

Regulatory Guidance Letter 87-05

SUBJECT: EIS Costs that can be Paid by the Applicant

DATE: May 28, 1987 EXPIRES: December 31, 1989

1. We have recently had several inquiries from field operating activities (FOAs) about whether or not the applicant can somehow pay the costs of EIS preparation in cases where the FOA does not have sufficient funds. While the applicant cannot transfer funds directly to the Corps for the Corps to prepare the EIS, the applicant can certainly bear a major part of the costs by providing the raw information to be included in the EIS. The FOA should not only direct what information should be submitted and in what detail, but should also specify a format that can be easily reviewed and reworked into an EIS.
2. Furthermore, 40 CFR 1506.5(c) provides for use of third party contracts in preparation of agency EISs. In further guidance issued in the Federal Register on 23 March 1981 ("Forty Questions"), CEQ stated that the term "third party contract" referred to contractors paid by the applicant but selected by the agency. 40 CFR 1506.5(c) stipulates that the contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the document is prepared under contract, the responsible agency must participate in the preparation and shall independently evaluate the statement prior to its approval. The agency must also take full responsibility for the scope and contents of the document.
3. FOAs should use these methods to the maximum extent possible in order to minimize government costs. In using these methods, FOAs should not sacrifice quality. On the other hand, FOAs must not let the EIS process become "lost" in technical evaluation. The EIS should provide only the information needed to allow the Corps and any cooperating agencies to make their decision.
4. This guidance expires 31 December 1989 unless sooner revised or rescinded.

FOR THE CHIEF OF ENGINEERS: