



United States Department of the Interior

BUREAU OF LAND MANAGEMENT
Nevada State Office
P.O. Box 12000 (1340 Financial Blvd.)
Reno, Nevada 89520-0006
<http://www.nv.blm.gov>



In Reply Refer To:
1790/1510 (NV-934) I

August 14, 2009

EMS TRANSMISSION 08/17/2009
Instruction Memorandum No. NV-2009-047
Expires: 9/30/2010

To: District Managers, Nevada
From: State Director, Nevada
Subject: Contracting Guidance for National Environmental Policy Act (NEPA) Documents.

Program Area: National Environmental Policy Act (NEPA) and Land Use Planning

Purpose: This purpose of this Instruction Memorandum (IM) is to provide guidance and clarification on contracting NEPA document preparation.

Outcome: Statewide consistency for contracting preparation of Bureau of Land Management (BLM) and Third-Party NEPA documents.

Background: The revised [NEPA Handbook H-1790-1](#) (January 2008) did not carry forward guidance on contracting BLM-initiated and contracting third-party preparation of NEPA documents (H-1790-1 Appendix VII, October 1988). The revised NEPA handbook (Section 13.5) does provide basic policy guidance per the requirements of the Council on Environmental Quality (CEQ) regulations and references procurement procedures per the [Federal Acquisition Regulations](#) (FAR). In addition, guidance on third party contracting in the form of Washington Office (WO) Instruction Memorandum 2006-011 "National Environmental Policy Act (NEPA) Third Party Contracting Procedures" is similarly outdated in its reliance upon the superceded 1988 NEPA Handbook and 1996 NEPA Desk Guide.

With the increase in renewable energy projects requiring NEPA document preparation and the addition of new staff and project managers to the agency to manage these projects, it is timely to update and clarify guidance relative to contracting environmental services in order to efficiently develop and manage contract solicitations to meet the agency's needs for these critical workloads. The following guidance is intended to provide policy and procedural guidance to ensure consistency in contracting for environmental services for BLM Nevada. Project

managers and staff are encouraged to consult with their Contracting Officer (CO) for further clarification or guidance regarding use of the FAR and development of any contract solicitation.

Policy/Action:

Contracting procedures for BLM-solicited and third-party solicited contracts for NEPA documents is provided below:

BLM Contracting Procedures: If funding is available, the BLM may choose to contract for the preparation of a NEPA document. The Project Manager would submit the request through the Financial and Business Management System (FBMS) as a Purchase Request (PR) with a Statement of Work (SOW) expressing the responsibilities and deliverables of the contractor attached. Upon receipt of the PR, the Contracting Office will work with the Project Manager to determine the proper evaluation criteria (price, past performance or technical capability) and their importance ([FAR 52.212-2](#)).

After going through proper competitive procurement procedures, the BLM would award a contract to a qualified contractor. In competitive procurements, the BLM has complete control over the scope and content of the Environmental Assessment (EA) or Environmental Impact Statement (EIS) and is responsible for ensuring that the contractor remedies any defects or deficiencies. The contractor is required to perform in accordance with contract standards and reports directly to the BLM. See [BLM Manual 1510 Acquisition](#) and [BLM Handbook H-1510-6 “Contracting for Studies, Analyses, Inventories and Surveys”](#) for detailed guidance on competitive procurement procedures.

The following general guidance applies when the BLM awards a contract for the preparation of an EIS or an EA:

The BLM manager responsible for preparing the EIS or EA appoints a project manager to work with the Contracting Officer to provide oversight of the contract. Depending on the complexity of the NEPA document, the BLM manager appoints a Technical Proposal Evaluation Committee (TPEC) to provide technical input into the selection of the contractor. The project manager and the agency interdisciplinary review team are responsible for ensuring the NEPA document’s adequacy, completeness, and accuracy.

The BLM manager must delegate sufficient authority to the project manager to represent the BLM with the contractor. This individual is usually a certified Contracting Officer’s Representative (COR) or Contracting Officer’s Technical Representative (COTR). To the extent practicable and to provide continuity, the project manager should be the same person for the duration of the project.

