

Community Advisory Group (CAG)

for the

Omaha Lead Site

Contracting Subcommittee
Summary Notes from September 01, 2004 Meeting
Mayor's Office

NOTE: The following serves as a replacement to the “Summary Notes from September 01, 2004 Meeting”, distributed as a handout for the September 15, 2004 Community Advisory Group.

Chris Rodgers, Cheryl Weston, Bob Feild, Steve Sanders, and Stacy Meacham met to discuss contracting issues for the Omaha Lead Site project. Goals of the meeting were to (1) establish committee boundaries and (2) review the Federal bidding/contracting process. The following is a summary of the topics discussed at the meeting.

Establishment of Committee Boundaries

Discussion was held regarding how much and the type of influence the committee and the CAG can have on the contracting process

- Mr. Feild indicated that EPA would like to use this opportunity for sharing information and expectations. He indicated that EPA could use this committee as an outlet to provide information to local contractors that will enable them to effectively participate in EPA's contracting process through sole source and competitive opportunities.
- In turn, the committee/CAG needs to inform EPA of the abilities of the local work force so that EPA can develop contract strategies that are good fits for the skill sets available and maximize use of the local workforce and contractors (to meet this goal, EPA needs a list of contractors with information regarding their size and capacity, the types of work they do and can do, skill sets, resources, etc.).

Federal Bidding/Contracting Process

Mr. Feild explained that the Federal bidding/contracting process is governed by the Federal Acquisition Regulations (FARs) and under FARs, a particular contractor cannot be designated, except under specific, limited circumstances, such as for 8(a) and HUB Zone contractors in certain instances.

The following provides a summary of information presented by Mr. Feild and discussion that followed regarding the current status of the OLS project, current and future contracting opportunities for the OLS project, and details regarding contracting options available for the OLS project.

Contract Opportunities

- For fiscal years 2003 and 2004, EPA has spent approximately \$7 to \$8 million per year (this amount does not include the \$5 million received from EPA headquarters for the Performance-Based Contracting Pilot project).
 - In 2003, 112 yards were excavated
 - In 2004, 300 yards are expected to be excavated (186 have been completed to date and 120 more are expected to be completed by the end of the fiscal year)
 - Currently there are approximately 30 people working on the site in 5 different crews (2 crews excavating, 2 crews backfilling, and 1 crew for “punch list” items (completing repairs, fencing, etc.))
- Current contracts (emergency removals) are based on time and materials (contractors are paid for the number of hours work and are reimbursed for the materials used); the next phase of contracts (remedial) will solicit bids based on detailed scopes of work.
- The proposed plan is a \$77 million remedy to be implemented over 3 years (at approximately \$26 million per year); the proposed plan calls for completing approximately 5,600 yards over the next few years.
- Specific areas of demand will include excavation, soil disposal, backfilling, and sodding (currently the prime contractor either performs directly or subcontracts for these services).
- Historic remedial contracts at Superfund sites have typically been implemented through the Corps (US Army Corps of Engineers) as they are considered the government’s contracting expert, with extensive experience in the construction process.
- Future contracts can be administered directly through EPA, (without involving the Corps) through the regional office in Kansas City. Ms. Weston noted that the administration of contracts directly through EPA is common in other EPA regions and for the OLS project, contracts other than the pilot program can be (and some currently are) administered directly through EPA Region 7.

Differences between Future Contract Opportunities and the Current \$5 million Pilot Project for Performance-Based Contracting

- Future contracts for the Omaha Lead Site will not be pilot projects and as such will not have “strings” attached to them.
- Future projects will have regional control (versus requirements from EPA headquarters).

Funding for Future Contracts

- EPA will implement contracts for the remedy if an agreement cannot be reached with the PRPs to pay for the remedy.

- If a settlement is reached with the PRPs for implementation of the remedy, then the PRPs will be in control of implementing contracts and EPA will not have a say in how the work gets contracted.
- If no agreement is reached with the PRPs, EPA will implement the contracts and then can sue the PRPs for cost recovery. For the money to be recoverable, it has to have been spent in accordance with FARs.

