

STATE OF TEXAS COMMENTS:

Coastal Impact Assistance Program (CIAP) Draft Guidelines Issued by Minerals Management Service (MMS) in March 2006

Texas General Land Office

5/24/2006

The comments of the Texas General Land Office are included following the appropriate section of the MMS Draft CIAP Guidelines. If additional information is needed, please contact Jeff Frank, Program Analyst as (512) 463-5335, or at jeff.frank@glo.state.tx.us.

SECTION 1: INTRODUCTION. No comments.

SECTION 2: ELIGIBLE STATES AND SUBDIVISIONS. No comments.

SECTION 3: CIAP PROGRAM ALLOCATIONS. No comments.

SECTION 4: CIAP PROGRAM FUNDS.

- Comment 1. Please specify a target date by which the MMS will provide information on the grant process.
- Comment 2. Please specify a drawdown date for funds for each fiscal year to assist entities in establishing administrative procedures.

SECTION 4.1: AUTHORIZED USES OF FUNDS.

- Comment 1. Please provide a more detailed description of what constitutes a "direct benefit."
- Comment 2. State programs should be allowed to apply for and receive an allocation from CIAP funds to conduct pre-planning work for potential state CIAP projects.

SECTION 4.2: RESTRICTIONS ON THE USE OF FUNDS.

SECTION 4.2.1: COST SHARING OR MATCHING OF FUNDS.

- Comment 1. Please clarify how the 23 percent limitation will apply to specific awards. The limitation should apply to individual awards, not individual fiscal years. Projects funded under CIAP grants may run for four years and combined funding for individual awards may total more than 23 percent during a single fiscal year.
- Comment 2. Please exclude from the definition of "onshore infrastructure" the following activities: beach nourishment and similar activities, restoration of dunes without a structural core, construction of parks, recreational piers, walkways, trails and land acquisition.
- Comment 3. If the projects described in paragraph 2, above, are excluded from the definition of "onshore infrastructure," please provide that recurring funding required for the operating costs for the continuing

upkeep of such projects will also be excluded from the definition of “onshore infrastructure”.

Comment 4. If the projects described in paragraph 2, above, are included in the definition of “onshore infrastructure,” please clarify how the costs of constructing piers and walkways that might be partially onshore and partially offshore should be prorated in determining the 23% limitation. It is suggested that if more than 50% of the area of a pier or walkway is below mean high water, the entire project should be considered offshore infrastructure.

Comment 5. Please provide a definition of “mean high water.”

SECTION 4.2.2: FUNDS DISTRIBUTION LIMITATION.

Comment 1. As stated in Comment 2 to Section 4.2.1, above, the definition of “onshore infrastructure” should specifically exclude the following: beach nourishment and similar activities, restoration of dunes without a structural core, construction of parks, recreational piers, walkways, trails and land acquisition. If such activities are excluded from the onshore infrastructure definition, the guidelines should clarify how the cost of constructing facilities that are both onshore and offshore should be prorated to determine the 23 percent limitation on onshore infrastructure. If more than 50 percent of a project is located below mean high water, the entire project should be considered offshore for the purposes of the 23 percent limitation. In the event that beach nourishment, dune restoration, construction of parks, recreational piers, walkways, trails and land acquisition are excluded from the infrastructure definition, funding for operating costs of such facilities should be excluded as well.

Comment 2. The 23 percent limitation should apply to individual awards, not individual fiscal years. A project funded under a CIAP grant may run for a multi-year period and combined funding from individual awards could total in excess of the 23 percent cap during a single fiscal year.

SECTION 4.3: COMPLIANCE WITH AUTHORIZED USES OF FUNDS.

Comment 1. Please consider providing alternative remedies to enforce the authorized use provisions. For example, MMS may find that an entity has expended funds for an unauthorized use while the grant recipient disputes that finding. Rather than suspending all funding to the entity until the dispute has been resolved, the guidelines should provide a mechanism for dispute resolution such as mediation or arbitration before cutting off funds for other undisputed CIAP grants.

SECTION 4.4: INCURRING COSTS BEFORE PLAN APPROVAL. No comments.

SECTION 4.5: ESCROW ACCOUNT.

