

Attachment 2  
August 2016 (Revised) Handbook

**August 2016 (rev)**

**HANDBOOK FOR USING  
THIRD-PARTY CONTRACTORS  
TO PREPARE ENVIRONMENTAL DOCUMENTS**

**For Natural Gas Facilities and  
Hydropower Projects**

**Federal Energy Regulatory Commission  
Washington, DC 20426**

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- A – OCI Representation/Disclosure Statement**
- B – OCI Questionnaire**
- C – Contractor’s CEI Non-Disclosure Agreement**
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**E – Project Overview Map**

**F – List of Available Background Documents**

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## Chapter 1. INTRODUCTION AND OVERVIEW

The Federal Energy Regulatory Commission's (FERC or Commission) voluntary third-party contracting program enables applicants seeking certificates for natural gas facilities and licenses for hydropower projects to fund a third-party contractor (3PC) to assist the Commission staff in reviewing the environmental aspects of applications and preparing the environmental documents required by the National Environmental Policy Act of 1969 (NEPA). These environmental documents could be environmental assessments or environmental impact statements, depending upon the potential project impacts.

Congress provided authorities for the use of 3PCs on hydropower projects in the Energy Policy Act of 1992.<sup>1</sup> The Commission formally extended this to pipeline projects in 1994 through a Commission notice<sup>2</sup> citing Council on Environmental Quality regulations on 3PC use.<sup>3</sup> This handbook provides guidance on how the program works for natural gas and hydropower projects analyzed by the Commission's Office of Energy Projects (OEP).

### PROGRAM OVERVIEW

In the context of the Commission's program, third-party contracting involves the use of an independent contractor to assist the FERC staff in its environmental analyses and review of a proposal. Under this voluntary program, the independent contractor is:

- selected by the Director of OEP and works solely under the direction of the OEP staff;
- responsible for conducting environmental analyses and preparing environmental documentation; and
- paid by the project applicant(s).

Third-party contracting provides OEP with additional flexibility in satisfying the Commission's NEPA responsibilities. It also complements other procedures presently in place for the environmental review of natural gas and hydropower projects, including the Commission's Pre-Filing Processes. For hydropower projects, such contracts have been used for applicants using the Commission's Alternative Licensing Process; however,

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1 See the Environmental Policy Act of 1992, P.L. No. 102-186 and 16 U.S.C. 797d.

2 See News Release issued February 9, 1994. Subsequent announcements were published in the Commerce Business Daily (March 25, 1994) and the Federal Register (April 20, 1994).

3 See Question 16 of NEPA's Forty Most Asked Questions at <https://ceq.doe.gov/nepa/regs/40/40p3.htm>.

there is the potential to use it for both the Integrated Licensing Process as well as the Traditional Licensing Process. To fully explore this potential, an applicant for a hydropower license or relicense should contact the OEP Hydropower Licensing Program staff identified at the end of this chapter.

## **PRE-FILING CONSULTATION**

### Traditional Applications

For traditional certificate application filings and those using the Traditional Licensing Process (i.e., those NOT involving the Commission's Pre-Filing Process), the applicant should plan to have the 3PC under contract concurrent with the filing of the application. As a result, the applicant should plan on meeting with FERC staff before completing the Request for Proposal (see the following section). Doing otherwise will delay the review of the application and preparation of the environmental document. Thus, we<sup>4</sup> strongly recommend that applicants meet with us to discuss their proposals, whether or not third-party contracting would fit their particular needs, and to answer any questions they might have relative to the program itself.

### Pre-Filing Process

For certificate and license application filings where an applicant intends to use one of the Commission's Pre-Filing Processes that engage Commission staff in the application preparation phase, it is extremely important that the applicant meet with us well in advance of its planned date for asking us to approve the use of that program<sup>5</sup>. This will not only allow us to properly prepare for the request, it will help to ensure that the request will contain everything we need to make a decision.

## **PREPARATION OF A DRAFT REQUEST FOR PROPOSAL**

Following a decision to use a 3PC and before an application is filed or a request for use of the Commission's Pre-Filing Process is submitted, the applicant will prepare a draft Request for Proposals (RFP). The draft RFP will be submitted for review and approval by the OEP staff before the RFP is issued by the applicant. The draft RFP

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4 "We", "us," and "our" refer to staff of the Office of Energy Projects

5 In lieu of third-party contracting, applicants proposing natural gas or hydropower projects of small to moderate size as well as license amendments may want to consider using an applicant-prepared draft EA. Contact OEP staff listed in this document regarding that process.

should be submitted directly to the OEP staff, rather than formally filed with the Commission.

The draft RFP will include a distribution plan that identifies where the RFP will be advertised/posted. This information must demonstrate that the RFP will be widely distributed (e.g. posted to applicant's website, RFP databases/services, provided to professional associations, provided to a wide range of potential contractors).

To assist applicants in developing an RFP for selection of 3PCs, we have included specific guidelines for the content of RFPs in Chapter 2. **The elements presented in these guidelines must be incorporated into all draft RFPs.** In addition, Chapter 3 contains two sample RFPs (based on RFPs previously used) that show how the specific guidelines in Chapter 2 might translate into an actual RFP.

## SELECTION OF THE THIRD-PARTY CONTRACTOR

Following OEP staff's review and approval of the draft RFP, the applicant will:

1. Issue the approved RFP per the distribution plan.
2. Screen all proposals received for Organizational Conflict of Interest (OCI).
3. File in the project docket (once a docket number is established) a certification that the RFP was widely distributed.
4. Submit to the OEP staff one electronic and one hardcopy of all proposals received in response to the RFP, including: technical proposals, cost proposals, OCI materials, and Critical Energy Infrastructure Information (CEII) non-disclosure agreements. All proposals must also be filed in the project docket in accordance with the Commission's instructions for filing of privileged material. For each proposal submitted, the applicant must review carefully all OCI materials to determine whether the candidate contractor, including any subcontractor(s), is capable of impartially performing the environmental services required under the third-party contract. The applicant must provide an OCI certification stating that it has reviewed the proposal for OCI and found it to be acceptable or an explanation if found unacceptable. The applicant may also provide an appraisal or ranking of the proposals and identify any proposal it considers unacceptable based on technical, cost, or other factors. Commission staff will consider this information in its independent evaluation of the proposals.
  - a) For projects proceeding under one of the Commission's traditional processes, i.e., NOT one of the Commission's Pre-Filing Processes, this

material should be submitted directly to the OEP staff and filed *no later* than when the certificate or license application is filed.

- b) For projects which ARE expected to proceed under one of the Commission's Pre-Filing Processes, the material listed above must be provided to the OEP staff and filed no later than the request for approval to use that process.

Lack of an OCI Statement, or the existence of an identifiable OCI that cannot be mitigated to the Commission staff's satisfaction, will be sufficient grounds for the Commission staff to reject the proposal. Guidance concerning the Commission's OCI requirements, including the format of an applicant's OCI certification, is presented in Chapter 4. Questions concerning OCI and CEII matters should be directed to the Commission's General and Administrative Law section of the Office of General Counsel (GAL). See the listing at the end of this chapter for the appropriate GAL contacts.

Under the direction of the Commission's Designated Agency Ethics Officials, GAL will perform an OCI review of the proposals by reviewing any relationships between the contractor and any business entity that could be affected by the proposed work done under the contract. This process is discussed in Chapter 4 below. Final contractor selection from those contractors cleared by GAL will be made by the Director of OEP, based on an independent evaluation by OEP staff of the technical, managerial, and personnel aspects of the qualified candidates' proposals. While bid fees and applicant rankings (if provided) will not be the controlling factor in the selection of the 3PC, OEP will take into consideration the applicant's appraisal of the proposals, including any proposals deemed unacceptable or recommended for rejection by the applicant due to cost or other factors.

OEP staff will evaluate and select the 3PC based on the following criteria:

- a. prior experience in preparing environmental documents for large natural gas facility or hydropower construction projects, or other similar projects, that have satisfied NEPA requirements;
- b. a demonstrated understanding of the project, potential issues, available data, and needed supplemental analyses;
- c. sufficient resources to meet the schedule requirements;
- d. ability to assign and commit key personnel to the project;
- e. past record in meeting performance and delivery requirements of similar contracts;



- f. ability to satisfy the logistical requirements to effectively manage the project such as materials, transportation, document production, computer services, etc;
- g. the applicant's appraisal or ranking of the 3PC proposals (if provided); and
- h. total cost.

Following OEP's decision on a 3PC, an approval letter will be issued to the applicant. This letter will clarify any details and/or resolve any issues that remain outstanding following review of the selected contractor's proposal.

As soon as practical, the applicant, the OEP-selected 3PC, and the OEP staff will enter into a Memorandum of Understanding (MOU) that details the roles and responsibilities of each party (a sample MOU is provided in Appendix G). Although the applicant will pay for the 3PC's work, the MOU will stipulate that the applicant will have no control over the work done under the contract and will not be able to review the work product before its release to the public. 3PCs must update their OCI statements annually, at a minimum, and must self-report any changes in financial situation or business relationships that may affect its previously submitted OCI statement. In addition, the MOU must indicate that the applicant retains no right to the products of the contract. The OEP staff will:

- direct the scope, content, and quality of the contractor's work;
- independently evaluate the results of the contractor's work,
- have sole ownership of all documents (other than those related to financial aspects) produced under the contract, and
- have complete discretion over the schedule for completion of the 3PC's work.

The MOU will be signed prior to award of the contract and the MOU will be posted to the Commission's public docket for the proceeding. Within 14 days from the receipt of the Commission's approval letter, the applicant should award a contract, consistent with the roles and responsibilities defined in the MOU, and notify the Commission that the contract has been awarded.<sup>6</sup> The applicant and the 3PC will determine the appropriate form of agreement for payment of the 3PC by the applicant.

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6 See 18 CFR 157.21(f)(2)

## **PREPARATION OF THE ENVIRONMENTAL DOCUMENT**

Once the selected 3PC is retained by the applicant, the 3PC will begin work for the Commission, under the sole direction of the OEP staff. The Commission, through its staff, will bear ultimate responsibility for full compliance with the requirements of NEPA.

If essential information critical to the integrity of OEP's environmental document is found missing from the applicant's environmental report and related documents, the 3PC will be directed by OEP staff to acquire the missing information in one of two ways. The OEP staff will instruct the 3PC to either:

- prepare a data request, which the OEP staff will review and forward to the applicant to obtain the information; or
- perform supplemental studies or data gathering needed to acquire the missing information.

