

H-1790-1 - NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK

CONTRACTING GUIDANCE

A. BLM Contracting Procedures. If funding is available, the BLM may choose to contract for the preparation of a NEPA document. After going through proper competitive procurement procedures, the BLM would issue a contract to a qualified offeror. In competitive procurements, the BLM has complete control over the scope and content of the EA or EIS and is responsible for ensuring that the contractor remedies any defects or deficiencies. The contractor is required to perform in accordance with contract standards and reports directly to the BLM. See BLM Handbook H-1510-6 for detailed guidance on competitive procurement procedures. The following general guidance applies when the BLM awards a contract for the preparation of an EIS:

1. The BLM manager responsible for preparing the EIS appoints a project manager and a technical proposal evaluation committee (TPEC) to work with the Contracting Officer and to provide technical input into the selection of the contractor as well as oversight of the contract. The project manager and the technical review team are responsible for ensuring the document's adequacy, completeness, and accuracy (using a systematic interdisciplinary approach).

2. The project manager should be given adequate authority to represent the BLM with the contractor. This individual is usually termed the contracting officer's representative (COR). To provide continuity, the project manager should be the same person for the duration of the project.

3. The project manager informs the contractor of all applicable NEPA compliance requirements including CEQ regulations (40 CFR 1500-1508) and Departmental requirements (516 DM 1-7). All such requirements must be met, including public involvement requirements.

4. Contractors must execute a disclosure statement prepared by the BLM specifying that they have no financial or other interest in the outcome of the project (40 CFR 1506.5(c)).

5. Generally, before starting work on an EIS, the contractor and/or the BLM should develop a preparation plan or its equivalent. Much of the information for the preparation plan may have been incorporated into the statement of work or required to be part of the proposal.

6. The BLM is responsible for responding to comments received on the draft EIS. However, the contractor may be required to organize the comments and prepare responses for subsequent review and approval by the BLM.

7. The BLM must independently review the EIS prior to its acceptance and take responsibility for its scope and contents (40 CFR 1506.5(c)).

8. The BLM is responsible for preparing the record of decision (ROD).

H-1790-1 - NATIONAL#HNVLXONMHNTAL POLICY ACT HANDBOOK

B. Third-Party Contracting Procedures. A third-party contract is an option when BLM cannot prepare a required NEPA analysis due to time, budget, or other limitations or when either the BLM or the applicant requests that the applicant hire a contractor to prepare the EA or EIS. It is called a third-party contract because the applicant for the proposal awards the contract, through proper procedures, for the preparation of the NEPA document for the BLM. No direct BLM funding is involved, however, in awarding the contract. By using the third party contracting approach, a contract can be awarded fairly quickly. However, a third party contractor can be less responsive to BLM direction and needs since it is under contract to the applicant rather than to the BLM. The following guidance applies to third-party contracting for an EIS.

1. The BLM develops a memorandum of understanding (MOU between the BLM, the applicant and other cooperating agencies, if any, to establish roles and responsibilities and to address any cost reimbursement aspects of the project (see 43 CFR 2808.3-1, 2883.1-1 and BLM MS 1323). The MOU should provide for the BLM to actively administer the contract, i.e., to work directly with the contractor on NEPA related matters and provide technical guidance and direction in the preparation of the EIS. It is at this stage that determinations are made regarding the level and nature of BLM's involvement. For example, the MOU should indicate whether the BLM, the contractor, or a combination of the two will be responsible for conducting the scoping process. The MOU should identify the proposed schedule for the project and the BLM estimated cost schedule, by quarter. The draft MOU should be reviewed by the applicant and cooperating agencies, if any, and modified as necessary. The final MOU must be signed before further work is done on the project, particularly if this is a cost reimbursable project (see DM 516 4.3 B.). By signing the MOU, the applicant indicates their willingness to finance the NEPA portion of the project.

2. The BLM independently develops a statement of work for the EIS. The statement of work, together with the MOU, generally includes or expands upon the information normally found in an EIS preparation plan.) The BLM also develops the technical evaluation criteria for contractor selection. The applicant develops contract cost criteria and obtains contract proposals. The applicant may also perform an initial screening of proposals.

3. The BLM and applicant concurrently, but sometimes separately, evaluate the remaining proposals using the same technical evaluation criteria. Some general rules are: for a simple evaluation, use no more than three evaluators; for a complex evaluation, use four or more evaluators, or, if very complex, consider establishing an evaluation committee which can include cooperating agencies team members as appropriate. The BLM focuses its evaluation upon the technical, managerial, and personnel portions of submitted propoals. The applicant primarily focuses its evaluation upon the costs.

H-1790-1-NATIONAL ENVIRONMENTAL POLICY ACT HANDBOOK

4. After the evaluations are completed, the applicant recommends their preferred contractor for the project to BLM. The BLM, however, must select the contractor (40 CFR 1506.5(c)). The BLM then informs the applicant, in writing, of their selection. Occasionally, the applicant's selection process arrives at a different contractor than BLM's. If so, a compromise should be worked out. It is to the applicant's benefit in the long run to meet BLM's quality needs since BLM is ultimately responsible for the contents, completeness, and accuracy of the NEPA document. However, since the applicant is footing the bill for the project, the BLM needs to be sensitive to the estimated costs and the applicant's concerns with such. The BLM, however, must make the final decision.

5. The contractor must execute a disclosure statement prepared by the BLM specifying that they do not have any interest, financial or otherwise, in the outcome of the project prior to the applicant awarding the contract (see 40 CFR 1506.5(c), and Federal Register, Vol. 48, Number 146, July 28, 1983, page 34266). The BLM must keep this statement on file throughout the life of the project.

6. The applicant finalizes and awards the contract.

7. The applicant can also be given permission to print the NEPA document.

8. The BLM tracks and monitors the actual BLM costs on a monthly basis, using Form 1323-1 (June, 1983), Reimbursable Project Log.

9. The BLM is responsible for responding to comments received on the draft EIS. However, the contractor may be required to organize the comments and prepare responses for subsequent review and approval by the BLM.

10. The BLM must independently review the EIS prior to its acceptance and take responsibility for its scope and contents (40 CFR 1506.5(c)).

11. The BLM is responsible for preparing the ROD.