



Paducah Citizens Advisory Board

"working for the future"

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Recommendation No 15-04: Review of Contracting Practices for Major Cleanup Activities Rev 6

Draft July 14, 2015

Background

In June of 2015, the Energy Communities Alliance (ECA) issued a comprehensive study of contracting practices and policies followed by the Department of Energy (DOE) in preparing and awarding recent contracts associated with cleanup activities at a number of sites across the complex. The study, entitled "Changing Course: The Case for Sensible DOE Acquisition Reform" (Attachment 1), analyzes a number of recent contract awards, as well as the Contractor's performance under those contracts, and then lays out several recommendations for future contract development that ECA feels can be beneficial to both DOE and the local communities by significantly accelerating the national cleanup efforts, at reduced cost to the taxpayer.

The Paducah Citizens Advisory Board has studied the ECA document and agrees that the current approach the DOE employs in developing and awarding contracts should be amended for the mutual benefit of the DOE, the taxpayer, communities and businesses. We bring it to the attention of the DOE that in 2010 the Environmental Management Site Specific Advisory Board (EM SSAB) submitted a recommendation (EM SSAB Chairs' Recommendation 2010-1) regarding contracting, specifically, the length of contracts. Within the document concerns are expressed regarding the impact contract turnover has on site cleanup, taxpayers, communities, and businesses. The CAB requests that DOE review the EM SSAB recommendation as further confirmation that the current contracting approach should be modified because it adversely affects all parties. It is provided for your review as Attachment 2.

RECOMMENDATION

The CAB recommends that the DOE use the ECA document, "Changing Course: The Case for Sensible DOE Acquisition Reform" as the basis for further dialogue between all the parties affected by the current contracting practices, including the community and the Citizens Advisory Board.

Attachments:

Attachment 1: "Changing Course: The Case for Sensible DOE Acquisition Reform"

Attachment 2: EM SSAB Chairs' Recommendation 2010-1, "Recommendation on the Inclusion of Option Periods in All Future DOE Requests for Proposals for Prime Contracts"



Energy Communities Alliance

Changing Course: The Case for Sensible DOE Acquisition Reform

June 2015

Significant changes are needed in four areas—risk-sharing, contract vehicles, subcontracting and community input—to ensure that future Department of Energy acquisitions are successful and achieve the Department’s important mission over the long-term

Executive Summary

The successful and safe operation of Department of Energy (DOE) sites is of paramount importance to the adjacent communities. Virtually all of the major prime contracts in DOE's Office of Environmental Management (DOE-EM) and NNSA's portfolios are set to expire between 2016 and 2019 (if not extended), setting up an unprecedented period of contract re-competition over the next four years. In addition, several new contracts—including a new contract to manage environmental cleanup work at Los Alamos National Laboratory—will be competed during this same time period. The approach to—and ultimate success of—these new contracts is vital to the overall nuclear security and nuclear waste cleanup mission in the United States, the health and viability of the communities that host these sites, the strength of the future workforce and the sustainability of businesses—both small and large—that take on these unique tasks.

Numerous factors will impact how successfully DOE navigates this period of change, including appropriations, interactions with host states, DOE's own contract and program management, leadership at sites and at headquarters and the performance of contractor key personnel. Yet one thing clearly transcends all other variables: the contract vehicles are the foundation of this strategic effort. As DOE's planning begins in earnest for this next wave of acquisitions, we are concerned that DOE's current processes, policies and procedures are not currently up to the task.

DOE's effort to shift more risk to contractors through fixed-price and cost-capped contracts, fee claw-back and other measures has resulted in significantly decreased competition for recent DOE contracts and, more importantly, has been a severe impediment to the completion of work on several existing contracts. At the same time, community and site-level input into contracting strategy is diminishing and subcontractors whose vitality is critical to local economies are seeing a similar decrease in their roles and opportunities. Although many companies have supportive corporate programs for community engagement, in today's Low Price Technically Acceptable (LPTA) contracting environment these behaviors are not recognized nor encouraged.

These trends are not in the best interests of the DOE or its host communities. ECA has proposed a process to address these concerns and move DOE towards contracts that will accomplish DOE's goals.

