



DEPARTMENT OF THE ARMY
GALVESTON DISTRICT, CORPS OF ENGINEERS
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GALVESTON, TEXAS 77553-1229

CESWG-RD

MEMORANDUM FOR All Regulatory Personnel

SUBJECT: Environmental Impact Statements – Third Party Contracting

1. Purpose:

The purpose of this document is to provide guidance for identifying, selecting, and managing third-party contractors (TPC) who provide assistance to the Corps for preparing Environmental Impact Statements (EISs) under the National Environmental Policy Act (NEPA) of 1969 within the Regulatory Program within the U.S Army Corps of Engineers, Galveston District (Corps). Third party contracting is a valuable method of assistance provided to USACE by applicants for preparing all or part of our project-specific EISs.

This document establishes standard procedures to ensure consistency and to assist the Corps and the Department of the Army (DA) permit applicants in identifying and selecting a TPC for assisting the Corps in executing its NEPA responsibilities for activities that require a DA permit decision and that involve the preparation of an EIS. It is not, however, all-encompassing guidance for every aspect of the TPC selection process, including compliance with related laws and regulations, nor overly prescriptive such that it constrains flexibility necessary to address circumstances unique to case-specific issues that are likely to arise. This document is not a substitute for the Council on Environmental Quality (CEQ) regulations on implementing NEPA at 40 C.F.R. §1500 – § 1508, CEQ guidance, U.S. Army Corps of Engineers Regulatory Program NEPA implementing procedures at 33 C.F.R. Part 325, Appendix B, or 33 C.F.R. Part 230.

The Corps will bear ultimate responsibility for full compliance with the requirements of NEPA and the ultimate selection of the TPC chosen to assist in preparation of any EIS.

2. References:

- National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.)
- Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act of 1969, 40 C.F.R §1500 – §1508, 29 November 1978, Council on Environmental Quality
- Regulatory Programs of the Corps of Engineers, Title 33: Navigation and Navigable Waters, 33 C.F.R. Parts 320 – 330, 332

- CEQ Information Memorandum to Agencies Containing Answers to the 40 Most Asked Questions and Answers on NEPA Regulations, 46 *Federal Register* 18026-38, dated 23 March 1981
- HQUSACE memorandum dated 17 December 1997, from the Director of Civil Works to Major Subordinate Commanders and District Commanders, Subject: Guidance on EIS Preparation, Corps Regulatory Program
- Regulatory Guidance Letter No. 05-08, Environmental Impact Statements – Third Party Contracting

3. Organization:

In addition to the body of this guidance, which addresses Roles and Responsibilities and Disclosure Statements, the guidance includes nine sections to assist in the selection process of the TPC:

- Guidance for Developing a Request for Proposal
- Third-Party Contractor Selection Guide
- Typical Milestone Deliverables for a Corps Regulatory Third-Party EIS
- Vertical Team Coordination SOP
- Southwestern Division Regulatory Program Environmental Impact Statement Review Process
- Conflict of Interest Guide
- Statement of Responsibilities
- NEPA Implementation Procedures for the Regulatory Program
- Glossary

4. Roles and Responsibilities

The Corps has a responsibility to select the TPC and to ensure the applicant and TPC adhere to their respective roles and responsibilities in preparing and coordinating the EIS.

The Applicant's Role. The applicant is responsible for furnishing all necessary information to the Corps to prepare and coordinate the EIS, including the funding and administrative management of a TPC who will collect information, perform technical studies and/or write the NEPA document. Generally, the applicant will be asked to review specific chapters of the administrative draft and final EISs, to comment on any proposed mitigation and to make sure the articulation of the applicant's need, project purpose and proposed action is accurate (e.g., Chapter 1 (*Purpose & Need*) and Chapter 2 (*Alternatives*)). The extent to which the Corps coordinates advance copies of additional chapters of the administrative draft and final EISs or other in-preparation EIS work products with the applicant will be at the sole discretion of the Corps. However, regardless of what draft documents are shared with the applicant, the Corps will ensure the applicant does not alter or unduly influence the data, interpretations and application of the data or any outcome—the Corps remains in control of the content of the EIS at all times.

The Third-Party Contractor's Role. The TPC is selected by and works under the direction and control of the Corps, although the applicant funds the TPC's work in accordance with the agreed upon statement of work (SOW). The TPC is responsible for searching, compiling and reviewing relevant literature, technical publications and previous environmental studies or reports of findings; conducting fieldwork and preparing technical studies in support of the EIS; assisting the Corps with public meetings/hearings; and preparing the NEPA documents, including reproduction, distribution/public posting and mailings (as applicable). *The TPC shall submit all draft materials and findings directly to the Corps without first filtering the information through others, including the applicant.*

The Corps' Role. The Corps is responsible for ensuring the information provided by the TPC is consistent with Corps policy and the NEPA statutory requirement to take a hard, objective look at the public interest and environmental factors. It is incumbent upon the Corps' to direct any necessary changes to the work of the TPC to make sure the work products are acceptable and to ensure any conclusions drawn from the interpretation of the data comport with Corps regulations and policies. The Corps must also independently review any data or materials generated or provided by the applicant that are incorporated into the EIS (directly or by reference) and/or relied upon in agency decision-making, including the Corps' record of decision (ROD) and permit decision(s).

The most important point relating to the Corps' role in the preparation of an EIS is that the Corps must provide sufficient oversight, control and independent review of the NEPA document(s). There is no impropriety for the Corps to rely upon an applicant's analysis as long as the Corps has independently evaluated and verified the data provided by the applicant in accordance with 40 C.F.R. § 1506.5(a). Although in many cases it may not be desirable from the Corps' perspective in terms of avoiding a perceived conflict of interest (financial or otherwise), participation by the applicant in the preparation of an EIS is not prohibited by any regulation. However, in most cases, it is anticipated the applicant's participation in the EIS process will be largely limited to providing information via the funding of a TPC, and that decision-making will be retained by the Corps. When the applicant provides information to the Corps in support of the EIS, the Corps will document in the administrative record that an independent review of the applicant-furnished information has been conducted and the Corps accepts the information as being unbiased, accurate and factually correct.

Once the selected TPC has been retained by the applicant, the TPC will begin work for the Corps, supervised by the Corps Regulatory staff. Although the applicant will pay for the TPC's work, it will have no control over the work done under the contract, and will not be able to review the work product before its release to the public. In addition, the contract must indicate that the applicant retains no right to the products of the contract. The Corps Regulatory staff will:

- have complete control over the scope, content, and quality of the contractor's work;
- independently evaluate the results of the contractor's work;

- have sole ownership of all documents (other than those related to financial aspects) produced under the contract; and
- have complete control over the schedule for completion of the TPC's work.

The Corps should also insure that the TPC contractual obligation expressly recognize that the Corps is the primary beneficiary of the TPC's work product.

If essential information, critical to the integrity of Corps' environmental document, is found missing from the applicant's environmental report and related documents, the TPC will be directed by Corps staff to acquire the missing information in one of two ways. The Corps staff will instruct the TPC to either:

- prepare a data request, which the staff will review and forward to the applicant to obtain the information; or
- perform supplemental studies or data gathering needed to acquire the missing information.

5. Disclosure Statements.

The TPC must execute a confidentiality, conflict of interest, and financial disclosure statement prepared by the Corps, specifying that they have no financial or other interest in the outcome of the project. Preparation of an EIS by a TPC who would suffer financial losses if, for example, a particular build alternative were selected, could erode the public's trust and lead to a perception of bias. Therefore, it is essential to maintain the public's faith in the integrity of the EIS process, and avoidance of any conflict of interest (including a perception of conflict) in the preparation of an EIS is an important means of achieving this goal. For all EISs prepared under a third-party contract, Regulatory Division will coordinate with Office of Counsel as to the appropriate disclosure form(s) and their legal soundness. The disclosure form(s) must be signed by the contractor and subcontractor, and the original submitted to the Corps prior to work commencing on the EIS.

6. Conclusion:

The Corps goal is to streamline the TPC selection process while maintaining actual objectivity in compliance with NEPA requirements. To facilitate this process, the Corps will identify the required information for the EIS and specify the necessary qualifications of the TPC. The Corps will not become involved in the specifics of non-federal contracting procedures beyond review of the solicitation documents to ensure compliance with this document. The Corps will approve in writing the solicitation, and the scope of work prior to the award of the third-party contract. The Corps will approve the final selection of the TPC. The Corps is responsible for ensuring that the information provided by the contractor is consistent with statutory requirements to take a hard, objective look at the public interest and environmental factors. The Corps will also take full responsibility for the scope and contents of the EIS, directing the contractor as necessary to make certain that its work is acceptable.

The Corps will regularly participate in the preparation of the document and independently evaluate the information to ensure that it is technically adequate and not biased. The Corps has the final determination whether the data provided is adequate and accurate.

29 Jan 2018
DATE

Kimberly Baggett
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Chief, Regulatory Division

Guidance for Developing a Request for Proposal

Developing a Request for Proposal

At a minimum, an applicant's Request for Proposal (RFP) to a prospective TPC should consist of:

- An introduction or cover section that includes:
 - The identification of the applicant with a designated point-of-contact;
 - The stated purpose and/or goals of the RFP;
 - A timeline or deadline for submission of a proposal to the applicant;
 - A statement that the RFP is not a Federal procurement action;
 - A statement that the parties agree to hold harmless and indemnify the Corps (see Indemnification and Hold Harmless information below); and,
 - A statement that the final selection of the TPC will be made by the Corps.
- A section describing the third party arrangement that contains:
 - A statement that Corps and assigned project staff are responsible for determining the scope of the environmental document and the technical quality of the work; and ,
 - A statement that the TPC will prepare an environmental impact statement under the direction of the Corps and assigned project staff.
- A section describing the third party selection process (refer to TPC Selection Guide);
- A statement that requires notification to Corps of changes to key personnel (project director, project manager, deputy project manager, and resource leads) and their experience (curriculum vitae). Changes will not occur until accepted by the Corps;
- A section describing the third party screening criteria and the Corps' minimum threshold standards (refer to TPC Selection Guide);
- A draft copy or summary of the application and appendices;
- A detailed description of services and tasks required of the TPC (refer to Milestones and Checklist Guide);
- The draft schedule for NEPA activities and applicant's proposed schedule for construction and operation with dates for key milestones;
- A statement that the applicant, not Corps staff, will respond to questions from non-selected contractors following the contract award; and,
- A requirement that each bid address Organizational Conflict of Interest (OCI) by including
 - Either an OCI Representation Statement or an OCI Disclosure Statement (Conflict of Interest Guide) indicating that the TPC has no financial or other conflicting interest in the outcome of the project;

- An abstract listing all Corps regulated entities with which the TPC (and any subcontractors) has had a business relationship and whether that relationship results in an actual or apparent conflict of interest.