Following public release of the environmental document, the 3PC will organize, analyze, and prepare draft responses to public comments (including those comments filed by the applicant). However, OEP staff will review and retain final responsibility for all the responses in the final document.

## **FERC CONTACTS**

This handbook should provide a basic understanding of the Commission's voluntary program for the use of 3PCs to prepare environmental documents for natural gas-related projects and may be of general use for environmental documents related to hydropower facilities. However, the Commission encourages applicants with specific questions about the third-party contracting program or its applicability to a specific project to contact OEP directly to arrange a pre-filing conference. Additional information may also be obtained from the following Commission staff:

### **General Inquiries:**

Rich McGuire, Acting Director  
OEP, Division of Gas - Environment and Engineering (PJ-11)  
[rich.mcguire@ferc.gov](mailto:rich.mcguire@ferc.gov)  
Telephone: (202) 502-6177

**Hydropower Licensing program:**

Nick Jayjack, Deputy Director  
OEP, Division of Hydropower Licensing (PJ-12)  
[nicholas.jayjack@ferc.gov](mailto:nicholas.jayjack@ferc.gov)  
Telephone: (202) 502-6073

**All inquiries regarding OCI, off-the-record communications or CEII:**

General and Administrative Law (GC-13)  
[mailto:gal\\_ethics@ferc.gov](mailto:gal_ethics@ferc.gov)  
Telephone: (202) 502-6457

The mailing address for all Commission staff contacts listed in this handbook is:

(contact name and organization)  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

## Chapter 2. SPECIFIC GUIDELINES FOR REQUEST FOR PROPOSALS

**At a minimum**, an applicant's RFP should include:

1. A cover page identifying that the RFP is not a federal procurement, and that the parties agree to hold harmless and indemnify the FERC and its staff. (See Disclaimer page in Chapter 3.)
2. A statement describing the third-party arrangement and establishing the roles and responsibilities of the applicant, 3PC, and FERC staff as follows:
  - a. The applicant widely distributes the RFP and screens all bid proposals for OCI. All responses to the RFP, and supporting material for their technical and cost proposals, will be submitted to the OEP staff and filed on the project docket in accordance with the Commission's instructions for filing of privileged material.
  - b. The OEP staff will review the proposals submitted and select a 3PC. The selected contractor must be found free of OCIs (or be able to mitigate any OCI to the satisfaction of the Commission staff).
  - c. The applicant, the selected 3PC, and the OEP staff will sign a MOU that details the roles and responsibilities of each party.
  - d. The applicant will finalize and award the contract to the 3PC selected by OEP.
  - e. The OEP staff will be solely responsible for the scope of the environmental document, the schedule for completion of the document, and for verifying the technical quality of the 3PC's work.
  - f. The 3PC will prepare the environmental document (and/or perform related tasks as may be specified in the RFP) under the technical direction of the OEP staff, although the financial contract is between the applicant and the contractor for payment.
  - g. The 3PC will provide special consultants and conduct special studies required by the OEP staff for analysis of the project even if not specifically identified in the RFP. The cost for any such requirements will be borne by the applicant.
  - h. The documents produced under the contract will be the sole property of the federal government.
3. An overview of the proposed project that contains:

- a. For a natural gas project the following information:
  - (i) the general purpose of the project;
  - (ii) a description of the project location by state, county, and pertinent landmarks;
  - (iii) the length, diameter, and capacity of all pipelines, including potential pipeline routes different from the proposed one;
  - (iv) the number and horsepower of all new and modified compressor stations;
  - (v) for liquefied natural gas (LNG) facilities, the number and size of LNG storage tanks, the number of berths for tankers, and the terminal size;
  - (vi) for storage facilities, the number of wells and type of storage;
  - (vii) the location and land requirements of all aboveground facilities, temporary work spaces, pipe storage yards, access roads, storage field boundaries, etc.; and
  - (viii) a complete list of available data pertinent to the project's environmental review.
- b. For a hydropower license proposal the following information:
  - (i) maps showing lands and waters within the existing or proposed project boundary that identify the state, county, river, river mile, and closest town and also showing the specific location of any federal and tribal lands and the location of existing and proposed project facilities, including water-retaining structures (including the physical composition, dimensions, and general configuration of any dams, spillways, penstocks, canals, tailraces, and other structures proposed to be included as part of the project or connected directly to it) power generating facilities, transmission lines, and any other appurtenant facilities;
  - (ii) the number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of any proposed turbines or generators to be included as part of the project and the normal maximum water surface area and normal maximum water surface elevation (mean sea level), and gross storage capacity of any existing or proposed impoundments;
  - (iii) the number, length, voltage, and interconnections of any primary transmission lines proposed to be included as part of the project,

- including a single-line diagram showing the transfer of electricity from the project to the transmission grid or point of use;
- (iv) a description of the current (if applicable) and proposed operation of the project, including any daily or seasonal ramping rates, flushing flows, reservoir operations, and flood control operations;
  - (v) a description of the existing environment and of any known or potential adverse impacts and issues associated with the construction, operation or maintenance of the proposed project; and
  - (vi) a complete list of available data pertinent to the project's environmental review.
- c. Projects involving facilities *other* than natural gas pipelines or hydropower projects (e.g., natural gas storage facilities or LNG import/export terminals) should provide a detailed description of the specific facilities known or under consideration for the proposal. To the extent that some information may NOT be available, it should be specifically highlighted as unavailable in the project overview section of the RFP.
4. A detailed description of the services required of the 3PC, including:
- a. Preparing all project-related documents, reports, and notices. In addition to paper copies, all materials must be provided to the OEP staff in Microsoft (MS) Word 2010 format, or as otherwise agreed to by the OEP Environmental Project Manager. Any required databases (such as mailing lists) must be MS Excel or MS Access compatible.
  - b. Arranging for and participating in public and/or interagency meetings, and preparing reports that summarize the results of the meetings.
  - c. Developing and maintaining a computerized (sortable database) mailing list of interested parties.
  - d. Facilitating issue identification and resolution, and during the Commission's Pre-Filing Process reviewing draft Environmental Reports or Environmental Resource Reports (RRs) for the FERC application.
  - e. Preparing an environmental document to meet the requirements of NEPA, the National Historic Preservation Act, federal and relevant state Endangered Species Act(s), and any additional requirements of the OEP staff. The document shall include:
    - (i) characterizations of and impact assessments for all resource areas having the potential to be significantly affected by the proposed facilities' construction, operation, maintenance and abandonment;

- (ii) analysis of appropriate alternatives;
    - (iii) discussion of proposed mitigation as well as 3PC and Commission staff recommended mitigation measures designed to reduce impact to acceptable levels;
    - (iv) consideration of all issues raised during scoping; and
    - (v) detailed maps showing the location of all project facilities and alternative routes or locations under consideration, related areas of disturbance, and pertinent resource data. The scale of the supporting maps should be appropriate to the project scope and the complexity/sensitivity of the resources potentially affected, but never less detailed than 1:250,000.
  - f. Providing the camera-ready documents in hard copy and/or email, as well as electronically on CDs as .pdf files, or as otherwise instructed by the OEP Environmental Project Manager.
  - g. Maintaining an ongoing review of potential issues and an assessment of adequacy of the overall scope of the environmental analysis, for the purpose of immediately advising the OEP staff of any potential data gaps or analysis shortcomings.
  - h. Arranging for site inspections and, as appropriate, right-of-way inspections (including overflights) for 3PC personnel and OEP staff. The applicant may be consulted for logistical information.
  - i. Analyzing and preparing draft responses to comments on the draft and final environmental documents.
  - j. Preparing a Biological Assessment and/or Essential Fish Habitat Assessment, if appropriate.
5. The applicant's proposed schedule with dates for the following key milestones:
- a. RFP issued to contractors;
  - b. Proposals submitted to OEP;
  - c. 3PC selected by OEP;
  - d. Federal Register Notice of Intent and mailing list submitted to OEP;
  - e. Preliminary administrative draft environmental document submitted to OEP;
  - f. Administrative draft environmental document distributed to OEP and cooperating agencies;

- g. Federal Register Notice of Availability submitted to OEP;
  - h. Camera-ready draft environmental document submitted to OEP;
  - i. Preliminary final environmental document submitted to OEP;
  - j. Federal Register Notice of Availability submitted to OEP; and
  - k. Camera-ready final environmental document submitted to OEP.
6. A requirement that each bid address OCI by including:
- a. Either an OCI Representation Statement or an OCI Disclosure Statement, indicating that the contractor has no financial or other conflicting interest in the outcome of the project;
  - b. An OCI Questionnaire; and
  - c. An abstract, listing all FERC-regulated entities that the 3PC and any subcontractors have had either an ongoing or previous business relationship with and whether that relationship results in either no conflict, or a real or perceived conflict.
- Detailed information concerning the Commission's OCI disclosure requirements is presented in Chapter 4.
7. A requirement that each bid include a CEII non-disclosure agreement signed by the contractor submitting the bid and any subcontractors proposed for use. (A format for this agreement is included as Appendix C.)
8. A list of the information the 3PC proposals must contain, including:
- a. A description of the 3PC's technical approach for preparing the environmental document and a management plan for the project. Any proposed subcontractors should be identified.
  - b. A description of the qualifications and experience of both the 3PC and the key personnel (including subcontractors).
  - c. A proposed schedule for completing major work tasks (which highlights any differences from the applicant's proposed schedule as presented in the RFP). Any changes to the schedule presented in the RFP must be fully justified.
  - d. A statement disclosing any potential OCI, and any proposed mitigation.
9. An itemized estimate of cost.



### Chapter 3. SAMPLE REQUEST FOR PROPOSALS

The following section presents two sample RFPs. The RFPs are generic documents that illustrate how the guidelines presented in Chapter 2 can be adapted for application to a wide variety of proposals and situations.

The first sample RFP shows how the Chapter 2 guidelines might translate for the Commission's Pre-Filing Process for a new natural gas facility. The second sample RFP shows how the guidelines could be used for a traditional certificate application. **Note that handbook Appendices A through G should be included as appendices to all RFPs.**

*The sample RFPs include the seven appendices at the end of this manual.*

- A. OCI Representation and Disclosure Statements*
- B. OCI Questionnaire*
- C. Contractor CEII Non-Disclosure Agreement*
- D. OCI Certification*
- E. Project Overview Map*
- F. List of Available Background Documents*
- G. Sample MOU*

Italicized items in parentheses represent information to be inserted by the user, supply guidance, or have been included for illustrative purposes.