The project manager works closely with and informs the contractor of all applicable NEPA compliance requirements including CEQ regulations ([40 CFR 1500-1508](#)) and Departmental Manual (DM) and regulatory requirements ([516 DM 11](#); [43 CFR 46](#)). All such requirements must be met, including public involvement requirements outlined in the CEQ regulations and regulations at 43 CFR 46. The project manager works closely with and informs the applicant

and contractor of all applicable studies, inventories, analyses, modeling, and statutory consultations required to complete the NEPA analysis (516 DM 11.3).

The BLM must independently review the EIS or EA prior to its acceptance and take responsibility for its scope and contents (40 CFR 1506.5(c)).

Third-Party Contracting Procedures: A third-party contract is an option when the BLM cannot prepare a required NEPA analysis due to time, budget, or other limitations. It is also an option when either the BLM or the applicant requests a contractor prepare the EA or EIS. It is called a “third-party contract” because the applicant for the proposal funds and awards the contract, through proper procedures, for the preparation of the NEPA document for the BLM. No direct BLM funding is involved in awarding the contract. By using the third party contracting approach, the time from contract bid and award is typically shorter than under agency contracting procedures.

The BLM does not select the contractor for a third party contract-prepared EA; therefore, the following general guidance applies to third-party contracting for an EIS:

The BLM independently develops a Statement of Work (SOW) for the EIS. The BLM may also allow the applicant to develop the SOW for the project due to time, budget, or other limitations. In this case, the BLM is responsible to review the SOW for technical adequacy prior to contract proposal solicitation¹. The BLM also develops and provides the technical evaluation criteria for contractor selection to the applicant for their use. The applicant develops contract cost criteria and obtains contract proposals through a solicitation of the approved SOW called a “Request for Proposal” (RFP). The applicant may perform an initial screening of proposals before submitting to the BLM for contractor evaluation and selection. If proposals are screened by the applicant, a sufficient number of proposals should be solicited to ensure the agency has a minimum of three contractors in the selection pool.

The BLM and applicant concurrently, but sometimes separately, evaluate the proposals using the technical evaluation criteria developed by the agency. In most cases, the complexity of the applicant’s project will guide the complexity of the evaluation. The BLM manager will determine the scope of the evaluation based on the complexity of the project. In general: for a simple project, use no more than three evaluators; for a complex project, use four or more evaluators, or, if very complex, consider establishing an equivalent to the BLM TPEC (see H-1510-1) which can include cooperating agency team members, as appropriate. The BLM focuses its evaluation upon the technical, managerial, and personnel portions of submitted proposals. The applicant primarily focuses its evaluation on the costs.

After the proposal evaluations are completed, the applicant recommends their preferred selection for the project to the BLM. The BLM, however, is responsible to select the contractor ([40 CFR 1506.5\(c\)](#)) for an EIS. For EAs, the BLM is not responsible for selection of a third-party

¹ This option may save time for BLM staff; however, the applicant must be aware that if a contractor develops the RFP’s Statement of Work for the applicant, or substantially works on the plan of development the SOW is based on, the contractor may be ineligible to compete for the contract due to knowledge of project details that would not be generally known to other offerors competing for the contract.

contractor; however, requirements for a Memorandum of Understanding (MOU), financial interest disclosure, and cost reimbursement requirements still apply. The BLM then informs the applicant, in writing, of the agency's selection. It is to the applicant's benefit to meet the BLM's quality needs since the BLM ultimately is responsible for the content, completeness, and accuracy of the NEPA document; however, since the applicant is funding the NEPA analysis for the project, the BLM needs to be sensitive to the estimated costs and the applicant's concerns with such and factor this into the BLM's final decision.

Under no circumstances will the BLM allow an applicant to select the EIS contractor for the project or "walk in the door" with an EIS contractor already under contract. Once the selection of the contractor is made by the BLM, the applicant finalizes and awards the contract.

The BLM must independently review the EIS prior to its acceptance and take responsibility for its scope and contents (40 CFR 1506.5(c)). Standards for review and acceptance of the NEPA document by the BLM are determined by the manager with delegated authority to approve and publish the NEPA document. In general, all BLM comments and issues should be satisfactorily addressed by the applicant in the NEPA document prior to publication for comment, appeal, or protest. Unresolved issues will be brought to the attention of the District Manager and/or State Director for resolution prior to the decision to publish and distribute to the public.

