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**Department of Energy**  
Richland Operations Office  
P.O. Box 550  
Richland, Washington 99352

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AUG 30 2001

Mr. Todd Martin, Chair  
Hanford Advisory Board  
1933 Jadwin, Suite 135: G1-04  
Richland, Washington 99352

Dear Mr. Martin:

**PRINCIPLES FOR NEW AND EXISTING HANFORD CLEANUP CONTRACTS**

Thank you for your advice on the Hanford Advisory Board (HAB) principles for new and existing Hanford cleanup contracts. The U.S. Department of Energy, Richland Operations Office (RL) appreciates the HAB's perspective on this issue and the lengthy discussions by the HAB members required to arrive at this consensus advice. In order to more completely respond to your advice, attached is information that identifies how RL plans to use the HAB advice.

You recommended in your letter to me dated June 8, 2001, that RL representatives meet with the HAB's Budget and Contracts Committee to discuss disagreements in understanding of existing contract requirements. We believe this is an excellent idea and agree to do so. In the past, RL has met with the HAB's Budget and Contracts Committee prior to the full HAB meeting and prior to any formal advice being crafted and sent. We believe that this was a beneficial process for both parties. We suggest that we continue this practice to try to resolve, early in the process, any open issues/concerns that the parties may have.

If you have any questions, please contact me, or W. Wade Ballard, Assistant Manager for Planning and Integration, at (509) 376-6657.

Sincerely,

Keith A. Klein  
Manager

AMI:WWB

Attachment

cc w/attach:

- C. Clarke, EPA
- T. C. Fitzsimmons, Ecology
- M. Gearheard, EPA
- J. H. Roberson, EM-1
- R. E. Siguenza, EnviroIssues

Response to HAB advice #121  
HAB Consensus Advice: New and Existing Hanford Contracts  
Letter from Keith Klein dated 8/30/01

Mr. Todd Martin  
01-AMI-025

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cc w/attach:

U.S. Senators (OR)

Gordon H. Smith

Ron Wyden

U.S. Senators (WA)

Maria Cantwell

Patty Murray

U.S. Representatives (OR)

Earl Blumenauer

Peter DeFazio

Darlene Hooley

Greg Walden

U.S. Representatives (WA)

Norm Dicks

Jennifer Dunn

Richard Hastings

George Nethercutt

State Senators (WA)

Pat Hale

Mike Hewitt

State Representatives (WA)

Jerome Delvin

Shirley Hankins

1. **When entering into new contracts and performance measures, the U.S. Department of Energy (DOE) must manage its contract terms and baselines to ensure compliance with the schedule contained in the Tri-Party Agreement (TPA). Contracts should authorize and direct the contractor to perform the full scope of work included in the TPA. DOE must not make unilateral changes in work scope or schedule, which are inconsistent with the TPA.**

Response: We generally agree and have tried to be consistent with this principle in our contract formulations and negotiations. There is a provision in the FHI contract which subjects FHI to penalties for missing TPA and Defense Nuclear Facilities Safety Board milestones. However, like most rules there are exceptions. Compliance inconsistencies could exist because (1) basic safety issues for workers or the public could take priority over TPA work; (2) it may be physically impossible to meet TPA milestones; (3) funds may not be appropriated to meet TPA milestones; and (4) there could be major cost penalties associated with the TPA milestone sequence. An important point to consider in this regard is that contracts can be modified. In many cases, the exigency of the situations may require that DOE has to take an action and negotiate with the regulators after the fact. In the recent case of the resequencing of the Spent Nuclear Fuel Program activities to reflect the Alternative Fuel Transfer Strategy (AFTS), DOE approved the Baseline Change Request (BCR) for the AFTS before modifying the TPA. Although we met with the U.S. Environmental Protection Agency (EPA) early and often throughout the process, DOE did not strictly adhere to the HAB principle.

- a) **Contract decisions should never pre-empt regulatory and TPA processes, which include public review and comment of proposed changes to the TPA.**

Response: Public comment and review of proposed changes to the TPA only occurs when major milestones are changed. With over 1,100 milestones in the TPA it would be impractical to have public comments for each change.

- b) **If DOE is actively seeking a change in its legal obligations under a consent order, decree or agreement, this can be noted in the contract, and be within the allowable scope of work if the change to the agreement is approved.**

Response: We agree, which highlights what we stated earlier that contracts can be changed.

- c) **The scope of work for the contract should not direct the contractor to perform work that is not required to comply with either the TPA, or any other legal requirements, as a higher priority than work to meet the milestones of the TPA, with the exception of work needed for safety and continuity of operations.**

Response: We generally agree but the AFTS example above would be an example of an exception.

- 2. **Work to comply with all TPA and other legal requirements should always be prioritized ahead of other contractually authorized work, including stretch and super stretch incentive fee work. Contractors should not unilaterally determine, without DOE approval, which work authorized by the contract they will pursue. DOE must consult with the regulators, HAB, and the public before approving such work.**

Response: Stretch and super stretch work can only be pursued if the baseline work is achieved in a given year. TPA milestones are included in the baseline work for the year; thus, TPA baseline work takes priority over stretch and super stretch work. We agree with the first part of the HAB principle.

We agree with the second part as well. DOE contractors cannot unilaterally determine which work they will pursue. Section H of the Fluor Hanford, Inc. (FHI) contract states: "The accelerated workscope must be identified and authorized by a baseline change request approved by the DOE Richland Operations Office Manager."

We disagree with the last part of the HAB principle. The negotiations on stretch and super stretch incentives are complex and dynamic, and not compatible with a public process. Remember, stretch and super stretch work is only an acceleration of the baseline work, not new work.

- 3. **Objective performance measures should be relied on for fee determination and use of subjective evaluation should be reduced.**

Response: This was a primary tenet of our new contract with FHI and is central to our annual negotiation on Performance Incentives (PI) with Bechtel Hanford, Inc.

- 4. **All contracts should require independent validation of all baseline costs to insure they are necessary and reasonable, including indirect overhead costs (see advice #77, 85, and 87).**

Response: DOE fully intends to require an independent validation of the baseline costs submitted by our contractors. Further, we will validate costs for indirect services provided to DOE. We have required FHI to reduce baseline costs by \$400 million over the next five years in order to meet its PI's. We believe a large fraction of those savings will come from reducing internal indirect costs. We have no intention of monitoring the ratio of direct costs to indirect costs, other than to ensure government approved accounting principles are being adhered to.

- 5. **Selection criteria for new contractors should ensure that institutional knowledge is retained and efforts are integrated with other related work.**

As part of the selection criteria, all respondents to a Request for Proposal for a prime DOE contract are required to submit a transition plan. This plan outlines how incumbent staff will be transitioned into the new corporate structure, thus retaining the institutional knowledge; further, it outlines a process for meeting with other prime contractors during the transition period to ensure all interfaces are identified, and all work is integrated.