**Sample RFP – Using the Commission’s Pre-Filing Process**

**Request for Proposal for Preparation of Third-Party  
Environmental Impact Statement**

*(applicant name)*

*(date)*

## **DISCLAIMER**

THIS IS NOT A FEDERAL PROCUREMENT.

THE FOLLOWING REQUEST FOR PROPOSALS (RFP) WILL RESULT IN A PRIVATE CONTRACT BETWEEN (*applicant name*) AND A CONTRACTOR, AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF (*state name*). NEITHER THE PROCUREMENT NOR ADMINISTRATION OF THE RESULTING CONTRACT IS SUBJECT TO FEDERAL PROCUREMENT LAWS, REGULATIONS, OR PROTEST PROCEDURES. ANY DISPUTES NOT SETTLED BY THE PARTIES THEMSELVES MUST BE RESOLVED BY A COURT OF COMPETENT JURISDICTION, OR THROUGH ALTERNATIVE DISPUTE RESOLUTION PROCEDURES TO BE DETERMINED BY THE PARTIES AND DESCRIBED IN THE CONTRACT.

QUESTIONS CONCERNING THIS PROCUREMENT SHOULD BE DIRECTED ONLY TO (*applicant name*). (*Applicant name*) MUST PROVIDE INFORMATION SUPPLIED TO ANY INDIVIDUAL CONTRACTOR TO ALL CONTRACTORS SUBMITTING A LETTER OF INTENT TO RESPOND TO THE RFP.

THE FEDERAL ENERGY REGULATORY COMMISSION STAFF SHOULD NOT BE CONTACTED AND WILL NOT RESPOND TO ANY QUESTIONS CONCERNING THE PROCUREMENT PROCESS.

## **HOLD HARMLESS**

The parties agree that the Federal Energy Regulatory Commission and its employees are not liable for any costs or judgments arising from the conduct of this procurement, and administration or supervision of the contract for the environmental services described herein.

***(Applicant Letterhead)***

**TO:** *(name of potential contractor)*

**FROM:** *(name and title of applicant contact)*  
*(applicant name)*

**DATE:** *(issuance date)*

**SUBJECT:** Request for Proposals (RFP) to Prepare an Environmental Impact Statement (EIS) for the *(project name)* Project

*(Proposal Due Date: (due date & time))*

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## **1.0 BACKGROUND, OVERVIEW, AND SCOPE**

### **1.1 Background**

*(Applicant name)* proposes to construct *(an LNG import terminal and related natural gas facilities)* at *(location and state)* to be known as the *(project name)* Project. *(A (length)-mile-long natural gas pipeline would also be required to connect the terminal with (company name)'s system at (location of interconnection))*. *(Applicant name)* is soliciting proposals for the consultation and coordination of the development of an Environmental Impact Statement (EIS) and alternatives, early identification and resolution of issues, and preparation of related documents to address the proposed *(project name)* Project as more specifically described in Section 1.2. The EIS will be prepared under a third-party contractor arrangement with *(applicant name)* as the Applicant and the Federal Energy Regulatory Commission (FERC or Commission) as the lead federal agency for the National Environmental Policy Act (NEPA) process. *(Applicant name)* intends to request FERC to begin the NEPA review prior to filing its application, in accordance with the Commission's pre-filing process detailed in section 157.21 of the Commission's regulations.<sup>7</sup> The FERC's Office of Energy Projects (OEP) will be responsible for providing technical direction to the third-party contractor throughout the NEPA review process. A contract will be executed pursuant to the third-party contracting procedures set forth in 40 CFR

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8 For Natural Gas Act-related projects.

1506.5(c) and as referenced in the FERC third-party contracting program announced on February 4 and 9, 1994.

As the Applicant, *(applicant name)* is soliciting proposals through this RFP for a third-party contractor to provide the services described in sections 1.3 and 1.4. The technical and cost proposals will be initially reviewed and evaluated by *(applicant name)* who will then submit all the proposals to the OEP staff and file the proposals in the FERC project docket as privileged. The OEP staff will make the final selection of the third-party contractor, based on its independent review of the technical, managerial, personnel, and Organizational Conflict of Interest (OCI) aspects of each proposal. Upon selection, the third-party contractor, *(applicant name)*, and the Director of OEP will sign a Memorandum of Understanding (MOU) that details the roles and responsibilities of each party (A sample MOU is provided in Appendix G). *(Applicant name)* will finalize a contract with and fund the successful contractor for the scoped activities.

Once a third-party contractor is selected, the OEP staff will direct the activities of the contractor in the consultation, reviews, and preparation and processing of documents within the scope identified herein. *(Applicant name)* will have no control over nor direct the activities of the contractor. Other federal agencies participating in the NEPA process may include *(identify potential federal cooperators)*. Appropriate regulatory agencies in *(state where facilities would be located)* will also be encouraged to participate in the NEPA process and may be cooperating agencies, as defined by the Council on Environmental Quality regulations at 40 CFR 1501.6.

*(Applicant name)* has selected a site for the *(specify the general facilities)* and has secured the services of *(consultant name)*, *(applicant name)*'s environmental consultant to assist in the development and preparation of the Environmental Resource Reports (RRs) required for the application to be filed with the FERC.

## 1.2 Overview of the Project

*(Summarize the general purpose of the project. Provide a detailed description of all proposed facilities, and potential routes, sites including alternatives. Tailor details to project specifics. Any locational or other project information that is not available should be specifically highlighted.)*

*For LNG facilities identify and describe LNG storage tanks; the LNG tanker size and expected number of tanker arrivals per week; berth and unloading facilities; LNG vaporization or liquefaction facilities; and any associated facilities for*

*refrigerant storage, gas processing, or natural gas liquids removal. In addition, identify and describe any related facilities necessary to deliver gas to or send gas from the LNG facility (e.g., pipelines, trucks, barges).*

*For storage fields, describe the geologic structure and proposed use of the storage field, the wells, storage field pipelines, compressor station, and interconnecting pipelines.*

*For pipelines related to any type of project: provide details such as the length, outside diameter, initial design capacity, pipeline system the gas will be delivered to, number and location of new or upgraded compressor stations, and total horsepower. Identify any potential alternative routes. Describe other aboveground facilities such as mainline valves, meter stations, interconnects, and pig launchers/receivers as well as significant other construction areas such as pipe and contractor yards. Identify any potential alternative sites. Identify the land requirements and location of all aboveground facilities. Include the size [horsepower] and location of any new compressor stations, and details of any other project-related activities that would occur at existing stations. Indicate the width of the construction right-of-way, the number of perennial waterbodies and major highways crossed, and the extent to which the pipeline would parallel other existing rights-of-way.)*

Maps of the proposed (*project name*) Project are included as Appendix E. (*Applicant name*) will identify any nonjurisdictional facilities associated with its proposal for possible inclusion in the scope of the review as soon as possible.

## **1.3 Scope**

### **1.3.1 Pre-Filing Activities**

In an effort to resolve issues early and to obtain stakeholder concurrence that the best facility site (*e.g., LNG terminal and interconnecting pipeline route*) has been selected, (*applicant name*) has requested FERC staff to begin its NEPA review process prior to receipt of (*applicant name*)'s application. Accordingly, (*applicant name*) has provided as much information as is currently available about project scope at this time in the process.

It is (*applicant name*)'s intention to hire a third-party contractor, under the direction of the OEP staff, to:

1. verify, update, and maintain mailing lists;

2. coordinate and attend scoping meetings and other meetings and site visits, as required by the OEP staff;
3. identify and summarize concerns raised by regulatory agencies and other stakeholders;
4. prepare meeting minutes for all attended meetings;
5. attend (*applicant name*)'s open house/public meetings;
6. work with OEP staff to identify additional concerns of affected/adjacent landowners, landowner organizations, environmental groups, and federal, state and local agencies;
7. communicate with and assess information from those concerned parties and advise (*applicant name*)'s environmental consultant and (*applicant name*)'s staff in the collection of data and the suggestions of alternative sites (/routes) and mitigations to respond to these concerns;
8. prepare periodic draft project update tri-folds;
9. prepare a draft Notice of Intent for public scoping, and coordinate and participate in public scoping meetings;
10. review and comment on field surveys conducted by (*applicant name*)'s environmental consultant, e.g.,
  - review information that will be the basis of both the RRs and the EIS;
  - anticipate the OEP staff's questions, or communicate directly with the OEP staff to determine possible environmental questions so that the appropriate answers may be developed while conducting environmental surveys; and
  - identify potential alternatives for further review.

The third-party contractor will also review and comment on the background data developed by (*applicant name*)'s environmental consultant to support the RRs. The contractor awarded this contract should request additional data through the OEP staff, where needed for the development of the EIS and anticipate the OEP staff's questions with the goal of minimizing environmental data requests after the filing of the application. This review may include the following items:

- maps and alignment sheets;
- work required to comply with the Endangered Species Act, including field surveys;
- work required to comply with the National Historic Preservation Act;

- work required to delineate waters of the U.S. and wetlands that will be subject to the federal permitting requirements; and
- work required to comply with the Coastal Zone Management Act and the Magnuson-Stevens Fishery Conservation and Management Act.

(*Applicant name*)’s environmental consultant will prepare the RRs for filing with (*applicant name*)’s application, in compliance with FERC's regulations. The content of each of the thirteen RRs is listed in the FERC’s regulations at 18 CFR 380.12.<sup>8</sup>

The third-party contractor will also be expected to prepare a preliminary administrative draft EIS (PADEIS) that can be submitted to the OEP staff for review before or soon after (*applicant name*) files the application with FERC. See Section 2 of this RFP.

### 1.3.2 Post-Filing Activities

Once (*applicant name*) has filed its application with the FERC, in addition to performing the functions listed in section 1.3.1 above, the selected third-party contractor will:

- prepare and submit a PADEIS to the OEP staff;
- incorporate comments from OEP staff into an administrative DEIS (ADEIS);
- submit the ADEIS to OEP staff and the cooperating agencies;
- incorporate/resolve comments on the ADEIS from OEP staff and the cooperating agencies;
- prepare and submit a DEIS to OEP staff;
- assist the OEP staff in preparing responses to public comments on the DEIS;
- prepare and submit an administrative final EIS (AFEIS) to OEP staff and the cooperating agencies, as necessary;
- prepare and submit a FEIS to the OEP staff;
- Prepare periodic draft project update tri-folds, as necessary; and
- Assist OEP staff, as necessary, with project-related tasks between the issuance of the NEPA document and the Commission Order. Examples of such tasks include support in responding to comments on the EIS.

