



Department of Energy
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DEC 6 1995

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Ms. Marilyn Reeves, Chair
Hanford Advisory Board
22250 Boulder Crest Lane, S.E.
Amity, Oregon 97101

Dear Ms. Reeves:

RESPONSE TO HANFORD ADVISORY BOARD ADVICE #32

On October 5, 1995, the Hanford Advisory Board (HAB) issued Advice #32 directed to the Tank Waste Remediation System (TWRS) Privatization Project. In preparing our response to Advice #32, we have also re-reviewed HAB Advice #18 and #24. The U.S. Department of Energy (DOE) has identified ten specific major issues and/or concerns. The following responses are submitted for your review and acceptance. They are intended to meet requirements for final closure on each item.

Request Risk Analysis paper -- The Risk Analysis paper was a discussion paper prepared by DOE in July 1995, entitled Candid Evaluation of Risks of the Tank Waste Remediation System and the Approach Being Pursued By the Department of Energy. The report is a listing of potential risks which could impact the successful implementation of the privatization effort. It is not a radiological hazards analysis as perhaps assumed by some members of the HAB. After review by General Counsel, the report was determined to be procurement sensitive and could not be publicly distributed without potentially compromising DOE's position in the competitive acquisition of waste processing services. Risks that have not already been resolved are being tracked for the purpose of mitigation.

An adequate fall back position established -- The need for a dual path approach to ensure a sufficient fall back position is recognized. DOE is maintaining technical "core competency" (worker expertise) at the Hanford Site as a privatization approach is developed. This commitment is reflected in the \$10M in funding set aside and earmarked for critical retrieval, immobilization and disposal sub-projects, and an additional \$2.5 M from EM-50 to fund technology development activities in the event that an alternate path is required. These activities are funded in the Multi-Year Project Plan (MYPP) for FY96. During recent TPA milestone negotiations with the Washington State Department of Ecology (Ecology), milestones were developed for the alternate path forward should privatization fail.

Development of waste products specifications -- As part of the procurement process, waste performance specifications were written and are included in the RFP. Please refer to Section C.6, Technical Specification Summaries, pages C-21 through C-38. Technical issues associated with high and low-level waste forms, as well as the waste feed specifications have been researched at Hanford for more than a decade. The performance standard is driven by the established requirements of DOE Order 5820.2A and draft 40 CFR Part 193 on Ground Water Protection. The privatization RFP process required that decisions on these issues be made prior to RFP issuance. With the release of the draft RFP, the optimum time to provide input is during this public comment period (November 20, 1995-January 5, 1996). DOE believes that public comments will ultimately improve the final RFP, therefore, HAB review and comment is welcomed and appreciated.

Request for Source Evaluation Board involvement -- DOE senior management agreed to consider including non-DOE personnel as ex-officio members of the Selection Evaluation Board (SEB). However, after evaluation, it is the opinion of the Source Selection Official, John Wagoner; TWRS Program Manager, Jackson Kinzer; and SEB Chairman, Jerry Bellows that inclusion of HAB members or other members of the public could increase the likelihood of a protest. DOE recognizes that this decision is disappointing to Hanford stakeholders, however, DOE bears the responsibility to ensure success of the procurement effort and believes that minimizing potential risks is in the best interest to achieve a successful and timely contract award.

HAB doubts DOE's ability to reduce costs via this privatization approach -- DOE is aware of the HAB's concern regarding the reduction of cost through privatization (HAB Advice #18). Cost studies have been prepared by third party consultants and compared to the estimate prepared by the Management and Operations contractor. The results of this comparison indicated that savings are likely under a privatization approach. Government cost estimates are being used in the contract selection process and cannot be given to the public prior to the three-contractor to two-contractor bid award (down select) in early 1998. However, members of DOE and the privatization contract support team are available to discuss key issues and approaches found in the draft RFP.

Evaluate promising privatization alternatives -- In the April HAB presentation we reviewed the four basic strategies within which operation of programs and facilities of interest to the government can be conducted: Government-Owned, Government-Operated (GOGO); Government-Owned, Contractor-Operated (GOCO); Contractor-Owned, Government-Operated (COGO); and Contractor-Owned, Contractor-Operated (COCO). Two of these strategies involve operations conducted by government employees (GOGO, COGO). At this time, these two options are not being considered for the TWRS privatization effort. The remaining two strategies involved are a government owned, contractor operated installation (GOCO), and a contractor owned, contractor operated installation (COCO).

The Office of Environmental Management has established the concept of privatization as contractors owning and operating the processes, equipment and facilities involved in the remediation effort. The intent is to realize the effectiveness of private sector management and therefore minimize the government's direct involvement in the execution of the effort. This concept was established pursuant to the findings of the DOE Contract Reform Initiative and within the context of the ideas presented by the Environmental Corporation of America for a privatized high-level waste vitrification plant as part of the Tank Waste Remediation System. This privatization concept, based entirely on private ownership and control, interested both stakeholders and the regulators. They encouraged DOE to explore further the concept of privatization, so much so that this approach was reflected in the required evaluation by DOE of this concept as a milestone in the Tri-Party Agreement.