In response to receipt of an RFP, TPC proposals should contain:

- A management plan for the project which includes a description of the prospective TPCs technical and managerial experience in development of other environmental documents ;
- The disclosure of any proposed subcontractors and OCIs and Indemnification and Hold Harmless Forms for each;
- A description of the qualifications and experience (curriculum vitae) of both the TPC firm and key personnel (including subcontractors), to include:
 - A record and description of similar contracts and POCs;
 - Familiarization with NEPA requirements;
 - Familiarization with relevant Corps regulations;
 - Previous work completed for the Corps or other federal agencies;
 - A list of EA's or EIS's completed and for whom;
 - Familiarization with specific environmental laws of the adjacent coastal State(s), where applicable (i.e., experience with preparing dual documents (e.g., EIS and EIR) to satisfy both Federal and State environmental requirements);
 - Approach to managing subcontractors and consultants; and
 - Experience drafting an EIS using subcontractors.
- A proposed schedule for completing major work tasks (refer to Milestones and Checklist Guide) which highlights any differences from the applicant's proposed schedule as presented in the RFP. Any changes to the schedule presented in the RFP must be fully justified. Major work tasks that will be required for the EIS include:
 - Arranging for and participating in public and/or interagency meetings, and preparing reports that summarize the results of the meetings.
 - Developing and maintaining a computerized (sortable database) mailing list of interested parties.
 - Preparing an environmental document to meet the requirements of NEPA, the National Historic Preservation Act, federal and relevant state Endangered Species Act(s), and any additional requirements of the Corps staff. The document shall include: (i) characterizations of and impact assessments for all resource areas having the potential to be significantly affected by the proposed facilities' construction, operation, maintenance and abandonment;
 - Analysis of appropriate alternatives;

- Evaluation of proposed mitigation measures designed to reduce impact to acceptable levels;
 - Consideration of all issues raised during scoping; and
 - Detailed maps showing the location of all project facilities and alternative routes or locations under consideration, related areas of disturbance, and pertinent resource data. Project maps will be in an appendix, or if appropriate, provided as a separate map volume in a three-ring binder format. The scale of the supporting maps should be appropriate to the project scope and the complexity/sensitivity of the resources potentially affected, but never less detailed than 1:250,000.
 - Providing the camera-ready documents in hard copy and/or electronically on CDs as accessible .pdf files.
 - Maintaining an ongoing review of potential issues and an assessment of adequacy of the overall scope of the environmental analysis, for the purpose of immediately advising the Corps staff of any potential data gaps or analysis shortcomings.
 - Analyzing and preparing draft responses to comments on the draft and final environmental documents.
 - Preparing a Biological Assessment and/or Essential Fish Habitat Assessment, if appropriate.
-
- A statement disclosing any potential OCI, and any proposed mitigation that avoids the conflict of interest;
 - A breakdown of hours proposed for each labor category under each proposed task;
 - Financial statements of the prospective TPC, or proposed subcontractor, for the previous 3 years, and disclosure of any bankruptcy, insolvency or other matters negatively affecting the financial interest of the prospective TPC or proposed subcontractor; and,
 - An executed Indemnification and Hold Harmless Form.

Example
Indemnification and Hold Harmless Form
(Applicant, TPC or Subcontractor Letterhead)

TO: (Title, name and office of Corps point-of-contact)

FROM: (Name and title of applicant, TPC or subcontractor point-of-contact)
(Name of applicant, TPC or subcontractor)

DATE: (Insert Date)

SUBJECT: Indemnification and Hold Harmless statement for the (applicant or project name)

(Applicant, TPC, or subcontractor) has agreed to observe and abide by federal regulations and U.S. Army Corps of Engineers policy pertaining to this Department of the Army application process. In addition, (applicant, TPC or subcontractor) agrees to indemnify and hold harmless the U. S. Army Corps of Engineers Galveston District, the U.S. Army, the Department of Defense, and all of their personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to, the conduct of (applicant, TPC or subcontractor) in connection with the administration or supervision of the contract, or for the environmental services described within the contract.

Furthermore, the scope of this contract, and any subcontract, is limited to actions designed to further the Application and accordingly constitute costs to be reimbursed by the Applicant. As the Applicant is paying contract costs directly, all parties acknowledge that no Federal funds are payable under this contract and hold harmless the U. S. Army Corps of Engineers Galveston District, the U.S. Army, the Department of Defense, and their employees as to all payments under the contract.

Signature: _____ Date: _____

Name: _____

Organization: _____

Title: _____

Third-Party Contractor Selection Guide

Third-Party Contractor Selection

Section 1 Selection Criteria

The applicant should review, evaluate and prioritize each proposal against the screening criteria listed in this section. Once all of the proposals have been prioritized, the applicant should select the three (3) highest scoring prospective TPCs and forward to the Corps for final selection. The Corps will verify the applicant's evaluation of the selection criteria and recommend a preferred candidate. The following criteria should be used in evaluating a prospective TPC's proposal.

General Experience and Availability

Ability to assign and commit sufficient key personnel for the duration of the project, including any delays associated with processing the application.

Reasonableness of the prospective TPC's proposed level of effort required for the project as well as for each task and labor category as described in the proposal; demonstrated experience of subcontractors required for the project.

Through past project management experience, proven ability to meet schedule requirements and possible shifts in project priorities.

Management Experience

Demonstrated ability to manage large, complex and potentially controversial projects.

Ability to resolve problems and assign appropriate staff in a timely manner when presented with challenging situations, aggressive schedules and shifting priorities.

Demonstrated experience of the TPC in managing the type(s) and number of subcontractors proposed.

NEPA and Related Federal Compliance Experience

Demonstrated experience (education and professional work history) of prospective TPC personnel assigned to the project.

Familiarity with Federal environmental laws and applicable state requirements.

Extent of the prospective TPC's history and prior experience in managing major NEPA reviews and preparing NEPA environmental documents for large facilities within the past three years.

Corps Regulatory Experience

Familiarity and experience with Section 10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act, Section 103 of the Marine Protection Research and Sanctuaries Act, and related requirements. (Note: Not having participated in a prior Corps' EIS project will not preclude selection).

Experience with Corps' regulations (33 CFR Parts 320 through 331), public interest review factors, 404(b)(1) Guidelines (40 CFR Part 230), and alternatives analysis.

Regional and Other Project-Specific Experience

Familiarity with the environmental evaluation of projects of comparable magnitude and scope in the region.

History and work experience in the region where the applicant's facility will be located, with the adjacent coastal State(s) agencies and environmental laws, and with other Federal agency offices that will be involved (e.g., EPA, NOAA, BOEM, USFWS, NMFS, USCG offices).

Section 2 Minimum Threshold Standards and Disqualifiers

The following criteria determine if a potential TPC has met the minimum standards. A proposal that does not meet minimums for **all** of these criteria will not be considered for further review:

- All documents and materials requested in the RFP have been provided;
- All key items discussed in follow-up clarification meetings have been supplied or addressed;
- OCI statement has been completed and provided;
- OCI mitigation or explanation documents included (only if OCI has been noted);
- Adequate financial resources have been demonstrated, copies of the firm's most recent annual audit provided, and explanations given of any negative aspects of the latest financial audit statement; and,
- Indemnification and Hold Harmless Forms have been submitted (refer to Section 4-4 and Appendix E).

A prospective TPC may be disqualified from the selection process, or from final selection, based upon any of the following:

- Financial instability of the TPC, including but not limited to recent record of bankruptcy that could affect the performance of work required;
- Incomplete or inadequate proposal submitted; and submission of a proposal after the applicant's deadline; or,
- Identification of an OCI which cannot be resolved.

Section 3 Selection Process

The following is a list of sequential steps to be followed by DA permit applicant, prospective TPCs, and the U.S. Army Corps of Engineers (Corps).

Applicant Responsibilities

- In order to verify completeness, submit a draft RFP to the Corps for review and approval; include a list of prospective TPCs (recommend a minimum of 3 to 5). Refer to Developing RFP Guide;
- Upon receipt of Corps approval of the draft RFP, send a final RFP to each prospective TPC, copy to Corps. Each RFP should contain a list of selection criteria, a copy of this guidance, and an explanation of how the screening process will be used to select the preferred candidate. The same RFP must be sent to each prospective TPC;
- Provide each prospective TPC with sufficient information about the project to prepare a meaningful proposal and accurate cost estimate;
- Set a deadline by which the prospective TPCs must submit a completed proposal;
- Review and rank bid proposals with respect to technical, managerial, and personnel qualifications to ensure minimum standards have been met, completeness of the proposal, and to identify any disqualifiers;
- Select the three best qualified TPC packages, which must include OCI statements, technical and cost proposals, project time line, and draft third party contract;
- For each proposal submitted to Corps, include an OCI statement. An actual or apparent conflict of interest shall disqualify a prospective TPC from further consideration unless a mitigation plan is proposed that avoids the conflict of interest to the satisfaction of the Corps;
- Forward the three best qualified TPC packages to Corps. The applicant should ensure the estimated total cost of performance on the contract is submitted separately and under seal; and,
- Throughout the selection process, and until a contract is awarded, the applicant will be the sole point of contact for both the Corps and any prospective TPCs.

Prospective TPC Responsibilities

- Prepare a proposal that satisfies the criteria listed in the RFP;
- Direct all inquiries and questions to the applicant;
- Submit the technical specifications and capabilities proposal, (including manager and personnel information, and a timeline identifying both NEPA and DA permit milestones) to the applicant within the specified deadline;
- Include proposals that are clear; stand-alone descriptions of level of effort required, including a list of tasks/milestones, hours per labor category required, and a description of qualifications of personnel for each labor category (e.g., Scientist I = Graduate degree in relevant discipline with 10+ years technical and/or management experience, etc.); and,
- Submit all required OCI documents and Indemnification and Hold Harmless Forms at submission.

Corps Responsibilities

Upon receipt of this information, the Corps staff will:

- Review each TPC proposal for completeness and evaluate each proposal against the Corps minimum threshold standards;
- Review descriptions of level of effort;
- Interview prospective TPCs (at Corps' discretion);
- Make a final selection of the TPC within sixty (60) business days; and
- Provide notification of final selection to the applicant.