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8 For Natural Gas Act-related projects.



## 2.0 SERVICES REQUIRED

The selected third-party contractor will be responsible for working along with the OEP staff and the various stakeholders while (*applicant name*)'s RRs are being developed. The selected third-party contractor will keep the OEP staff apprised of issues as they arise, and, when the OEP staff determines it is appropriate, participate in stakeholder meetings and site visits to identify and possibly help resolve issues.

The selected third-party contractor will also be responsible for assisting the OEP staff in conducting the NEPA review, preparing an EIS, and completing related work within the agreed-upon schedule and approved budget. It will be the contractor's responsibility to notify (*applicant name*) if the work effort ultimately required by the OEP staff exceeds the work effort on which the bid was based, or the approved budget.

The third-party contractor will be responsible for satisfactory completion of the following tasks:

- 2.1 Preparation of all project-related documents, reports, and notices required by OEP staff. In addition to paper copies, all materials must be provided to the OEP staff on compact disks, in Microsoft Word 2010 format, or as otherwise agreed to by the OEP Environmental Project Manager. Any required databases (such as mailing lists) must be Excel or Access 2010 compatible. The camera-ready EA or DEIS and FEIS will be provided as pdf files as specified by the OEP staff in addition to hard copy.
- 2.2 Preparation of notices and presentation materials for public scoping meetings and public comment meetings on the DEIS. This task will require close coordination with the OEP Environmental Project Manager. Required work will include researching venues, preparing notices, developing materials for meetings, participating in meetings, and preparing reports summarizing the results of the scoping meetings/process and public meetings on the DEIS. The contractor will prepare a summary of agency scoping comments/issues for subsequent agency review and concurrence. Assume at least (*number*) scoping meetings and public comment meetings will be conducted. Potential locations for these meetings will be (*list the locations*).
- 2.3 Preparation and maintenance of a computerized (sortable database) mailing list of agencies, officials, community/environmental groups, concerned citizens, affected

property owners and other interested parties. (*Applicant name*) will provide initial agency and affected property owner lists.

**2.4** Characterization of existing environmental conditions, incorporation of issues identified during scoping, assessment of the significance of the potential environmental effects of the proposed project, identification of potential site, route, and facility location alternatives (both locally and regionally), and determination of mitigation necessary to avoid or reduce impacts to acceptable levels for the environmental topics listed in section 2.5 (below). Studies shall take into account both direct and indirect effects of project facility construction, operation and maintenance, upset conditions, and abandonment for all proposed and alternative project facilities. Special expertise may be needed for areas of non-routine environmental sensitivity (such as marine environments). The RRs contained in other major applications, if any, and other already available technical data shall be used to the maximum extent practicable.

**2.5** Preparation of the EIS to meet the requirements of NEPA, the National Historic Preservation Act, Endangered Species Act, other applicable laws and regulations, any additional requirements of the OEP staff, and to address any scoping and public meeting issues.

The EIS shall include, but not necessarily be limited to, the following sections:<sup>9</sup>

1. Cover Sheet
2. Executive Summary (including Impact Summary Table)
3. Introduction
4. Description of Proposed Project
5. Alternatives
6. Affected Environment
7. Environmental Consequences (including Cumulative Impacts)
8. Conclusions (including summary of unavoidable significant adverse effect) and Recommendations (mitigation measures, including mitigation monitoring plan)
9. Agencies and Sources Consulted
10. List of Preparers and Contributors
11. References
12. EIS Distribution List
13. Index
14. Comments and Responses (FEIS only)

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<sup>9</sup> See 18 CFR 380.7 and 40 CFR 1502.10 for additional guidance.

15. Appendices and Technical Reports (including Essential Fish Habitat Assessment, if appropriate)

In conjunction with the OEP staff, the third-party contractor will be responsible for identifying and assessing potential alternatives to the proposed project that are capable of meeting the project's goals and are sufficient to meet the requirements of NEPA, including reducing potentially significant effects associated with the proposed project and fostering informed decision-making. Potential alternatives to the (*project name*) Project identified by (*applicant's name*) will be identified in Resource Report #10 of the RRs. Any project alternatives identified by the OEP staff will also be addressed.

The Description of the Proposed Project and Alternatives should include, at a minimum, the following subsections:

1. Purpose and Need for the Project
2. Approvals to be Sought through Use of the EIS
3. LNG Terminal, Storage Field and Compression Facilities, and Pipeline Route Description, as appropriate
4. Ancillary Facilities
5. General Design Parameters
6. Construction Methods, (*for Terminal, LNG Storage, Compressor Stations, Storage Field Facilities and Pipeline, as applicable*) including Applicant-Proposed Mitigation Measures
7. Construction Schedule and Work Force
8. Operation and Maintenance Procedures
9. Abandonment Procedures
10. Interrelationships with Other Planned Projects and Nonjurisdictional Facilities
11. Alternatives (including No Action)

The majority of this information will be available in the RRs. The third-party contractor shall review the RRs for accuracy and adequacy to meet the needs of NEPA for the preparation of an EIS, and shall prepare a data request(s) to (*applicant name*) (routed through the OEP staff) requesting any other data that may be needed. The EIS shall fully address the following resource topics (as applicable):

1. Geology (including mineral resources and geologic hazards)
2. Soils (including erosion control and restoration/revegetation)
3. Water Resources (surface water and groundwater hydrology and quality)

4. Biological Resources (including wildlife, vegetation, wetlands, aquatic biology, essential fish habitat, and threatened and endangered species)
  5. Land Use and Recreation
  6. Socioeconomics
  7. Visual Resources/Aesthetics
  8. Air Quality
  9. Noise
  10. Cultural and Paleontological Resources
  11. Public Safety
  12. Cumulative Impacts
- 2.6** Prepare supporting maps showing the location of all project facilities and related areas of disturbance, and pertinent resource data. (*Applicant name*) will be responsible for developing most maps requested by the third-party contractor. The scale of the supporting maps will normally range from 1:24,000 to (*identify larger scale*), depending on the complexity/sensitivity of the resources potentially affected and project specifics.
- 2.7** Maintain ongoing review of potential environmental issues and assessment of adequacy of overall scope of the environmental analysis. The OEP staff shall be advised immediately of any potential data gaps or analysis shortcomings.
- 2.8** Arrange with (*applicant name*) to participate in inspections of the proposed facility locations (including overflight, as appropriate) with the OEP staff. This may occur in conjunction with open houses or the scoping meetings. (The FERC will reimburse [*applicant name*] for all costs associated with OEP staff participation in overflights.)
- 2.9** Analyze comments and prepare draft responses to comments on the PADEIS, ADEIS, DEIS, and FEIS, and related documents.
- 2.10** Prepare camera-ready copies of the DEIS and FEIS and any required notices for submission to the FERC staff for printing and mailing. For purposes of proposal preparation, assume that the contractor will print and distribute at least (25) copies of the preliminary documents (ADEIS, etc.) to cooperating agencies. (The actual number of preliminary documents needed will be determined based on consideration of cooperating agencies' needs.)
- 2.11** Develop and maintain a formal project management system to allow for weekly or biweekly, as mutually agreed, tracking of schedule and budget status for the prime contractor and any subcontractors.

**2.12** Prepare a Biological Assessment, if appropriate.

**2.13** Prepare an Essential Fish Habitat Assessment, if appropriate.

### **3.0 PROJECT TIMELINE**

Proposals submitted in response to this RFP should identify any perceived need for specific supplemental studies to fully comply with NEPA and the FERC's implementing regulations.

Assuming (*applicant name*) responds expeditiously to data requests, the major milestones of the project schedule are summarized below, however, it should be understood that the ultimate schedule for NEPA will be determined by the OEP staff, not the applicant.

#### **3.1 Third-Party Contractor Selection**

1. (*Applicant name*) sends out RFP to contractors.
2. Hold contractors' (*tele*)conference.
3. Submit proposals to (*applicant name*) by 5:00 p.m. on:
4. Hold contractors' oral presentations (if required).
5. Submit proposals to OEP staff.
6. OEP selects third-party contractor,
7. Complete contract negotiations with (*applicant name*).
8. Third-party contractor begins work.

#### **3.2 (*Applicant name*)'s Certificate Application Development Work**

1. Conduct open houses/public meetings.
2. Begin environmental surveys.
3. Completion of civil and design survey.
4. Completion of environmental surveys.
5. Submission of draft RRs to OEP Staff.
6. Submission of FERC application and RRs.
7. Receive FERC authorization.

### 3.3 (Applicant name) Project Schedule Milestones<sup>10</sup>

The following EIS review tasks will be conducted by the third-party contractor and/or OEP staff:

#### 3.3.1 Pre-Filing

1. Study (*facility location, LNG terminal engineering, and pipeline route*) plans, attend open house/public meeting(s)
2. Coordinate agency scoping meetings
3. Issue Notice of Intent, hold EIS scoping meeting(s)
4. Conduct site visit(s) (*, route investigations,*) and alternative site(*/route*) analysis
5. Review draft RRs
6. Begin preparation of PADEIS

#### 3.3.2 Post-Filing

(File FERC application on day 0)

1. Contractor delivers PADEIS to OEP staff: \_\_day
2. Comments on PADEIS returned to contractor: \_\_day
3. Contractor delivers ADEIS to OEP staff and Cooperating Agencies: \_\_day
4. Comments on ADEIS returned to contractor: \_\_day
5. Contractor delivers camera-ready DEIS to OEP staff: \_\_day
6. OEP mails DEIS: \_\_day
7. Hold public meetings to receive comments: \_\_day
8. Contractor delivers preliminary FEIS to OEP staff and Cooperating Agencies: \_\_day
9. Comments on preliminary FEIS returned to contractor: \_\_day
10. Contractor delivers camera-ready FEIS to OEP staff: \_\_day
11. OEP mails FEIS: \_\_day

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10 Note that for Natural Gas Act-related projects section 157.21 of the Commission's regulations specifies some general timelines that must be met.

