

Regulatory Guidance Letter 88-15

SUBJECT: Third-Party Contracting

DATE: November 7, 1988

EXPIRES: December 31, 1990

District engineers are authorized to require that permit applicants or permittees provide essential information necessary for compliance with Corps regulations. The purpose of this guidance is to clarify the Corps role when the permit applicant or permittee chooses to use third-party contracting to obtain the information. This policy applies to all information requests involving third-party contracting, to include-preparation of environmental impact statements. Additionally this guidance is intended to ensure that any information obtained by third-party contract is consistent with the Corps statutory requirements to take a hard, objective look at the public interest and environmental factors, while at the same time minimizing Corps involvement in matters which are essentially private sector activities.

The Corps is primarily concerned with obtaining acceptable information which can be used as the basis for such things as permit decisions or determining compliance with the terms and conditions of the permit. The district engineer must clearly identify the required information and, when appropriate, specify in advance the qualifications of the third-party contractor. Furthermore, to insure acceptability of the information, the district engineer shall review and approve (may be acknowledged by formal notification or simply by acceptance in the record) the scope of work and the third-party contractor which has been-selected by the applicant or the permittee. Approval of contractors may be granted on an individual basis (either before or after the award of the contract) or by maintaining a prepared list of acceptable contractors in appropriate circumstances, such as contracts for archeological survey and as-built drawings. Approval of scope of work may occur either before or after the award of the third-party contract, but must occur before the information is used by the Corps.

District engineers will not become involved in the specifics of the private sector contracting procedures. For example, district engineers should not become involved in preparing and reviewing bidding list, specifying requirements for competition, or choosing the actual method of procurement (i.e. bidding vs. negotiation).

The use of third-party contracts to prepare environmental impact statements is specifically addressed at 40 CFR Part 1506.5(c) and in Regulatory Guidance Letter 87-5. The usage of the word "select" in the context of both of these references should be interpreted to mean "approve."

This guidance expires 31 December 1990 unless sooner revised or rescinded.