The Energy Communities Alliance is the organization of local governments that are adjacent to or impacted by DOE and NNSA activities. Our board members include elected officials and administrators from local governments impacted by DOE and our members include community reuse organizations and other local community agencies and organizations adjacent to DOE facilities.

1.0 Introduction

DOE is on the leading edge of a period of unprecedented contract competition. The Idaho cleanup ‘core’ contract competition (DOE-EM) and the Kansas City M&O competition (NNSA) are both currently ongoing in 2015 and followed by at least 17 major contracts which are set to expire between 2016 and 2019 (see Table 1.1).

In addition, several new contracts are set to be completed during this time period as well, most notably the new Los Alamos National Laboratory cleanup contract that is being separated from the NNSA lab M&O contract to be managed by DOE-EM. While some of the expiring contracts can—and likely will—be extended, the combination of new contracts and expiring contracts will present a tremendous challenge for DOE, its contractors, and the communities that host DOE/NNSA sites.

Table 1.1

Upcoming Contract Expirations	
<p>2016</p> <ul style="list-style-type: none"> • DUF6 Conversion Operations (Jan. 2016) • Oak Ridge ETTP (July 2016; can be extended for four years) • Nevada National Security Site (Sept 2016) • Moab (Sept. 2016) • SRS (Sept. 2016; can be extended 22 months) • Portsmouth (March 2016; can be extended for five years) • Hanford waste tanks (Sept. 2016; two-year extension possible) 	<p>2017</p> <ul style="list-style-type: none"> • SRS waste tanks (June 2017) • Paducah (July 2017) • WIPP M&O (Sept. 2017; five-year extension possible) • Los Alamos National Laboratory (Sept. 2017; more award terms possible) • Sandia National Laboratories (April 2017) <p>2018 and Beyond</p> <ul style="list-style-type: none"> • Hanford Central Plateau (Sept. 2018) • Lawrence Livermore (Sept. 2018; more award terms possible) • West Valley (April 2019) • Y-12/Pantex (June 2019; up to five more years possible) • Hanford Mission Support (Sept. 2019) • Salt Waste Processing Facility

These new contracts will be especially important as they will be re-competed during a pivotal time for DOE, particularly for the Office of Environmental Management. For many years, DOE-EM has been spreading the annual appropriation of \$5.5 to \$6 billion in a thinner layer

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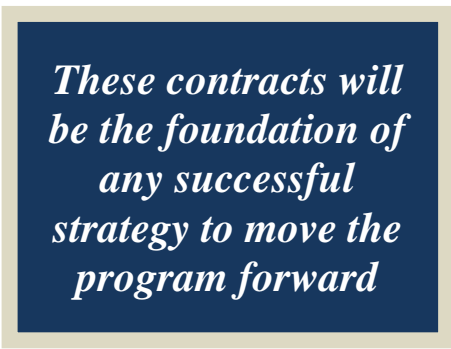
over an increasingly expensive portfolio, but in the next few years a variety of circumstances will make that all but impossible. During the same 2016-2019 time period in which the contracts will be expiring, the operational commitments of the program—particularly at the Hanford site in Washington State—will begin to outpace expected appropriations by \$2 billion or more.

Likewise, a vast number of legally enforceable—and largely unattainable—cleanup milestones are coming due, bringing with them fines and legal settlements that diverts DOE’s leadership’s attention and puts a further financial strain on the program. Adding to that strain, the bill for lack of investment in infrastructure and maintenance across the complex over the last two decades is coming due. Finally, the mandatory defense cuts known as sequestration could return in 2016, bringing a whole new dimension to this equation.

This convergence of events makes the contracting strategy all the more important, as these contracts will be the foundation of any successful strategy to move the cleanup mission forward under these complex and difficult conditions. As highlighted in the President’s Blue Ribbon Commission, buy-in from the local communities is critical to building relationships that can help avoid confrontation.

2.0 Appropriately Balance the Risk in Contracts

DOE has traditionally seen a very high level of competition for its contracts, with three to five teams led by world-class engineering and construction firms vying for each opportunity. However, in the last four years, DOE has changed its acquisition approach, seeking to shift more risk to its prime contractors, both within existing contracts and in planning for new opportunities. This has had several impacts, the most notable of which is the dramatic drop-off in the number of companies willing to bid for contracts with DOE-EM.



