



Department of Energy

Richland Field Office

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Dear Messrs. Day and Jansen:

HANFORD FEDERAL FACILITY COMPLIANCE AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) - MILESTONE M-14-00 (M-14)

We have received your letter of March 11, 1993. The U.S. Department of Energy Richland Field Office (RL) appreciates your willingness to provide clear guidance in regard to M-14-04, and further appreciates your timely response. However, it is now apparent that a serious failure of communication occurred in the negotiations on M-14 in regard to the concept of when an analytical laboratory becomes "operational." In your letter you have indicated that to meet the regulators' understanding of what was intended by the term "operational," the laboratory must be fully capable of receiving and timely processing a full 80% of the analytical samples from the Hanford Site. It was RL's understanding in negotiations that "operational" was to be defined in terms of common industry usage, i.e., that the facility would be fully permitted, equipped and staffed, and capable of handling samples, but that a ramp-up period would be allowed after this date to allow the laboratory to reach capability to manage a full 80% sample load.

Very serious consequences would follow from the definition of "operational" put forth by the regulators. The federal Competition in Contracting Act (CICA) requires that an agency, in conducting a procurement, provide for as much competition as possible given the government's legitimate needs. Since this is a Westinghouse Hanford Company (WHC) procurement, CICA does not apply. However, WHC is subject to the "Federal Norm" which embodies the intent of the competition requirements found in CICA. If the "Federal Norm" competition policy is not followed, it can lead to CICA type actions by those participating in this procurement action. There has already been serious concern raised by potential offerors over the restriction to the local area. A further time restraint of the nature you have suggested may limit competition so far as to effectively eliminate it entirely. If a procurement protest on this basis is brought and sustained, RL will be in the very serious position of starting the request for procurement (RFP) process over again with the result of very serious delays, and would further compromise the ability to obtain timely processing of analytical samples. This would neither benefit RL nor the regulators.

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Subject: HANFORD FEDERAL FACILITY COMPLIANCE AGREEMENT AND CONSENT ORDER (TRI-PARTY AGREEMENT) - MILESTONE M-14-00 (M-14)		

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