Procedures after TPC Selection

The Corps is not involved in contract negotiation. The applicant and the TPC will determine the appropriate method and schedule for payment. Upon receipt of notification of the Corps' final selection, the applicant should:

- Notify all prospective TPCs, in writing, of their selection or non-selection;
- Create, finalize, and award the third party contract within fifteen (15) business days of receiving the Corps's final selection; and,
- Provide a copy of the completed and signed contract between the applicant and the TPC to the Corps.

- Following final contract agreements, the TPC will attend a project “kick-off” meeting with the Corps staff. The kick-off meeting allows the TPC, and, to a limited extent, the applicant, to meet Corps project staff who will communicate expectations.

Typical Milestone Deliverables for a Corps Regulatory Third-Party EIS

Typical Milestone Deliverables for a Corps Regulatory Third-Party EIS

Typical Environmental Impact Statement Deliverables

Scoping

- Draft Notice of Intent to Prepare an Environmental Impact Statement.
- Affected Party Letter, including graphics (i.e. maps of facility and associated components). (Note: TPC is responsible for developing, producing and mailing out the Affected Party Letter).
- Searchable mailing list (updated as necessary) to track all mailings and include names, titles, and contact information for:
 - Federal agencies (headquarters and appropriate field offices);
 - Appropriate state agencies;
 - Members of Congress;
 - Governor(s) and appropriate members of state(s) legislatures;
 - Non-governmental organizations;
 - General public who have expressed interest;
 - Lists obtained from cooperating agencies and the applicant that represent stakeholders, affected landowners or other interested parties; and,
 - Appropriate tribal entities.
- Draft and Final Scoping Meeting Plan.
- Draft Newspaper notices of Public/Agency Scoping Meeting(s).
- Draft and Final Posters/Handouts for Public/Agency Scoping Meeting(s).
- Coordinate and Manage Public/Agency Scoping Meeting.
- Draft and Final Public/Agency Scoping Meeting Report/Summary.
- Data Gap Analyses (ongoing throughout NEPA review).
- Style guide that includes a Table of Contents (TOC) for the EIS.

Draft Environmental Impact Statement

- Preliminary Draft EIS that conforms to the requirements of 40 Code of Federal Regulations §§ 1500 - 1508. This document may also include, as applicable:
 - Draft Biological Assessment (stand-alone);
 - Draft Essential Fish Habitat Assessment (stand-alone);
 - Biological modeling; and,
 - Hydraulic modeling, as required.
- Administrative Draft EIS Distribution List.
- Administrative Draft EIS Distribution: The TPC will be required to print, bind and mail as specified in the Distribution List. Number of copies to be determined, but generally no more than 25-30.
- Draft EIS Distribution List.

- Draft EIS: The TPC will be required to print and perfect (adhesive) bind, and mail the Draft EIS as specified in the Distribution List. Number of copies to be determined, but generally 250-300; CDs may be required in place of, or in addition to hard copies.
- Draft and Final EIS Public Hearing Meeting Plan.
- Draft Newspaper notices of Draft EIS Public Hearing Meeting(s).
- Draft and Final Posters/Handouts for Draft EIS Public Hearing Meeting(s).
- Coordinate and Manage Draft EIS Public Hearing Meeting.
- Draft and Final EIS Public Comment Meeting Report/Summary.

Final Environmental Impact Statement

- Preliminary Final EIS, including responses to comments. Following the public comment period and public hearing meeting of the DEIS, the TPC will organize, analyze, and prepare draft responses to public/Federal/state/local agency comments (including those comments filed by the applicant). The draft responses will be provided to Corps staff for further action.
- Administrative Final EIS Distribution List.
- Administrative Final EIS.
- Final EIS Distribution List.
- Final EIS: The TPC will be required to print and perfect bind the EIS and mail as specified in the Distribution List. Number of copies to be determined; CDs may be required in place of or in addition to hard copies.
- Drafting assistance for the Record of Decision, as necessary.
- Development, preparation, and delivery of an administrative record to the Corps upon issuance of the Record of Decision.

Typical Cyclical, Ongoing or Upon Request Deliverables

- Monthly updates summarizing the contents of the administrative record.
- Agenda and minutes for all technical/management meetings including regular weekly or biweekly meetings and special management or technical meetings; these are often teleconferences.
- Monthly (or more frequent, if requested by Corps) progress reports.
- Reports from comment response database upon request of Corps staff.
- Reports from internal comment resolution database upon request of Corps staff.
- ROD support as required.

Typical Ongoing Responsibilities

- Ensure security of information in application by establishing a secure project site with limited access.
- Obtain signed confidentiality agreements from all project team members and subcontractors.
- Maintain the administrative record (refer to Section 3-2).

- Development and maintenance of an interactive database to track comments on the Draft EIS and, at the request of Corps staff. Corps staff must be given access to the database.
- Verify the accuracy, validity, integrity and completeness of environmental information and advise Corps of:
 - Sufficiency of information to identify the significance level of environmental impacts;
 - Sufficiency of supporting information to confirm applicant's statements;
 - Sufficiency of information to respond to questions from Federal, state and local agencies or from the public;
 - Sufficiency of information to develop alternatives analysis for both onsite and offsite alternatives, including the no action alternative; and,
 - Identify data gaps for Corps project staff review.
- Assist the Corps with scoping and other public coordination activities, including responsibility for development and implementation of a logistics plan for all public meeting(s) and hearing(s), (e.g. arrangements for venue, facilitator, court reporter, interpreter, and security).
- Identify conflicting environmental requirements among Federal and state(s) laws, and recommend solutions to resolve conflicts.
- The TPC should inform the Corps, in a timely manner, of any matters, whether procedural or technical, that may affect performance on the contract (see e.g., discussion in Section 3-2 regarding Out of Scope Activities).

Major NEPA Milestones, EIS Process Checklist and General Timelines

| NEPA MILESTONE | LEGAL CITATION Add app b | RESPONSIBLE PARTY | SCHEDULE/TIMELINE |
|---|---|---|--|
| Publish Notice of Intent (NOI) to Prepare an EIS | 40 CFR 1501.7; 40 CFR 1508.22. | Prepared by the Corps; published in the <i>Federal Register</i> | No statutory time limit, but typically allow 30 days to prepare, sign and publish the NOI |
| Scoping and Public Scoping Meeting(s) | 40 CFR 1501.7; 40 CFR 1506.6; 40 CFR 1501.7(a)(1); 33 C.F.R. 230.12; 33 CFR 230.12 | Third-party contractor with direction and oversight from the Corps (as the lead Federal agency) | No time limit, but generally the NOI identifies 30-60 days, although scoping comments may be received up to the release of the DEIS |
| Prepare Draft EIS | 40 CFR 1502.9(a) | Third-party contractor with direction and oversight from the Corps (as the lead Federal agency) | No statutory time limit. Timeline will vary depending on the scope and intensity of significant issues, complexity of proposed action, range of alternatives, etc. |
| Coordinate Picture ready DEIS with Coop, applicant, and Vertical Team | | | |
| Publish Notice of Availability (NOA) of Draft EIS | 40 CFR 1506.9 and 1506.10(a), and notice provided to the public per 40 CFR 1506.6(b). Need to send a copy of Draft EIS to HQ. 33 CFR Part 325 Appendix B ¶14. | NOA prepared by the Corps (as the lead Federal agency); published in the <i>Federal Register</i> by EPA | No statutory time limit, but typically allow 30 days to prepare, sign and publish the NOA |
| Circulate Draft EIS | 40 CFR 1506.10(c) | Third-party contractor with approval from the Corps (as the lead Federal agency) | Minimum 45 days |
| Public Meeting or Hearing | 40 CFR 1506.6 | Corps with assistance from the third-party contractor | Occurs during the 45-60 day public review period. The EIS must be made available to the public at least 15 days in advance of the hearing/meeting. |
| Coordinate Picture ready DEIS with Coop, applicant, and Vertical Team | | | |
| Prepare Final EIS | 40 CFR Part 1503.4(c); 33 CFR 230.19(c) | Third-party contractor with direction and oversight from the Corps (as the lead Federal agency) | No statutory time limit. Timeline will vary depending on extent of public comment received and issues raised. |
| Publish NOA of Final EIS | 40 CFR 1506.10(a). | NOA prepared by the Corps; published in the <i>Federal Register</i> by EPA | No statutory time limit, but typically allow 30 days to prepare, sign and publish the NOA |
| Circulate Final EIS | 40 CFR 1506.10(b) | Third-party contractor with approval from the Corps (as the lead Federal agency) | 30 days |
| Prepare and Issue ROD | 40 CFR 1506.10(b); to 33 CFR Part 325 Appendix B ¶18 | Corps with assistance from the third-party contractor | Cannot be signed until 90 days after publication of the Draft EIS or 30 days after the |

| INITIAL PERMIT APPLICATION REVIEW | APPROXIMATE # OF DAYS |
|--|-----------------------|
| <p>1. Initial Permit Application Review</p> <ul style="list-style-type: none"> • Receive DA permit application and assign action identification number in ORM • Within first 15 days, determine whether the application is “complete” per 33 C.F.R. 325.1(d)(9) • If complete, issue initial Public Notice (PN) requesting public input on the applicant’s proposed action to inform decisions on SOA and whether there will be significant effects that necessitate the preparation of an EIS. • Corps initiates preliminary JD or approved JD • Coordinate with other district business lines to determine if other Corps approvals required <ul style="list-style-type: none"> ◦ If yes, then identify district lead for EIS ◦ Share EIS schedule with PDT, modify as needed ◦ Identify specific data needs and analyses related to other business lines and provide to applicant and third-party contractor for inclusion in scope of work (SOW) ◦ Prepare Project Management Plan, if needed | <p>15 - 45</p> |
| PRE-SCOPING (EARLY NEPA COORDINATION) | APPROXIMATE # OF DAYS |
| <p>2. Establish Scope of Analysis and Determine whether an EIS is needed</p> <ul style="list-style-type: none"> • Establish the scope of analysis (SOA), including cumulative Federal control and responsibility • Determine whether “a major Federal action significantly affecting the quality of the human environment” within SOA and prepare MFR documenting determination of significance <ul style="list-style-type: none"> ◦ If there is no potential for significant effects within SOA or the significance is unknown, prepare an EA ◦ If FONSI is reached, then no further NEPA action is required of the Corps ◦ If FONSI cannot be reached (including a mitigated FONSI), inform applicant in writing of the need for an EIS • Provide instructions to applicant about selection and procurement of third-party contractor and required information for the EIS, including necessary qualifications of the third-party contractor | <p>15 -30</p> |

