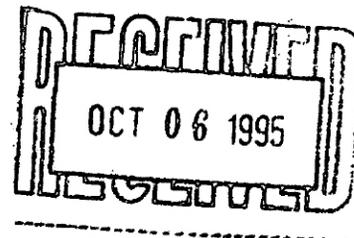




Department of Energy

Richland Operations Office
P.O. Box 550
Richland, Washington 99352



OCT 6 1995

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

Dear Ms. Reeves:

RESPONSE TO HANFORD ADVISORY BOARD (HAB) CONCERNS

We appreciate your letter dated June 7, 1995, outlining advice from the HAB regarding the Tank Waste Remediation System (TWRS) privatization initiative. Your letter identified several issues that the Board wanted addressed. We will continue to work with you, the Board members and stakeholders to assure a full and thorough understanding of the bases underlying privatization of the TWRS and the means to achieve our goals. We agree that remediating the tank waste situation is essential and that the current contracting methods and proposed approach need to be changed.

The first issue identified was the ability of the U.S. Department of Energy (DOE) to enter into long-term legal and financial commitments with private contractors that do not affect budget until outlays occur. DOE currently has significant flexibility with regard to the length of contracts, exceeded. No additional legislation would be needed for the Phase I because DOE can enter into contracts for up to 10 years in length with renewal options up to five years in length, as provided in the Atomic Energy Act (Section 161 (u)(2)). DOE is authorized to enter into multi-year contracts for up to 10 years for building a facility and the goods and services it provides, excluding renewal options, and renewal options of five years at a time for the delivery of goods and services. Currently we see no limitation to the proposed approach based on contracting considerations.

Budgeting requirements will be tied to the expected spending rate of the vendors. This is not expected to be fully understood until proposals are received and analyzed. If DOE enters into a contract, it will be necessary for DOE to request the funds required to support the funding profiles to which it has agreed. To initiate a contract for a privatized effort, sufficient Budget Authority (BA) will be required to cover costs for termination if it is done for the convenience of the government. Budget Outlays (BO) will not be required until there is a requirement to make a payment. Based on the schedule for the implementation of the TWRS under a privatized situation, significant BO will not be required until Fiscal Year 2001.

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We want to make a separate point about the funding to be made available in the budget. If we failed to take action to correct the current inadequacies in the contracting arrangement for TWRS, it is not likely that DOE would get significant funding for the TWRS. Only through the pursuit of a more imaginative and aggressive privatization approach have we been able to develop support for suitable budgets necessary to move forward on a schedule comparable to that specified in the Hanford Federal Facility Agreement and Consent Order (Tri-Party Agreement).

In addition, two other initiatives are linked to the execution of the new contracting method:

- DOE is conducting a Contract Reform Initiative and that task force has already recommended that all activities should be assessed for the feasibility to out-source them. This initiative is also expected to recommend ways to improve the pace of the contracting process.
- Senator Slade Gorton and Representative Richard (Doc) Hastings are aggressively supporting privatization efforts at Hanford. They are submitting legislation in this session of Congress to give the Secretary of Energy the authority to commit to long-term contracts, up to 30 years.

The second issue dealt with the need that DOE must clearly define and hold consistent contract specifications and regulatory requirements up-front. We recognize this need. The strategy for implementing the TWRS privatization has numerous unknowns and complexities, but it is not impossible to effectively define or execute. Issues, such as the nature and structure of regulatory oversight, private financing and long-term contracting are examples of unknowns that have been or are being addressed. They all have answers and, once decisions are made, dedicated teams of people will be assigned to address and resolve these issues. We also recognize that those specifications and requirements which we are not able to define initially can result in change orders for DOE, increasing the overall cost of privatization which is contrary to our reason for selecting a fixed-price type of contract. DOE will be required to effectively define the specifications and requirements.

The third issue states that a privatization plan must not result in health and safety or environmental impacts that are greater than those in the current Tri-Party Agreement and must show a real cost savings advantage. A major objective is to improve the effectiveness of safety programs; in some cases this will mean eliminating some requirements that are expensive and personnel-intensive but which provide no added value in the achievement of safe working conditions. One of the fundamental principles of the privatization initiative has been to protect worker health and safety while minimizing the environmental impacts in comparison to the baseline TWRS Program.

While privatization is a means of changing DOE's contracting approach, this contracting method would change from a government-owned/contractor-operated (GOCO) cost-plus award-fee contract to a contractor-owned/contractor-operated (COCO) fixed-price requirements contract for services that produce products meeting specifications. DOE recognizes that the TWRS Program is complex, with significant environmental and safety concerns; this will affect the care with which any changes will be made. As a result, DOE is pursuing oversight by different agencies in three different areas which include the following:

- For environmental protection and compliance, the oversight will be provided by Washington State organizations such as the Department of Ecology (Ecology) and the Department of Health. This is not a change from the current Tri-Party Agreement baseline approach.
- Responsibility for conventional industrial and occupational safety oversight will go to the Occupational Safety and Health Administration (OSHA) or the Washington Industrial Safety and Health Agency (WISHA)
- Radiological safety oversight can be provided by DOE for the demonstration phase; this can provide time for the Nuclear Regulatory Commission (NRC) to stabilize its changing regulatory requirements to allow it to take on this responsibility during the subsequent full-scale production phase. DOE is now preparing the high-level requirements for radiological safety oversight for a COCO facility.

We recognize your concern regarding the analysis of alternative concepts. The alternatives considered are contractual in nature. Enclosed is an outline of the principal considerations within the proposed privatization approach. These can be achieved through a privatization scheme based on COCO facilities providing services; they cannot be achieved to the degree desired through a situation that involves GOCO facilities. Many issues of importance to improving the contracting method were covered by the Department's Contract Reform Initiative Task Force, and this specific effort is an extension of that previous work.

There are risks in pursuing privatization; however, the existing Tri-Party Agreement baseline program was also certain to fail within the context of the Federal budget.

DOE is currently offering opportunities for an open process and exploring other ways to accommodate the needs of stakeholders. Mr. Jackson Kinzer, Assistant Manager for the TWRS Program, is providing for program review meetings to be held monthly or on a schedule that best suits the needs of the stakeholders. Agenda items for these reviews are being established by HAB members and other stakeholders based on their information needs. Items being discussed at these meetings focus on TWRS issues, including privatization efforts. Other formal interactions, such as one-to-one phone calls or conference calls with members of the HAB, are currently being used to enhance this open dialogue.

Ms. Marilyn Reeves
95-RTI-093

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In addition, Mr. Kinzer committed on September 6, 1995, to conduct a public workshop that would present the draft Request For Proposal (RFP) and discuss issues associated with this document. Disk copies of the draft will be available to the public in addition to electronic copies via Internet. An "informal" comment period will be announced requesting input by mid-January so that comments can be considered for incorporation into the final RFP. Please note that this strategy above is based on a decision to proceed with the Privatization Request for Proposal by the Secretary of Energy.

We look forward to working with you to further identify methods of establishing and maintaining an "open process" and resolving any remaining concerns. You may contact me at (509) 376-7395 or Mr. Jackson Kinzer at (509) 376-7591.

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