Contracting Options

- **Sole Source Contracts**
 - Non competitive (sole source) contracting is allowed under FARs with some restrictions and qualifications.
 - Certified 8(a) Firms on the SBA registry are eligible for sole source contracts (an 8(a) firm is one that meets specific criteria of the small business administration (SBA)) (Note, that for eligible small business firms, the process can take up to several years to get on the SBA registry).
 - HUB Zone (Historically Underutilized Business Zone) certified contractors are eligible for sole source contracts but only if there are no other HUBZone contractors that can provide the service (a HUBZone contractor is one that meets specific criteria (must be within a specific geographical boundary, most of the firm's work must be completed within that boundary, the majority of the firm's employees must live within that boundary, etc.). If there is more than one eligible HUBZone contractor, the contract must be open for bidding to all HUBZone contractors across the country (as such, for it to be lucrative for HUBZone contractors outside of the area to want to compete for these contracts, the contracts would have to be fairly substantial in price).
 - Under the sole source contracting mechanism, contracts would be awarded without competition and would be based on a negotiated price (contract could be performance-based, fixed fee, or any other).
 - There are currently only eight companies on the 8(a) Douglas County registry; only one is an environmental firm (AEW; this firm is currently doing work on the OLS project). Ms. Weston pointed out a concern with the registry because it does not recognize local 8(a) firms that have offices in Douglas County but are registered elsewhere. She gave the example of the firm PE, which is an 8(a) firm with an office in Omaha but its 8(a) registration is in St. Louis. As such, this firm does not appear on the Douglas County registry even though it has a local office.
 - Limitations to this contracting mechanism are that the dollar amount generally cannot exceed \$3 million per contract (under certain circumstances, the limit can go as high as \$5 million); for Native American owned 8(a) firms, there is no limit on the contract price. Ms. Weston pointed out that the firm AEW is Native American owned.
 - Another limitation to this mechanism is in the number of contracts EPA staff can manage. Each contract requires assignment of an EPA project officer and contracting officer that can only handle so many contracts at a time. Although the Corps may be able to manage more contracts at a time than EPA, there is also a limit as to how many contracts the Corps can manage. Ms. Weston noted that

this limitation can be somewhat overcome by the fact that EPA has a contract department that can work with EPA's Project Manager to assist in the management of multiple contracts.

- **Pre-placed GSA Contracts**

- Ms. Weston noted that other EPA regions have used pre-placed GSA contracts successfully. Mr. Feild stated that although an option, EPA has received criticism for using certain GSA contracts for not being competitive and would probably not be considered for large remedial contracts for this project.

- **Pre-placed EPA & Corps Contracts**

- EPA and the Corps have pre-placed contractors; a competitive process can be used to select one of these pre-placed contractors (the \$5 million pilot project is using pre-placed contractors and past and current contracts for the project have used pre-placed contractors). Ms. Weston expressed concern with this contracting mechanism due to the fact that it shuts out our local 8(a), small businesses, small disadvantaged business, etc. from ever becoming prime contractors. Ms. Weston pointed out that under this mechanism, local business will continue to only be eligible as subcontractors and will not ever get the opportunity to compete at the prime contractor level.
- Work awarded to pre-placed contracts are not new contracts, but rather would be handled as task orders or work assignments under existing contracts.
- Advantages of using pre-placed contractors are that requirements of the FARs have been met through the original award process, allowing for more flexibility in directing how contractors perform the work. For example, through this contracting mechanism, specific incentives can be developed for subcontracting such as incentives for using subs within specific geographic boundaries and subcontracting to small business firms (small businesses are generally considered firms with 500 or fewer employees), minority business, existing Omaha business, etc.
- Selection criteria can be built into pre-placed contracts as long as work is awarded in a manner that is fair and reasonable to the government.
- Ms. Weston noted that this contracting mechanism maintains the status quo and that the biggest disadvantage is that local minority and 8(a) firms are not prime contractors; they are subcontractors to the pre-placed contractor that is selected as the prime.

Contracting Decisions

- EPA's regional office will make the decision as to what contracting strategy will be used
- If EPA decides to use the Corps, EPA will set up an IAG (inter agency agreement) that can direct the Corps as to what type of contracting mechanism EPA requires (meaning EPA can direct the Corps to administer the contract as sole source, competitive, etc.)
- EPA contracting office has the authority to contract directly or EPA can go through the Corps and direct them as to which contracting mechanism to use (selection could also be handled as a collaborative effort between EPA and Corps)

- Most contracts for the OLS will be competitively bid due to the dollar amount limits on the sole source options and the limits on how many contracts EPA and the Corps can manage at a time. Ms. Weston expressed concern that this contracting strategy keeps the current policy as is – local contractors will continue to be eligible only as subcontractors with no opportunities to become prime contractors.