*These contracts will
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program forward*

No one wins if the best and brightest companies decide to take their talent elsewhere. If the winning contractor is just the one who bids hoping that they can get reasonable treatment from DOE in the future—rather than the one who leverages the best ideas, corporate reachback, technical approach, technical advances and key personnel—it does not set up a successful situation for DOE, the community or subcontractors. The risk-reward equation needs to be rebalanced to ensure the taxpayers and stakeholders are protected, while at the same time providing enough of an upside that companies are willing to compete.

The changes in DOE’s acquisition policies are outlined in a Dec. 12, 2012 memorandum (Attachment 1) from then-Deputy Secretary of Energy Dan Poneman. In that memo, DOE

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lays out two primary principles: DOE will align the contractor interest to the taxpayer interest and contracts will be structured so that contractors bear responsibility for their actions. These principles are laudable in theory, but in practice have resulted in contracts that do not serve the interests of taxpayers, DOE, contractors or the communities that host DOE sites.

Primarily, the breakdown has been the result of an emphasis on fixed-price contracting and provisional fee payments, as directed by the 2012 memo:

“In accordance with Administration policy, contracting officers will first consider the use of a firm-fixed-price contract to complete work requirements. This contract type is most appropriate for services that can be objectively defined in a statement of work and the risks involved can be estimated with an acceptable degree of certainty. Long-standing views about the unique and sometimes unpredictable nature of work performed by the Department have resulted in the limited use of firm-fixed-price or other fixed-price type contracts. However, improved upfront planning and requirements definition, as well as appropriate scoping of the contract to clearly-defined, will allow for the greater use of firm-fixed-price contracting.”

The changes in policy have resulted in fee structures in new contracts that are overly punitive, with little upside and a tremendous potential downside for the bidding companies

The memo directs that performance measures link all or “a substantial portion” of the fee to achievement of final outcomes rather than interim accomplishments. “Contracts shall be structured such that all or a significant portion of the fee for interim milestones will be provided provisionally and must be returned if the contractor does not fulfill its ultimate contractual obligations,” the memo states. In addition, the DOE policy puts an emphasis on hard cost caps or a cost-share approach:

“Using this approach effectively transforms a cost-reimbursement contract into a fixed-price contract if the contractor incurs costs beyond a certain amount. This approach is appropriate for contracts where the total cost to perform can be estimated with reasonable certainty. If a contractor does not meet performance targets, the cost cap and /or cost share will shift the cost burden to the contractor. In this context, the contractor must still perform regardless of the costs it incurs and the Department will not reimburse some or all of the costs beyond the state amount as set forth in the contract, subject to certain legal limitations.”

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It is unquestionably important for DOE to be a demanding customer and to hold contractors accountable for performance, but the emphasis on accountability can't supersede the overarching mission of cleanup of the various sites. Accountability alone cannot be the end goal. For example, as part of the shift in DOE policy, hard cost caps were put in place over the last several years at two of DOE-EM's most troubled projects—the Integrated Waste Treatment Unit at the Idaho site and the Separations Process Research Unit in New York. Both projects have greatly exceeded the cost cap with the contractors CH2M (IWTU) and AECOM (SPRU) on the hook for the remaining costs. For CH2M, that has meant more than \$90 million at IWTU and for AECOM that has meant more than \$150 million at SPRU. The Department has cited both contracts as successes given that the contractors in charge of each project are fully responsible for cost overruns.

“...the emphasis on positive penalties and accountability has failed to achieve positive project performance.”

However, in both cases the emphasis on punitive penalties and accountability has failed to achieve positive project performance. IWTU continues to experience delays in startup and commissioning, causing state regulatory milestones to be missed, while there continues to be no clear path for completion of cleanup at SPRU. In both cases, the contractors were certainly held accountable but ultimately the projects—and the cleanup mission—are no better off. This is a classic case of short-term thinking not producing long-term results.

Similarly, the changes in policy have resulted in fee structures in new contracts that are overly punitive, with little upside and a tremendous potential downside for those companies bidding on prime cleanup contracts. The impact on the level of competition before and after this policy went into effect is striking. In the five major unrestricted DOE-EM contract competitions from 2010-2012 (Portsmouth, WIPP, ETTP, West Valley and AMWTP), an average of 4.4 teams bid, with as many as six teams on at least one occasion.

