



Department of Energy

Washington, DC 20585

March 17, 2004

Mr. James A. Ajello, Chair
Environmental Management Advisory Board
U.S. Department of Energy
Room 5B-171
1000 Independence Avenue, SW
Washington, DC 20585

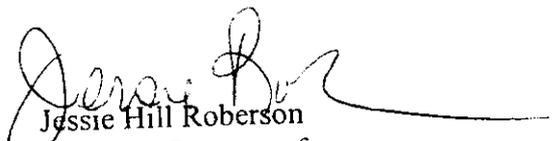
Dear Mr. Ajello:

The purpose of this letter is to express my appreciation for the Environmental Management Advisory Board's (EMAB) observations and recommendations contained in the November 2003 report. The Environmental Management (EM) accelerated cleanup program will use and implement EMAB's observations and recommendations as appropriate to help us achieve our mission. EM has already taken steps to address some of the recommendations as discussed in the enclosure to this letter. Also included in the enclosure are detailed responses to each of the 22 observations and recommendations.

You also asked that I provide further guidance on any new directions I would like the EMAB to pursue. I agree that the Hanford site should serve as the case study for evaluating performance against expectations. However, I request that the EMAB approach this effort for the Richland Operations Office only.

Thank you for the Board's November report. If you have any further questions, please call me at (202) 586-7709 or Mr. Eugene C. Schmitt, Deputy Assistant Secretary for Environmental Cleanup and Acceleration, at (202) 586-0755.

Sincerely,


Jessie Hill Roberson
Assistant Secretary for
Environmental Management

Enclosure

cc: J. Melillo, EM-33



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Responses to the November 21, 2003, EMAB Team Report

Steps Already Taken to Address Recommendations

The Office of Environmental Management (EM) has already taken numerous steps to address some of the EMAB's recommendations contained in the Board's November 21, 2003, Team Report. For example, establishing and monitoring progress towards program metrics has been a priority for EM. In the new EM organization, the Assistant Secretary established the Office of Project Planning and Controls. This office has, and will continue to gain, expertise in the management, tracking and monitoring of performance measures. Also, as the EMAB recommended, this office will use an earned value management system to improve program and project management.

In the area of improving contracting practices, EM created the Office of Acquisition Management and also established the position of Field Procurement Advisor. This action will lead to addressing many of the EMAB's recommendations. For example, one of the Board's recommendations is to designate an additional executive-level support team committed to improving the Source Evaluation Board (SEB) process so that any lessons-learned can be dispersed throughout EM. A Contract Management Advisory Council, consisting of three senior EM executives that reports to the Assistant Secretary, has already been created. One of the functions of this Council is to improve the SEB process and share lessons-learned across the complex.

The third area of the report focused on Risk-Based End States (RBES). Identifying clearly defined RBES for each of our cleanup sites is one of the Assistant Secretary's top priorities. Each EM site is to obtain input from their regulators, local governments, and stakeholders during the development of their end state vision.

Detailed Responses to the 22 Observations and Recommendations

Observations and Recommendations for Improving EM Metrics

- 1. The new EM corporate performance measures are an improvement over previous efforts to measure program management performance.*

In October of 2002, EM established a new set of corporate performance measures for the EM program. EM's new corporate performance measures are quantitative and focus on the accomplishment of risk-reducing actions which lead to site closure. The new set of 16 corporate performance measures clearly establish site expectations and accountability, enabling EM to more comprehensively track progress against its accelerated risk reduction and closure objectives.

- 2. Implementation of an earned value management system to ensure that cost, schedule and technical aspects of the contracts are truly integrated is a major step forward, and a key component of program and project management.*

EM recognizes the need to continue to improve upon the progress made to date to further develop project management techniques and associated cost and schedule measures. EM will have validated baselines for all of its sites approved by the end of FY 2004, at which time an earned value management system will be used to improve our ability to monitor progress and accountability across the complex. In addition, EM will use critical path analyses to accelerate cleanup by concentrating on accelerating those tasks that are crucial to the scheduled completion of the work.

