

COUNCIL ON ENVIRONMENTAL QUALITY

Executive Office of the President

Memorandum to Agencies:

[Forty Most Asked Questions](#) Concerning CEQ's National Environmental Policy Act Regulations

SUMMARY: The Council on Environmental Quality, as part of its oversight of implementation of the [National Environmental Policy Act](#), held meetings in the ten Federal regions with Federal, State, and local officials to discuss administration of the implementing regulations. The forty most asked questions were compiled in a [memorandum](#) to agencies for the information of relevant officials. In order efficiently to respond to public inquiries this memorandum is reprinted in this issue of the Federal Register.

[Ref: 40 CFR Parts 1500 - 1508 \(1987\).](#)

FOR FURTHER INFORMATION CONTACT:

General Counsel,
Council on Environmental Quality,
722 Jackson Place NW,
Washington, D.C. 20006;
(202)-395-5754.

[This memorandum was published in the Federal Register and appears at 46 Fed. Reg. 18026 (1981).
[Ed. Note.](#)]

March 16, 1981

NEPA's Forty Most Asked Questions

16. [Third Party Contracts.](#)
17. [Disclosure Statement to Avoid Conflict of Interest.](#)

16. Third Party Contracts. What is meant by the term "third party contracts" in connection with the preparation of an EIS? See Section 1506.5(c). When can "third party contracts" be used?

A. As used by EPA and other agencies, the term "third party contract" refers to the preparation of EISs by contractors paid by the applicant. In the case of an EIS for a National Pollution Discharge Elimination System (NPDES) permit, the applicant, aware in the early planning stages of the proposed project of the need for an EIS, contracts directly with a consulting firm for its preparation. See 40 C.F.R. 6.604(g). The "third party" is EPA which, under Section

1506.5(c), must select the consulting firm, even though the applicant pays for the cost of preparing the EIS. The consulting firm is responsible to EPA for preparing an EIS that meets the requirements of the NEPA regulations and EPA's NEPA procedures. It is in the applicant's interest that the EIS comply with the law so that EPA can take prompt action on the NPDES permit application. The "third party contract" method under EPA's NEPA procedures is purely voluntary, though most applicants have found it helpful in expediting compliance with NEPA.

If a federal agency uses "third party contracting," the applicant may undertake the necessary paperwork for the solicitation of a field of candidates under the agency's direction, so long as the agency complies with Section 1506.5(c). Federal procurement requirements do not apply to the agency because it incurs no obligations or costs under the contract, nor does the agency procure anything under the contract.

17a. Disclosure Statement to Avoid Conflict of Interest. If an EIS is prepared with the assistance of a consulting firm, the firm must execute a disclosure statement. What criteria must the firm follow in determining whether it has any "financial or other interest in the outcome of the project" which would cause a conflict of interest?

A. Section 1506.5(c), which specifies that a consulting firm preparing an EIS must execute a disclosure statement, does not define "financial or other interest in the outcome of the project." The Council interprets this term broadly to cover any known benefits other than general enhancement of professional reputation. This includes any financial benefit such as a promise of future construction or design work on the project, as well as indirect benefits the consultant is aware of (e.g., if the project would aid proposals sponsored by the firm's other clients). For example, completion of a highway project may encourage construction of a shopping center or industrial park from which the consultant stands to benefit. If a consulting firm is aware that it has such an interest in the decision on the proposal, it should be disqualified from preparing the EIS, to preserve the objectivity and integrity of the NEPA process.

When a consulting firm has been involved in developing initial data and plans for the project, but does not have any financial or other interest in the outcome of the decision, it need not be disqualified from preparing the EIS. However, 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 that may exist.

17b. If the firm in fact has no promise of future work or other interest in the outcome of the proposal, **may the firm later bid** in competition with others for future work on the project if the proposed action is approved?

A. Yes.