

# EIS PREPARATION GUIDANCE - THIRD PARTY CONTRACTING

## INTRODUCTION

- a. The Council on Environmental Quality (CEQ) regulation 40 CFR section 1506.5© states that any environmental impact statement (EIS) prepared pursuant to the requirements of the National Environmental Policy Act (NEPA), shall be prepared directly by a lead agency or a contractor **selected** by the lead agency.
- b. The intent of CEQ section 1506.5© is to avoid conflicts of interests by those preparing impact statements.
- c. The following clarification of policy contained in FAA Order 5050.4A is provided to ensure continued compliance with CEQ regulations and the NEPA.

## GENERAL GUIDANCE

- a. Consistent with Federal Aviation Administration (FAA) Order 5050.4A, for airport actions requiring preparation of an EIS, the FAA will either prepare an EIS in-house (utilizing agency personnel and resources) or select a contractor to prepare the EIS. One method of selecting a contractor that may be used, and has been used successfully, is known as "third party contracting."
- b. "Third party contracting" refers to the preparation of an EIS by a contractor selected by the FAA and under contract to and paid by an airport sponsor. The contractor is responsible to the FAA for preparing an EIS that meets the requirements of the NEPA, the NEPA regulations, the FAA's NEPA procedures, and all other appropriate Federal, State, and local laws.
- c. Since third party contracting is a voluntary process, it is recommended that an agreement to use this process, establish a scope of work, and delineate the FAA and airport sponsor responsibilities, be formalized by a Memorandum of Understanding (MOU) between the FAA and airport sponsor. Sample MOU's are provided as Attachments A and B.
- d. The CEQ recognizes the third party contracting arrangement as a legitimate method of EIS preparation in which the non-Federal party actually executes the contract and pays for the cost of preparing the EIS (see Attachment C, an excerpt from CEQ's "Forty Most Asked Questions").
- e. The FAA's selection of a contractor under this process would be based upon the FAA's evaluation of a preselection list ("short list") of contractors submitted to the FAA by an airport sponsor based on the sponsor's request for proposals (RFP) and evaluation. The sponsor may submit the list of candidates to the FAA ranked according to the sponsor's evaluation of the contractor's qualifications. The FAA, however, is under no obligation to make a selection based on this ranking. The sponsor may also submit the list of candidates to the FAA in an unranked form. Guidance provided in the most current version of FAA Advisory Circular 150/5100-14, Architectural, Engineering and Planning Consultant Services for Airport Grant Projects, should be followed in selecting a contractor for EIS preparation.
- f. Costs for preparing the EIS may be funded by either Airport Improvement Program (AIP) funds or local funds including Passenger Facility Charge (PFC) revenues. While AIP funds may be used to pay costs associated with EIS preparation by a contractor selected by the FAA, Federal procurement requirements do not apply. Federal agencies are permitted under 40 CFR Part 18 to substitute their judgment for

that of the grantee (i.e., airport sponsor) if the matter is primarily a "Federal concern" (i.e., consultant selection by the FAA to comply with the requirements of CEQ section 1506.5© is a "Federal concern"). Furthermore, the attached CEQ memorandum on this subject (see Attachment C) specifically states that Federal procurement requirements do not apply.

- g. An EIS contractor, and any EIS subcontractor, must be technically qualified and have the ability to execute a disclosure statement per the requirements of FAA Order 5050.4A. A sample disclosure statement is provided as Attachment D.
- h. When an EIS is prepared by a contractor, the FAA is still responsible for:
  - obtaining a "disclosure statement" from the contractor/subcontractors,
  - exercising oversight of the contractor/sub- contractors to ensure that a conflict of interest does not exist,
  - taking the lead in the scoping process,
  - furnishing guidance and participating in the preparation of the EIS,
  - independently evaluating the EIS and verifying any environmental information provided by the airport sponsor, or others, adding expertise through review and revision, as necessary,
  - approving the EIS, and
  - taking responsibility for the scope and content of the EIS.