Contract MOUs (EIS/EA): Before any third party contract award, the BLM must execute a Memorandum of Understanding (MOU). The BLM develops the MOU between the BLM, the applicant, and other cooperating agencies, if any, to establish roles and responsibilities for EISs and major EAs (see [W.O. I.M. 2006-011](#) for MOU requirement and [example format](#)). The selected contractor is not a party to the MOU. If the MOU involves a cooperating agency, the NEPA document preparation contract MOU does not serve as nor take the place of the separate cooperating agency MOU developed between the agency and the cooperator. In most cases, the MOU is developed prior to the award of a contract. The MOU must provide that the BLM will work directly with the contractor on NEPA related matters and provide technical guidance and direction in the preparation of the NEPA document. The MOU must also identify the proposed schedule for the project.

To avoid the perception the contractor is less responsive to agency direction since the contractor is under contract to the applicant rather than the agency, the MOU should clearly outline that the BLM is ultimately responsible for the content of the NEPA document and approves the document for release to the public (40 CFR 1506.5(c)). The applicant needs to ensure the contractor is responsive to BLM recommendations for changes to the document to ensure agency procedural and analytical standards are maintained. Non-responsiveness by a contractor to reasonable BLM requests to comply with procedural or analytical content requirements will be documented in the contractor performance evaluation.

The draft MOU should be reviewed by the applicant and cooperating agencies, if any, and modified as necessary. The final MOU must be signed before further work is done on the project, particularly if this is a cost reimbursable project (see [DM 516 4.3 C](#)). The MOU must provide that the applicant will finance the NEPA portion of the project. Although an MOU technically has no financial language or merit, by signing the MOU, the applicant affirms that they will finance the NEPA portion of the project.

Contributed /Trust Funds and Cost Recovery Account: For some programs, projects are required to be managed through cost reimbursement. For cost reimbursement aspects of a project, refer to applicable regulations for the program (e.g. [43 CFR 2804.19](#), [2884.17](#)) and the BLM [MS 1323 Cost Recovery for Reimbursable Projects/Activities](#). The BLM tracks and monitors the actual BLM costs at a minimum on a monthly basis, using Form 1323-1 (June, 1983), [Reimbursable Project Log](#). Offices may opt to track costs by pay period and to compare with FBMS labor reports.

In some cases, there may be sensitivity among the public and its representatives based on the perception that the applicant has too much influence over the EIS project and its outcome since they are the party who has the contractual relationship with the EIS consultant. Although the intent of the MOU and procedural steps outlined in this guidance is to ensure objectivity and provide the BLM appropriate span of control over the project, the applicant and the BLM have the option to determine the project costs and have the applicant funding put into one of several types of proffer accounts for the BLM's use ([See NV I.B. 2004-102 and Contributed Funds Guide](#)). In this case, the BLM would follow its contracting procedures for the project. This allows the project to be fully controlled by the BLM with appropriate span of control over the contract execution and performance. The BLM is responsible for tracking all costs using Form 1323-1 to ensure full cost accountability to the applicant.

Contractor Lists: Consultants often contact the BLM state office and field offices to be placed on a list of bidders to be considered for future projects. Maintaining such lists by the agency is difficult due the number of consultants available, the uncertainty of whether they remain in business, change in their name or location and contact information, as well as ensuring that new businesses coming into the market are included. Likewise, the BLM cannot be an advocate for any one consultant. Maintaining a local agency list can be perceived by a consultant to be unfair if they do not receive work, regardless of how the list is organized or formatted. Because of these factors, the BLM does not maintain lists for qualified contractors for environmental services.

When an applicant or a BLM office wants to select from a range of qualified contractors, the Nevada State Office (NSO) recommends the [GSA SIN 899-1 Environmental Services](#) list (899 list) which comprises several hundred consultants that are pre-qualified and available for government services. The consultants on the 899 list provide their business prospectus and wage schedule the agency can use to determine if their service is appropriate to the agency's needs and to compare costs. The NSO recommends consultants make efforts to get included on the GSA list because a General Services Administration (GSA) contractor is a mandatory source if the BLM becomes the contracting agency. Other contractors can be located using the federal database Central Contractor Registration (CCR) by searching for the North American Industry Classification Standard (NAICS) 541620 at www.ccr.gov.

