

Read Me First

This document is a list of documents regarding the ITB project at the end of the successful Proof of Concept phase.

I was accusing HDC engineers of attempting to get the source code without paying for it.

Once they had the source code, they could make an unlimited number of ITBs instead of buying them all from me. I was insisting on the “Bill Gates Deal.” Look at the license agreement for Windows. Substutute ITB for Windows everywhere and that’s what I want.

The Contracting Officer insisted on a side-deal commitment for me to sell the source code to the goverhment. We negotiated to a \$750k price with restruictions that the SteadyState algorithm could only be used by the government in the Columbia River Basin to solve the fish mortality problem.

They were wanting the ITB as a product for their own private “Captive Supplier” company to make and sell. The successfully demonstrated ITB software was needed to enable their private company, created outside their government jobs, to mass produce and sell Index Test Boxes.

It’s a long story...

HDC engineers had compelled the Contracting Officer to alter a copy of the Contract to make the software source code a deliverable with each Index Test Box delivered.

HDC engineers were claiming that the Index Test Box source code had been written at government expense under the contract.

The Copyright on the Source Code debunked their claim, and their actions to take it by legal chicainery were blocked. A year later Ralph Banse-Fey, head contracting officer called on the phone to ask for the source code for the ITB.

When I reminded him that Dave Ebner, the Contracting Offiver and I had a side-agreement with explicite terms:

- 1. The price for the Source Code was \$750,000**
- 2. The Government may only use the ITB algorithmis in the Columbia River Basin to save fish**

3. ATECo Splash-Panel must display at startup
4. When people ask where they can get one – if they're outside of the Columbia River Basin they're mine.

When I told him that the deal was still on the table - where's the money?

He laughed and said once *they* got *their* hands on the contracts funds, it vanished overnight.

When I asked who are, "*they*?" He changed the subject to haggle the price.

When I told him the price was firm, he said it was my patriotic duty to give the Source Code to the government for free because they needed it or the entire Type-1, Type-2... Type-5 optimization suite that HDC and BPA had constructed and demonstrated successfully would fail.

I had to tell him the deal is still on the table.

No freebees. Not even for the government.

In his first report on the ITB project that I got a copy of from Lee, the ITB contract was being billed as a Proof of Concept test. HDC was pretending that they invented the ITB and I was just a code-jockey writing the program code for them.

I feared such shicainery and acquired a U.S. Copyright on the ITB source code. A time-line showing when the contract was signed and when the Copyright was ordered along with a copy of the contract deliverables.

REFERENCE DOCUMENTATION:

(#1) Summary Government discussion of Contract Source Code Requirements and GDACS security issues and why the Contractor was non-compliant with Contract requirements.

(#2) Original Contract (Signed May 26, 2004)

(#3) A contract clause negotiated between the Government and Contractor prior to award to protect both the Contractor and Government: "Optimizer Special License Agreement" Original Contract Section J (May 26, 2004).

(#4) Contractor's Computer Program Copyright Certificate of Registration. This document indicates Index Test Software was copyrighted but the four separate modules identified by the Contractor are not separately identified. (July 19, 2004)

(#5) Email from Contractor to Government indicating that the pre-existing code Copyright had been registered and indicates contractor is integrating co-developed code with preexisting code ignoring Section J agreement. Also included in the email are statements by the Contractor indicating the Contractor was ignoring "Stop Work" order emailed from Government on October 14, 2004 which is included with the email. (Oct. 20, 2004)

(#6) Contracting Officer hand written note of conversation with Contractor where Contractor threatens default on contract. (June 14, 2005)

(#7) Government comments (transmitted to Contractor for action) on initial field test demonstration of ITB on McNary Unit 5 and identifying many major and minor deficiencies. (August 12, 2005)

(#8) Email from Contractor to Government titled "Enough Already" asserting that the Government was at fault for schedule delays, quality control problems, willfully misleading the Contractor prior to and during and after the ITB field demonstration test at McNary and the Contractor threatens default. (August 12, 2005)

(#9) Signed Contract Modification #1, This modification increased funding (\$20,000) extended the performance period completion date (from May 31, 2005 to September 30, 2005) and specified the delivery date (NLT July 29, 2005) of the interim ITB for field testing (signed by Contractor on August 19, 2005 after the initial field test and after the delivery of all supplies was due).

(#10) Two emails from Contractor to Government with Contractor responses to field test comments, Government clarifications and rebuttal of Contractor responses and Contractor re-rebuttal and refusal to address some comments. (August 17 and August 29, 2005)

(#11) Notes of Government engineers during 2nd Field Test demonstration of the ITB on McNary Unit 5 (Sept 13, 2005) sent to the CO for action. The notes contain many general comments and many specific comments on the deficiencies identified during the testing.