In the two major contract competitions since the changes in DOE's procurement approach took effect (Paducah and Idaho Core), only two teams have bid, with many traditional contractors in the DOE market deliberately staying away from the competitions (See Table 2.1).

3.0 Rely on Proven Contract Types That Encourage Competition

Traditionally, DOE-EM's biggest successes—Rocky Flats, Fernald, Mound, River Corridor and others—have shared a common contracting strategy: a cost-plus incentive fee contract that provides highly lucrative fee payments for exceeding cost and schedule targets, well defined scopes of work and uncertainties, and lack of DOE micro-management of the

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contractor. Generally, these contracts gave the contractor a great deal of flexibility in performing the work to ensure the job was done as efficiently, quickly and completely as possible. These contracts had simple cost and schedule targets, which informed a fee share line that was easy to understand and served as a powerful incentive to companies. Contractors were able to make substantial fee, but the big winner is DOE—which saved billions of dollars in lifecycle costs through accelerated cleanup—and the communities—which were able to see the benefits of both the federal investment, protection of human health and the environmental and a cleaned up site on an accelerated schedule.

Table 2.1

Contract Competition	Bidding Teams	Notable ‘No-Bids’
Idaho Core (2015)	2 teams: 1. Fluor-CH2M 2. AECOM	Bechtel, B&W, EnergySolutions, HII, CB&I
Paducah Cleanup (2014)	2 teams: 1. AECOM-Stoller 2. Fluor-CB&I	Bechtel, URS, EnergySolutions, B&W, CH2M
WIPP M&O (2012)	4 teams: 1 URS-B&W 2 Bechtel-EnergySolutions 3 Fluor 4 CH2M	None
ETTP (2011)	5 teams: 1 URS-CH2M 2 Fluor-B&W 3 EnergySolutions-Northrop Grumman 4 Shaw-Stoller-Weston 5 Bechtel	None
AMWTP (2011/2010)	3 teams: 1 B&W-URS-EnergySolutions 2 CH2M-Northrop Grumman 3 Bechtel-Northwind	Fluor
West Valley (2011)	6 teams: 1 CH2M-B&W 2 Stoller 3 URS 4 Bechtel-EnergySolutions 5 Fluor-Jacobs 6 LATA-ECC	None
Portsmouth (2010)	4 teams: 1. Bechtel-CDM 2. Fluor-B&W 3. EnergySolutions-AECOM-LATA 4. CH2M-Battelle	None

****Bolding indicates company awarded contract****

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In 2005, Congress reminded DOE to not lose track of the success it achieved as part of the 2005 National Defense Authorization Act: *“The committee encourages DOE to reach out to the communities at the 2006 closure sites and determine what lessons can be learned to help accelerate cleanup and thereby reduce the safety and health risks at the remaining major EM sites. In 1995, when a few individuals at Rocky Flats, Fernald, and Mound first began discussing closure of these sites as much as 60 years ahead of schedule, there were many more skeptics than believers in the accelerated closure approach. At that time, the contractors were required to merely meet compliance milestones, not to do cleanup. These three sites have proven that by reducing the highest risks first, the risk of exposure to the workers, environment, and communities was reduced, and accelerated cleanup has significantly reduced the life cycle cost.”* (Full text set forth in Appendix A)

The best tool in the DOE-EM toolbox is being taken off the table in favor of contract structures that have never driven mission success in the DOE program

Yet with the 2012 DOE changes in policy, those kind of contracting vehicles were effectively removed from the table for the next wave of DOE-EM contract competitions. The best tool in the DOE-EM toolbox is being taken off the table in favor of contract structures that have never driven mission success in the DOE program and that have a number of potential negative consequences. DOE lost track of what made it successful in cleanup.

