request to avoid this established rule 14a-8 proposal and the related *Fluor Corporation* (January 11, 2012) which granted no action relief.

The company March 2, 2012 preliminary proxy now states on page 63: "The Board retains discretion under Delaware law not to implement the proposed amendment [which resulted in this no action relief], even if approved by our stockholders."

The company no action request failed to disclose that the company proposal would be a lame op-out proposal.

This is to request that the Division of Corporation Finance allow this resolution to stand and be voted upon in the 2012 proxy.

Sincerely,



John Chevedden

cc: James McRitchie

Carlos M. Hernandez <carlos.hernandez@fluor.com>

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**AMENDMENT OF CERTIFICATE OF INCORPORATION TO  
GRANT HOLDERS OF AT LEAST 25% OF THE COMPANY'S OUTSTANDING SHARES OF COMMON STOCK THE  
RIGHT TO CALL A SPECIAL MEETING OF STOCKHOLDERS**

**Proposal 3**

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Article Eleventh of the Certificate currently provides that special meetings of the stockholders may only be called by the Board or a Board committee and states that special meetings may not be called by any other persons except to the extent provided in the Certificate. Section 2.02 of our Amended and Restated Bylaws (as amended to date, the "Bylaws") contains an identical provision. Thus, stockholders do not presently have the right or ability to call a special meeting of the stockholders.

The Board's proposal is a result of its ongoing review of our corporate governance principles and also in response to a stockholder proposal. In developing this proposal, the Board (including all members of the Governance Committee) carefully considered the implications of amending our Certificate to allow stockholders to call a special meeting.

The Board recognizes that providing for a stockholder right to call special meetings is consistent with best corporate governance practices and further recognizes that this practice can enhance stockholder rights and Board accountability. However, special meetings can cause the company to incur substantial expenses and can be potentially disruptive to its normal business operations. Accordingly, the Board believes that special meetings of the stockholders should be extraordinary events that should not be held in close proximity to an annual meeting or when the matters to be addressed have been recently considered or are planned to be considered at another meeting. The Board would continue to have the ability to call special meetings of stockholders when fiduciary obligations or strategic concerns require.

In addition, the Board believes that a small minority of stockholders should not be entitled to utilize the mechanism of special meetings for their own interests, which may not be shared by the majority of stockholders of the company. Likewise, the Board believes that only stockholders with a true economic interest in the company and full voting rights in company shares should be entitled to exercise the right to call a special meeting.

In light of these considerations, the Board believes that establishing an ownership threshold of 25%, along with certain procedural requirements and limitations, in order for stockholders to call a special meeting strikes a reasonable balance between enhancing stockholder rights and adequately protecting stockholder interests.

As a result, the Board has considered the matter, adopted resolutions setting forth the proposed amendment to the Certificate, declared such amendment advisable and unanimously resolved to submit such amendment to our stockholders for consideration.

**The Amendment and Related Changes**

If the amendment is approved, Article Eleventh of the Certificate would be amended to allow stockholders that own at least 25% of the outstanding shares of common stock of the company the

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- are not proper subjects for stockholder action under, or involve a violation of, applicable law;
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- relate to an item of business that is identical or substantially similar to an item of business that was presented or is to be presented at any meeting of stockholders held or to be held within six months of the receipt of the request.

The Bylaw amendment would provide that a special meeting must be called within 90 calendar days after the receipt by the Secretary of the company of valid requests by holders of the requisite number of shares.

The general description of the proposed amendment to the Certificate set forth above is qualified in its entirety by reference to the text of the proposed amendment, which is attached as *Annex A* to these proxy materials. Additions to the Certificate are indicated by underlining and deletions to the Certificate are indicated by strike outs.

→ The Board retains discretion under Delaware law not to implement the proposed amendment, even if approved by our stockholders. If the Board exercises such discretion, it will publicly disclose that fact and the reason for its determination. Otherwise, if approved, the amendment will become effective upon the filing of a Certificate of Amendment to our Certificate with the Delaware Secretary of State. ←

**Board Recommendation**

The Board of Directors recommends a vote FOR the amendment of our Amended and Restated Certificate of Incorporation to grant holders of at least 25% of the Company's outstanding shares of common stock the right to call a special meeting of the stockholders.