It is not a requirement for a consultant to be on the 899 list or the CCR to be qualified for third-party contracts. If a local consultant is not on the GSA list, this does not preclude them from being on the contract or RFP solicitation; however, for contracts initiated or funded by the federal government, the BLM must exhaust or excuse the GSA sources prior to utilizing sources not on the GSA list ([FAR Part 8.002](#)).

Contractor Eligibility: All potential contractors or consultants desiring to [conduct business with the BLM](#) must:

- 1) Obtain a valid Data Universal Numbering System (DUNS) number from Dun and Bradstreet at <http://www.dnb.com>.
- 2) Register their firm on the Central Contractor Registration (CCR) system at <http://www.ccr.gov>.
- 3) Certify their business size at the On-line Representations and Certifications Application (ORCA) at <https://orca.bpn.gov/>.

Statements of Work: All contract solicitations require a detailed SOW. The SOW should follow the general outline and principles contained in H-1510-6 Appendix 1 and 2, Statement of Work Checklist and Statement of Work Writer's Guide. The SOW should contain sufficient detail to outline the tasks to be completed to result in the product desired. Within Nevada, all SOWs will address data management and include language identifying the data and metadata standards that should be adhered to as outlined in [NV IM 2009-034, "Data and Technical Baseline for Contract Statements of Work"](#). Data management standards change frequently due to changes in software and development of new data standards; therefore, it is important to check with state office data managers on current standards and language for contracts, prior to inclusion into a SOW. All SOWs will include Data Adequacy Standards for the resource programs analyzed. For third-party contract SOWs or RFPs developed by an applicant, the SOW/RFP shall be reviewed and approved by the district or field office prior to the proposal solicitation. All data generated as part of the NEPA process for the project must be made available to the BLM at the conclusion of the project.

Independent Government Cost Estimate: All BLM SOWs require an Independent Government Cost Estimate (IGCE) be completed for the project prior to contract solicitation. This is an estimate of what the project would cost if the BLM were to undertake the project with its own personnel, resources, and funding. The IGCE is compared to the contractor cost estimate to aid in determining if the Federal Government is obtaining the best value in its contractor selection and that the costs are reasonably estimated by the contractor ([FAR Part 15.4](#)).

Each task outlined in the SOW should be assessed as to the cost of the task and this estimate rolled up into an overall project cost. There is no BLM handbook or guidance on how to do an IGCE. The BLM Nevada State Office (NSO) Division of Resources [Planning Share Point](#) site contains a two page primer that can serve as a general guideline and includes cost estimate worksheets with *examples* only; that can be used to aid in determining an IGCE. It is important that current government wage information is included into the estimate so as to accurately estimate staff costs. The IGCE is also the appropriate tool to use and document cost estimates for any agency cost-reimbursement activity or contributions made by an applicant to a proffer account. Since BLM does not fund third-party contracts, an IGCE is not mandatory for the BLM to complete for these types of projects, unless one of the various cost-reimbursement authorities is used.

Source Selection: Environmental Services contracts are quoted/proposed competitively per government acquisition policy (FAR [Subpart 7.3](#)). Authority for soliciting for other than full and open competition (i.e. “sole source”) is rarely used and must meet the requirements of FAR [Subpart 6.3](#) for justification and be approved by the Chief of the Contracting Office. An applicant “walking in the door” with a contractor usually will not suffice on its own merits for other than full and open competition.

Financial Disclosure Requirements and Conflict of Interest: The selected contractor must execute a disclosure statement prepared by the BLM that specifies they do not have any interest, financial, or otherwise, in the outcome of the project prior to the applicant awarding the contract for the NEPA document. The BLM must keep this statement on file throughout the life of the project. CEQ interprets this requirement broadly to cover any known benefit, “including any financial benefit such as promise of future consideration or design work on the project, as well as any indirect benefits the consultant is aware of.” As long as the firm has had no promise of future work, the firm may later bid in competition with others for future work on the project after the proposed action is approved.