The currently ongoing Idaho Core procurement presents an example of how the changes in acquisition policy have driven the Department to rely on ill-conceived contract structures that discourage competition and emphasize punitive penalties over mission completion. Unlike the simplicity of successful past DOE-EM contracts, the Idaho Core RFP relies on a highly sophisticated and complex set of fee measures that will take substantial contractor and DOE time to administer, and may not properly incentivize the contractor. The draft RFP released in 2014 proposed a cost cap that made the winning contractor responsible for all costs once the cap was breached by \$150 million. The draft RFP also proposed reducing fee by \$0.20 for every dollar the contractor exceeds the proposed target cost, and to prevent the contractor from earning cost incentive fee and to begin reducing fee on a dollar-for-dollar basis if the contract performance ceiling is exceeded. For publicly traded companies, the fee structure was especially difficult, as earnings declared in each of the first four years of the contract could be voided as the results of an unforeseen cost overrun experienced in the final year of the contract. Additionally, fee criteria were based on achieving operational levels that were largely unrealistic and unachievable even under the most favorable conditions and a

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provision was included that would give a DOE contracting officer the ability to withhold fee based on a subjective determination that performance was inadequate.

While some of the provisions were modified in the final RFP—including dropping the cost cap and making some of the fee non-provisional—the starting point in the draft RFP was so far removed from the vehicles that have been successful in DOE-EM that the final version, even with the changes, functionally had the same impact. And even though the Department ultimately removed enough of the barriers that a few companies were able to justify a bid, the final RFP is still a far cry from the kind of strategic, mission-driven contracts DOE-EM will need to be successful over the next four years and beyond.

Conversely, the 2005 River Corridor contract, awarded to Washington Closure Hanford—a team of URS, CH2M Hill and Bechtel—should be held up as a model for future DOE-EM contracting. Under the cost-plus-incentive-fee contract, for every dollar the work comes in under Washington Closure’s target cost, the company receives \$.20 in additional fee; for every dollar in increased expense, it loses \$.20 in fee. There are also enforceable contractual requirements for subcontractor and small business participation—60 percent of the work has to be subcontracted, with 50 percent of that subcontracted work going to small business. A minimum of three of every 10 contract dollars was to flow to small business, the Department said at the time of award.

While implementation of the River Corridor contract and management by both DOE and the contractor was not without its bumps—especially early on as DOE, regulator and contractor behaviors adjusted to the new type of contract—the result has been what is viewed by many observers across the weapons complex as the single best contract DOE-EM has ever crafted. Certainly, the fee structure was able to drive performance and the subcontracting requirements offered substantial opportunities for the full spectrum of local and small businesses and residual benefits to the local community.

Going forward, it’s especially important for DOE to look for contract models that have been proven successful for the cleanup mission.

4.0 Incentivize Small Business Opportunities and Healthy Subcontracting

Another key factor in the success of the next wave of DOE contracting will be the strategy for ensuring opportunities for small businesses and a healthy base of subcontractors throughout the complex. The subcontractors, both small and large, and small business primes must be an equal partner in this process, as their specialized skills and innovation are important drivers for mission success, economic development, and the long-term sustainability of the communities that host DOE sites. They are typically highly motivated, efficient and effective. Yet they are made vulnerable under the current procurement model.

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In recent years, the climate for subcontractors has worsened as budget constraints, inconsistent subcontracting requirements and a number of other factors have resulted in a large number of DOE prime contractors self-performing broad scopes of work that were previously subcontracted primarily to local and other small businesses. For example, CH2M Plateau Remediation Company at Hanford announced a new subcontracting approach in 2013 as it began a five-year extension of its contract. Under the new approach, which was intended to save \$7-9 million annually, roughly 55 percent of the subcontractor workforce was invited to join CHPRC, 30 percent of the subcontracts were initially set to be competed and 15 percent of the subcontracts were extended. Similarly, Oak Ridge cleanup contractor URS-CH2M Oak Ridge (UCOR) unveiled its own revamped subcontracting approach in 2012, converting to a mostly staff augmentation approach in which subcontractors would provide employees and UCOR would manage the actual cleanup work.

The subcontractors, both small and large, and small business primes must be an equal partner in this process, as their specialized skills and innovation are important drivers for mission success, economic development and the long-term sustainability of the communities that host DOE sites.