| | |
|---|---------------------|
| <p>3. Select Third-Party Contractor, Approve Scope of Work (SOW) and Execute Statement of Responsibilities (SOR)</p> <ul style="list-style-type: none"> • Applicant submits statement of qualifications for at least three potential third-party contractors and identifies the applicant's order of preference • Respond in writing accepting the first contractor fully acceptable to the Corps • Review and approve SOW <ul style="list-style-type: none"> ○ Per RGL No. 05-08 the Corps should approve in writing the third-party contractor and SOW <u>prior</u> to the award of the third-party contract • Receive signed copies of CEQ-mandated disclosure statement(s), SOR and final SOW from contractor • Complete EIS milestone schedule, with estimated target date for completion • Establish schedule for regularly occurring coordination meetings with third-party contractor and progress report meetings with the applicant (and cooperating agency(s) once identified) • Revise detailed EIS schedule with third-party contractor, as needed | <p>30-45</p> |
| <p>4. Invite Cooperating Agencies to Participate in the EIS Process</p> <ul style="list-style-type: none"> • Identify potential cooperating agencies • Prepare and send letter(s) inviting cooperating agency(s) to participate in the EIS process • Establish roles and responsibilities of cooperating agencies through letter, MOU or other means to ensure a clear understanding of expectations | <p>45</p> |
| <p><i>Note: Process step #2 may have a longer timeline if an EA is first prepared. In most cases, Steps #1 and #4 will happen concurrently. Step #3 may have a longer timeline if a PMP is prepared.</i></p> | |

| NEPA SCOPING | APPROXIMATE # OF DAYS |
|---|-----------------------|
| <p>5. Notice of Intent and Public Scoping Meeting</p> <ul style="list-style-type: none"> • Determine place, date(s), time(s) for public scoping meetings with third-party contractor assistance • Prepare draft NOI • Send draft NOI to HQ Regulatory CoP or Army Federal Register Liaison for review • Transmit final NOI (3 signed copies) to HQ Regulatory CoP or Army Federal Register Liaison for FR publication • Prepare and issue district-level NOI public notice • Hold scoping meeting(s) | 30-60 |
| DRAFT EIS DEVELOPMENT | APPROXIMATE # OF DAYS |
| <p>6. Purpose and Need</p> <ul style="list-style-type: none"> • Initiate or continue discussions with applicant on project need and purpose statement • Review documentation provided on project need and purpose; • Hold meetings with applicant and third-party contractor, as needed • Finalize NEPA project purpose and overall project purpose statement | 30 |
| <p>7. Evaluate Scoping Input</p> <ul style="list-style-type: none"> • Corps and third-party contractor review scoping comments • Third-party contractor prepares and provides scoping report to Corps • Based on scoping input/comments, identify significant issues to be evaluated in DEIS and range of alternatives to be evaluated; adjust SOA if justified. | 45 |
| <p>8. Develop NEPA/404 Project Alternatives</p> <ul style="list-style-type: none"> • Develop initial range of potential alternatives (“reasonable” and “practicable”) • Develop screening criteria for considering costs, logistics and existing technology • Evaluate alternatives as to whether they meet project purpose and are “reasonable” and “practicable” • Document rationale for those alternatives eliminated from further analysis • Carry remaining alternatives through as reasonable range of alternatives under NEPA | 60 |

| | |
|--|---|
| <p>9. Third-Party Contractor Prepares Draft EIS Under Corps Direction</p> <ul style="list-style-type: none"> • Conduct literature search and review • Perform fieldwork, surveys and analyses • Document and describe affected environment (baseline conditions) • Prepare draft technical reports, including draft jurisdictional delineation/determination • Hold regularly scheduled coordination meetings with Corps, third-party contractor, and cooperating agency(s), as appropriate • Corps issues approved jurisdictional delineation of special aquatic sites for project site and mitigation sites • Evaluate environmental effects of alternatives; propose compensatory mitigation measures, as appropriate • Ensure NEPA alternatives analysis is rigorous enough and includes the criteria of the Guidelines to avoid having a separate section 404(b)(1) alternatives analysis • Prepare administrative Draft EIS (ADEIS) for Corps and cooperating agency(s) review • Incorporate comments on ADEIS and submit to SPD for policy review • Prepare screen-check, "camera-ready" Draft EIS and upon Corps approval reproduce document | <p>180-300</p> |
| <p>10. File Draft EIS with HQ EPA and Publish NOA in <i>Federal Register</i></p> <ul style="list-style-type: none"> • Electronically file DEIS with HQ EPA • HQ EPA publishes NOA in <i>Federal Register</i>; CEQ requires a minimum 45-day public review period, however Galveston District prefers 60-day • Provide copy of DEIS to HQUSACE, SWD, cooperating agency(s), EPA regional office, DOI, other State and local agencies, Indian tribes and members of the public as needed | <p>15</p> |
| <p>11. Circulate Draft EIS for Public Review and Comment and Issue District-Level Public Notice re: NOA of DEIS</p> <ul style="list-style-type: none"> • Issue district-level PN re: NOA of DEIS and solicit public comment on applicant's preferred alternative, if known • Post DEIS on district website or provide link to FTP site. When required, mail hard copies or CDs of DEIS to agencies and/or other interested parties | <p>45 (minimum) 60 (preferred)</p> |

| <p>12. Hold Public Hearing/Meeting(s) With assistance from third-party contractor, hold public hearing or meeting(s) on DEIS during public review period</p> | <p>--</p> |
|---|-----------------------|
| <p><i>Note: Steps #6 through #12 will generally happen sequentially. The timeline for Step #9 may vary. Step #11 involves CEQ-mandated minimum 45-day public review period. Step #12 is not mandatory, but is highly advised by the CEQ and</i></p> | |
| FINAL EIS DEVELOPMENT | APPROXIMATE # OF DAYS |
| <p>14. Respond to Comments Received on the Draft EIS</p> <ul style="list-style-type: none"> Corps and third-party contractor review comments received on DEIS Third-party contractor prepares draft responses to comments, often with input from the applicant Corps reviews and approves responses to comments prior to incorporation into the administrative FEIS | <p>45</p> |
| <p>15. Applicant Develops Compensatory Mitigation Plan</p> <ul style="list-style-type: none"> Applicant or third-party contractor sends Corps final mitigation plan for unavoidable impacts resulting from implementation of the applicant's preferred alternative Corps reviews draft mitigation plan. Mitigation plan must be consistent with 33 CFR 332 and may also include other mitigation measures determined appropriate or necessary per 33 CFR 320.4(r) Applicant or third-party contractor incorporates Corps comments and prepares final mitigation plan Corps responds in writing accepting/rejecting mitigation plan | <p>60</p> |

| | |
|--|------------------|
| <p>16. Prepare Final EIS</p> <ul style="list-style-type: none"> • Third-party contractor prepares administrative FEIS (AFEIS) <ul style="list-style-type: none"> ○ Incorporate public comments and responses ○ Make any necessary revisions to document ○ Integrate Corps-approved mitigation measures ○ Address the status of compliance with applicable laws, regulations and EOs ○ Identify any unresolved issues, etc. • Submit AFEIS for Corps and cooperating agency(s) review • Incorporate Corps and cooperating agency(s) comments on AFEIS and submit to SPD for policy review • Prepare screen-check FEIS and upon Corps approval third-party contractor reproduces the document | <p>90</p> |
| <p>17. File Final EIS with HQ EPA and Publish NOA in <i>Federal Register</i></p> <ul style="list-style-type: none"> • Electronically file FEIS with HQ EPA • HQ EPA publishes NOA in <i>Federal Register</i>; 30-day comment period commences • Provide copy of FEIS to HQUSACE, SPD, cooperating agency(s), EPA regional office, DOI, other State and local agencies, Indian tribes and members of the public | <p>15</p> |
| <p>18. Circulate Final EIS and Issue District PN re: NOA of FEIS</p> <ul style="list-style-type: none"> • Issue district-level PN Re: NOA of FEIS and notification to agencies and public of pending Corps permit decision • Post FEIS on district website or provide link to FTP site. When required, mail hard copies or CDs of FEIS to agencies and/or other interested parties | <p>30</p> |

| DECISION | APPROXIMATE # OF DAYS |
|---|-----------------------------|
| <p>19. Record of Decision</p> <ul style="list-style-type: none"> Corps, with the assistance of the third-party contractor, reviews and addresses comments on FEIS for incorporation into the ROD, if appropriate Corps prepares ROD, including: <ul style="list-style-type: none"> Explain basis of decision Determine LEDPA and document applicant's compliance with 40 CFR § 230 section 404(b)(1) Guidelines – Subparts B-H Make public interest review determination Identify the “environmentally preferred” alternative, if different from the LEDPA Document compliance with all applicable laws, regulations and EOs Staff ROD for signature by NEPA responsible official Execute/sign ROD, post to district website <ul style="list-style-type: none"> Issue district-level special public notice Re: availability of the ROD | <p>30-90</p> |
| <p><i>Note: If proposed action involves Corps approval under 33 U.S.C. 408, ROD may not be signed until Section 408 approval is granted</i></p> | |
| <p>20. 404 Permit Decision Issue (with or without special conditions) or deny 404 permit based on ROD</p> | <p>Following ROD</p> |
| <p><i>Note: The ROD is the Corps' decision document and therefore, the DA permit decision will be based upon the findings presented in the ROD.</i></p> | |

Southwestern Division Regulatory Program Environmental Impact Statement Review Process



Reply to
Attention of

CESWD-PDS-O

DEPARTMENT OF THE ARMY
SOUTHWESTERN DIVISION, CORPS OF ENGINEERS
1100 COMMERCE STREET
DALLAS, TEXAS 75242-0216

RECEIVED

APR 30 2007

REGULATORY

24 APR 2007

MEMORANDUM FOR

Commander, Fort Worth District
Commander, Galveston District
Commander, Little Rock District
Commander, Tulsa District

SUBJECT: Regulatory Program Environmental Impact Statement (EIS) Review Process

1. Reference memorandum, CESWD-CMO-E, 11 October 2002, Subject: Regulatory Program Environmental Impact Statement (EIS) Review Process.
2. Regional policy was initially developed to comply with existing regulation and provide time frames for review of environmental impact statements (EIS's) within the Southwestern Division (SWD) that are associated with Regulatory Program permits on nonfederal projects. The purpose of this memorandum is to update the referenced policy. In accordance with existing regulation, the districts will utilize the following guidance in obtaining and incorporating SWD comments into EIS's associated with Regulatory Permit actions.
3. Authority. 33 CFR 230.17 states: "Division Commanders should file final EIS's and final supplements for all other Corps actions, except for final EIS's or final supplements for permit actions, which should be filed by the district commander after appropriate reviews by division and the incorporation of division's comments in the EIS."
4. EIS Review Process for SWD Regulatory Program Actions. SWD review will be the minimal necessary to ensure that an EIS is consistent with current policy. In addition, it will be evaluated for effect on regional initiatives and potential impacts to other Corps projects and actions.
 - a. PreDraft EIS. To expedite SWD review, the district will provide three copies of the predraft EIS to CESWD-PDS-O or provide the information electronically. The following offices in SWD will have the opportunity to review and provide comments on the predraft EIS: Office of Counsel, Planning, Operations, and the appropriate District Support Team. The Division will forward its consolidated comments to the district Regulatory Program office within 15 working days from receipt of the predraft EIS. Comments will be provided to the district via memorandum signed by the Chief, Operations Division, CESWD-PDS-O.