When a consulting firm has been involved in developing initial data and plans for the project, but has no financial or other interest, a disclosure statement in the draft EIS should clearly state the scope and extent of the firm’s prior involvement to expose any potential conflicts of interest. A conflict of interest may exist if the environmental contractor selected to prepare the EIS is under the direct control of another contractor with some financial or other interest in the project, such as an environmental firm whose parent company is an engineering firm with construction or design contracts for the project.

The BLM Nevada has previously sought an informal Solicitor’s opinion with regard to whether an environmental firm would be eligible for award of a third party EIS contract if they had participated in the preparation of a project’s RFP or had prepared the plan of operation for the proposal. The Solicitor concluded that in either case, this would constitute a conflict of interest per 40 CFR 1506.5 (c), and that such an environmental firm would be ineligible for the award of the EIS contract. In some cases, an environmental firm may have completed technical studies (e.g. water resources report, cultural resources inventory, etc.) for an applicant’s project. As stated above, development of initial data does not necessarily preclude a contractor from being eligible to be awarded a contract, but full disclosure of their involvement should be made in the EIS. In all cases, it is advisable to check with the Chief of the Contracting Office regarding potential conflicts of interest or the appearance of conflicts of interest. For further guidance refer to the FAR [Subsection 9.5](#) Organizational and Consultant Conflicts of Interest.

Documenting Contractor Performance: Past performance is an [evaluation factor](#) used to assess an offeror’s capability. Past performance information is relevant information, for future source selection purposes, regarding a contractor’s actions under previously awarded contracts, including the contractor’s record of conforming to specifications and standards of good workmanship, record of retaining and forecasting costs on cost-reimbursable contracts, adherence to contract schedules, history of reasonable and cooperative behavior, commitment to customer satisfaction, and concern for the interest of the customer ([FAR 42.15](#)). FAR 42.1502 require agencies to collect this information on all contracts over \$100,000 and to make data

available for use in evaluating offerors on negotiated procurements. Contractor performance for BLM contract acquisitions above \$100,000 may be documented on [BLM Form 1510-57 Contract Diary](#) or BLM Form 1510-60A. A contract performance evaluation for a third-party (applicant-funded) contract is not mandatory; however, it is recommended the COR or COTR use these forms to document performance and maintain records for these types of contracts for future selection purposes.

Preparation Plan: Effective project management principles include the development and use of a preparation plan. The preparation plan outlines how the project will be managed and includes key information such as the schedule, proposed or approved budget, agency and contractor roles and responsibilities, identification of issues, potential alternatives for analysis, data adequacy standards, and general approach to conducting the NEPA process and public participation. Before starting work on an EIS, the BLM and/or contractor should develop a preparation plan or its equivalent. For BLM-solicited contracts, the BLM develops an initial preparation plan prior to solicitation of the contract. The information for the preparation plan will aid the agency in developing the SOW that will be used for the project. Once the contract is awarded, a final preparation plan is typically submitted by the selected contractor within 30 days of award, based upon negotiations between the agency and contractor. For third-party contracts, the preparation plan is typically the first contract task deliverable and is approved by the agency as the template on how the project will be managed and the NEPA process will be conducted.

ePlanning: In order to streamline the preparation and organization of land use planning and NEPA documents, the BLM has developed the web-based ePlanning program. This is an XML-based system that uses Citrix® servers for common access to the software and system. The BLM, as an agency, is currently moving towards full deployment of ePlanning for NEPA. Deployment has started in Nevada and is anticipated to be fully deployed in all districts by the beginning of FY2011. In light of this, there is the potential that an EIS or EA analysis may be developed and managed through the ePlanning system as the system becomes deployed and implemented. The following language should be accounted for in future SOWs where ePlanning is being considered or used.

“All contractors will use the ePlanning system on the internal BLM network through the agency VPN (Virtual Private Network), which requires the use of BLM-owned computers (to be coordinated by State Office Information Technology [IT] and Planning Staff). Each Contractor using the system must complete specific security and training requirements prior to gaining access to ePlanning, BLM-owned computers, and the BLM network. This information is based on Washington Office [IM 2006-154](#), Requesting Background Investigations for Bureau of Land Management Employees and Contractors”.