## 4.0 PROPOSAL REQUIREMENTS AND PROCESS

*(Applicant may elect to use a Letter-of-Intent and Contractors' (Tele)Conference approach, e.g., ...*

### 4.1 Letter of Intent

*Third-party contractors shall submit a Letter of Intent before the Contractors' (Tele)Conference to offer a proposal to (applicant name) at the e-mail address or the regular address listed in section 4.3.12. Those submitting a Letter of Intent will receive amendments to this RFP, if any, and copies of any written material from the (tele)conference as described in section 4.2. This letter will facilitate the distribution of written information but does not obligate the contractor to submit a proposal.*

### 4.2 Contractors' (Tele)Conference

*A Contractors' (Tele)Conference will be held by (applicant name) on (conference date) beginning at (time). At the conference, questions will be answered by (applicant name). Contractors who submit a Letter of Intent and who do not attend the (tele)conference will be notified of any modifications and receive a copy of the minutes of the meeting within two (2) days of the meeting if an e-mail address or telephone facsimile number is provided. Otherwise, minutes of the meeting will be sent via regular mail.*

*The purpose of this (tele)conference will be to:*

- *answer contractors' questions about the RFP;*
- *discuss any other information to be used in the submission of a proposal;*
- *discuss software that will be used by (applicant name)'s environmental consultant and engineering consultant in the development of documents for the FERC certificate application; and*
- *entertain requests for other background documents, which may be available for use during the preparation of the proposal but were not sent to contractors.*

*All third-party contractors are strongly encouraged to participate in this Contractors' (Tele)Conference since this is the only opportunity to receive responses to questions. Individual telephone calls are not permitted; no questions related to this RFP will be answered in any forum other than at the Contractors' (Tele)Conference. All questions must be answered while the conference is in open session so that all participants have equal access to the responses.*



### 4.3 Proposal Requirements

If a contractor provides a Letter of Intent to bid on the RFP, and subsequently does not intend to submit a proposal, the contractor shall notify (*applicant name*) as soon as possible, but in any event no later than (*number*) of days prior to the proposal due date. Contractors shall also return all material to (*applicant name*).

Contractors must provide (*number*) copies of the technical proposal and cost estimate; (*applicant name*) will coordinate distribution, and ultimately provide the OEP staff with one hardcopy and one electronic copy of the proposals. Cost estimates must be submitted in separate sealed envelopes labeled “COST ESTIMATE.” The proposal is limited to (50) pages (single-sided, space and a half). All materials should be easily readable. The proposal should be concise, well organized and contain the following information in the order presented below:

#### 4.3.1 Introduction

Explain the contractor's understanding of the project and a summary of the contractor's qualifications for this project in one or two pages. Because the project is located in (*identify state(s)*), qualifications for assessing impacts to the environment of this region of the country should be highlighted.

#### 4.3.2 Technical Approach

Present both an overall technical approach for the preparation of the EIS and the approach proposed for individual technical areas and tasks. Include any recommendations to improve the scope (including rationale) and reflect those recommendations in the cost estimate.

#### 4.3.3 Project Organization and Management Approach

Describe the proposed project organization, with an organization chart including positions, responsibilities and reporting relationships. The project manager, deputy project manager, environmental specialists with responsibility for each resource area, administrative support personnel, and any subcontractor(s) must be identified and their location specified. These key personnel shall not be reassigned within the project or to other projects without prior consultation with the OEP staff.



Describe the proposed management scheme for the project, with a discussion of where the work will be done and where each key person and subcontractor presently resides. Provide the proposed mechanisms for communication, reporting, technical direction and control, cost control, schedule control, quality control, quality assurance and control of subcontractors.

#### 4.3.4 Qualifications and Experience

Describe qualifications and prior experience in completing similar NEPA projects, particularly pipeline construction projects or other linear facility projects, and, as applicable, marine terminal projects. Emphasize prior work experience with the FERC for natural gas-related projects, (*identify affected state(s)*) state agencies, major relevant construction projects, and the geographical areas of study. Discuss the contractor's familiarity with the specialized issues and requirements of proposed facility construction. Discuss the contractor's understanding of the FERC environmental requirements for projects under the Natural Gas Act as reflected in FERC's regulations and current policies. Describe the contractor's past record in meeting performance and delivery requirements for similar contracts.

Statements of education, qualifications, and prior experience should be provided not only for the contractor but also for the key personnel and subcontractors that will be assigned to the project, along with their **specific experience with the type of project under consideration**.

The past, current, and proposed use of small and small disadvantaged owned business enterprises by the contractor should be described.

#### 4.3.5 Project Schedule

Submit a proposed schedule delineating dates for completion of the major work tasks specified in section 3 of this RFP. Any suggested modifications to the schedule must be presented with reasons for the changes. **Note, however, that the ultimate schedule will be determined by the OEP staff, not the applicant.**

It is important that contractors demonstrate to (*applicant name*) and the OEP staff that ample resources exist to meet the project schedule. If a contractor has multiple EIS obligations underway concurrently, it must clearly show separate resources or provide convincing evidence that it can meet the schedule.

#### 4.3.6 References

List and describe three successfully completed or in-progress projects of a similar nature with the name and phone number of the client's project manager. Additionally, list three client references specifically for the proposed project manager.

#### 4.3.7 Conflicts of Interest and Critical Energy Infrastructure Information

Identify possible conflicts of interest that may require investigation by the FERC staff. Include a discussion of all work completed by the contractor for similar work on natural gas-related projects within the last 3 years. Pursuant to 40 CFR 1506.5(c), contractor selection is based on ability and absence of conflicts of interest. The contractor must also submit a Critical Energy Infrastructure Information (CEII) Non-Disclosure Agreement for itself and each subcontractor used.

All proposals must include the following items:

- Either the FERC's (a) Organizational Conflict of Interest (OCI) representation statement, or (b) OCI Disclosure Statement, prepared by a responsible official attesting the contractor and its subcontractor(s) have no financial or other conflicting interest in the outcome of the project, or proposing a mitigation plan if an actual or potential OCI exists. (See Appendix A.)
  - The FERC's OCI Questionnaire. (See Appendix B.)
  - A Contractor CEII Non-Disclosure Agreement. (See Appendix C.)
- (Applicant name)* will complete an OCI Certification. (See Appendix D.)

#### 4.3.8 Resumes

Resumes may be submitted as an attachment to the proposal or as a separate volume. All resumes should be limited to two pages and must include the institution and date of graduation for all academic degrees as well as a summary of relevant work experience and the specific dates of performance.

#### 4.3.9 Cost Estimate

*(The applicant should identify the type of contract, such as time and materials, cost plus, etc., and provide additional guidance on how the cost of the contract is to be estimated.)*

(*Applicant name*) anticipates awarding and signing a (identify type) contract. Since the specific dates and number of field teams required are strictly estimates, each contractor shall submit a daily crew billing rate and expense rate sheet. (*Applicant name*) will compensate the contractor based upon the actual crews and hours worked. All preparation and processing of documents, RR review, NEPA review, EIS submission, and any other costs not associated with the daily crew rate shall be submitted as a fixed-price proposal with an attached cost breakdown. (*Applicant name*) understands that there may be out-of-scope requirements for the completion of this project and any resultant costs will be handled between the contractor and the applicant under the provisions of the contract.

Any limiting assumptions used to prepare the cost estimate should be clearly specified in the proposal. Also include a rate schedule that will apply to the project and for any work beyond the scope stated in this RFP.

Assume that (*applicant name*), through the OEP staff, will provide the successful contractor with copies of all environmental information filed with FERC, including base maps, aerial photos, and computerized mailing lists of agencies, officials, community/environmental groups, concerned citizens, affected property owners and known interested parties at the time that contact negotiations are completed. (*Applicant name*) will provide aerial overflights for key contractor and OEP staff (weather conditions permitting), either prior to or in conjunction with the open house/public meetings, or at the OEP staff's request. (However, the FERC will reimburse (*applicant name*) for all costs associated with OEP staff participation in aerial overflights.)

#### **4.3.10 Available Materials**

Appendix F presents a list of documents available from (*applicant name*) that should assist contractors in preparation of their proposals. Please contact (*name and telephone number of applicant's contact*) to arrange for review of these documents. Note that (*applicant name*) will only entertain questions about this RFP at the Contractor's (Tele)Conference discussed in section 4.2.

#### 4.3.11 Sample Memorandum of Understanding (MOU)

Appendix G to this RFP presents a sample MOU with key provisions that must be included in the awarded contract. Contractors are asked to review this sample MOU and point out any difficulties with its language in their proposal. The proposal must indicate the contractor's review of the sample MOU and identify issues that require resolution during contract negotiations. Issues raised after submittal of the proposal will not be subject to negotiation. The person(s) authorized to negotiate on behalf of the contractor should be identified.

Please note the OEP staff cannot be contacted on any contract negotiations between (*applicant name*) and the contractor.

#### 4.3.12 Addresses

Submit Letters of Intent via e-mail or facsimile to:

(*contact name, e-mail/facsimile address, etc.*)

Submit Technical Proposals and Cost Estimates to:

(*contact name, mailing address, phone number, etc.*)

Technical Proposals and Cost Estimates should be submitted to (*applicant name*) by (*time and date*).

### 5.0 SELECTION PROCESS

Only those proposals submitted by contractors prior to the deadline stated herein will be evaluated. The proposals will be initially reviewed by (*applicant name*), and then all proposals will be submitted to the OEP staff. Proposals will also be filed on the FERC project docket in accordance with the Commission's instructions for filing of privileged material.

(*Applicant name*) will provide the OEP staff with one hardcopy and one electronic copy of the contractors' proposals, along with the contractors' OCI statements, CEII non-disclosure agreements, and (*applicant name*)'s OCI certification of each contractor. GAL will perform an OCI review of the submitted proposals. OEP staff will then conduct an independent review of the contracts cleared by GAL and the Director of OEP will make the final selection of the contractor. Lack of an OCI Statement, or the existence of an identifiable OCI (relative to the contractor, its key personnel, or any proposed subcontractor) that

cannot be mitigated to the satisfaction of the FERC staff, will be sufficient grounds for proposal rejection.

Once the OEP staff has notified (*applicant name*) of its selection and the MOU is signed, (*applicant name*) will negotiate and fund a contract with the contractor. (*Applicant name*) will keep the OEP staff apprised of the negotiations with the contractor. Once the contract has been executed, the contractor will proceed to work solely under the direction and guidance of the OEP staff. Pursuant to 40 CFR 1506.5(c), the responsible official (i.e., the OEP staff) “shall furnish guidance and participate in the preparation and shall independently evaluate the [environmental document] prior to its approval and take responsibility for its scope and contents.”