24 APR 2007

CESWD-PDS-O

SUBJECT: Regulatory Program Environmental Impact Statement (EIS) Review Process

b. Draft EIS. To expedite SWD review, the district will provide three hard copies of the public notice and draft EIS to CESWD-PDS-O or provide the information electronically.

c. PreFinal EIS. The Division will also review and comment on the prefinal EIS. The district will provide three copies of the prefinal EIS to CESWD-PDS-O or provide the information electronically. The following offices in SWD will have the opportunity to review and provide comments on the predraft EIS: Office of Counsel, Planning, Operations, and the appropriate District Support Team. The Division will consolidate comments and forward to the district Regulatory office within 15 working days from receipt of the prefinal EIS. Comments will be provided to the district via memorandum signed by the Chief, Operations Division, CESWD-PDS-O.

d. Final EIS. The district will provide one copy of each final EIS, preferably on compact disc, to both CESWD-PDS-O and CECW-OR.

4. The final approval of EIS's and permit applications will remain with the District Engineer unless one or more of the factors in 33 CFR 325.8(b)(1)-(5) is applicable.

5. The process outlined in this memorandum supersedes previous guidance and is effective immediately. Should you have any questions regarding this process, please contact Ms. Vicki Dixon, CESWD-PDS-O, 469-487-7037.



JEFFREY J. DORKO
Brigadier General, USA
Commanding

Conflict of Interest Guide

ORGANIZATIONAL CONFLICT OF INTEREST REQUIREMENTS

Council of Environmental Quality's implementing regulations for the National Environmental Policy Act require that third parties preparing an Environmental Impact Statement (EIS) for a federal agency "shall execute a disclosure statement prepared by the lead agency... specifying that they have no financial or other special interest in the outcome of the project" (40 *Code of Federal Regulation* 1505.5 (c))

In an effort to meet this requirement, the third-party contractor must execute a disclosure statement prepared by the Corps, specifying that they have no organizational conflicts of interest in the outcome of the project.

The term organizational conflicts of interest (OCI) means that a relationship or situation exists whereby a contractor, including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors, where they may be performing services similar to the services provided by the prime contractor, has past, present, or currently planned interests that either directly or indirectly, through a client, contractual, financial, organizational or other relationship, may relate to the work to be performed under the third-party contract. OCI exists when the nature of the work to be performed may, without some restriction on future activities:

- diminish or impair the contractor's its capacity to give impartial, technically sound, objective assistance and advice to the Corps; or
- result in the contractor gaining an unfair competitive advantage.

The term OCI does not include the normal flow of benefits from the performance of the contract.

OCIs typically exist where the contractor and/or its employees have a past, present, or ongoing financial interest in a project to be covered by the third-party contract. For example, an OCI exists if the contractor:

- has been involved with the applicant on the project before it is proposed to the Corps, or while it is pending before the Corps;
- would be called on to review its own prior work; or
- has an ongoing relationship with the applicant;
- has a financial or other interest in the outcome of the Corps' decision.

The contractor may work on the project for the applicant after the Corps has decided whether to approve the project as long as there was no prior agreement or expectation that approval of the project would result in such involvement.

OCI Submission Requirements

All prospective contractors must submit a Conflicts of Interest Representation/Disclosure document as part of their proposal. Contractors must state whether or not there is an OCI, and if so, to what extent. If an actual or apparent conflict is identified, a detailed mitigation plan to resolve and isolate any OCI must be provided.

Guidance regarding the OCI Statement, including requirements and definitions, are provided in this section. Subcontractors also must submit an OCI Statement and, where necessary, a mitigation plan to resolve real or perceived OCIs.

Documents to File

The TPC must submit one of the following documents:

- Financial Disclosure/Conflict of Interest Form (Firm/Corporation/Company)
- Financial Disclosure/Conflict of Interest Form (Individual/Employee)
- Financial Disclosure/Conflict of Interest Form (optional short version)

Applicant's Role

The applicant will review and certify by letter each OCI Statement and abstract to determine if the contractor and any subcontractors are capable of impartially performing the environmental services required under the contract based upon the information provided to the applicant in the OCI statement and taking into account any mitigation plan submitted by the contractor. All OCI materials submitted to Corps (including the contractor's OCI Statement, mitigation plans, and the applicant's certification letter) will be reviewed by Corps' Office of Counsel.

TPC's Role

The selected contractors and subcontractors will have a continuing obligation to identify conflicts that may arise because of changes in corporate identity, affiliation, structure, or ownership, or changes to the contract. In the event an OCI is discovered after award, the contractor shall immediately stop work on the assigned task and notify the Corps. The contractor will be required to create a plan to mitigate the conflict (e.g. through assignment to a subcontractor), and get Corps approval, in writing, to implement that plan. The decision of the Corps shall be final.

Corps' Role

It is the policy of the Corps to identify and avoid, or to mitigate, an OCI before selecting a TPC. The Corps will generally consider two factors to determine whether an OCI exists:

- Are there conflicting roles (including potential financial involvement) which might bias a contractor's judgment in relation to its work for the Corps?
- Is the contractor being given an unfair competitive advantage based on the performance of the contract?

If an OCI does exist, the Corps will require the contractor to submit a mitigation plan for approval by Corps' Office of Counsel. If the conflict cannot be resolved through a mitigation plan, the contractor will be ineligible for selection or for proceeding with the third-party contract.

CONFLICT OF INTEREST STATEMENT

1. Conflict Of Interest Declarations

Pursuant to the Council on Environment Policy's regulations concerning the national environmental Policy Act at 40 CFR § 1506.5© for an Environmental Impact Statement (EIS) for Department of the Army Permit SWG-XXXX-XXXXX ("Project") located in COUNTY County, Texas I hereby certify on behalf of CORPORATION, as TYPE Contractor, the Corporation does not have, and has not had, any financial or other interests in the outcome of the Project under development, nor any vested interest in the proposed future development in the Project area, nor any financial or other interests in other related developments undertaken by APPLICANT or any other potential developers, local governments, or other public Agency(s); nor any financial or other interests in any mitigation that may be developed in relation to the Project. The Corporation has worked for, or is currently working for NAME on the following project(s) (include any foreseeable, upcoming project(s): LIST

In the following capacity: DESCRIBE

Explain why the work on the above listed project(s) would not (or should not) influence the Corporation's ability to objectively participate with the EIS team (attach additional sheets if necessary).

I certify on behalf of the Corporation, the Corporation will provide copies of all original surveys, data, reports, or other documentation received or prepared by any of the consultants that pertain to the Project, or immediately surrounding property, to the U.S. Army Corps of Engineers Galveston District. Further, all such environmental documentation, intended for submittal as part of the EIS, once it reaches a stage suitable for review, will be forwarded to the U.S. Army Corps of Engineers Galveston District. This will ensure all work produced by EIS consultants is given directly to the U.S. Army Corps of Engineers Galveston District, and will not receive any editing, interpretation, or other alteration by a person or entity, prior to its submission.

2. Confidentiality Of Information

By signing this Agreement or serving on the EIS team, the Corporation agrees to use reasonable care to hold in confidence and not disclose any proposals, competitive technical information, and competitive cost or price information submitted to the U.S. Army Corps of Engineers Galveston District that are identified as "proprietary" or "trade secret" or otherwise "confidential." The Corporation agrees to use such proprietary or confidential information only for the purpose of supporting the preparation of the EIS, and will not make independent use of or publish or release any such information except to the extent necessary to accomplish the work of the U.S. Army Corps of Engineers Galveston District.

Proprietary, trade secret, or confidential pricing and technical information does not include information which is published or otherwise in the public domain through no fault of the receiving party; can be demonstrated by the receiving party to have been in its possession prior to receipt through the preparation of the EIS; is obtained by the receiving party without restriction from a third party; is independently developed by the receiving party by individuals who have not had either direct or indirect access to such information; or is disclosed by the receiving party to a third party with the written approval of the disclosing party without any restriction. The Corporation shall not be liable for disclosure of any information that is obligated to be disclosed by order of a court of competent jurisdiction. Corporation shall not be liable for accidental or inadvertent disclosure or use of proprietary or confidential information received during the environmental review process if such Corporation shows that he or she employed the standard of reasonable care stated herein in protecting and handling such information, and that the Corporation made reasonable efforts to retrieve any such accidentally or inadvertently disclosed information and took additional measures to reasonably prevent any further unauthorized disclosure and use of the proprietary or confidential information.

3. Certifications

I hereby acknowledge that I have read and understand the above and do certify that I will comply with these requirements.

Signature

Date

Name

Title

Statement of Responsibilities

Statement of Responsibilities

Define Roles and Responsibilities.

Districts have a responsibility to ensure the applicant and third-party contractor adhere to their respective roles and responsibilities in preparing and coordinating the EIS.

The Applicant's Role. The applicant is responsible for furnishing all necessary information to the Corps to prepare and coordinate the EIS, including the procurement and funding of a TPC who will collect information, perform technical studies and write the NEPA document. Generally, the applicant will be asked to review specific chapters of the administrative draft and final EISs, to comment on any proposed mitigation and to make sure the articulation of the applicant's need, project purpose and proposed action is accurate (e.g., Chapter 1 (*Purpose & Need*) and Chapter 2 (*Alternatives*)). The extent to which the district coordinates advance copies of additional chapters of the administrative draft and final EISs or other in-preparation EIS work products with the applicant will be at the discretion of the Corps. However, regardless of what draft documents are shared with the applicant, the Corps will ensure the applicant does not alter or unduly influence the data, interpretations and application of the data or any outcome—the Corps remains in control of the content of the EIS at all times.

The Third-Party Contractor's Role. The TPC works under the direction and control of the Corps, although the applicant funds the TPC's work in accordance with the agreed upon SOW. The TPC is responsible for searching, compiling and reviewing relevant literature, technical publications and previous environmental studies or reports of findings; conducting fieldwork and preparing technical studies in support of the EIS; assisting the Corps with public meetings/hearings; and preparing the NEPA documents, including reproduction, distribution/public posting and mailings (as applicable). The TPC shall submit all draft materials and findings directly to the Corps without first filtering the information through others, including the applicant.