(#12) Draft Government Cure Letter, with Government Plan for "Proof of Concept" demonstration of the ITB. The letter was not sent to Contractor; however it identifies the work remaining. (Sept, 2005) The reference also contains a potential plan of action proposed by the Government to field test a "proof of concept" ITB device. The Governments negotiations with the Contractor resulted in agreement to attempt a "proof of concept" demonstration if the Government would pay for Contractor preparations and Contractor travel expenses. Agreement was reached for the Government to add \$16,002 to the Contract amount

(#13) Partial email from Contractor to Government containing Contractors Invoice #9 (May 31 to Sept 12, 2005) with a day by day explanation of Contractor's work and providing the Contractors opinion of cause of schedule delays and documenting Contractor expenditures.

(#14) Signed Contract Modification #3, (NTP Nov 22, 2005, signed Dec 10, 2005 by Contractor). This modification removed some of the deliverables because the Contractor could not meet contract requirements. These are pre-developed source code modules, documentation/manuals, eliminated at least one-half of previously required field testing, a much reduced data analysis tool requirement. The modification identified the specifics of a "proof of concept" demonstration field test. The purpose of the contract modification was to identify if the Contractors ITB could collect and analyze data and communicate with the GDACS control system.

(#15) Memorandum For the Record, Government Trip Report, McNary Unit 9 Index Test Box Proof of Concept Test. (Dec 21, 2005) This report identifies that the ITB did collect data but could not operate independently, could not operate unattended, could not perform an Index test, could not analyze collected data, did not have adequate documentation and did not comply with the source code requirements. The Contractor's non-compliance of the Optimizer Special License Agreement threatened the security of the regional GDACS control system.

(#16) The Government initially sent this document to the Contractor by email and it contains the actual Government comments (black text) on the "Proof of Concept" field test. The Contractor embedded his response (blue text) or rebuttal (blue text) within the original document. The Contractor later embedded additional response (green text) or rebuttal (green text) and indicated he needed additional Government resources to address some Government comments. (Jan 6, 2006)

(#17) Contractor email to Government indicating inexperience in data analysis and lack of supplied documentation. (Jan 14, 2006)

(#18) Email from Contractor to Government with suggestion that ITB was sabotaged by the Government. (Jan 20, 2006)

(#19) Email from Contractor to Government providing option prices, equipment changes and identifying equipment now unnecessary (ATEC 150). (Feb 7, 2006)

(#20) Email from Government field test engineer to CO indicating the status of ITB during a Government Independent field test at Ice Harbor. (Feb 21, 2006) The ITB was checked during operation to determine if the deficiencies previously identified by the Government during the "proof of concept" field test had been addressed. The test engineers felt most had been addressed but some were not or could not be addressed by the Contractor. ITB was able to collect data on one unit but not the other because of unclear ITB documentation and instructions.

(#21) Internal email to CO from Government field test engineer summarizing an independent Government evaluation of the data collection ability of the ITB during a field test at Ice Harbor. (Feb 24, 2006) The field test engineer felt the ITB could collect steady state data but has not been fully tested.

(#22) Copy of Contractor release of claims for line item 0001 (prototype ITB) (March 29, 2006) and the Government released retainage.

(#23) Contractor Original Proposal to Government for the ITB (Oct 2, 2003) which identifies software and hardware proposed. This software was to be in modular form and pre-developed. A comparison with what was actually delivered to the Government (#24) below indicates the original software was not in independent modules as indicated during pre-contract negotiations of the clause (#3) above.

(#24) Email from Contractor to Government identifying Contractors interpretation of final software documentation. (July 27, 2005) This email was internally reviewed by a Government PDT expert. Government comments are on the supplied software and security risks to the GDACS control system. Text black and red is the Contractors explanation. The text identified and separately highlighted by "WORD" is the Government comments. This document with comments was provided to the CO for consideration. It should be noted that the final code listing still contains programming to access GDACS control of up to four turbine units within the powerhouse as well as unnecessary security restrictions that require a separate Contractor supplied password to enable the ITB.

(#25) Email from Contractor to Government discussing program modules. (2006) In this email the Contractor explains his plans for supplying pre-developed code from co-developed code to produce the Contract required program modules. The Contractor states that if the Government wants what it contracted for it will cost more. The Contractor also presents an opinion that the Government is trying to use Contractor intellectual property for Government purposes and that is why pre-existing source code and the co-developed source code have been combined so the

Government would be dependent on the Contractor and would have to pay for each use.