- 3. It would be useful to document risk reduction in a more definitive manner. Possible metrics could include reduction in risks due to improved health and safety procedures, reduction of a site's footprint, and reduction in financial and performance risks due to greater project definition.*

EM's past efforts to develop such a risk reduction methodology have had limited usefulness (e.g., development of risk data sheets to document risk reduction). A risk-based methodology is something other federal agencies (e.g., the Environmental Protection Agency) and private industry with a similar scope of work have struggled to develop. Given the team's early proposal/suggestion for EM to develop such a methodology, we requested that the team identify any ongoing efforts either in the federal government or private industry which could be potentially applicable to EM. No such methodologies were identified.

We believe that the most meaningful, straightforward way to demonstrate true risk reduction is portrayed through the "working off" of EM's 16 corporate performance measures in the context of each measure's life-cycle. EM's corporate performance measures are outcome oriented and capture the scope of work and wide range of risks associated with the program's cleanup efforts. As "on the ground" work is accomplished, leading to the ultimate completion of an end state, true risk reduction is achieved and reflected in EM's corporate performance measures.

It is EM's position that any proposed additional corporate measures would either be supportive of or inherent in the program's current set of corporate performance measures.

- 4. Training EM personnel in the management, tracking, and monitoring of the new performance metrics will be essential to ensure the accuracy and usefulness of the EM database.*

A continued emphasis on "training" in this area is essential in guaranteeing the corporate performance measure data collected is of a high quality and representative of site progress to date.

Observations and Recommendations for Improving EM Contracting

- 5. EM should consider gathering information on contracting and fee incentive models from firms who design and operate global environmental remediation projects and evaluate the different approaches they use in terms of their potential applicability to EM program mission requirements.*

We concur with this recommendation, and have previously attempted to gather such information for incorporation into its contracts and procurement processes. EM will incorporate this type of information into its procurement efforts. EM will also incorporate these approaches into its future contracts where appropriate and permitted by the Federal Acquisition Regulation.

6. *EM should first determine whether it is the actual DOE contract bidding process or DOE contract liability requirements that limit new, large contracting firms from entering the EM cleanup market.*

The contractor's bid/no bid decision process is certainly an important part of the contracting process. They take into account all factors, including profit incentives and liabilities. On the other hand, DOE has certain requirements that must be met by contractors large and small. EM wants the best contractor available to complete its work and plans to provide sufficient incentive to attract world-class companies with first-rate employees. EM agrees that an assessment of the bidding process and liability requirements may improve acquisition strategies and lead to better bids. EM will review this issue to determine if changes are needed.

7. *When developing contractual mandates for contractors, it is recommended that EM limit its procedural mandates and its supervisory role to allow contractors to take on responsibility for performing the work and absorbing any risks (as stipulated in the contract).*

EM is incorporating this perspective into several procurements that are being prepared at this time, and has already begun emphasizing the need to minimize procedural mandates, such as through the DOE-approved "Necessary and Sufficient" requirements tailoring process in DOE P 450.3. While DOE is also providing its contractors the necessary latitude to complete their tasks through increased emphasis on performance-based contracting, DOE is also increasing the accountability of contractors to demonstrate performance against their contracts, and rewarding good performance where warranted and ensuring that poor performance is corrected. Performance-based contracting also allows a greater opportunity for contractors to assume responsibilities and risks, as appropriate. From a supervisory perspective, DOE will continue to hold its contractors accountable for performance, worker safety, and protection of the public and worker health and the environment. EM will review the effectiveness of its current efforts and will make changes as appropriate to further emphasize the right procedural mandates, with a focus on contractual performance, including allowing contractors to take on responsibility and risks as appropriate, worker safety, and protection of public and worker health and the environment.

8. *Offering an expanded range of contract vehicles to vendors that more closely matches individual risk to reward for specific task segments and different project tasks could provide more flexibility to potential vendors in making bid/no bid decisions. In addition, the potential exists to reduce an overall project's cost by reducing allowances for uncertainty. Under a procurement process in the private sector, contractors are often allowed to define project scope and ask for permission to submit segmented (phase) proposals, which can lead to lower overall project costs. EM's role in this approach would be to set outcome, schedule, and performance goals. In this regard, EM should consider using performance-based contracting more extensively throughout its program.*

In this way, EM will encourage the contracting community to propose more innovative, effective, and efficient approaches to waste reduction and accelerated cleanup.

