

Community Advisory Group (CAG)

for the

Omaha Lead Site

Contracting Subcommittee
Summary Notes from September 15, 2004 Meeting
Mayor's Office

Attending the meeting were Mr. Chris Rodgers (Omaha City Mayor's Office), Ms. Cheryl Weston (Lead Safe Omaha Coalition [LSOC]), Mr. George Barsom (Professional Environmental Engineers [PE]), Mr. Bob Feild (EPA), Mr. Steve Sanders (EPA), and Ms. Stacy Meacham (MFG).

Mr. Feild provided a handout (see attached) summarizing the contracting information he presented at the September 1, 2004 subcommittee meeting. Mr. Feild noted that although he had been requested to provide a step by step flow chart regarding contracting opportunities for small businesses, it was not possible to create such a chart because there are no set steps and the means are difference for each type of contract.

Mr. Feild stated that although not necessarily pertinent to the question of how to get local firms involved in the Superfund process at the Omaha Lead Site, EPA does have a book that provides basic contracting information and details. The book is titled *How to Get Involved with EPA Contracts* and provides information on the different types of contracts that are available as well as information from the regional offices and headquarters regarding who to contact for additional assistance. The book also describes assistance programs for grants and cooperative agreements.

Discussion then focused on the handout provided by Mr. Feild.

Regarding Bullet 1 from Handout - Must Comply with Federal Acquisition Regulations

- Mr. Feild stated that all contracting must be handled in accordance with FARs and EPA acquisition requirements and guidance.
- Mr. Feild explained that a firm's NAIC code is a descriptor that indicates a firm's capabilities and to be eligible for specific sole source contracts, the firm must have the proper code to support the work.
- Mr. Feild stated in accordance with FARs, to be awarded a contract a firm must demonstrate it has the capacity, capability, resources, experience, etc. to be able to complete the work.

- Mr. Rodgers stated that it is not the CAG's intent to ask EPA to hire unqualified firms; it is the CAG's intent to identify and maximize opportunities for local businesses. Ms. Weston concurred with Mr. Rodgers. She stated, it is not, nor has it ever been her intent to push for the inclusion of Minority, Woman Owned, Disadvantage, 8(a) or HUB Zone businesses just because they were. The purpose is to involve these types of qualified businesses because they are qualified and deserve the right to have an opportunity to participate at a PRIME level instead of a secondary level.
- It was agreed that one goal of this subcommittee is to determine how to help local companies determine EPA needs so that they can build capacity to compete for contracts.

Regarding Bullet 2 from Handout (Pre-Placed Contracts)

- Mr. Feild noted that LOE contracts (Level of Effort contracts) are one type of contract EPA and Corps use. With these contracts, the government buys capacity (buys hours) from national companies (including small businesses with less than 500 employees). Through the LOE contracts, EPA and the Corps issue task orders (or work assignments) for specific projects.
- Mr. Feild stated that an advantage to pre-placed contracts is that it is easier to add incentives and specific selection criteria but that local firms will generally remain in a subcontractor role.

Regarding Bullet 3 from Handout (Site-Specific Contracts)

- Mr. Feild explained that for site-specific contracts, proposals are ranked based on their technical approach and responsiveness and are then compared based on price. Typically the lowest cost bid will be awarded but not always. If one proposal ranks higher on responsiveness but is higher in cost, it could still be selected if it could be justified that the government would be getting more for its money with the higher priced firm.
- Mr. Feild stated that a sole source contract cannot be awarded unless the firm to be awarded the contract provides a unique service that no other qualified firm provides. Ms. Weston, questioned, the contract cannot be sole source to a specified contractor, but it can be set aside and sole source to 8 (a) firms? Mr. Feild stated that the FARs sole sourcing restrictions apply, regardless of the conditions.
- Ms. Weston asked if there were two qualified firms competing for a contract, what would be the deciding factor. Mr. Feild responded that in a competitive bidding process, a performance work statement (request for proposal) is issued to solicit bids. The proposals are then rated based on degree of responsiveness to the request (such as staffing, experience, approach, etc.). If the proposals are technically equal, cost would be the deciding factor. If the one proposal were a higher cost but a better value, it would be selected. Ms. Weston asked what would happen if both proposals were equal both technically and in cost. Mr. Feild responded that such an occurrence would be highly unlikely and it would be nearly impossible for there to be no distinguishable differences between the two proposals.
- Ms. Weston asked how much of the money that is going to be given to the OLS project for next year does EPA plan to break out for sole sourcing. She asked specifically if EPA has a percentage in mind, such as 20 or 25% of the money that is received ~~with~~

- would be used for sole sourcing. Ms. Weston also asked what types of work and what areas will be considered for sole sourcing. Ms. Weston noted that it should be more than just dust removal and exterior work; there should be some sole sourcing for remediation work. She stated that we (Omaha) have qualified, experienced local firms available that can do remediation work.
- Mr. Feild stated that he is not a contracting officer and has no authority to award contracts. He stated that there is no percentage determined at this point and such a decision will be made by the contracting officer. Ms. Weston asked what real authority did Mr. Feild have in the determination as to the award and types of contracts for the Omaha Lead Site. Mr. Feild stated that he will make recommendations to the contracting officer but that the contracting officer will determine the types of contracts that will be used at the Omaha Lead Site.
 - Mr. Rodgers asked what type of an environment we need to create for EPA to feel comfortable and familiar with the local contractors so that he can recommend to the contracting officer that sole source opportunities be considered.
 - Mr. Feild responded by stating that he will recommend maximizing sole sourcing where it can be done but first he needs to know what the capacities and resources of our local firms. He further stated that if the contracting officer decides to use sole sourcing, the contracting officer must be able to justify this decision because the inspector general and general accounting office audit such decisions and they must be defensible.
 - Ms. Weston stated that these types of contracting options, “sole sourcing, HUB Zone, etc” are in many federal contracts and that have been placed as procedures for a purpose and therefore, they should be justifiable and defensible.

