

UNITED STATES DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT
WASHINGTON, D.C. 20240

October 17, 2005

In Reply Refer To:
1790 (WO-210) P

EMS TRANSMISSION 10/24/2005
Instruction Memorandum No. 2006-011
Expires: 09/30/2007

To: State Directors

From: Director

Subject: National Environmental Policy Act (NEPA) Third Party Contracting Procedures

Program Area: The use of third party contracts for preparation of major environmental documents.

Purpose: This Instruction Memorandum summarizes the responsibilities of the Bureau of Land Management (BLM) when using a third party contract for preparing major environmental documents under the NEPA.

Background: This IM completes a task assigned to WO-210 by the Deputy State Directors (DSD's).

Policy/Action: The use of third party contracts to facilitate processing of proposals and applications through BLM NEPA processes is provided for in 40 CFR 1506.5, with clarification by the Council on Environmental Quality found in the "40 Questions." Agency policy and direction are found in BLM Handbook 1790-1, Appendix 7, with additional guidance available in the 1999 desk reference "Overview of BLM's NEPA Process."

The key elements of third party contracting procedures are:

- (1) For all environmental impact statements (EIS) and major environmental assessments (EA) the State Director and/or Field Manager must have a Memorandum of Understanding (MOU) between the agency and the proponent, establishing the roles and responsibilities of each party. The MOU will specify that all costs of using a contractor to prepare environmental documents will be borne by the proponent.
- (2) The MOU will describe the responsibilities of BLM and the proponent in the administration of the MOU and in oversight of and communication with the contractor. A MOU for preparation of an EIS should be more detailed and, if appropriate, subject to Solicitor's review and concurrence. Consistent with delegations of authority, a MOU for the preparation of an EA may be less detailed and may be executed by a Field Manager.
- (3) The State Director/Field Manager must ensure that the contractor preferred by the proponent is one that is acceptable to the BLM and that the proponent has submitted a copy of the required disclosure statement that specifies that the contractor has no financial or other interest in the outcome of the project, [40 CFR 506.5(c)(3) and question 17a in the "40 Questions."] The Field Manager makes the final decision regarding the selection of the contractor.
- (4) The State Director/Field Manager will ensure that communications between the proponent and the

BLM, and communications between the contractor and the BLM are consistent with the roles and responsibilities stated in the MOU. This includes ensuring that points of contact are established and used for communications between the parties. During the term of the MOU any direct communications between the proponent and the contractor will be consistent with those described in the MOU and held to a minimum. Any direct communications between the proponent and contractor outside of the provisions of the MOU must be approved in advance by the BLM.

(5) Major changes of schedule, proposals, or protocols, including product technical specifications, will be documented through official correspondence with copies of that correspondence provided to the signatories of the MOU. The State Director/Field Manager is responsible for informing the proponent of the contractor's progress and for immediately providing the proponent with notification of contractor delays or unsatisfactory products or both. The State Director/Field Manager will also recommend the termination of a contractor should it become necessary.

The State Director/Field Manager holds final decision authority regarding data used, alternatives studied in detail, analyses conducted, and document content and quality. The State Director/Field Manager will ensure that the MOU (or its attachments made part of the MOU) includes a description of the products that the contractor will prepare, the technical standards for each product, and a schedule of product delivery.

The MOU should include a provision that ensures that documents and records used or developed by the contractor to support the NEPA process will be part of the administrative record. These documents and records will be given to the BLM when the contractor's involvement in the process is completed, or as requested by the State Director/Field Manager. See the attachment as an example.

Timeframe: This IM is effective upon receipt.

Budget: Implementing this IM will not require additional staff or funding.

Manual/Handbook Sections Affected: None.

Coordination: This IM was developed jointly by WO-210, other WO Groups and DSD's.

Contact: If you have questions or need further information regarding MOUs for third party contracting, please contact Jordon Pope, Planning, Assessment and Community Support Group at (202) 452-5048.

Signed by:
Lawrence E. Benna
Deputy Director

Authenticated by:
Robert M. Williams
Policy and Records Group, WO-560

1 Attachment

[1 – Example of an Memorandum of Understanding \(MOU\) \(14 pp\)](#)