The Corps' Role. The Corps is responsible for ensuring the information provided by the TPC is consistent with Corps policy and the NEPA statutory requirement to take a hard, objective look at the public interest and environmental factors. It is incumbent upon the Regulatory PM in charge of the EIS to direct any necessary changes to the work of the TPC to make sure the work products are acceptable and to ensure any conclusions drawn from the interpretation of the data comport with Corps regulations and policies. The district must also independently review any data or materials generated or provided by the applicant that are incorporated into the EIS (directly or by reference) and/or relied upon in agency decision-making, including the Corps' record of decision (ROD) and permit decision(s). The most important point relating to the Corps' role in the preparation of an EIS is that the district must provide sufficient oversight, control and independent review of the NEPA document(s). There is no impropriety for the Corps to rely upon an applicant's analysis as long as the district has independently evaluated and verified the data provided by the applicant in accordance with 40 C.F.R. § 1506.5(a). Although in many cases it may not be desirable from the Corps' perspective

in terms of avoiding a perceived conflict of interest (financial or otherwise), participation by the applicant in the preparation of an EIS is not prohibited by any regulation. However, in most cases, it is anticipated the applicant's participation in the EIS process will be largely limited to providing information via the funding of a TPC, and that decision-making will be retained by the Corps. When the applicant provides information to the Corps in support of the EIS, the Corps will document in the administrative record that an independent review of the applicant-furnished information has been conducted and the district accepts the information as being unbiased, accurate and factually correct.

Once the selected TPC has been retained by the applicant, the TPC will begin work for the District, supervised by the District Regulatory staff. Although the applicant will pay for the TPC's work, it will have no control over the work done under the contract, and will not be able to review the work product before its release to the public. In addition, the contract must indicate that the applicant retains no right to the products of the contract. The District Regulatory staff will:

- have complete control over the scope, content, and quality of the contractor's work;
- independently evaluate the results of the contractor's work,
- have sole ownership of all documents (other than those related to financial aspects) produced under the contract, and
- have complete control over the schedule for completion of the TPC's work.

If essential information, critical to the integrity of Corps' environmental document, is found missing from the applicant's environmental report and related documents, the TPC will be directed by Corps staff to acquire the missing information in one of two ways. The Corps staff will instruct the TPC to either:

- prepare a data request, which the staff will review and forward to the applicant to obtain the information; or
- perform supplemental studies or data gathering needed to acquire the missing information.

NEPA Implementation Procedures for the Regulatory Program

Regulatory Program of the Army Corps of Engineers

Part 325 - Processing of Department of the Army Permits

Appendix B-NEPA Implementation Procedures for the Regulatory Program

- 1. Introduction**
- 2. General**
- 3. Development of Information and Data**
- 4. Elimination of Duplication with State and Local Procedures**
- 5. Public Involvement**
- 6. Categorical Exclusions**
- 7. EA/FONSI Document**
- 8. Environmental Impact Statement General**
- 9. Organization and Content of Draft EISs**
- 10. Notice of Intent**
- 11. Public Hearing**
- 12. Organization and Content of Final EIS**
- 13. Comments Received on the Final EIS**
- 14. EIS Supplement**
- 15. Filing Requirement**
- 16. Timing**
- 17. Expedited Filing**
- 18. Record of Decision**
- 19. Predecision Referrals by Other Agencies**
- 20. Review of Other Agencies' EISs**
- 21. Monitoring**

1. Introduction.

In keeping with Executive Order 12291 and 40 CFR 1500.2, where interpretive problems arise in implementing this regulation, and consideration of all other factors do not give a clear indication of a reasonable interpretation, the interpretation (consistent with the spirit and intent of NEPA) which results in the least paperwork and delay will be used. Specific examples of ways to reduce paperwork in the NEPA process are found at 40 CFR 1500.4. Maximum advantage of these recommendations should be taken.

2. General.

This Appendix sets forth implementing procedures for the Corps regulatory program. for additional guidance, see the Corps NEPA regulation 33 CFR Part 230 and for general policy guidance, see the CEQ regulations 40 CFR 1500.1508.

3. Development of Information and Data.

See 40 CFR 1506.5. The district engineer may require the applicant to furnish appropriate information that the district engineer considers necessary for the preparation of an Environmental Assessment (EA) or Environmental Impact Statement (EIS). See also 40 CFR 1502.22 regarding incomplete or unavailable information.

4. Elimination of Duplication with state and local Procedures.

See 40 CFR 1506.2

5. Public Involvement.

Several paragraphs of this appendix (paragraphs 7, 8, 11, 13, and 19) provide information on the requirements for district engineers to make available to the public certain environmental documents in accordance with 40 CFR 1506.6.

6. Categorical Exclusions.

a. General. Even though an EA or EIS is not legally mandated for any Federal action falling within one of the "categorical exclusions," that fact does not exempt any Federal action from procedural or substantive compliance with any other Federal law. For example, compliance with the Endangered Species Act, the Clean Water Act, etc., is always mandatory, even for actions not requiring an EA or EIS. The following activities are not considered to be major Federal actions significantly affecting the quality of the human environment and are therefore categorically excluded from NEPA documentation:

- (1) Fixed or floating small private piers, small docks, boat hoists and boathouses;
- (2) Minor utility distribution and collection lines including irrigation;
- (3) Minor maintenance dredging using existing disposal sites;
- (4) Boat launching ramps;
- (5) All applications which qualify as letters of permission (as described at 33 CFR 325.5(b)(2)).

b. Extraordinary Circumstances. District engineers should be alert for extraordinary circumstances where normally excluded actions could have substantial environmental effects and thus require an EA or EIS. For a period of one year from the effective date of these regulations, district engineers should maintain an information list on the type and number of categorical exclusion actions which, due to extraordinary circumstances, triggered the need for an EA/FONSI or EIS. If a district engineer determines that a categorical exclusion should be modified, the information will be furnished to the division engineer who will review and analyze the actions and circumstances to determine if there is a basis for recommending a modification to the list of categorical exclusions. HQUSACE (CECWOR) will review recommended changes for Corps-wide consistency and revise the list accordingly.

7. EA/FONSI Document.

(See 40 CFR 1500.9 and 1508.13 for definitions)

a. Environmental Assessment (EA) and Findings of No Significant Impact (FONSI). The EA should normally be combined with other required documents (EA/404(b)(1)/SOF/FONSI). "EA" as used throughout this Appendix normally refers to this combined document. The district engineer should complete an EA as soon as practicable after all relevant information is available (i.e., after the comment period for the public notice of the permit application has expired) and when the EA is a separate document it must be completed prior to completion of the statement of finding (SOF). When the EA confirms that the impact of the applicant's proposal is not significant and there are no "unresolved conflicts concerning alternative uses of available resources..." (section 102(2)(E) of NEPA), and the proposed activity is a "water dependent" activity as defined in 40 CFR 230.10(a)(3), the EA need not include a discussion on alternatives. In all other cases where the district engineer determines that there are unresolved conflicts concerning alternative uses of available resources, the EA shall include a discussion of the reasonable alternatives which are to be considered by the ultimate decision-maker. The decision options available to the Corps, which embrace all of the applicant's alternatives, we issue the permit, issue with modifications or deny the permit. Modifications are limited to those project modifications within the scope of established permit conditioning policy (See 33 CFR 325.4). The decision option to deny the permit results in the "no action" alternative (i.e. no activity requiring a Corps permit). The combined document normally should not exceed 15 pages and shall conclude with a FONSI (See 40 CFR 1508.13) or a determination that an EIS is required. The district engineer may delegate the signing of the NEPA document. Should the EA demonstrate that an EIS is necessary, the district engineer shall follow the procedures outlined in paragraph 8 of this Appendix. In those cases where it is obvious an EIS is required, an EA is not required. However, the district engineer should document his reasons for requiring an EIS.

b. Scope of Analysis. (1) In some situations, a permit applicant may propose to conduct a specific activity requiring a Department of the Army (DA) permit (e.g., construction of a pier in a navigable water of the United States) which is merely one component of a larger project (e.g., construction of an oil refinery on an upland area). The district engineer should establish the scope of the NEPA document (e.g., the EA or EIS) to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review.

(2) The district engineer is considered to have control and responsibility for portions of the project beyond the limits of Corps jurisdiction where the Federal involvement is sufficient to turn an essentially private action into a Federal action. These are cases where the environmental consequences of the larger project are essentially products of the Corps permit action. Typical factors to be considered in determining whether sufficient "control and responsibility" exists include:

- (i) Whether or not the regulated activity comprises "merely a link" in a corridor type project (e.g., a transportation or utility transmission project).
- (ii) Whether there are aspects of the upland facility in the immediate vicinity of the regulated activity which affect the location and configuration of the regulated activity.
- (iii) The extent to which the entire project will be within Corps jurisdiction.
- (iv) The extent of cumulative Federal control and responsibility.

A. Federal control and responsibility will include the portions of the project beyond the limits of Corps jurisdiction where the cumulative Federal involvement of the Corps and other Federal agencies is sufficient to grant legal control over such additional portions of the project. These are cases where the environmental consequences of the additional portions of the projects are essentially products of Federal financing, assistance, direction, regulation, or approval (not including funding assistance solely in the form of general revenue sharing funds, with no Federal agency control over the subsequent use of such funds, and not including judicial or administrative civil or criminal enforcement actions).

B. In determining whether sufficient cumulative Federal involvement exists to expand the scope of Federal action the district engineer should consider whether other Federal agencies are required to take Federal action under the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), Executive Order 11990, Protection of Wetlands, (42 U.S.C. 4321-91977), and other environmental review laws and executive orders.

C. The district engineer should also refer to paragraphs 8(b) and 8(c) of this appendix for guidance on determining whether it should be the lead or a cooperating agency in these situations. These factors will be added to or modified through guidance as additional field experience develops.

(3) Examples: If a non-Federal oil refinery, electric generating plant, or industrial facility is proposed to be built on an upland site and the only DA permit requirement relates to a connecting pipeline, supply loading terminal or fill road, that pipeline, terminal or fill road permit, in and of itself, normally would not constitute sufficient overall Federal involvement with the project to justify expanding the scope of a Corps NEPA document to cover upland portions of the facility beyond the structures in the immediate vicinity of the regulated activity that would effect the location and configuration of the regulated activity.

