



June 5, 1998

Mr. Stephen Michelsen
Office of Contract and Resource Management (HR-53)
U.S. Department of Energy
1000 Independence Avenue SW
Washington, D.C. 20585

Subject: Revisions to the Department of Energy Acquisition Regulation (DEAR)

Dear Mr. Michelsen:

The Hanford Advisory Board has conducted in-depth reviews of the Department of Energy's (DOE) proposed cleanup of the Hanford Site and has provided many letters of consensus advice concerning programs, cost, and contractual arrangements during the last four years.

The following are comments, as requested in Federal Register Notice 69, dated April 10, 1998, on the proposal to revise the fee policies and related procedures for management and operating contracts and other designated contracts.

Many of your proposed changes have been incorporated into the current Project Hanford Management Contract (PHMC) and we concur with them, especially Section 970.5204-XX, "Conditional Payment of Fee or Incentives." This section prescribes a contract clause for conditional payment of fees or incentives. The Contractor must meet minimum requirements stated in the clause or the Contracting Officer may make unilateral determination to reduce the earned fee, profit or share of cost savings as described in paragraphs (a) through (d) of this clause. This includes minimum requirements for: (a) environment, safety & health, (b) catastrophic event, (c) specified level of performance and (d) cost performance.

One of the proposed contract changes states that performance incentive contracts are preferred and base fees will not be allowed without DOE-Headquarters approval. Under performance incentive contracts with no base fee, the contractor must perform for the performance period prior to payment of fee.

This approach of performance and then payment of fee is being diminished by another clause in the PHMC entitled "Provisional Payment of Fee." This clause allows interim payments of performance fee, not base fee, before the government makes its determination of earned fee. Under this arrangement, the contractor receives payment of fee prior to performance. We recommend that DOE not use the clause entitled "Provisional Payment of Fee" in its future incentive contractual arrangements in which fee is based on performance, so long as provision is made to cover the contractor's interim non-reimbursed costs.

We believe that when the contractor obtains up to 60 percent of the fee pool on a provisional basis, it

does not send the message to the contractor that performance needs to be the driving force in the contract. Also, if the government pays a provisional fee, it should still pay the earned fee on a timely basis after the performance period. Under the PHMC, untimely payment of earned fee has an adverse affect on employees' team spirit because they share in a percent of the earned fee. We find that it is difficult for the employees to relate performance to a late earned fee.

Very Truly Yours,

Merilyn B. Reeves, Chair
Hanford Advisory Board

cc: John Wagoner, Department of Energy
Alice Murphy, Designated Federal Official
Randy Smith, Environmental Protection Agency
Dan Silver, Washington Department of Ecology

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