*(This sample RFP is set up to include the seven appendices at the end of this manual.)*

- A. OCI Representation and Disclosure Statements*
- B. OCI Questionnaire*
- C. Contractor CEII Non-Disclosure Agreement*
- D. OCI Certification*
- E. Project Overview Map*
- F. List of Available Background Documents*
- G. Sample Memorandum of Understanding*

***Sample RFP – Traditional Certificate Application***

**Request for Proposal for Preparation of Third-Party  
Environmental Impact Statement**

*(applicant name)*

(date)DISCLAIMER

THIS IS NOT A FEDERAL PROCUREMENT.

THE FOLLOWING REQUEST FOR PROPOSALS (RFP) WILL RESULT IN A PRIVATE CONTRACT BETWEEN (*applicant name*) AND A CONTRACTOR, AND WILL BE GOVERNED BY THE LAWS OF THE STATE OF (*state name*). NEITHER THE PROCUREMENT NOR ADMINISTRATION OF THE RESULTING CONTRACT IS SUBJECT TO FEDERAL PROCUREMENT LAWS, REGULATIONS, OR PROTEST PROCEDURES. ANY DISPUTES NOT SETTLED BY THE PARTIES THEMSELVES MUST BE RESOLVED BY A COURT OF COMPETENT JURISDICTION, OR THROUGH ALTERNATIVE DISPUTE RESOLUTION PROCEDURES TO BE DETERMINED BY THE PARTIES AND DESCRIBED IN THE CONTRACT.

QUESTIONS CONCERNING THIS PROCUREMENT SHOULD BE DIRECTED ONLY TO (*applicant name*). (*Applicant name*) MUST PROVIDE INFORMATION SUPPLIED TO ANY INDIVIDUAL CONTRACTOR TO ALL CONTRACTORS SUBMITTING A LETTER OF INTENT TO RESPOND TO THE RFP.

THE FEDERAL ENERGY REGULATORY COMMISSION STAFF SHOULD NOT BE CONTACTED AND WILL NOT RESPOND TO ANY QUESTIONS CONCERNING THE PROCUREMENT PROCESS.

### **HOLD HARMLESS**

The parties agree that the Federal Energy Regulatory Commission and its employees are not liable for any costs or judgments arising from the conduct of this procurement, and administration or supervision of the contract for the environmental services described herein.

***(Applicant Letterhead)***

**TO:** *(name of potential contractor)*

**FROM:** *(name and title of applicant contact)*  
*(applicant name)*

**DATE:** *(issuance date)*

**SUBJECT:** Request for Proposals (RFP) to Prepare an Environmental Impact Statement (EIS) for the *(project name)* Project

Proposal Due Date: *(due date & time)*

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## **1.0 BACKGROUND AND OVERVIEW**

### **1.1 Background**

*(Applicant name)* is soliciting proposals for the preparation of an Environmental Impact Statement (EIS) and related documents and services to address its proposed *(project name)* Project as more specifically described in Section 1.2. The EIS will be prepared under a third-party contractor arrangement with *(applicant name)* as the Applicant and the Federal Energy Regulatory Commission (FERC or Commission) as the lead federal agency for the National Environmental Policy Act (NEPA) process. The FERC's Office of Energy Projects (OEP) will be responsible for providing technical direction to the third-party contractor during the preparation of the EIS and related documents. A contract will be executed pursuant to the third-party contracting procedures set forth in 40 CFR 1506.5(c) and as referenced in the FERC third-party contracting program announced on February 4 and 9, 1994.

As the Applicant, *(applicant name)* is soliciting proposals through this RFP for a third-party contractor to provide the services described in section 2.0. The technical and cost proposals will be initially reviewed and evaluated by *(applicant name)* who will then submit the proposals to the OEP staff and file the proposals on the FERC's project docket as privileged. The OEP staff will make the final selection of the third-party contractor, based on its independent review of the technical, managerial, personnel, and Organizational Conflict of Interest (OCI) aspects of each proposal. Upon selection, the third-party contractor, *(applicant*



*name*), and the Director of OEP will sign a Memorandum of Understanding (MOU) that details the roles and responsibilities of each party and mandatory provisions of the contract (A sample MOU is provided in Appendix G). (*Applicant name*) will finalize a contract with and fund the successful contractor for the preparation of this third-party EIS and attendant activities.

Once a third-party contractor is selected, the OEP staff will direct the activities of the contractor in the preparation and processing of the EIS within the scope identified herein. (*Applicant name*) will have no control over nor direct the activities of the contractor. The (*name of federal cooperating agencies*), and possibly others may be cooperating agencies for the NEPA review process. Appropriate regulatory agencies in (*identify affected states*) will also be invited and encouraged to participate in the NEPA process.

## 1.2 Overview of the Project

*(Summarize the general purpose of the project. Provide a detailed description of all proposed facilities. Tailor details to project specifics. Any locational or other project information that is not available should be specifically highlighted.*

*For storage fields: describe the geological structure and proposed use of the storage field, the wells, storage field pipelines, compressor station, and interconnecting pipelines.*

*For pipelines related to any type of project: provide details such as the length, outside diameter, initial design capacity, pipeline system the gas will be delivered to, number and location of new or upgraded compressor stations, and total horsepower. Describe other aboveground facilities such as mainline valves, meter stations, interconnects, and pig launchers/receivers as well as significant other construction areas such as pipe and contractor yards. Identify the land requirements and location of all aboveground facilities. Include the size [horsepower] and location of any new compressor stations, and details of any other project-related activities that would occur at existing stations. Indicate the width of the construction right-of-way, the number of perennial waterbodies and major highways crossed, and the extent to which the pipeline would parallel other existing rights-of-way.)*

Maps of the proposed (*project name*) are included as Appendix E. (*Applicant name*) will identify any nonjurisdictional facilities associated with the proposal for possible inclusion in the scope of review as soon as possible.

### 1.3 Available Data

The proposed (*project name*) Project is presented in detail in (*applicant name*)'s (*draft*) application to the FERC for a Certificate of Public Convenience and Necessity, Exhibit (*exhibit designation/name*). (*Applicant name*) has organized its Exhibit (*exhibit designation/name*) into Environmental Resource Reports (RR), as identified and containing the information listed in the FERC's regulations at 18 CFR 380.12.

The RRs, which (*applicant name*) (*is preparing*) except for portions of the Cultural Resources Report (which will be submitted as privileged), will be made available to contractors at the pre-bid conference. These reports must be reviewed in detail to gain an understanding of the proposed project and the level of available environmental data. This information should be assessed for any required supplemental analysis prior to proposal preparation and submittal.

*(Discuss any additional sources of pertinent environmental data, such as filings with another federal agency, or with states having a NEPA-like statute. Include the status of the following items:*

- *work required to comply with the Endangered Species Act, including agency scoping, field surveys and preparation of a Biological Assessment and Mitigation Plans;*
- *work required to comply with the National Historic Preservation Act, including field surveys, and all associated reports and mitigation plans;*
- *work required to delineate waters of the U.S. and wetlands that will be subject to the Federal and state permitting requirements; and*
- *work required to comply with the Coastal Zone Management Act and the Magnuson-Stevens Fishery Conservation and Management Act.)*

It is expected that the available data (*along with the site-specific information, as discussed above,*) will facilitate the preparation of the EIS. Appendix F provides a list of the available background documents. Proposals submitted in response to this RFP should clearly demonstrate an understanding of the extent of the (*available/provided*) information. Perceived data gaps and the need for specific supplemental studies to fully comply with the EIS requirements should be identified.

## 1.4 Schedule

*(The time line below is for illustration purposes only. In the "Contractor Selection" section, applicants should design their own schedule for contractor screening and completion of contract negotiations. OEP expects to be able to select a third-party contractor within 14 days of the filing date. Once the contractor is hired, OEP recommends that a Notice of Intent and mailing list be provided within 7 days. Intervals in the remaining portion of the "EIS Preparation" section represent an EIS schedule where cooperating agencies play a major role. The schedule also assumes timely applicant response to requests for information from the OEP staff and, through the OEP staff, the third party contractor. In the absence of significant cooperating agency involvement, the time allotted for OEP staff and cooperating agency review of the administrative draft document could be substantially reduced. Applicants are encouraged to suggest areas where time savings may be achieved. However, the schedule for the completion of the environmental document is under the control of the OEP staff. Applicant-proposed dates will be considered in light of Commission staff workload and regulatory requirements as the draft RFP is being reviewed.)*

Assuming (applicant name) responds expeditiously and completely to data requests, the schedule (in calendar days) is as follows. However, it should be understood that the ultimate schedule for NEPA will be determined by the OEP staff, not the applicant. Note that contract deliverables are designated with the symbol "►".

### Third-Party Contractor Selection

- Send out RFP to contractors: (day 1)
  - Hold contractors' conference: (day 6)
  - Submit proposals to (applicant name) by 5:00 p.m. on: (day 17)
  - Oral presentations by contractors: (day 28)
  - File application and contractor proposals with FERC: (day 36)
  - OEP selects contractor: (day 50)
- Complete MOU and contract negotiations with (name of applicant): (day 54)

## EIS Preparation

- Complete contract negotiations with (*name of applicant*): (day 0)
- ▶ Submit Notice of Intent and mailing list to OEP: (day 7)
- ▶ Arrange and attend Scoping Meeting(s): (day 30-42)
- Submit Preliminary Administrative Draft EIS (PADEIS) and draft Biological Assessment, if needed, to OEP: (day 174)
- OEP returns PADEIS and draft Biological Assessment to contractor: (day 205)
- ▶ Distribute Administrative Draft EIS (ADEIS) to OEP and Cooperating Agencies; return revised Biological Assessment to OEP: (day 214)
- ▶ Submit Federal Register Notice to OEP: (day 254)
- OEP returns ADEIS to contractor: (day 268)
- ▶ Submit camera-ready Draft EIS to OEP: (day 275)
- OEP sends Draft EIS to printing: (day 289)
- OEP mails Draft EIS and files with EPA: (day 303)
- 45-day public comment period begins: (day 311)
- ▶ Arrange and attend public comment meetings: (day 343-357)
- End of public comment period: (day 356)
- ▶ Submit Preliminary Final EIS (PFEIS) to OEP: (day 388)
- ▶ Submit Federal Register Notice to OEP: (day 396)
- OEP returns PFEIS to contractor: (day 406)
- ▶ Submit camera-ready Final EIS to OEP: (day 413)
- OEP sends Final EIS to printing: (day 427)
- OEP mails Final EIS: (day 441)

### 1.5 Letter of Intent

Third-party contractors shall submit a Letter of Intent before the Contractors' Conference to offer a proposal to (*applicant name*) at the e-mail address or regular mail address listed in Section 3.12. Those submitting a Letter of Intent will receive amendments to this RFP, if any, and copies of any written material from

the Conference as described in Section 1.6. This letter will facilitate the distribution of written information but does not obligate the contractor to submit a proposal.