The classic definition of privatization specifies; the disinvestment by the government of the physical assets serving as the basis for a business or service. The current contract concept -- government-owned, contractor-operated (GOCO) framework -- represents only a minor variation of the contractor-owned, contractor-operated (COCO) practice and does not represent privatization. The Office of Environmental Management (EM) does not consider the GOCO concept as privatization and subsequently did not spend significant effort evaluating it beyond the experienced understanding of this established contracting method. The GOCO method of contracting does little to achieve the objectives of the Department to shift more of the responsibility, accountability and liability to the contractor. The contractor's financial investment in facilities is a fundamental means of intrinsically transferring accountability and liability to the contractor. Pursuing the HAB's preferred options would defeat the basic objective, therefore DOE will pursue privatization as defined by EM.

DOE unilaterally determines failure -- DOE is responsible for fulfilling the requirements of the Tri-Party Agreement. This point is a well established regulatory principle and has been recognized by Ecology. As a regulator, with requirements for independent oversight, Ecology does not have authority to participate in the management of the remediation operations; it is also appropriate under the traditional requirements for separation of responsibilities to assure that the regulator is not reviewing his own work. DOE has made progress in negotiating with Ecology those parameters under which an alternate path forward shall be undertaken, including substantive schedule milestones and attendant penalties for failure to attain.

Define the Public Involvement Process -- During the procurement process, DOE will attempt to maintain a meaningful public involvement process. With the release of the draft RFP (November 20, 1995), the Department is able to discuss in detail many of the specific items and issues of concern previously determined procurement sensitive or restricted (e.g., worker health and safety, waste product and performance specifications, labor issues, some cost data, technical feasibility). Until the final RFP is released (scheduled for February 15, 1996) the Department encourages Board members and other stakeholders to maintain a dialogue. Some restrictions again will be imposed

due to the mechanics of the procurement process once the final RFP is released.

Currently, project staff are poised to provide a public workshop arranged and coordinated with the Board and other stakeholder groups to explore issues of concern. The Board or HAB Committee may also consider conducting a question-and-answer session with project staff and perhaps Source Evaluation Board members. Bill Taylor or other DOE officials will continue to provide briefings to the HAB and its committees.

As you know, some information cannot be fully disclosed without compromising the Department's competitive and negotiating positions. As long as such information has economical value to the Department in a procurement action, it cannot be released per requirements of the Competition in Contracting Act and the Procurement Integrity Act. As government employees, we face significant sanctions for release of such information.

Concern with meeting the TPA schedule -- On November 17, 1995, DOE and Ecology developed replacement milestones for the privatization effort. Although near term tasks associated with the baseline GOCO approach will not be attained due to funding restrictions, all major milestones will be achieved. Additionally, \$10M has been earmarked for project core competency to ensure both technology advances are maintained and key technical talent is retained. This decision, jointly agreed upon by the Assistant Secretary and the HAB, ensures that a dual path forward is maintained so the TPA's 2028 final cleanup milestone is achieved and the technical expertise exists if an alternate path becomes necessary.

Concern with two pilot plant/two larger production plant approach -- The U.S. DOE decision to privatize the TWRS immobilization activities created an approach which contained several constraints. Based on the studies performed by DOE, a two phased, competition driven, fixed price, contractor-owned, contractor-operated service contract was deemed most probable to succeed.

The two plant approach created the atmosphere of competition throughout the life of the program. Without competition, a single contractor can drive the unit cost of product to unacceptable levels. Once committed to this, DOE structured the entire privatization approach including the language used in almost every section of the RFP as a competition driven cost savings program.

In summary, DOE recognizes the values established by the Hanford Advisory Board. The TWRS Privatization Project has established a set of guiding principles which incorporates several of these values. As the privatization effort progresses, we are mindful of applying and implementing the values and principles. We believe these will help improve our approach and ultimately the desired outcome. These principles are attached.


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DOE encourages members of the Hanford Advisory Board to read the draft RFP. We look forward to receiving Member comments which will help us improve the final document. Should you have any questions, I encourage you to contact Bill Taylor, TWRS Privatization Project Manager, at (509) 372-3864.

Sincerely,


John D. Wagoner
Manager

Enclosure

Principles Embedded in TWRS Privatization

- ✓ **Fulfill TPA commitments**
- ✓ **Shifts significant responsibility, accountability, and liability to vendor**
- ✓ **Makes vendor responsible and accountable for cost and technical performance**
- ✓ **Plant/operation, vendor owned, vendor operated**
- ✓ **Vendor responsible for environmental protection/compliance**
- ✓ **No reduction to worker/general public safety/health protection**
- ✓ **Government purchases products/services against performance specifications**
- ✓ **Acquisition of products/services under fixed price contract**
- ✓ **Establish competitive framework for cost control**
- ✓ **Reduction of life cycle cost**
- ✓ **Phased learning/continuous improvements starting with pilot plants**
- ✓ **Vendors own sufficient technology; department focus on high risk, potentially high payoff technology development**