While there are arguably small short-term benefits to pulling work back under prime contractors, the long-term negative impacts to subcontractors—small businesses in particular—are significant and difficult to reverse. Likewise, the loss of innovation, specialized skills and efficiency that subcontractors bring to the DOE complex is hard to measure in the short-term, but long-term impacts will be severe.

During the next wave of procurements, DOE should put in place a broad strategy to include language in its large, prime contracts that not only requires a subcontracting plan, but includes the plan in the evaluation criteria at award and annually evaluates performance against the subcontracting plan as part of the yearly fee determination. Too often, pre-selected subcontractors have been added to teams in order to win the contract only to see the work never materialize or be pulled back after a year or two because there is no contract mechanism to enforce or incentivize the subcontracting plan. Additionally, the evaluation of the subcontracting plan should include a scoring advantage for proposing local businesses and sourcing, and recognize that staff augmentation as a dominant practice should be avoided.

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It is important that such subcontracting policies don't come at the expense of DOE direct (prime) small business opportunities, but rather work in concert to support sustainability for the local business community. A healthy, vibrant subcontracting and small business community is vital to achieving the long-term mission of the DOE cleanup program, and the next round of procurements should include subcontracting provisions that position everyone—DOE, the contractors and the communities—for success.

Another facet of healthy subcontracting involves development and deployment of new technologies in the cleanup mission. As detailed in the December 2014 report from the Secretary of Energy Advisory Board's (SEAB) Task Force on Technology Development for Environmental Management, current contracts do not adequately incentivize contractors to incorporate new

“...current contracts do not adequately incentivize contractors to incorporate new technologies, largely because of the limited term of the contracts, the risk associated with new technologies and an emphasis on delivering on the baseline that discourages innovation.”

technologies, largely because of the limited term of the contracts, the risk associated with new technologies and an emphasis on delivering on the baseline that discourages innovation. In its May 2015 response to the SEAB task force report, DOE said it will “identify strategies that promote and enable contractors to exploit new and emerging technologies, especially those that have the potential to be high mission impact. Incorporating performance incentives and flexibility for technological innovation in contracts will be explored. Sharing the financial benefits of incorporating innovations and implementing smarter solutions has already proven to be effective at motivating contractor performance.”

DOE's recognition of this issue is important and ECA encourages the Department to incorporate incentives—not only for development and deployment but also for technology transfer—in the next round of procurements.

5.0 View the Host Communities as the Ultimate “Customer”

The local communities that host DOE sites are the ultimate “customer” in the acquisition process and it is critical that the Department engage appropriately with elected officials and other community groups early and often as part of the planning for the next round of procurements. Too often, the communities are left to respond after the fact to potentially harmful provisions in Requests for Proposals, with little hope of sparking a change.

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For future procurements, DOE should seek out local community input early in the planning process not only to ensure that DOE's goals in each acquisition align with the community's goals, but also to take conscious advantage of the lessons learned from the last round of prime contract competitions. Elected officials in these communities are not "stakeholders" only to receive an after-the-fact briefing. Instead, DOE must engage the local government officials in substantive discussions (like at the most successful DOE cleanup projects over the years) during the planning, the execution, and the evaluation of each new procurement. Host communities have years of first-hand experience being on the front lines to assess which subcontracting policies, economic development incentives, and labor strategies have been successful—and which haven't—and their perspective would be invaluable during acquisition planning.

For future procurements, DOE should seek out local community input early in the planning process not only to ensure that DOE's goals in each acquisition align with the community's goals, but also to take conscious advantage of the lessons learned from the last round of prime contract competitions.

Additionally, it is crucial that this engagement with the community is part of an overall strategy to make the federal leadership at the DOE field offices where these contract competitions will take place the focal point of the acquisition planning, procurement and award process rather than having those decisions driven by headquarters or a central procurement office such as the EM Consolidated Business Center. While the broader DOE organization should certainly play the appropriate role in supporting these acquisitions, it's important to recognize that each DOE site is unique and there is no 'one-size-fits-all' acquisition approach that should be implemented from hundreds—or thousands—of miles away. Local communities can often help coordinate more effectively with State and other oversight/regulatory bodies to deal with regulatory and other requirements that may be overly burdensome or result in skewed priorities that get in the way of completing these cleanups and transitioning the sites as efficiently as possible.