## **1.6 Contractors' Conference**

A Contractors' Conference will be held by (*applicant name*) on (*conference date*), beginning at (*conference time*). At the conference, questions will be answered by (*applicant name*). Contractors who submit a Letter of Intent and who do not attend the conference will be notified of any modifications and receive a copy of the minutes of the meeting within two (2) days of the meeting if an e-mail address or telephone facsimile number is provided. Otherwise, minutes of the meeting will be sent via regular mail.

The purpose of this conference will be to:

- answer contractors' questions about the RFP;
- provide copies of any other information to be used in the submission of a proposal; and
- entertain requests for other background documents, which may be available for use during the preparation of the proposal but were not sent to contractors.

All third-party contractors are strongly encouraged to attend this conference since this is the only opportunity to receive responses to questions. Telephone calls are not permitted; no questions related to this RFP will be answered in any forum other than at the contractors' conference. All questions must be answered at the conference so that all participants have equal access to the responses.

## **2.0 SERVICES REQUIRED**

The selected third-party contractor will be responsible for assisting the OEP staff in conducting the NEPA review, preparing an EIS, and completing related work within the agreed-upon schedule and approved budget. It will be the contractor's responsibility to notify (*applicant name*) if the work effort ultimately required by the OEP staff exceeds the work effort on which the bid was based or the approved budget.

The third-party contractor will be responsible for satisfactory completion of the following tasks:

- 2.1** Preparation of all project-related documents, reports, and notices required by OEP staff. In addition to paper copies, all materials must be provided to the OEP staff in Microsoft Word 2010 format, or as otherwise agreed to by the OEP Environmental Project Manager. Any required databases (such as mailing lists) must be Microsoft Access or Excel compatible. The camera-ready EA or DEIS and FEIS will be provided as pdf files as specified by the OEP staff in addition to hard copy.
- 2.2** Preparation of notices and presentation materials for public scoping meetings and public comment meetings on the EIS. This task will require close coordination with the OEP Environmental Project Manager. Required work will include researching venues, preparing notices, developing materials for meetings, participating in meetings, and preparing reports summarizing the results of the scoping meetings/process and public meetings on the EIS. The contractor will prepare a summary of agency scoping comments/issues for subsequent agency review and concurrence. Assume at least (*number*) scoping meetings and public comment meetings will be conducted. Potential locations for these meetings are: (*list the locations*).
- 2.3** Preparation and maintenance of a computerized (sortable database) mailing list of agencies, officials, community/environmental groups, concerned citizens, affected property owners and known interested parties. (*Applicant name*) will provide the initial agency and affected property owners list.
- 2.4** Characterization of existing environmental conditions, incorporation of issues identified during scoping, assessment of the significance of the potential environmental effects of the proposed project, identification of potential site, route and facility location alternatives, (both locally and regionally) and determination of mitigation necessary to avoid or reduce impacts to acceptable levels for the environmental topics listed in section 2.5 (below). Studies shall take into account both direct and indirect effects of project facility construction, operation and maintenance, upset conditions, and abandonment for all proposed and alternative project facilities. Special expertise may be needed for areas of non-routine environmental sensitivity (such as marine environments). The RRs contained in the FERC application (*and other major applications, if any*) and other already available technical data shall be used to the maximum extent practicable.
- 2.5** Preparation of an EIS to meet the requirements of NEPA, the National Historic Preservation Act, Endangered Species Act, other applicable laws and regulations, any additional requirements of the OEP staff, and to address any scoping and public meeting issues.

The EIS shall include, but not necessarily be limited to, the following sections: <sup>11</sup>

1. Cover Sheet
2. Executive Summary (including Impact Summary Table)
3. Introduction
4. Description of Proposed Project
5. Alternatives
6. Affected Environment
7. Environmental Consequences (including Cumulative Impacts)
8. Conclusions (including summary of unavoidable significant adverse effects) and Recommendations (mitigation measures, including mitigation monitoring plan)
9. Agencies and Sources Consulted
10. List of Preparers and Contributors
11. References
12. EIS Distribution List
13. Index
14. Comments and Responses (Final EIS only)
15. Appendices and Technical Reports (including Essential Fish Habitat Assessment, if appropriate)

The project as proposed by (*applicant name*) includes several pipeline route and aboveground facility site location alternatives. In conjunction with the OEP staff, the third-party contractor will be responsible for identifying and assessing potential alternatives to the proposed project that are capable of meeting the project's goals and are sufficient to meet the requirements of NEPA, including reducing potentially significant effects associated with the proposed project and fostering informed decision-making. System alternatives to the (*project name*) Project that should be addressed include (*identify any known system alternatives*). Additional project alternatives may be identified by the OEP staff.

The Description of the Proposed Project and Alternatives should include, at a minimum, the following subsections:

1. Purpose and Need for the Project
2. Approvals to be sought through Use of the EIS
3. Storage Field, Compression Facilities, and Pipeline Route Description, as appropriate

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<sup>11</sup> See 18 CFR 380.7 and 40 CFR 1502.10 for additional guidance.



4. Ancillary Facilities
5. General Design Parameters
6. Construction Methods (for Compressor Stations, Storage Field Facilities and Pipeline, as applicable) (including Applicant-Proposed Mitigation Measures)
7. Construction Schedule and Work Force
8. Operation and Maintenance Procedures
9. Abandonment Procedures
10. Interrelationships with Other Planned Projects and Nonjurisdictional Facilities
11. Alternatives (including No Action)

The majority of this information (*is/will be*) available in the RRs included in the application made to the FERC. The third-party contractor shall review the RRs for accuracy and adequacy to meet the needs of NEPA for the preparation of an EIS, and shall prepare a data request(s) to (*applicant name*) (routed through the OEP staff) requesting any other data that may be needed. The EIS shall fully address the following resource topics (as applicable):

1. Geology (including mineral resources and geologic hazards)
2. Soils (including erosion control and restoration/revegetation)
3. Water Resources (surface water and groundwater hydrology and quality)
4. Biological Resources (including wildlife, vegetation, wetlands, aquatic biology, essential fish habitat, and threatened and endangered species)
5. Land Use and Recreation
6. Socioeconomics
7. Visual Resources/Aesthetics
8. Air Quality
9. Noise
10. Cultural and Paleontological Resources
11. Public Safety
12. Cumulative Impacts

- 2.6** Prepare supporting maps showing the location of all project facilities and related areas of disturbance, and pertinent resource data. (*Applicant name*) will be responsible for developing all maps requested by the third-party contractor. The scale of the supporting maps will normally range from 1:24,000 to (*identify larger scale*), depending on the complexity/sensitivity of the resources potentially affected and project specifics.



- 2.7** Maintain ongoing review of potential environmental issues and assessment of adequacy of overall scope of the environmental analysis. The OEP staff shall be advised immediately of any potential data gaps or analysis shortcomings.
- 2.8** Arrange with (*applicant name*) to participate in inspections of the proposed facility locations (including overflight, as appropriate), with the OEP staff. This may occur in conjunction with the scoping meetings. (The FERC will reimburse [*applicant name*] for all costs associated with OEP staff participation in overflights.)
- 2.9** Analyze comments and prepare draft responses to comments on the PADEIS, ADEIS, DEIS, and FEIS and related documents.
- 2.10** Prepare camera-ready copies of the DEIS and FEIS and any required notices for submission to the FERC staff for printing and mailing. For purposes of proposal preparation, assume that the contractor will print and distribute at least (25) copies of the preliminary documents (ADEIS, etc.) to cooperating agencies. (The actual number of preliminary documents needed will be determined based on consideration of cooperating agencies' needs.)
- 2.11** Develop and maintain a formal project management system to allow for weekly or biweekly, as mutually agreed, tracking of schedule and budget status for the prime contractor and any subcontractors.
- 2.12** Prepare a Biological Assessment, if appropriate.
- 2.13** Prepare an Essential Fish Habitat Assessment, if appropriate.

### **3.0 PROPOSAL REQUIREMENTS**

If a contractor provides a Letter of Intent to bid on the RFP, and subsequently does not intend to submit a proposal, the contractor shall notify (*applicant name*) as soon as possible, but in any event no later than (*number*) days prior to the proposal due date. Contractors shall also return all materials to (*applicant name*).

Contractors must provide (*number*) copies of the technical proposal and cost estimate; (*applicant name*) will coordinate distribution, and ultimately provide the OEP staff with one hardcopy and one electronic copy of the proposals. Cost estimates must be submitted in separate sealed envelopes labeled "COST ESTIMATE." The proposal is limited to (50) pages (single-sided, space and a half). All materials should be easily readable. The proposal should be concise,

well organized and contain the following information in the order presented below:

### **3.1 Introduction**

Explain the contractor's understanding of the project and a summary of the contractor's qualifications for this project in one or two pages. Because the project is located in (*identify state(s)*), qualifications for assessing impacts to the environment of this region of the country should be highlighted.

### **3.2 Technical Approach**

Present both an overall technical approach for the preparation of the EIS and the approach proposed for individual technical areas and tasks. Include any recommendations to improve the scope (including rationale) and reflect those recommendations in the cost estimate.

### **3.3 Project Organization and Management Approach**

Describe the proposed project organization, with an organization chart including positions, responsibilities and reporting relationships. The project manager, deputy project manager, environmental resource specialists with responsibility for each resource area, administrative support personnel, and any subcontractor(s) must be identified and their location specified. These key personnel shall not be reassigned within the project or to other projects without prior consultation with the OEP staff.

Describe the proposed management scheme for the project, with a discussion of where the work will be done and where each key person and subcontractor presently resides. Provide the proposed mechanisms for communication, reporting, technical direction and control, cost control, schedule control, quality control, quality assurance and control of subcontractors.