Virtually all of EM's major site contracts are performance-based. HQ contracts, including GSA supply schedule contracts include performance-based requirements. EM has already begun asking questions of the contracting community and its sites concerning what other alternative contract mechanisms would function better for projects or sites that have unique attributes. EM will continue to explore the possibilities in this area, including developing a better understanding of the breadth of contract vehicle opportunities, institutionalizing this understanding, and as appropriate, recommending approaches for situations that have similar attributes.

9. *One very expensive component that bears heavily on a potential contractor's bid/no bid decision is project-bonding costs. EM usually requires that the entire job be bonded. It is recommended that EM review its bonding requirements with the objective of breaking out those job elements where there is enough risk to warrant bonding and only require bonding for those portions. This could result in substantial savings to a potential contractor.*

One of the topics selected for discussion at the EM Small Business Workshop last July in Nashville, Tennessee dealt with bonding requirements. The small businesses in attendance identified bonding as an impediment to their contracting with DOE for environmental restoration projects. The firms indicated that in many cases bonds were not available, and if they were, the bonding requirement impacted the ability of the small businesses to secure commercial financing for contracts. While the focus at the Workshop was on small business firms, the Department's solution was to eliminate the bonding requirement on all cost reimbursement contracts. Removal of the bonding requirement is expected to result in cost savings for the firms, resulting in cost savings for the Government.

10. *EM's overhead costs for security and safeguard operations may be deterring contractors from meeting or exceeding performance goals. Clearly differentiating between allowable and unallowable costs and focusing on strategies that limit EM's overhead costs to only those required to perform the task in question could prevent a contractor from being held responsible for paying charges that are not necessary for the EM task being performed. This will reduce the contractor's bid and save DOE money in the process.*

Several procurements that are being prepared at this time include a greater emphasis on identifying and reducing the burden of overhead costs that do not contribute to the EM task being performed. This approach also is consistent with the increased emphasis on performance based contracting. EM will review the effectiveness of its current efforts and will make changes as appropriate to further reduce contractors' exposure to overhead costs that are unnecessary to mission completion.

11. *The evolving goals of EM's cleanup sites should be more tightly correlated with the performance indices contained in the Gold Chart and disseminated throughout the program, either through a top-down approach (goals would be established by the Assistant Secretary and incorporated into site cleanup contracts) or through a bottom-up approach (sites could modify contract with new*

tasks to accelerate closure, which would be translated into programmatic goals by the Assistant Secretary).

EM is incorporating such performance indices based on the Gold Chart metrics into its new contracts, as appropriate. EM will review the effectiveness of its current efforts and will make changes as appropriate to further link contract performance measures and rewards with DOE programmatic performance measures (e.g., Gold Chart metrics).

12. *EM's current contract incentive program is designed only to reward the contractor firm. It should consider including specific contract incentives for performance that, when awarded, would also flow-down through the contracting firm to reward and motivate valuable employees. This may attract a higher quality cadre of contractor personnel to work on EM projects.*

The contractor typically determines the compensation provided to its employees. EM has focused its contract incentives on the firm as a whole, believing that the opportunity for larger profits would motivate company leaders and employees alike to develop innovative methods to accelerate the work and therefore create a larger fee for the firm and potentially themselves. EM agrees that a mandatory flow-down of contract incentives may attract higher-quality personnel, and has tried this at Richland. EM will review this issue to determine the changes that are needed in the contract incentive program.

13. *To attract the finest in the contracting field, EM should consider investing in human capital improvements for both Federal and private sector employees. Specifically, the implementation of clearly defined career path models may allow the EM program to successfully compete for top-level leaders.*

EM agrees and is following DOE's lead for career development programs. Several EM procurement professionals have participated in one-year rotational assignments in private industry. As the EMAB suggested, EM will review the NNSA and Homeland Security Department's programs to determine how they can be incorporated into EM's human capital initiatives.

