



**Citizens Advisory Board  
Idaho National Engineering and Environmental Laboratory**

**Implementing Direct Department of Energy Relationships  
and Funding to Site Specific Advisory Boards**

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The Environmental Management (EM) Site-Specific Advisory Board (SSAB) for the Idaho National Engineering and Environmental Laboratory (INEEL), also known as the INEEL Citizens Advisory Board (CAB), is a local advisory committee chartered under the U.S. Department of Energy's (DOE) Environmental Management SSAB Federal Advisory Committee Act Charter.

Elizabeth Sellers, the INEEL Site Manager, provided a copy of an EM-11 (Sandra Waisley) Memorandum dated October 31, 2003 to us and asked for our advice and input. The title of that memorandum is "Direction and Guidance for Implementing Direct DOE Relationship and Funding for the Environmental Management Site-Specific Advisory Board." The memorandum directs the Site Manager to submit her preferred long-term option and associated implementation plan to EM Assistant Secretary Jessie Roberson by April 2, 2004.

The INEEL CAB is surprised and disappointed by the action of DOE Headquarters in mandating the methods for providing support services for the SSABs. We are eager to accommodate Ms. Sellers request and to help determine the way we will operate in the future. However, the two long-term options offered by DOE-HQ do not appear to be in the best interest of either the INEEL CAB or the success of the INEEL. In addition, we have no idea what problem(s), if any, generated this mandate.

**The INEEL CAB requests a written explanation of the rationale for this directive to determine our preferred path forward.**

Below we discuss and analyze the two long-term options proposed by DOE-HQ and offer an alternative.

**Option #4 – Non-Profit Organization [Section 501(c)3 IRS Code]**

The INEEL CAB suspects that on closer examination, the non-profit organization option would be a difficult arrangement from DOE's point of view. A new non-profit organization would have to be formed for the specific purpose of applying for a grant from DOE to support the INEEL CAB. Finding CAB members who would also be interested in taking on the responsibilities of serving on a Board of Directors might be difficult without firm assurances from DOE that the organization would, in fact, receive a grant sufficient to implement the scope of work. The non-profit organization would have control of the funds provided by DOE and DOE would have reduced ongoing effective oversight.

In addition, this would be a difficult change from the point of view of the INEEL CAB. The INEEL CAB is composed of 15 citizen-volunteers who are interested in providing advice to DOE – their interest in participating may be severely diminished if DOE's expectations change significantly. Setting up a new Section 501(c)3 non-profit corporation takes quite a bit of time (6-9 months) and requires significant legal services and fees. On an ongoing basis, a 501(c)3 corporation needs legal services, must file tax returns (even if no taxes need to be paid), is obligated to purchase corporate and Board of Directors liability insurance, etc. In addition to the current burden of reading and reviewing DOE documents, meeting to develop consensus on our recommendations, committee conference calls, and other current duties of CAB members, the volunteers that serve on the 501(c)3 Board of Directors would be forced to accept administrative responsibilities that would only increase their necessary time commitment.

Of even more concern would be the transition period, which is mandated by DOE-HQ to be completed by September 30, 2004. A sequence of events must be completed, the timing of which is almost entirely out of the control of the CAB:

- Incorporate the CAB with the State of Idaho, including filing application forms, developing by-laws, and obtaining a Federal identification number.
- File an application with the Federal government for a 501(c)3 status, including copies of the Bylaws, three years of financial data, description of revenues and expenses, and a statement of the source of the organization's income (only a promise from DOE to provide grant funding).
- Organize the corporation at a special organizational meeting, appoint directors, elect officers, and indemnify the directors. Presumably the current support contractor (North Wind, Inc.) would be the registered office and agent.
- Secure adequate insurance, including Errors and Omissions coverage, to protect the Board of Directors from personal liability.
- Negotiate a "cooperative agreement" with DOE-ID procurement. This would require opening a separate bank account demonstrating an acceptable accounting system, and following DOE regulations (10CFR). Presumably, the current support contractor could do most of this work.
- Receive actual funding from DOE under the cooperative agreement.
- Negotiate a support contract for Fiscal Year 2005 (to start on October 1, 2004). The easiest route would be to extend or renegotiate the contract with the current support contractor.