Similarly, if an applicant seeks a DA permit to fill waters or wetlands on which other construction or work is proposed, the control and responsibility of the Corps, as well as its overall Federal involvement would extend to the portions of the project to be located on the permitted fill. However, the NEPA review would be extended to the entire project, including portions outside waters of the United States, only if sufficient Federal control and responsibility over the entire project is determined to exist; that is, if the regulated activities, and those activities involving regulation, funding, etc. by other Federal agencies, comprise a substantial portion of the overall project. In any case, once the scope of analysis has been defined, the NEPA analysis for that action should include direct, indirect and cumulative impacts on all Federal interests within the purview of the NEPA statute. The district engineer should, whenever practicable, incorporate by reference and rely upon the reviews of other Federal and State agencies.

For those regulated activities that comprise merely a link in a transportation or utility transmission project, the scope of analysis should address the Federal action, i.e., the specific activity requiring a DA permit and any other portion of the project that is within the control or responsibility of the Corps of Engineers (or other Federal agencies).

For example, a 50-mile electrical transmission cable crossing a 1 1/4 mile wide river that is a navigable water of the United States requires a DA permit. Neither the origin and destination of the cable nor its route to and from the navigable water, except as the route applies to the location and configuration of the crossing, are within the control or responsibility of the Corps of

Engineers. Those matters would not be included in the scope of analysis which, in this case, would address the impacts of the specific cable crossing.

Conversely, for those activities that require a DA permit for a major portion of a transportation or utility transmission project, so that the Corps permit bears upon the origin and destination as well as the route of the project outside the Corps regulatory boundaries, the scope of analysis should include those portions of the project outside the boundaries of the Corps section 10/404 regulatory jurisdiction. To use the same example, if 30 miles of the 50-mile transmission line crossed wetlands or other "waters of the United States," the scope of analysis should reflect impacts of the whole 50-mile transmission line.

For those activities that require a DA permit for a major portion of a shoreside facility, the scope of analysis should extend to upland portions of the facility. For example, a shipping terminal normally requires dredging, wharves, bulkheads, berthing areas and disposal of dredged material in order to function. Permits for such activities are normally considered sufficient Federal control and responsibility to warrant extending the scope of analysis to include the upland portions of the facility.

In all cases, the scope of analysis used for analyzing both impacts and alternatives should be the same scope of analysis used for analyzing the benefits of a proposal.

8. Environmental Impact Statement-General

a. Determination of Lead and Cooperating Agencies. When the district engineer determines that an EIS is required, he will contact all appropriate Federal agencies to determine their respective role(s), i.e., that of lead agency or cooperating agency.

b. Corps as Lead Agency. When the Corps is lead agency, it will be responsible for managing the EIS process, including those portions which come under the jurisdiction of other Federal agencies. The district engineer is authorized to require the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix. It is permissible for the Corps to reimburse, under agreement staff support from other Federal agencies beyond the immediate jurisdiction of those agencies.

c. Corps as Cooperating Agency. If another agency is the lead agency as set forth by the CEQ regulations (40 CFR 1501.5 and 1501.6(a) and 1508.16), the district engineer will coordinate with that agency as a cooperating agency under 40 CFR 1501.6(b) and 1508.5 to insure that agency's resulting EIS may be adopted by the Corps for purposes of exercising its regulatory authority. As a cooperating agency the Corps will be responsible to the lead agency for providing environmental information which is directly related to the regulatory matter involved and which is required for the preparation of an EIS. This in no way shall be construed as lessening the district engineer's ability to request the applicant to furnish appropriate information as discussed in paragraph 3 of this appendix.

When the Corps is a cooperating agency because of a regulatory responsibility, the district engineer should, in accordance with 40 CFR 1501.6(b)(4), make available staff support at the lead agency's request to enhance the latter's interdisciplinary capability provided the request pertains to the Corps regulatory action covered by the EIS, to the extent this is

practicable. Beyond this, Corps staff support will generally be made available to the lead agency to the extent practicable within its own responsibility and available resources. Any assistance to a lead agency beyond this will normally be by written agreement with the lead agency providing for the Corps expenses on a cost reimbursable basis. If the district engineer believes a public hearing should be held and another agency is lead agency, the district engineer should request such a hearing and provide his reasoning for the request. The district engineer should suggest a joint bearing and offer to take an active part in the bearing and ensure coverage of the Corps concerns.

d. Scope of Analysis. See paragraph 7b.

e. Scoping Process. Refer to 40 CFR 1501.7 and 33 CFR 230.12.

f. Contracting. See, 40 CFR 1508.5.

(1) The district engineer may prepare an EIS or may obtain information needed to prepare an EIS either with his own staff or by contract. In choosing a contractor who reports directly to the district engineer, the procedures of 40 CFR 1506.5(c) will be followed.

(2) Information required for an EIS also may be furnished by the applicant or a consultant employed by the applicant. Where this approach is followed the district engineer will

(i) advise the applicant and/or his consultant of the Corps information requirements, and

(ii) meet with the applicant and/or his consultant from time to time and provide him with the district engineer's views regarding adequacy of the data that are being developed (including how the district engineer will view such data in light of any possible conflicts of interest).

The applicant and/or his consultant may accept or reject the district engineer's guidance. The district engineer, however, may after specifying the information in contention require the applicant to resubmit any previously submitted data which the district engineer considers inadequate or inaccurate. In all cases, the district engineer should document in the record the Corps independent evaluation of the information and its accuracy, as required by 40 CFR 1506.5(a).

g. Change in EIS Determination. If it is determined that an EIS is not required after a notice of intent has been published the district engineer shall terminate the EIS preparation and withdraw the notice of intent. The district engineer shall notify in writing the appropriate division engineer; HQUSACE (CECW-OR); the appropriate EPA regional administrator, the Director, Office of Federal Activities (A-104), EPA 401 M Street SW, Washington, DC 20460 and the public of the determination.

h. Time Limits. For regulatory actions, the district engineer will follow 33 CFR 230.17(a) unless unusual delays caused by applicant inaction or compliance with other statutes require longer time frames for EIS preparation. At the outset of the EIS effort, schedule milestones will be developed and made available to the applicant and the public. If the milestone dates are not met the district engineer will notify the applicant and explain the reason for delay.

9. Organization and Content of Draft EISs

a. General. This section gives detailed information for preparing draft EISs. When the Corps is the lead agency, this draft EIS format and these procedures will be followed. When the Corps

is one of the joint lead agencies, the joint lead agencies will mutually decide which agency's format and procedures will be followed.

b. Format

(1) Cover Sheet

(a) Ref. 40 CFR 1502.11.

(b) The "person at the agency who can supply further information" (40 CFR 1502.11(c) is the project manager handling that permit application.

(c) The cover sheet should identify the EIS as a Corps permit action and state the authorities (sections 9, 10, 404, 103 etc.) under which the Corps is exerting its jurisdiction.

(2) Summary. In addition to the requirements of 40 CFR 1502.12, this section should identify the proposed action as a Corps permit action stating the authorities (sections 8, 10, 404, 103, etc.) under which the Corps is exerting its jurisdiction. It shall also summarize the purpose and need for the proposed action and shall briefly state the beneficial/adverse impacts of the proposed action.

(3) Table of Contents.

(4) Purpose and Need. See 40 CFR 1502.13. If the scope of analysis for the NEPA document (see paragraph 7b) covers only the proposed specific activity requiring a Department of the Army permit, then the underlying purpose and need for that specific activity should be stated. (For example, "The purpose and need for the pipe is to obtain cooling water from the river for the electric generating plant."). If the scope of analysis covers a more extensive project, only part of which may require a DA permit, then the underlying purpose and need for the entire project should be stated. (For example, "The purpose and need for the electric generating plant is to provide increased supplies of electricity to the (named) geographic area.") Normally, the applicant should be encouraged to provide a statement of his proposed activity's purpose and need from his perspective (for example, "to construct an electric generating plant"). However, whenever the NEPA document's scope of analysis renders it appropriate, the Corps also should consider and express that activity's underlying purpose and need from a public interest perspective (to use that same example, "to meet the public's need for electric energy"). Also, while generally focusing on the applicant's statement, the Corps, will in all cases exercise independent judgment in defining the purpose and need for the project from both the applicant's and the public's perspective.

(5) Alternatives. See 40 CFR 1502.14. The Corps is neither an opponent nor a proponent of the applicant's proposal; therefore, the applicant's final proposal will be identified as the "applicant's preferred alternative" in the final EIS. Decision options available to the district engineer, which embrace all of the applicant's alternatives, are issue the permit, issue with modifications or conditions or deny the permit.

(a) Only reasonable alternatives need be considered in detail as specified in 40 CFR 1502.14(a). Reasonable alternatives must be those that are feasible and such feasibility must focus on the accomplishment of the underlying purpose and need (of the applicant or the public) that would be satisfied by the proposed Federal action (permit issuance). The alternatives analysis should be thorough enough to use for both the public interest review and the 404(b)(1) guidelines (40 CFR Part 230) where applicable. Those alternatives that are unavailable to the applicant, whether or not they require Federal action (permits), should normally be included in the analysis of the no-Federal-action (denial) alternative. Such alternatives should be evaluated only to the extent necessary to allow a complete and objective evaluation of the public interest and a fully informed decision regarding the permit application.

(b) The "no-action" alternative is one which results in no construction requiring a Corps permit.

it may be brought by (1) the applicant electing to modify his proposal to eliminate work under the jurisdiction of the Corps or (2) by the denial of the permit. District engineers, when evaluating this alternative, should discuss, when appropriate, the consequences of other likely uses of a project site, should the permit be denied.

(c) The EIS should discuss geographic alternatives, e.g., changes in location and other site specific variables, and functional alternatives, e.g., project substitutes and design modifications.

(d) The Corps shall not prepare a cost-benefit analysis for projects requiring a Corps permit. 40 CFR 1502.23 states that the weighing of the various alternatives need not be displayed in a cost-benefit analysis and "... should not be when there are important qualitative considerations." The EIS should, however, indicate any cost considerations that are likely to be relevant to a decision.

(e) Mitigation is defined in 40 CFR 1508.20, and Federal action agencies are directed in 40 CFR 1502.14 to include appropriate mitigation measures. Guidance on the conditioning of permits to require mitigation is in 33 CFR 320.4(r) and 325.4. The nature and extent of mitigation conditions are dependent on the results of the public interest review in 33 CFR 320.4.

(6) Affected Environment. See Ref 40 CFR 1502.15.

(7) Environmental Consequences. See Ref 40 CFR 1502.16.

(8) List of Preparers. See Ref 40 CFR 1502.17.

(9) Public Involvement. This section should list the dates and nature of all public notices, scoping meetings and public hearings and include a list of all parties notified.