14. *Many large contracting firms are reluctant to subcontract tasks to small businesses because of risks stemming from higher overhead costs and performance uncertainty. EM may be able to encourage larger firms to compete for its projects by continuing a small business mentor/protégé program to address the uncertainties by providing incentives for large firms to contract out to small firms. The Department's small business outreach strategy proposes this type of approach.*

Both the Department and the Small Business Administration (SBA) have mentor protégé programs. The SBA program recognizes only mentor protégé arrangements with 8(a) firms. The Department's mentor protégé program is open to all small business socioeconomic categories. The Office of Environmental Management recently sponsored a question and answer session with experts from SBA and potential bidders to discuss mentor protégé relationships and impacts of SBA's affiliation rule on companies who submit joint proposals in response to Requests for Proposals for EM projects.

The Federal Acquisition Regulation requires that contracts in excess of \$500,000 (\$1,000,000 for construction) include a small business-subcontracting plan. The DOE Office of Small and Disadvantaged Business Utilization has notified all departmental elements that in FY 2004 and FY 2005, 50 percent of a prime contractor's subcontracts must be placed with small business firms.

The Department is continuing to work with SBA to increase the number of small business firms performing EM contracts.

15. *EM should designate an additional executive-level support team committed to improving the Source Evaluation Board (SEB) processes, so that any lessons-learned can be dispersed throughout EM in an expedited fashion.*

EM has been improving the acquisition process over the past two years. A Contract Management Advisory Council consisting of EM executives was established to review contract and acquisition strategies from a corporate perspective and to ensure lessons-learned are applied throughout the complex. A new headquarters Office of Acquisition Management was recently created to evaluate contract performance, develop acquisition strategies, analyze performance-based incentives, identify opportunities for small businesses, and support SEBs. This new office will provide general oversight, executive staff, along with executive staff from around the EM complex, to implement and improve the SEB process.

Observations and Recommendations for End-States

16. *DOE has done a good job of interacting with interested parties, especially regulators, during the development of the Risk Based End States Policy and Guidance Documents and the Implementation Plan, while keeping to a rigorous schedule.*

The Department will continue to interact with interested parties and respond to queries and comments concerning RBES in a timely manner. The first phase of the RBES development process put into place the framework for its implementation. Interactions during this development phase naturally focused on headquarters through the development of the Policy statement and guidance document. With the evolution of RBES development moving to the RBES Vision preparation by the DOE sites, it is expected that interactions with regulators and other interested parties will shift predominantly with the sites directly. DOE Headquarters will continue to interact with interested parties as needed through responses to inquiries, and through other more direct means such as participation in various DOE sponsored and other intergovernmental and industry conferences. Examples of these interactions that featured specific sessions and/or presentations on RBES include the EPA Superfund National Radiation Meeting in February 2004 and Waste Management 2004 in March 2004.

17. *DOE must obtain adequate and meaningful input from regulators, local governments, and stakeholders to ensure each site's Risk Based End State Vision is both accurate and credible.*

All of the DOE Risk Based End State framework documents contain explicit direction for formulation of RBES Vision documents, variance reports, and proposed changes to cleanup

remedies "...in cooperation with regulators, and in consultation with affected governments, Tribal nations, and stakeholders (as appropriate)." Additional specific direction to obtain meaningful input from regulators is provided in the Implementation Plan (see Page 5, Figure 2, Site Risk Based End State Implementation Process) directing submittal of documents to regulators and stakeholders for review and comment. Furthermore, this Plan directs that regulators be asked to concur and affected and interested governments consulted in the development of the RBES Visions. During the Headquarters review of the initial draft RBES Vision document submittals, the review process called for discussion of comments with the sites during which sites were reminded of these requirements and site stakeholder and regulator interactions were discussed. This dialog will continue throughout the review of subsequent RBES Vision document submittals.

