



Mr. Peter A. Richman, Bureau of Competition
Federal Trade Commission (FTC)
Office of the Secretary
600 Pennsylvania Ave., N.W.
Washington, DC 20580

CCN: 095597
November 10, 2004

Dear Mr. Richman,

**CONTRACT NO. DE-AC27-01RV14136 – ASPEN TECHNOLOGY, INC., DIVESTITURE,
PUBLIC COMMENTS, FTC DOCKET NO. 9301**

Bechtel National, Inc. (BNI), Prime Contractor to the U. S. Department of Energy (DOE), Office of River Protection, P.O. Box 450, MS H6-60, Richland, WA 99352, under Contract No. DE-AC27-01RV14136, Hanford Tank Waste Treatment and Immobilization Plant (WTP), offers the following comments regarding the subject action. The Department of Energy will require long-term support (20 years) for the Simulator software currently being developed by Aspen Technology, Inc. (AspenTech) under subcontract with BNI to support the operations of this waste treatment facility.

Please refer to the attached 2 page document entitled Public Comments, FTC Docket No. 9301, dated 11/9/04.

Due to numerous unresolved issues (ie: delays in AspenTech's deliveries and performance issues) BNI has serious reservations regarding the divestiture of AspenTech's affected business units to Honeywell and requires the above comments be satisfactorily resolved prior to any divestiture taking place with respect to AspenTech's Subcontracts with BNI. Please advise comments or questions at your earliest convenience.

Very truly yours,

Mark S. Swenson
Subcontract Administrator
Acquisition Services

MSS/mdm

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cc:

Armstead, M.	WTP	MS14-3B
Calvey, J. E.	WTP	MS14-3A
Lee, J.	WTP	MS6-R1
Ozkardesh, K.	WTP	MS6-M1
Rueter, K.	WTP	MS4-B2
Swenson, M. S.	WTP	MS14-3A
Thompson, A. N.	WTP	MS14-2A
Walker, S.	Bechtel Corporate	
PDC w/a	WTP	MS11-B



Regarding: Aspen Technology, Inc., Divestiture, Public Comments, FTC Docket No. 9301

From: Bechtel National, Inc. (BNI), Prime Contractor to the U. S. Department of Energy (DOE), Office of River Protection, P.O. Box 450, MS H6-60, Richland, WA 99352, under Contract No. DE-AC27-01RV14136, Hanford Tank Waste Treatment and Immobilization Plant (WTP)

WARRANTY

1. Honeywell must be responsible for honoring the warranty as set forth in the existing contract terms. OTISS Software licenses are also being assigned to Honeywell by AspenTech and Honeywell must have the staffing that will provide the OTISS support.
2. Assignment does not relieve AspenTech or its sureties of their responsibilities under the subcontract for Maintenance Agreements, Steady State Model Enhancements, Dynamic Model Rehosting, Rigorous Modeling, Data Reconciliation Work, or any other subcontract requirement. BNI will not novate its subcontract with AspenTech to substitute Honeywell as a party.
3. Third party interfaces between AspenTech and BNI/WTP/DOE lower tier suppliers (like Axiom, AEM, etc.) must be recognized and supported by Honeywell.
4. The structure of the maintenance agreements and response to product defects (hot fixes) and upgrades/changes will not be revised.
5. The simulator interface between Aspen OTISS and the ABB AC800 control system has not been delivered as part of the original product agreement with AspenTech and Honeywell must deliver this requirement.

EMBEDDED AES APPLICATIONS

1. What is Honeywell's obligation to continue support for AspenTech's AES products embedded in OTISS (e.g., ACM in OTISS and physical properties files). BNI must understand how this interface will be maintained with Honeywell.
2. Honeywell must maintain the AES/OTISS product baseline regarding version releases of ACM and continued compatibility with OTISS.

SIMULATOR MARKET DILUTION

1. BNI/WTP/DOE are concerned that the Simulator Market will be diluted because of the FTC ruling against AspenTech that reduces the number of simulator training vendors.
2. Hyperion, supporting AspenTech on our project, must be able to continue to support our project and Honeywell must use those resources.
3. BNI/WTP/DOE purchased Aspen's OTISS products and AES under a Material Requisition/Purchase Order separate from the Aspen OTISS Modeling Technical Services Subcontract. Therefore it is BNI's preference for retention of AspenTech as: a) the sole provider of subcontracted modeling services, b) the sole provider of the Software and Maintenance Support (SMS) Agreement on the OTISS product and the other AspenTech products, c) retention of Aspen as the sole holder of the System Source Codes for the WTP Simulation Model and d) Ensuring key personnel in the OTS business are retained as key contributors to the BNI/WTP Simulation Model after the FTC order is met and the divestiture is complete.

OPEN CLAIMS

1. Honeywell must honor agreements made between BNI/WTP/DOE and AspenTech and provide the system source codes to BNI/WTP/DOE in the event this transfer of intellectual property does not occur before the sale is finalized.
2. All open and unresolved claims must be resolved between BNI and AspenTech prior to the assignment of BNI's agreements to Honeywell.
3. Honeywell needs to be made aware that BNI has issued a Cure Notice against AspenTech for contractual non-compliance.
4. Honeywell needs to be made aware that there are technical issues with the product that are still outstanding and is preventing closure of the BNI contract.

LICENSING ARRANGEMENT FOR OTISS

1. BNI/WTP/DOE's retention of AspenTech as the sole provider of the Software Maintenance Service Agreements is preferred.
2. AspenTech's support existing licenses for changes and upgrades is also preferred.
3. The current services subcontracts and software purchase orders must be transferred to Honeywell as-is with no unilateral modification of terms and guarantee of continued long-term support.

OTHER

1. The same people managing the project today will be transferring to Honeywell and we do not expect any change in personnel. Honeywell must appoint the same project manager to address transition issues that may arise. Since Michael Fredette, the current AspenTech Project Manager is not transferring to Honeywell, AspenTech and Honeywell recognize that continuity of staff is important to ensure a smooth transition and should maintain the same staff and Project Manager.
2. It is expected that Honeywell takes over the project in whatever shape it is in at the closing including any modeling carried out for the project. Since the OTS engineers are also being transferred, that includes their laptops and whatever 'work in process' they have on their laptops or any server or in any file. All project equipment for the Factory Acceptance Testing (FAT) must also transfer in place in Denver to Honeywell. There must be no change in location of the FATs.
3. BNI/WTP/DOE must be afforded the opportunity to technically interact with Honeywell, with or without AspenTech representatives present, before divestiture is finalized.

Due to numerous unresolved issues (ie: delays in AspenTech's deliveries and performance issues) BNI has serious reservations regarding the divestiture of AspenTech's affected business units to Honeywell and requires the above comments be satisfactorily resolved prior to any divestiture taking place with respect to AspenTech's Subcontracts with BNI.