The current approach to contracting, in which there has not been substantial community engagement, is proving to be increasingly insupportable to communities that host DOE sites. This creates a myriad of issues for DOE, and it must be addressed as DOE approaches the next wave of contract competitions.

It also behooves DOE to be aware of and sensitive to the costs borne by local communities as they strive to be good hosts. Community planning for everything from infrastructure like roads and stoplights and the provision of fiber optics to sites, to educational concerns like school expansions or closures, and residential and commercial development can be impacted

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by the quality and duration of a contract. Thus further underscores why it is important to involve localities in the process.

Additionally, the length and timing of contracts ought to be given careful consideration as the procurement process is examined. Elsewhere in this document reference has been made to the likelihood of contract extensions. DOE is urged to right-size the duration of a contract at the onset rather than establishing set, five-year contracts with seemingly haphazard and/or last-minute extension provisions. For a small community (arguably under 100,000 in population) the difference between a five-year contract with two, six-month extensions and a six-year contract is significant when it comes to community effect. The willingness of employee families to engage in a community—to purchase homes and participate on local boards and in a wide array of community activities is negatively impacted as contracts uncertainty is increased.

Finally, DOE is encouraged to look at aligning the length of a contract with the specific milestones or clean-up objectives of a particular site. For example, ending a contract right as a milestone is approaching, or engaging in two or more five-year contracts for a projected 13-year process demonstrates poor long-term planning and vision.

6.0 Recommendations

In order to best position DOE for the next round of contract competitions, a number of important changes are needed in DOE's approach to acquisition planning, its engagement with the community and the specific approaches in the upcoming contracts and Requests for Proposals. To accomplish these changes, DOE should:

1. **Use contract structures that are based on the highly incentivized contract model that was successful at River Corridor, Rocky Flats, Mound, and Fernald rather than cost caps, fixed price, LPTA or other high risk/low reward contract structures that are overly complex and have no track record of success**
 - a. Appropriately balance risk and place a high priority on mission completion versus punitive penalties
 - b. DOE behaviors need to match/support the contract structure
 - c. Contractors need sufficient flexibility and discretionary authority to deal with issues in a timely and efficient manner

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- d. Although many of the people have retired that worked on the past successful contract structures, DOE needs to ensure that it learns from the past successes and builds capacity to deal with potential high volume of contracts in the procurement system.
- 2. Actively engage with appropriate host community representatives during the planning phase of each acquisition.**
 - a. Contracts should include community engagement requirements.
 - b. An emphasis should be placed on longer-term contracts (i.e. five years versus three years with two one-year options).
 - c. Include *community* cleanup priorities clearly in the contact scope.
- 3. Include the subcontracting and small business plans in the evaluation criteria and emphasize use of local and small businesses in the scoring.**
 - a. Staff augmentation should not be a dominant practice.
 - b. Subcontracting plan should address the type of work to be subcontracted out, not just the quantity.
 - c. Build in contract mechanisms that discourage prime contractors from self-performing previously subcontracted work during the term of the contract.
 - d. Allow accounting of small business utilization by non-M&O prime contractors to further encourage the utilization of local businesses
- 4. Contracts should incentivize development, deployment and eventual transfer of new technologies.**
 - 5. Acquisition planning should originate at the site level and site participation should continue through Source Evaluation Board membership, with DOE headquarters support.**

7.0 Summary

DOE is facing an unprecedented number of potential contract competitions over the next few years and the approach to these new contracts will be vital to the overall nuclear security and nuclear cleanup mission in the United States, the health and viability of the communities that host these sites, the strength of the future workforce and the sustainability of businesses—both small and large—that take on these unique tasks. The Department and the communities that host DOE sites, are best served when there is strong competition among highly qualified companies seeking to implement the most innovative and efficient strategies for success on this work. Over the next few years there will be increasing competition for the attention and commitment of these top companies from numerous other sectors—including the commercial nuclear reactor decontamination and decommissioning market, Department of Defense environmental work and cleanup programs in the U.K., Canada and Japan. It is critical that the Department of Energy put in place acquisition policies that foster competition, drive performance, align with the goals of host communities and support a healthy and sustainable subcontracting base for the long-term.