18. *It is critical that the regulator be actively involved in the assessment of the variance between the End-States Vision and current regulatory drivers.*

We concur with this comment. As can be seen from the responses to the comments above, regulator involvement in the development of the RBES Vision and Variance report is considered an essential element for success. In fact, regulator interaction will be the lynchpin in the actual implementation of any RBES as seen by the provisions of Policy 455.1 that states in part that DOE shall comply with applicable Federal, state, community, and treaty requirements when proceeding with the [RBES] effort. This intent is underscored in the December 9, 2003, memorandum to DOE Field Managers in which the Assistant Secretary for Environmental Management states "The [site's] planned land use is not modified nor are there any shortcuts around any current law or regulation" during the development or implementation of the RBES Vision.

19. *It is important for the process of risk assessment to be based on realistic and appropriate, yet conservative assumptions*

The level of conservatism in assumptions about risk and land use in many of the EM cleanup projects has been questioned as a result of the February 2002 Top-to Bottom Review. Materials and wastes at many DOE sites continue to be managed on the basis of their origin or type instead of their risk. This is contrary to the intent of DOE Policy 455.1. To address this problem, the Implementation Plan for the policy identifies six integrated elements, including the reexamination of the role and use of risk in cleanup and the use of conceptual site models in the validation of their RBES Vision. That reexamination involves the reconsideration of the assumptions and components of the risk assessments that contribute to the basis for cleanup decisions and EM project end-state. This risk assumption reconsideration is to be tied to the analysis of application of risk calculations in exposure scenarios; review and revision, if necessary, of these scenarios to ensure that they are appropriate to site land use; and examination of the results as they appear in conceptual site models that are called for in the RBES Vision document. The Risk Based End States Project guidance directs the sites to perform this kind of reexamination of risk for their sites and end states and to include the results in their RBES Vision documents.

Local Government should have the opportunity to "to be at the table" throughout the end states process, because they will have ongoing responsibility to protect the public from harm after DOE has completed its cleanup.

We concur with this comment. See the response to comment #17 above.

21. *When determining whether to pursue a variance to a federal facilities agreement (FFA), record of decision (ROD) or other regulatory documents, DOE should conduct a thorough evaluation of many factors, as stated in the Implementation Strategy*

The RBES Visions are not decision documents. The processes and analyses used to develop the Vision documents must first and foremost be based on credible science. The risk based end states contained in the Vision documents need to be carefully compared to the currently planned end states. Consistency with legal and regulatory requirements, and identification of specific DOE cleanup project cost and schedule impacts would be significant indicators of any particular RBES Vision's desirability. The Department will add to any decision to adopt a validated RBES Vision, consideration of the Department's responsibilities as a Natural Resources Trustee and as a steward of public monies, and the inputs from and impacts on the communities surrounding its sites.

22. *Despite extensive outreach, there is still significant skepticism and lack of trust among external parties about DOE's intentions.*

The view from outside the Department can perhaps be characterized as "RBES is DOE's plan simply to do less than it has already agreed to do." This perception is ill founded and is completely counter to the Department's intent and all its published materials concerning RBES.

The Department's messages regarding RBES are contained in the RBES Policy Statement, its Implementation Plan, the Guidance for the preparation for RBES Vision documents, and the associated direction memoranda from the Assistant Secretary for Environmental Management. The messages are explicit: RBES Vision documents are not decision documents, the development of an RBES Vision is to be protective of human health and the environment, site land use is not to be modified nor are current laws and regulations to be countermanded or shortcut until agreement by the appropriate regulators is obtained, the Department's cleanup program will continue to comply with all applicable laws, regulations and agreements, and that RBES Vision implementation will be governed by the outcome of interactions with the appropriate site regulators, affected stakeholders, and interested and affected Governments.

These messages are not being understood for the most part. DOE intends to conduct an assessment of RBES stakeholder needs and concerns, develop a strategy to best define its RBES messages in a way that they can be heard and understood, and determine how to deliver those messages in a comprehensive manner. How to best provide staff training at the sites and Headquarters is currently being considered along with the best tools for accomplishing the needed communication.

Subject:

Record Notes: Attached responses to Observations and Recommendation was prepared by the Office of Planning and Controls (Metrics), the Office of Acquisition Management. (Contracting), and the Office of Core Technical Group (RBES).

1. This document takes the action required to respond to EM2003-03143

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of detail should go
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