EM Advisory Board Regulatory Reform Areas for Consideration

May 16, 2018

Regulatory Reform for Waste Management

Regulatory, statutory and/or DOE policy changes could allow for more efficient use of existing radioactive and mixed waste management and disposal options. Changes could include:

- Regulation of radioactive waste based on radionuclide content and chemical/physical form, without regard to origin. This could include revision or clarification of waste definitions (such as HLW) that limit treatment and disposal options or that are based on overly conservative risk assumptions

- Review of previous waste management decisions, commitments or policies that may need to be revised based on regulatory changes, new experience and emerging waste treatment technologies or political expedience. These could include:

    - Revisiting the prohibition of tank waste currently included in the WIPP Hazardous Waste Facility Permit (Hanford/SRS)
    - Revisiting the defense waste determination for stranded TRU waste (West Valley)
    - Working with DOE Host States and Congress to look at the existing volume limits in the Land Withdrawal Act to determine the need for the increase in current volume limits in the face of growing TRU waste inventories driven by ongoing environmental remediation activities

These concepts are currently supported by the Energy Communities Alliance (ECA) and all options would require significant stakeholder outreach, coalition building and a national dialogue on DOE's overall waste management for radioactive waste. These concepts could contribute to more effective management of both TRU and LLW.

Regulatory Reform with EPA

Engage greater EPA support for consistency and streamlining nationwide.

- EPA is a consistent player in a tri-party agreements with DOE and the host state.
- EPA has already initiated their Superfund Task Force review, driven by Administrator Pruitt, looking at many issues that are also common concerns for DOE.
- EPA is participating in National Dialogue with DOE and host states, convened through the Environmental Council of States.

Some areas of potential common advancement:

- Greater use of performance based cleanup standards/more realistic future use scenarios (EPA Superfund Task Force Recommendation (Rec) 38 and 40)
- End clean up goal alignment (Rec 21, 36 and 38)
- Third party financing for old and deteriorating DOE facilities (Rec 20, 23, 27, 30 and 39)
- Indemnification options for reuse/economic development of cleaned up areas (Rec 2, 15, 22, 23, 25, 26, 28 and 30)
- FFA Dispute Resolution timeframes (Rec 18)
- Nationwide consistency in risk based cleanup decisions (Rec 4 and 7)
- Partnering (Draft Partnering Agreement product of National Dialogue)

A List of Contract Types

- M&O – Management and Operations
  - *A legacy special contracting method unique to DOE* (FAR Subpart 17.6) – Cost Reimbursable
  - The M&O contractor essentially manages and performs all operations on the site, including subcontracting decisions for any aspects
  - About 22 of these contracts – all the DOE labs, NNSA sites, 2 in EM
- Cost Plus Contracts – "FAR based"
  - Cost Plus Award Fee – used in EM
    - Qualitative Judgment of an Award Fee Board and Fee Determining Official
  - Cost Plus Incentive Fee – used in EM
    - Pre-set targets; fee awarded when targets attained

A List of Contract Types

- Fixed Price Contracts – “FAR based”
  - Can be used for more simple scopes of work, which can be defined. Direct contracts from the site for:
    - Utilities projects including maintenance and repairs
    - Site preparation, roads, repairs not within site-wide contractor’s area of responsibility
    - Repetitive types of work
  - Less than 4% of EM work (by annual value) is done with FP direct contracts
- Indefinite Delivery/Indefinite Quantity (IDIQ) Contracts
  - Task Order based, could be competed among several contract holders – could be fixed price tasks, or cost reimbursable tasks
- Site prime contractors generally subcontract by
  - Small business contracts (and serve as mentor)
  - Often, site contractors use fixed price subcontracts

Innovation – Lesson Learned

- Understand that the Office of Science is now re-focusing its Award Fee Boards to be chaired by HQ.
  - Fee Determining Official could be at HQ
  - Board would be a mix of HQ and site officials

- Advantages:
  - Consistency in approach across sites and contractors
  - Perhaps enhance accountability in the evaluations by applying the more consistent approach

Tribal Contracts

- DOE Order 144.1 – DOE American Indian Tribal Government Tribal Interactions and Policy
- American Indian Tribes and Pueblos have a vested interest in cleanup in their traditional lands
- EM sites already employ Native American contractors (and tribal contracts) for support
- EM is proactively looking for better and enhanced contracting opportunities
  - A unique aspect is that because of Government-to-Government treaties, these contracts would be “direct contracts” or grants from the Federal government (site) with the Tribal entity

Tribal Contracts

- As with anything, there are advantages and cautions
  - Nuclear safety
  - Capability to certify the product (for example, air sampling for contaminants, water sampling for contaminants)
- EM has been reaching out to Tribal Nations to better promote contracting opportunities to Tribes and Tribal businesses through DOE's Office of Small and Disadvantaged Business Utilization

EMAB Suggestions to Consider

- Explore the Office of Science model for the structure of Award Fee Boards, and Fee Determining Official
- Explore opportunities to enhance direct contracts (and grants) with Tribes/Tribal business
  - As part of existing procurement policy under DOE's Office of Small and Disadvantaged Business Utilization, form a targeted subcategory underrepresented population group for Tribes/Tribal entities
  - Examine Buy Indian Act for application to DOE
- Consider doing more work, especially non-nuclear, with Fixed Price and IDIQ contracts
  - NNSA is doing selected tasks with FP contracts