Eligibility Requirements for Local Contractors to Compete

- To be eligible and competitive, firms must be responsive and responsible (responsive means that the firm’s proposal addresses all parts of the RFP (Request for Proposal) and responsible means that the firm can demonstrate their experience and ability to execute the work and complete it within the specified time frame), firms must also meet bonding requirements.
- To prepare local contractors to compete at the prime contractor level, contractors need to be educated on the FARs process. Contractors can go to the fedbizops website to learn more about how to compete for selection as a pre-placed contractor.
- Contractors are required to have employees involved in site cleanup operations trained in 40-Hour Hazardous Waste Operations and Emergency Response (HAZWOPER). EPA will most likely be able to provide this training free of charge; if the community can get a minimum of 20 to 25 people together that need the training. Ms Weston stated that there is already a minimum of 20 people ready and waiting for this training.

Time Frame

- Interim ROD – An interim ROD is expected at the end of September.
- Enforcement Phase - A 4-month moratorium on spending will begin when special notice letters are sent to PRPs, which should occur immediately after the interim ROD is issued, during which time EPA will negotiate with PRPs for implementing the interim ROD.
- Construction/Remedial Phase – Following the issuance of the interim ROD, EPA Region 7 intends to request \$25 million dollars per year from EPA headquarters for fiscal years 2005, 2006, and 2007. Discussions have begun with EPA headquarters regarding this but the formalized request cannot be made until after the interim ROD is released.
- Mr. Feild stated that it is expected that headquarters will provide the \$25 million/year if this level of funding is available. Ms. Weston noted that this funding is not guaranteed. Mr. Feild agreed that the funding is not guaranteed; noting that the funding is dependent on budget constraints within the Superfund program and the OLS remediation will be competing for funds with other projects across the country. Mr. Feild clarified that the money provided from headquarters is not an appropriation; it comes from the EPA budget. Congress appropriates money to the Superfund Program, and then the Superfund Program allocates this to the specific projects through a prioritization process.

Upcoming Sole Source Opportunities

- Once the interim ROD is released, EPA will be able to amend its current action memo for the removals to include elements of the interim ROD (such as the interior cleaning, paint removal via power washing, and repainting) that are not currently in the action memo.
- Sole source opportunities for these elements will be created via the following outlets:
 - EPA plans to investigate the possibility of allocating some portion of the money from the \$5 million pilot project to award to local firms for completion of these

elements. The contracts would be for interior cleaning (dust removal), paint removal via power washing, repainting, etc.

- Once Interim ROD is issued, EPA will have access to funds under its remedial authority and will be able to award sole source contracts for these elements.

Next Steps

- **Categorization of work opportunities** - Mr. Feild indicated that he would talk with EPA's contracting office to develop a matrix or chart of the contracting options that are available to this project.
- **List of available contractors from the community/CAG** – Mr. Feild indicated that he will be on the contracting team that prepares future scopes of work (SOW) for the project and as such, he needs to know what the capabilities and skill sets are of our local firms. With this information, EPA's contracting team can tailor the requirements of proposals based on the skills and limitations of the local workforce. The subcommittee/CAG needs to provide this information to EPA.
- **Communication of opportunities** – The subcommittee/CAG needs to assist in arranging meetings between EPA and the local contractors. Ms. Weston offered to arrange such a meeting and to notify local contractors.

The purposes of these meetings are for (1) EPA to become familiar with the local firms and learn about their capabilities and resources, (2) EPA to answer questions regarding what EPA's needs are for this project, and (3) EPA to assist firms by giving them step-by-step details regarding what these firms need to do to be able to compete for work (including information regarding FARs and eligibility requirements for pursuing future opportunities to become pre-placed contractors).

- **Training** – EPA indicated that they will possibly be able to provide a free 40-hour HAZWOPER training in Omaha if the community can provide EPA with a list of 20 to 25 interested attendees. Ms. Weston indicated that she currently has a list of individuals this long and offered to provide this to EPA if there was a commitment to provide training, not just talk of the possibility.

**The next contracting subcommittee meeting will be held
September 15, 2004, at 8:00 a.m. at the Mayor's office.**