

- 1. Can the applicant initiate the competitive bid process for the DOE NEPA 3rd party contractor prior to receiving Phase 2 approval? It is understood that DOE would make the final contractor selection if Phase 2 approval is granted but confirmation is needed that the applicant could make the first down select. If this process is initiated early, it would help expedite the NEPA process. If that approach is acceptable: 1) Is there a required template or specific DOE language required to be included in the bid package; 2) Does the DOE have specific bid evaluation criteria for evaluating the proposals; 3) Can the bid package be sent to any environmental consultant holding a GSA contract or is there a specific list of approved contractors associated with NEPA document prep; 3) How many contractor options does DOE require for purposes of making its final selection?**

To expedite the process, the Applicant may initiate their bid process prior to notification of award under Phase II. Assuming that a third-party contract arrangement would be used, the Applicant may develop prior to award a short list of candidate NEPA Contractors. See the response to question #2 in NEPA Qs &As posted Feb. 25.

There is no template or specific DOE language required to be included in the bid package. However, it might be helpful to include the relevant text from the cooperative agreement, as re-printed in response #2 in NEPA Qs &As posted Feb. 25. More importantly, the bid package should expressly state that the selected environmental consultant must not have a conflict of interest (see 40 CFR 1506.5(c)). Furthermore, it might be helpful if the SOW used for the bid process includes or addresses foreseeable

contingences or uses a task order mechanism. For the (short) list of candidate NEPA Contractors presented to DOE by the Applicant, DOE will only consider each candidate's qualifications, as expressed in responses #2 and #3 in NEPA Qs &As posted Feb. 25. Generally, DOE will not evaluate their bids in making a selection. There is no requirement to limit the bidding to the GSA list or any other published list of environmental consultants. For purposes of DOE "selection" under a third-party arrangement, there is no specific minimum or maximum number of candidates that the Applicant might present to DOE. To expedite the process, however, it would be helpful to not present more than two candidates to DOE.

Keep in mind that DOE will not be financially responsible for cost sharing on any commitments made by the Applicant until: (1) after the Applicant is selected by DOE for a Phase II award, (2) after DOE notifies the applicant that a third-party contract arrangement has been determined to be acceptable, (3) after DOE selects (i.e., approves) the third-party contractor, and (4) after a third-party agreement or Memorandum of Agreement is signed by the Applicant, DOE and the NEPA Contractor. Only after these four steps are complete, the cost incurred will be reimbursable at the cost-share ratio established in the cooperative agreement to the extent the costs are allowable under the applicable cost principles.

NETL's Chief Counsel is providing the following guidance for establishing a "third-party contracting arrangement" for preparation of the EISs for your projects. DOE believes that this will be the most efficient way to proceed, although it has not made a decision on which projects will use the third-party arrangement.

In the following order, DOE must: (1) determine that your proposed NEPA contractor is qualified to prepare an EIS for this type of project; (2) ensure that your proposed contractor has no conflicts of interest regarding the project; (3) review and approve your agreement with the contractor (if required by the Cooperative Agreement); and (4) enter into a memorandum of agreement with you and your contractor once DOE has determined that your proposed contractor is qualified and free of conflicts.

It is anticipated that item 3 (above) will be negotiated into the Cooperative Agreement under the section for Subcontract Approvals.

1. Qualifications: You are free to propose more than one contractor, but should limit yourself to no more than two. There is no particular format for demonstrating a contractor is qualified. However, submissions should be short and focused on prior NEPA experience, particularly any experience with DOE, large industrial projects, or both. Significant prior experience preparing EISs (either as to the individuals employed by the contractor or the contractor itself) is critical. Please do not submit promotional materials.

2. Lack of conflicts of interest: Please see NETL's example disclosure statement filed by the NEPA contractor for the Kemper project. This is an example of the type of information DOE needs to ensure that your proposed contractor has no financial interest in the outcome of the project. The contractor or an affiliate can be involved in environmental permitting and other environmental issues related to the project so long as there is not a contingent fee arrangement. Neither the contractor nor any affiliates can be involved in work such as design, engineering, construction or other work that would be affected by a DOE decision to withhold further financial assistance to the project.

3. Review your agreement with the contractor: If required by the Cooperative Agreement, DOE must review your agreement with the NEPA contractor to ensure that it makes clear that: (a) while you will be working with the contractor on a daily basis, DOE directs this work and makes the decisions as to the scope, content and other aspects (e.g., schedule) of the EIS; (b) the contractor has an obligation to refrain from actions that could create a conflict of interest (see 2 above); and (c) [Is a subject/noun missing here?] recites the need for a memorandum of agreement among DOE, the NEPA contractor and the project proponent regarding preparation of the EIS.

4. Memorandum of agreement among DOE, the NEPA contractor, and the project proponent: Please see NETL's example memorandum of agreement for the Kemper project. This agreement covers items 2 and 3 above.

2. Should raw data used to complete sections of the EIV be included in appendices, or is it adequate to summarize the data in tables and provide the data references? Examples of raw data include climate data, census data, natural features inventory database review spreadsheets, MSDS sheets, etc.

As support documents for an EIS, EIVs would usually include raw data, with voluminous data sets and spreadsheets put into one or more appendixes. Likewise, field survey reports for cultural resources, wetlands delineation and evaluation reports, threatened and endangered species studies, details of predicted air emissions (e.g., emissions calculations spreadsheet, dispersion modeling results, exposure/risk analyses, permit application data), etc., would be put into one or more appendixes.

Because EIVs are being requested as part of the Phase II renewal applications and will be used primarily to support DOE's "216 Process" compliance (see 10 CFR 1021.216) and to support DOE's evaluation of proposed projects (e.g., to determine the level of NEPA review [EA vs EIS] and to assess the likelihood of project success), submitted EIVs might only reference certain voluminous data sets, field reports, and analyses, rather than putting all of them into appendixes that are submitted along with the renewal application. In cases where such data, reports and analyses are not included with the EIV submission, (1) the relevant information must be well summarized in the body of the EIV, (2) the supporting data sets and documents must be appropriately referenced and described, and (3) the documents must be available to DOE immediately upon request. For example, such information and documents might be made available to DOE and DOE's "216 Process" Contractor via a password-protected ftp site.

See also response to Question #6 (sub-items 25a and 25b) in the Qs&As posted on February 25, 2010.