Because of the security and publishing requirements, the PR should explicitly note that Homeland Security Presidential Directive 12 ([HSPD-12](#)) and Section 508² compliance

² Section 508 of the Americans with Disabilities Act of 1973, as amended, 29 U.S.C. 794 (d) requires that agencies must give disabled employees and members of the public access to information that is comparable to the access available to others.

requirements (see [WO IM 2009-083](#)) need to be incorporated as part of the solicitation and contract.

In addition, a 'parachute clause' has been developed to allow the BLM to direct a contractor to stop using ePlanning if some unforeseen problem comes up. This is the clause:

“All work on this project, including the administrative record, will be completed using the BLM ePlanning system, to the extent consistent with the functionality of the system. In the event that ePlanning cannot be used, due to system problems, or some unforeseeable issue, the BLM will notify the contractor and provide copies of all documents from ePlanning to the contractor in MS Word or Adobe PDF format, as applicable, to allow progress to continue on schedule”.

BLM Functions (What is not contracted):

Printing and Distribution: Title 44, U.S. Code (501) mandates all printing and binding must be accomplished through the GPO unless a waiver is obtained from the Joint Committee on Printing (JCP). Regardless of the method of contract (BLM or Third-Party), the BLM is responsible for printing the NEPA document through the Government Printing Office (GPO) ([FAR 8.802](#)). The BLM is also responsible to ensure appropriate distribution of the document to required repositories and the public. This is not a contractor or applicant function and may not be delegated in the contract SOW.

All published NEPA documents should conform to current BLM publication standards and templates, e.g. Cover Sheet, appropriate BLM National System of Public Lands logo, etc. (See [WO IM 2005-156](#) for further information). Publication standards can be found in H-1553-1. Copies of this handbook should be available in every District. A publication index number must be obtained from the BLM state printing coordinator for the document and must be printed on the inside front cover of each copy of the document. For EISs, an Environmental Statement (ES) Number for the Draft (DES) or Final (FES) document must be obtained from the DOI Office of Environmental Policy and Compliance (OEPC). This number is a reference and tracking number used by DOI and the Environmental Protection Agency (EPA). The DES or FES number should be printed on the cover, spine, and title page of the EIS. See Attachment 1 for procedures on obtaining the OEPC ES number.

Arrangements for printing should be made early in the project and coordinated through the National Operations Center (NOC), Division of Business Services, [National Operations Center Printing Team](#). The NOC has access to pre-qualified contractors to ensure the BLM printing quality standards are met. Allow up to six weeks for printing large documents with color and maps. The selected GPO contractor may also provide distribution services as specified in the work order or BLM can independently distribute the document once it is printed. Printing and distribution should be closely coordinated with publication of the EPA and agency federal register notice of availability.

NEPA Decision Documents: The BLM is responsible for preparing the NEPA decision document (Record of Decision, Decision Record, Finding of No Significant Impact).

Federal Register Notices: The BLM is responsible for preparation, review, and approval of all Federal Register Notices (FRNs) and related briefing materials for a NEPA project.

Response to Comments/Protests: The BLM is responsible for responding to comments received on the NEPA documents published for public and agency comment, and any comments received on the final NEPA document. The BLM also responds to any protests received for a planning project. If included in the SOW, the contractor may be tasked to organize the comments and prepare draft comment or protest responses for subsequent review and approval by the BLM.

Timeframe: Effective immediately.

Budget Impact: None.

Manual/Handbook Sections Affected: Clarifies H-1790-1 Section 13.5.

Coordination: This IM has been coordinated with the Division of Natural Resources, Lands and Planning, Division of Support Services and Nevada District Offices.

Contact: If there are any questions regarding this guidance, contact Brian C. Amme, NSO Planning and Environmental Coordinator at (775) 861-6645, or via email at Brian_Amme@blm.gov.

Signed By:
Ron Wenker
State Director

Authenticated By:
Ellyn Darrah
Administrative Assistant

Attachments

1 - Procedures for Initiating, Filing, and Publishing an EIS (2 pages).