Regarding Bullet 4 from Handout (Potential Work Categories)

- Mr. Feild requested that he be given information about local firms that can provide services in the potential work categories listed in the handout. Specifically, he stated that he needed to know their capacity to do work in these categories. Examples of items he requested were qualifications and experience brochures, government profile forms (such as the SF 254/255 form or the new SF 330), and any other company literature firms have available.
- Ms. Weston stated that knowing what the categories were would be helpful in making sure that those contractors were aware of a “getting to know you meeting” and has business owners they would be able to come prepared to provide information as to what their capabilities were. It may not be SF 254/255 forms but it would capture the fundamental nature of their firm.
- Mr. Feild indicated that he will also review the SF 55 forms from current contractors working at the Omaha Lead Site to determine if there are any other service areas that need to be added to the list (such as laundering of work clothes).

Establishing a Meeting Between Local Contractors and EPA Representatives

- Ms. Weston recommended hosting a meeting, similar to a meeting arranged approximately one year ago by LSOC, between the local contractors, Mr. Feild, and

- contracting officers from the EPA and the Corps so that the individuals responsible for decision making could meet with the contractors and get the information needed.
- Mr. Feild indicated that it would be difficult to get the Corps to attend such a meeting and at this time, he did not know if the Corps would even be involved with future contracts. He stated that it is his preference for contracts to be administered through the EPA. He noted that although there are some advantages to using the Corps, such as their construction management experience, the Corps charges a fee to administer contracts.
 - Mr. Feild further stated that although his preference is to have EPA administer the contracts, if the EPA contracting officers are not amenable to finding ways to working with local firms, he will recommend using the Corps. Ms. Weston asked who makes the decision as to whether the contracts will go through the EPA or the Corps. Mr. Feild stated that the decision will be made by his management, in consideration of his recommendations.
 - Mr. Rodgers asked about the timing of getting a meeting scheduled. To be eligible for next year's funding, he asked if the window of opportunity for holding such a meeting is between now and early November.
 - Mr. Sanders replied that because EPA has an enforcement first policy, EPA is going to be working with the PRPs to try and reach agreements for the PRPs to fund all aspects of the remedy. A 4-month moratorium will follow issuance of the interim ROD. During this time, EPA will negotiate with PRPs. As such, funding details won't be known until January or February, after the negotiations are completed. If agreements are reached, EPA will have no control over how the PRPs contract for the work to be completed.
 - Ms. Weston asked what happens if agreements with the PRPs are not reached. Mr. Feild replied that EPA will then spend remedial action money for the project and will take the PRPs to court to try and recover this money. He stated that the contracting mechanisms EPA will use (sole source, competitive bidding, etc.) will not be known until after the moratorium.
 - Ms. Weston and Mr. Rodgers suggested that we continue to proceed with the suggested meeting between EPA representatives and the local firms so that if EPA does in fact end up handling the contracts, then when the time comes, EPA would have the information needed for making sole source contracting decisions and identifying opportunities for local firms.
 - Mr. Feild stated that before he can commit to a meeting, he would need to check with EPA's contracting office to make sure such an event would not be perceived as favoring firms in attendance and to also determine how such a meeting would need to be advertised. He further stated that if such a meeting is arranged, it will need to be open to all firms that are able to provide services in the areas of interest. Ms. Weston stated that it is not the intent of the LSOC or herself to favor one company or contractor over another. The reason that specific companies were used in her letters regarding the "pilot program" was to specifically identify companies that were qualified and available from the local area at the time. However, just as before at the meeting of contractors, small businesses and EPA, the announcement of any such meeting would be open to all

contractors and business owners. It would be disseminated through mailings, newspaper and other news media.

- Mr. Rodgers requested that the meeting be held no later than the third week of November so that EPA can give local firms an honest assessment of where they stand and identify areas that need work for the firms to be eligible to compete for next spring's contracts.

Next Steps

- Mr. Feild will check with EPA's contracting office regarding the feasibility of proceeding with a meeting between local firms that can provide services for the Omaha Lead Site project and EPA representatives (to include Mr. Feild, an EPA contracting officer, and any other EPA representatives that could be involved in making contracting decisions).
- The CAG subcommittee will provide Mr. Feild with information (qualification and experience brochures, forms, etc.) regarding local firms. Ms. Weston stated that instead of the CAG subcommittee providing Mr. Feild with information, it should be a more direct contact between Mr. Feild, EPA contracting decision makers, and the local firms. She asked why duplicate and stated that at the meeting of the players,, the parties could distribute among themselves.
- If approval is granted by EPA's contracting office, plans will proceed for arranging a meeting.

**The next contracting subcommittee meeting will be held
October 13, 2004, at 8:00 a.m. at the Mayor's office.**