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7 **UNITED STATES DISTRICT COURT**
8 **NORTHERN DISTRICT OF CALIFORNIA**
9 **SAN FRANCISCO DIVISION**

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11 AMEC ENV'T & INFRASTRUCTURE,
12 INC.,

13 Plaintiff,

14 v.

15 INTEGRAL CONSULTING, INC., and
16 others,

17 Defendants.

Case No. 12-cv-01735 SC (NC)

ORDER GRANTING AMEC'S
PROPOSED ELECTRONIC SEARCH
TERMS

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19 This order supplements the August 28, 2014, order concerning electronic search terms
20 to be used by Integral in searching for data responsive to requests from AMEC. Dkt. No.
21 133. The Court has reviewed the supplemental filings by both parties. Dkt. Nos. 137, 145.
22 The Court is also aware that there are pending requests to the trial judge to amend the
23 complaint by adding defendant David Averill, and to continue discovery and the trial.

24 In its most recent order, the Court denied AMEC's vague request for Integral to
25 produce "derived documents" and directed the parties to confer further in an effort to agree
26 on a protocol for electronic search terms. Dkt. No. 133. The parties were not able to agree
27 on a protocol. Integral reports that using AMEC's search terms would result in 411,426
28 document "hits" and would cost Integral between \$1.48 and \$3.3 million to process and

1 produce. Dkt. No. 137. In response, AMEC disagrees with Integral’s methodology in
2 estimating its costs, but proposes to further narrow certain of the search terms. Dkt. No.
3 145.

4 As an initial matter, the Court reaffirms its commitment to secure the just, speedy,
5 and inexpensive determination of this action. Fed. R. Civ. P. 1. The Court is concerned
6 that discovery litigation in this case is being used by both parties less as a search for truth
7 and more as a cudgel to impose costs on a business adversary.

8 The Court finds that AMEC’s requests seek relevant information. The disputed
9 question is whether the burden of producing the information outweighs its probative value.
10 The Court is not persuaded that Integral’s cost estimates are accurate. And Integral has not
11 proposed a less expensive alternative that would provide equivalent information to AMEC.

12 On the other hand, the Court is concerned that AMEC may be motivated to make the
13 discovery process as expensive as possible for Integral.


14 For these reasons, the Court GRANTS the revised relief sought by AMEC in Dkt. No.
15 145, but with a twist. To be specific, Integral must run for all custodians, including those
16 identified by AMEC in footnote 6, the search terms identified by AMEC in its “AMEC’s
17 Narrowed Terms” chart in Dkt. No. 145. Integral must produce all responsive data to
18 AMEC by November 12, 2014.

19 The twist is that the Court will later consider cost sharing between the parties for this
20 production. The possibility of cost sharing will give the parties common motivation to
21 make this production as efficient as possible. When Integral has completed its production
22 in accordance with this order, it must file a notice that it has done so and state whether it
23 will be seeking cost sharing. Within 7 days after completing the production, Integral may
24 file a motion seeking cost sharing, supported by declaration(s) setting forth its actual
25 expenses. AMEC may oppose the motion within 7 days. In ruling on a cost sharing
26 request, the Court will be interested in the cooperation, communication, and reasonableness
27 shown by each side.

1 Any party may object to this nondispositive discovery ruling, but must do so within
2 14 days. Civil L.R. 72-2.

3 IT IS SO ORDERED.

4 Date: October 9, 2014

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7 Nathanael M. Cousins
8 United States Magistrate Judge
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