(10) Appendices. See 40 CFR 1502.18. Appendices should be used to the maximum extent practicable to minimize the length of the main text of the EIS. Appendices normally should not be circulated with every copy of the EIS, but appropriate appendices should be provided routinely to parties with special interest and expertise in the particular subject.

(11) Index. The Index of an EIS, at the end of the document, should be designed to provide for easy reference to items discussed in the main text of the EIS.

10. Notice of Intent.

The district engineer shall follow the guidance in 33 CFR Part 230, Appendix C in preparing a notice of intent to prepare a draft EIS for publication in the Federal Register.

11. Public Hearing.

If a public hearing is to be held pursuant to 33 CFR Part 327 for a permit application requiring an EIS, the actions analyzed by the draft EIS should be considered at the public hearing. The district engineer should make the draft EIS available to the public at least 15 days in advance of the hearing. If a hearing request is received from another agency having jurisdiction as provided in 40 CFR 1506.6(c)(2), the district engineer should coordinate a joint hearing with that agency whenever appropriate.

12. Organization and Content of Final EIS.

The organization and content of the final EIS including the abbreviated final EIS procedures shall follow the guidance in 33 CFR 230.14(a).

13. Comments Received on the Final EIS.

For permit cases to be decided at the district level, the district engineer should consider all incoming comments and provide responses when substantive issues are raised which have not been addressed in the final EIS. For permit cases decided at higher authority, the district engineer shall forward the final EIS comment letters together with appropriate responses to higher authority along with the case. In the case of a letter recommending a referral under 40 CFR Part 1504, the district engineer will follow the guidance in paragraph 19 of this appendix.

14. EIS Supplement.

See 33 CFR 230.13(b).

15. Filing Requirements.

See 40 CFR 1506.9. Five (5) copies of EISs shall be sent to Director, Office of Federal Activities (A-104), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The official review periods commence with EPA's publication of a notice of availability of the draft of final EISs in the Federal Register. Generally, this notice appears on Friday of each week. At the same time they are mailed to EPA for filing, one copy of each draft or final EIS, or EIS supplement should be mailed to HQUSACE (CECW-OR) WASH DC 20314-1000.

16. Timing.

40 CFR 1506.10 describes the timing of an agency action when an EIS is involved.

17. Expedited Filing.

40 CFR 1506.10 provides information on allowable time reductions and time extensions associated with the EIS process. The district engineer will provide the necessary information and facts to HQUSACE (CECWRE) WASH DC 20314-1000 (with copy to CECW-OR) for consultation with EPA for a reduction in the prescribed review periods.

18. Record of Decision.

In those cases involving an EIS, the statement of findings will be called the record of decision and shall incorporate the requirements of 40 CFR 1505.2. The record of decision is not to be included when filing a final EIS and may not be signed until 30 days after the notice of availability of the final EIS is published in the Federal Register. To avoid duplication, the record of decision may reference the EIS.

19. Predecision Referrals by Other Agencies.

See 40 CFR Part 1504. The decision-maker should notify any potential referring Federal agency and CEQ of a final decision if it is contrary to the announced position of a potential referring agency. (This pertains to a NEPA referral, not a 404(q) referral under the Clean Water Act. The procedures for a 404(q) referral are outlined in the 404(q) Memoranda of Agreement. The potential referring agency will then have 25 calendar days to refer the case to CEQ under

40 CFR Part 1504. Referrals will be transmitted through division to CECW-RE for further guidance with an information copy to CECW-OR.

20. Review of Other Agencies' EISs.

District engineers should provide documents directly to the requesting agency specifically related to the Corps jurisdiction by law or special expertise as defined in 40 CFR 1508.15 and 1508.26 and identified in Appendix H of CEQ regulations (49 FR 49750, December 21, 1984). If the district engineer determines that another agency's draft EIS which involves a Corps permit action is inadequate with respect to the Corps permit action, the district engineer should attempt to resolve the differences concerning the Corps permit action prior to the filing of the final EIS by the other agency. If the district engineer finds that the final EIS is inadequate with respect to the Corps permit action, the district engineer should incorporate the other agency's final EIS or a portion thereof and prepare an appropriate and adequate NEPA document to address the Corps involvement with the proposed action. See 33 CFR 230.21 for guidance. The agency which prepared the original EIS should be given the opportunity to provide additional information to that contained in the EIS in order for the Corps to have at] relevant information available for a sound decision on the permit.

21. Monitoring.

Monitoring compliance with permit requirements should be carried out in accordance with 33 CFR 230.15 and with 33 CFR Part 325.

Glossary

Administrative Draft EIS (ADEIS): an internal, pre-deliberative draft document prepared by a TPC that contains all information and analysis required for a draft EIS per CEQ NEPA implementing regulations, 40 C.F.R. Parts 1500 – 1508, and Corps NEPA implementing regulations, 33 C.F.R. Part 230 and 33 C.F.R. Part 325, Appendix B. The ADEIS is submitted to the Corps and cooperating agency(s) for internal review to ensure overall document completeness, technical accuracy and consistency with existing Corps policies prior to the filing, public release and distribution of the 'official' draft EIS.

Administrative Final EIS (AFEIS): an internal, pre-deliberative draft document prepared by a TPC that addresses public comments provided on the draft EIS and contains all information and analysis required for a final EIS per CEQ NEPA implementing regulations, 40 C.F.R. Parts 1500 – 1508, and Corps NEPA implementing regulations, 33 C.F.R. Part 230 and 33 C.F.R. Part 325, Appendix B. The AFEIS is submitted to the Corps and cooperating agency(s) for internal review to ensure overall document completeness, technical accuracy, sufficiency of responses to comments and consistency with existing Corps policies prior to the filing, public release and distribution of the 'official' final EIS.

Cumulative Impact: the impact on the environment which results from the incremental impact of the action when added to other past, present and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 C.F.R. § 1508.7).

Direct Impact (or Effect): direct impacts are those effects that are caused by the action and occur at the same time and place (40 C.F.R. § 1508.8).

Effects: Effects (or impacts) includes ecological (such as the effects on natural resources and on the components, structures and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social or health, whether direct, indirect or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects (40 C.F.R. § 1508.8).

Federal Action: for purposes of the Corps Regulatory Program, the NEPA "Federal action" is the action taken by the Corps in either issuing or denying a permit pursuant to one of the Corps regulatory authorities: section 404 of the Clean Water Act, sections 9 and 10 of the Rivers and Harbors Act of 1899 and/or section 103 of the Marine Protection Research and Sanctuaries Act of 1972.

Federal Register: The Federal Register contains Federal agency regulations, proposed rules and public notices, executive orders, proclamations and other Presidential documents. The NARA Office of the Federal Register prepares the Federal Register for publication in partnership with the Government Printing Office (GPO). It is updated daily by 6 a.m. and is published Monday through Friday, except Federal holidays. The Federal Register is where notices from Federal agencies can be found regarding their NEPA actions.

Human Environment: is defined comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an EIS. When an EIS is prepared and economic or social and natural or physical environmental effects are interrelated, then the EIS will discuss all these effects on the human environment (40 C.F.R. § 1508.14).

Indirect Impact (or Effect): indirect impacts are those effects that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems (40 C.F.R. § 1508.8).

Major Federal Action: an action with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of "significantly". Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as agency action (40 C.F.R. § 1508.18).

Mitigation: avoiding the impact altogether by not taking a certain action or parts of an action; minimizing impacts by limiting the degree or magnitude of the action and its implementation; rectifying the impact by repairing, rehabilitating or restoring the affected environment; reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and compensating for the impact by replacing or providing substitute resources or environments (40 C.F.R. §1508.20).

No Action: The No Action alternative is one which results in no construction requiring a Corps permit. It may be brought by (1) the applicant electing to modify his proposal to eliminate work under the jurisdiction of the Corps or (2) by the denial of a permit (33 C.F.R. § 325, Appendix B).

Permit Action: as used herein means the evaluation of and decision on an application for a DA permit pursuant to sections 9 or 10 of the RHA of 1899, section 404 of the CWA or section 103 of the MPRSA or the modification, suspension or revocation of any DA permit (33 C.F.R. § 327.3(b)).

Practicable: available and capable of being done after taking into consideration cost, existing technology and logistics in light of the overall project purpose(s) (40 C.F.R. § 230.10(a)(2)).

Pre-final ("camera-ready") Draft EIS: an internal, pre-deliberative draft document prepared by a TPC in response to Corps and cooperating agency(s) comments on the ADEIS. The pre-final ("camera-ready") DEIS addresses all Corps district, SPD and cooperating agency(s) review comments and is the final version of the DEIS the Corps will approve for reproduction (e.g., printing), filing with U.S. EPA Headquarters and public distribution for the mandated minimum 45-day public review period.

Pre-final (“camera-ready”) Final EIS: an internal, pre-deliberative draft document prepared by a TPC in response to Corps and cooperating agency(s) comments on the AFEIS. The pre-final (“camera-ready”) FEIS addresses all Corps district, SPD and cooperating agency(s) review comments and is the final version of the FEIS the Corps will approve for reproduction (e.g., printing), filing with U.S. EPA Headquarters and public distribution for the required 30-day review (waiting) period.

Project Management Plan: A formal, approved living document used to define requirements and expected outcomes and guide project execution and control. Primary uses of the PMP are to facilitate communication among participants, assign responsibilities, define assumptions and document decisions to establish baseline plans for scope, cost, schedule and quality objectives against which performance can be measured, and to adjust these plans as actuals dictate. A PMP is developed by the project delivery team (ER 5-1-11, 1 November 2006).

Public Hearing: a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed DA permit action, or Federal project, and which affords the public an opportunity to present their views, opinions and information on such permit actions or Federal projects (33 C.R.R. § 327.3(a)).

Reasonable: practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant (CEQ, 1981). Reasonable alternatives must be those that are feasible and such feasibility must focus on the accomplishment of the underlying purpose and need (of the applicant or the public) that would be satisfied by the proposed Federal action.

Scope: the range of actions, alternatives and impacts to be considered in an environmental impact statement (40 C.F.R. § 1508.25).

Scope of Analysis: used in the context of the Corps Regulatory program, scope of analysis refers to the spatial boundaries or geographic area and project features that will be encompassed by and considered in the NEPA analysis to address the impacts of the specific activity requiring a DA permit and those portions of the entire project over which the district engineer has sufficient control and responsibility to warrant Federal review (33 C.F.R. § 325, Appendix B, paragraph 7(b)).

Significantly: as used in NEPA this term requires consideration of both “context” and “intensity”. Context means the significance of an action must be analyzed in several contexts such as society as a whole (human,