All these steps, some of which have never been done before by the INEEL CAB or DOE-ID, would have to be completed successfully by October 1, 2004. Since the timing of most of them is not in the control of the CAB, this whole procedure is highly risky. Failure to complete the steps in a timely fashion would result in shutting down the CAB on October 1, 2004. Furthermore, since the CAB is counting on its current support contractor to do most of the organizational work, a delay beyond October 1, 2004 could prove fatal to the CAB..

As one can see from the above description, the transition will incur significant expenses, will require significant expenditure of time by the CAB members, and cannot be guaranteed to be successful.

**The INEEL CAB does not believe that it is in the best interest of DOE for our support services to be provided by a non-profit corporation.**

#### **Option #5 – DOE Federal Management and Support**

This option proposes that Federal employees provide administrative support, travel management, and office space with telephones, copiers, etc. Separate contracts could be let for facilitation services and technical advice.

This is a very unsatisfactory arrangement for a number of reasons:

1. First, difficulties and confusion could arise due to multiple points of contact among Federal employees, the facilitation contractor, and the technical support contractor.

2. Second, due to funding uncertainties and other work requirements, it is not clear that Federal employees would be able to provide the necessary services in a timely and efficient fashion. Workload at DOE-ID is expected to increase in years to come and CAB responsibilities could be burdensome to DOE staff.

The INEEL CAB's Deputy Designated Federal Official, DOE Coordinator, and Assistant Coordinator all work for other organizations within DOE (not the EM program). Although the current arrangement is acceptable to all parties, it is likely that the option as described in the October 31, 2003 Memorandum would require an across the board replacement of all CAB staff with EM personnel. Implementation of this option would assuredly cause turnover of staffing for the CAB – which is not helpful to the CAB's smooth functioning.

3. Third, there may be conflict between the goals of the CAB and the technical and political interests of DOE. DOE staff sometimes lack a solid understanding of the needs of the CAB and the need for objectivity in arranging presentations for the CAB. Our support contractor has always provided very necessary services in helping DOE understand the CAB and our needs. There is no reason to believe our needs would change that significantly in the future.
4. Fourth, and most important, there would be the perception, if not the reality, of a lack of autonomy and independence of the CAB. In a letter to the CAB from Beth Sellers, dated October 22, 2003, we were encouraged to seek members that represent “the local populace . . . to reach agreement as a group . . . [on] advice and recommendations on ‘what makes sense’ . . .” The CAB's ability to fulfill that direction while maintaining its own credibility with the public would be severely compromised if our support were provided by DOE staff. Our advice, no matter how it is developed, would not be perceived as representing the views of the public.

**The INEEL CAB recommends that our support services not be provided by DOE staff.**

#### **Option #1 – Use a Section 8(a) Small Business Contract**

The CAB recognizes that, according to the October 31, 2003 memorandum, Option #1 is not allowed as a long-term solution. However, it has many advantages, which may have been overlooked by DOE-Headquarters.

This option is the method now used by the INEEL CAB. In November 2002, DOE's Idaho Operations Office (DOE-ID) awarded a Section 8(a) Small Business Contract to our current contractor (North Wind, Inc.) for support services. North Wind is a small, disadvantaged woman-owned business certified as an 8(a) company by the U.S. Small Business Administration. Prior to our contract with North Wind, we had a similar contract with Jason Associates Corporation from 1994 to 2002. Jason was an 8(a) company when the contract was first awarded in 1994. Both contractors provided administrative support, technical support, meeting and other logistical support, and facilitation services. The CAB has been quite satisfied with the performance of both contractors.

We feel that this current arrangement is in the best interest of DOE. The contract is issued by the Federal government and allows Federal oversight over financial and legal aspects of the contractor's performance. The INEEL CAB still has the authority to direct the operations of the contractor to meet our needs, within the allocated budget. In addition, this type of contract offers business opportunities for small businesses.

**The CAB recommends that DOE-Headquarters reconsider the long-term options available to the CAB and include Option #1 as an acceptable long-term solution.**

The two long-term options described by Ms. Waisley would provide no advantage to DOE and, indeed, would pose a threat to the INEEL CAB's long-term viability and credibility. By contrast, Option #1 presents the least burden to CAB members, provides the most benefit to DOE-EM, and has been used successfully for ten years.