DOE should use this opportunity to engage directly with local communities and contractors on these issues to develop an agreement on how best to proceed to accomplish the important missions at DOE. ECA has reached out to EM and asked for a meeting on these issues and will invite all contractors and other interested groups – especially state regulators to participate in this important discussion.

Energy Communities Alliance

This paper is the work of a committee that is written from the experience of local governments that host defense nuclear facilities, which have been and will be most impacted by any policies regarding nuclear waste cleanup and management. ECA's leadership consists of mayors, councilmembers, commissioners, chairpersons, judges, city and county managers, Community Reuse Organization executives and board members, economic development professionals, and others. We developed of this paper and provided input into the realities of dealing with DOE's contracting since the early 1990s, including the benefits and challenges.

Appendix A

Senate Report 108-260 to the FY 2005 National Defense Authorization Act (P.L. 108-375).

The committee notes that the fiscal year 2005 budget request for Environmental Management (EM) will be the last full fiscal year authorization and appropriation for cleanup at the Rocky Flats Environmental Technology Site (Rocky Flats), the Fernald Environmental Management Project (Fernald), and the Miamisburg Environmental Management Project Mound Site (Mound). The committee applauds the level of priority and focus DOE and management within the Environmental Management Program have placed on cleaning up these three EM sites decades ahead of the original baseline schedule and at a savings of tens of billions of dollars.

The committee encourages DOE to reach out to the communities at the 2006 closure sites and determine what lessons can be learned to help accelerate cleanup and thereby reduce the safety and health risks at the remaining major EM sites. In 1995, when a few individuals at Rocky Flats, Fernald, and Mound first began discussing closure of these sites as much as 60 years ahead of schedule, there were many more skeptics than believers in the accelerated closure approach. At that time, the contractors were required to merely meet compliance milestones, not to do cleanup. These three sites have proven that by reducing the highest risks first, the risk of exposure to the workers, environment, and communities was reduced, and accelerated cleanup has significantly reduced the life cycle cost.

ENVIRONMENTAL MANAGEMENT SITE-SPECIFIC ADVISORY BOARD

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**Northern New Mexico
Savannah River**

January 21, 2010

Inés R. Triay
Assistant Secretary for Environmental Management
U.S. Department of Energy, EM-1
1000 Independence Avenue, SW
Washington, DC 20585

Dear Assistant Secretary Triay:

The U. S. Department of Energy (DOE) has awarded numerous contracts in recent years to manage projects and to perform work in an effort to complete environmental cleanup at Environmental Management sites across the DOE complex. These contracts contain a myriad of provisions designed to expediently and efficiently accomplish the work. Currently, DOE awards prime contracts for a Base Period of Performance, which is typically five years, some with option periods, some without. If an option period is not included, DOE must go through the formal process of bidding each contract when the Base Period of Performance of five years is nearing expiration. New contracts are awarded through Request for Proposals.

In the event that a prime contract is awarded to a contractor other than the current contractor, the DOE, the local community, and the workforce endure the transition to another contractor. The rebid process and transition are costly and time consuming, create significant retraining requirements, can cause delays in cleanup schedules, distract the workforce which can result in safety issues, and cause economic uncertainty within the local community.

From a business standpoint, the flexibility of option periods to extend contract terms helps cultivate and sustain long-term business relations, and provides needed continuity on complex contracts with steep learning curves, such as DOE's major prime operating contracts. Use of such option periods should specify measurable quality requirements for performance under the contract.

In order to maintain continuity of service and to minimize future impacts on footprint reduction, the EM SSAB recommends the inclusion of option periods in the language of all future DOE Request for Proposals for prime contracts when appropriate.



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Ralph Phelps, Chair
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Citizens' Advisory Board



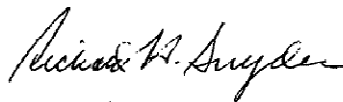
Ron Murphree, Chair
Oak Ridge SSAB



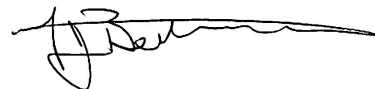
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Manuel Bettencourt, Chair
Savannah River Site
Citizens Advisory Board

cc: Melissa Nielson, EM-42
Catherine Brennan, EM-42