Comment 1. The guidance document should clarify the amount of funding that an entity may draw down in advance of a project. Clarification on

the treatment of interest earned on escrowed funds should be provided.

SECTION 4.6: SUB-GRANTS AND PROJECT FUNDING. No comments.

SECTION 4.7: TIME LIMITATION OF FUNDING. No comments.

SECTION 5: CIAP PLAN.

SECTION 5.1: PLAN SUBMITTALS.

- Comment 1. Please clarify whether a final plan must include any substantive elements not required in a draft plan and whether a final plan could be submitted without the prior submission of the draft plan. For clarification, the term “draft” could be replaced with the word “proposed” in reference to the first plan submission. The proposed plan would thus be released for public comment and MMS review and the final plan would be the version incorporating the state’s response to comments. Additional information on the timeframe for an MMS response to the submission of a state plan is needed. Additional information on the length of time a state will have to submit a final plan following MMS review and response is also needed.

SECTION 5.2: PLAN REQUIRED COMPONENTS. No comments.

SECTION 5.3: MINOR CHANGES AND AMENDMENTS TO A PLAN.

- Comment 1. Please clarify the process that will be followed in cases where a state submits a minor change that MMS determines is a plan amendment or otherwise objects to the submission.
- Comment 2. Please clarify how MMS will inform the designated state agency of approval of a minor change submission.
- Comment 3. Please clarify that the submission of a Tier 2 project listed on a state project list will, in all instances, be a minor change.
- Comment 4. Please clarify that the addition or removal of any project, including a previously unlisted Tier 2 project, to the project list is a plan amendment.

SECTION 5.3.1: MINOR CHANGES TO A PLAN.

- Comment 1. Please clarify whether a budget amendment of up to 10% of an individual grant will be considered a minor change to a plan, or whether there will be separate guidelines for individual grant administration.
- Comment 2. Please provide additional information on the extent to which changes to individual grants will be considered minor changes or amendments to a plan.

SECTION 5.3.2: AMENDMENTS TO A PLAN: No comments.

SECTION 6: CIAP PLAN REVIEW AND APPROVAL: No comments.

SECTION 7: PERFORMANCE AND FINANCIAL REPORTS:

- Comment 1. Please provide that performance reviews are required semiannually, rather than quarterly.
- Comment 2. Please indicate whether MMS will use www.grants.gov for reporting activities.

SECTION 8: CIAP PLAN COMPLIANCE WITH FEDERAL, STATE, AND LOCAL AUTHORITIES:

SECTION 8.1: ENVIRONMENTAL REVIEW.

- Comment 1. Please clarify whether and under what conditions MMS will reimburse funds for permitting costs prior to the final issuance of the required permits.
- Comment 2. Please provide additional information listing the categories or types of projects that will be assigned to three National Environmental Protection Act categories: categorical exclusion, finding of no significant impact (FONSI), or further environmental review.

SECTION 8.2: CONSISTENCY FOR FEDERAL ASSISTANCE:

- Comment 1. Please provide clarification on whether MMS approval of a state's final plan is a federal agency activity requiring a federal consistency determination that a state coastal management agency must concur with or object to. The federal Coastal Zone Management Act would require a consistency determination upon the decision to provide federal assistance for a particular project. It is unclear whether a federal consistency determination is required for the federal approval of the final plan, which contains a list of the Tier 1 and Tier 2 projects but does not authorize MMS to disburse funds. Suggested language to clarify this matter is provided in the shaded box below.

8.2. Consistency for Federal Assistance:

The approval of Plans and disbursement of funds are subject to authorities such as, but not limited to, the National Environmental Protection Act (NEPA), Endangered Species Act, Coastal Zone Management Act (CZMA) and equivalent State and local authorities. The actions of MMS in approving Plans or disbursing funds are Federal activities within the meaning of each applicable federal statute. As the Federal funding agency, MMS is responsible for verifying compliance with these and other relevant authorities before approving Plans or disbursing funds. Only those proposed projects that meet all Federal, State and local authorities would be approved for CIAP funds (e.g. all NEPA and CZMA requirements must be met in connection with grant application submissions and disbursement of funds for projects). States will be required to document compliance with these and other relevant authorities before funds are disbursed.

APPENDICES A – F: No comments.