### 3.4 Qualifications and Experience

Describe qualifications and prior experience in completing similar NEPA projects, particularly pipeline construction projects or other linear facility projects. Emphasize prior work experience with the FERC for natural gas-related projects, (*identify affected state[s]*) state agencies, major relevant construction projects, and the geographical areas of study. Discuss the contractor's familiarity with the specialized issues and requirements of proposed facility construction. Discuss the contractor's understanding of the FERC environmental requirements for projects under the Natural Gas Act as reflected in FERC's regulations and current policies. Describe the contractor's past record in meeting performance and delivery requirements for similar contracts.

Statements of education, qualifications, and prior experience should be provided not only for the contractor, but also for the key personnel and subcontractors that will be assigned to the project, along with their **specific experience with the type of project under consideration**.

The past, current, and proposed use of small and small disadvantaged owned business enterprises by the contractor should be described.

### 3.5 Project Schedule

Submit a proposed schedule delineating dates for completion of the major work tasks specified in Section 2.5 of this RFP. The selected contractor's proposal must address the completion dates as specified in Section 1.4 of this RFP. Any suggested modifications to this schedule must be presented with reasons for the changes. **Note, however, that the ultimate schedule will be determined by the OEP staff not the applicant.**

It is important that contractors demonstrate to (*applicant name*) and the OEP staff that ample resources exist to meet the project schedule. If a contractor has multiple EIS obligations underway concurrently, it must clearly show separate resources or provide convincing evidence that it can meet the schedule.

### 3.6 References

List and describe three successfully completed or in-progress projects of a similar nature with the name and phone number of the client's project manager. Additionally, list three client references specifically for the proposed project manager.

### 3.7 Conflicts of Interest and Critical Energy Infrastructure Information

Identify possible conflicts of interest that may require investigation by the FERC staff. Include a discussion of all work completed by the contractor for similar work on natural gas-related projects within the last 3 years. Pursuant to 40 CFR 1506.5(c), contractor selection is based on ability and absence of conflicts of interest. The contractor must also submit a Critical Energy Infrastructure Information (CEII) Non-Disclosure Agreement for itself and each subcontractor used.

All proposals must include the following three items:

- Either the FERC's (a) Organizational Conflict of Interest (OCI) Representation Statement, or (b) OCI Disclosure Statement, prepared by a responsible official attesting the contractor and its subcontractor(s) have no financial or other conflicting interest in the outcome of the project, or proposing a mitigation plan if an actual or potential OCI exists. (See Appendix A.)
- The FERC's OCI Questionnaire. (See Appendix B.)
- A Contractor CEII Non-Disclosure Agreement. (See Appendix C.)

*(Applicant name)* will complete an OCI Certification. (See Appendix D.)

### 3.8 Resumes

Resumes may be submitted as an attachment to the proposal or as a separate volume. All resumes should be limited to two pages and must include the institution and date of graduation for all academic degrees, as well as a summary of relevant work experience and the specific dates of performance.

### 3.9 Cost Estimate

*(The Applicant should identify the type of contract, such as time and materials, cost plus, etc., and provide additional guidance on how the cost of the contract is to be estimated.)*

*(Applicant name)* anticipates awarding and signing a *(identify type)* contract. Since the specific dates and number of field teams required are strictly estimates, each contractor shall submit a daily crew billing rate and expense rate sheet.

(*Applicant name*) will compensate the contractor based upon the actual crews and hours worked. All preparation and processing of documents, NEPA review, EIS submission, and any other costs not associated with the daily crew rate shall be submitted as a fixed-price proposal with an attached cost breakdown. (*Applicant name*) understands that there may be out-of-scope requirements for the completion of this project and any resultant costs will be handled between the contractor and the applicant under the provisions of the contract.

Any limiting assumptions used to prepare the cost estimate should be clearly specified in the proposal. Also include a rate schedule that will apply to the project for any work beyond the scope stated in this RFP.

Assume that (*applicant name*), through the OEP staff, will provide the successful contractor with copies of all environmental information filed with FERC, including base maps, air photos, and computerized mailing lists of agencies, officials, community/environmental groups, concerned citizens, affected property owners and known interested parties at the time that contract negotiations are completed. (*Applicant name*) will provide aerial overflights for key contractor and OEP staff (weather conditions permitting) either prior to or in conjunction with the scoping meetings, or at OEP staff's request. (However, the FERC will reimburse (*applicant name*) for all costs associated with OEP staff participation in aerial overflights.)

### **3.10 Available Materials**

Appendix F presents a list of documents available from (*applicant name*) that should assist contractors in preparation of their proposals. Please contact (*name and telephone number of applicant's contact*) to arrange for review of these documents. Note that (*applicant name*) will only entertain questions about this RFP at the Contractor's Conference discussed in Section 1.6.

### **3.11 Sample Memorandum of Understanding (MOU)**

Appendix G to this RFP presents a sample MOU with key provisions that must be included in the awarded contract. Contractors are asked to review this sample MOU and point out any difficulties with contract language in their proposal. The proposal must indicate the contractor's review of the sample MOU and identify issues which require resolution during negotiations. Issues raised after submittal of the proposal will not be subject to negotiation. The person(s) authorized to negotiate on behalf of the contractor should be identified.

Please note the OEP staff cannot be contacted on any contract negotiations between (*applicant name*) and the contractor.

### 3.12 Addresses

Submit Letters of Intent via e-mail or facsimile to:

*(contact name, e-mail/facsimile address, etc.)*

Submit Technical Proposals and Cost Estimates to:

*(contact name, mailing address, phone number, etc.)*

Technical Proposals and Cost Estimates should be submitted to (*applicant name*) by (*time and date*).

## 4.0 SELECTION PROCESS

Only those proposals submitted by contractors prior to the deadline stated herein will be evaluated. The proposals will be initially reviewed by (*applicant name*), and then all proposals will be submitted to the OEP staff. The proposals will also be filed on the FERC project docket in accordance with the Commission's instructions for filing of privileged material.

(*Applicant name*) will provide the OEP staff with one hardcopy and one electronic copy of the contractors' proposals, along with the contractors' OCI statements, CEII non-disclosure agreements, and (*applicant name*)'s OCI certification of each contractor. GAL will perform an OCI review of the submitted proposals. OEP staff will then conduct an independent review of the contracts cleared by GAL and the Director of OEP will make the final selection of the contractor. Lack of an OCI Statement, or the existence of an identifiable OCI (relative to the contractor, its key personnel, or any proposed subcontractor) that cannot be mitigated to the satisfaction of the FERC staff, will be sufficient grounds for proposal rejection.

Once the OEP staff has notified (*applicant name*) of its selection and the MOU is signed, (*applicant name*) will negotiate and fund a contract with the contractor. (*Applicant name*) will keep the OEP staff apprised of the negotiations with the contractor. Once the contract has been executed, the contractor will proceed to work solely under the direction and guidance of the OEP staff. Pursuant to 40 CFR 1506.5(c), the responsible official (i.e., the OEP staff) "shall furnish guidance

and participate in the preparation and shall independently evaluate the [environmental document] prior to its approval and take responsibility for its scope and contents."

*(This sample RFP is set up to include the seven appendices at the end of this manual.)*

- A. OCI Representation and Disclosure Statements*
- B. OCI Questionnaire*
- C. Contractor CEII Non-Disclosure Agreement*
- D. OCI Certification*
- E. Project Overview Map*
- F. List of Available Background Documents*
- G. Sample Memorandum of Understanding*

## Chapter 4. FERC's ORGANIZATIONAL CONFLICT OF INTEREST AND OFF-THE-RECORD COMMUNICATIONS (EX PARTE) REQUIREMENTS

An OCI exists when the nature of the work to be performed may, without some restriction on future activities:

- result in an unfair competitive advantage to a contractor and/or its affiliates; or
- impair the contractor's objectivity in performing the contract work.

OCIs typically exist where the contractor and/or its employees or affiliates have a past, present, or ongoing financial interest in the project or in a related project, or have a financial or business relationship with the applicant. For example, an OCI exists if the contractor and/or its affiliates:

- has been involved with the applicant on the project before it is proposed to the Commission, or while it is pending before the Commission;
- has an ongoing relationship with the applicant;
- would be called on to review its own prior work or that of its affiliates; or
- has a financial or other interest in the outcome of the Commission's decision.

All contractors must submit as part of their proposals a statement of **Contractor's Organizational Conflicts of Interest Disclosure or Representations** (OCI Statement). Specifically, contractors must reveal all relationships, including ownership interests, with all FERC regulated entities, including but not limited to pipelines, gathering companies, brokers and marketers of natural gas, major producers and their affiliates, and end users of natural gas such as industrial users, including cogeneration facilities. Contractors must state whether or not there is an OCI, and if so, to what extent. Contractors must provide an abstract listing all the above entities with which it or its subcontractors have had a business relationship and indicate whether or not that relationship results in a real or perceived conflict. In the event an apparent or real conflict is listed, a detailed mitigation plan to resolve and isolate any OCI should be included in the abstract. Detailed guidance regarding the OCI Statement, including requirements and definitions, begins on page 4-3.

**The above obligation carries through the actual performance period of the work covered by this RFP. Therefore, the OCI Statement must be refreshed on an annual basis, at a minimum, and more frequently if the contractor and/or its affiliate's business relationships have changed in a manner that affects the previously submitted OCI Statement.**



**In other words, in addition to refreshing the OCI Statement on an annual basis, if during the performance of that work the contractor and/or its affiliates establish a relationship, including ownership interest, with any of the FERC regulated entities identified above, the contractor must notify the OEP Environmental Project Manager, and file an amended OCI Statement with GAL within 30 days. The amended OCI Statement must include a conflict mitigation plan to address any perceived or potential conflict of interest.**

The contractor's conflict mitigation plan should describe mechanisms to resolve and isolate any OCI and ensure the contractor would impartially perform the services under the contract. When a contractor has identified a possible conflict, OEP staff may suspend its work with the contractor until a review has been conducted by the Commission's Designated Agency Ethics Official staff of GAL. The contractor must receive GAL approval, in writing, to implement the mitigation plan. The determination of GAL is final, but may be reconsidered for just cause.

The applicant will review each OCI Statement and abstract to determine whether the contractor is capable of impartially performing the environmental services required under the contract. The applicant shall certify that neither the contractor nor its subcontractors have an OCI. A format for this certification is included as Appendix D. All OCI materials submitted to OEP (including the contractor's OCI Statement, mitigation plans, and the applicant's certification) will be reviewed by GAL.

As more thoroughly discussed below, post-award communications between the applicant and the contractor will be limited by the Commission's off-the-record communications rule. Therefore, **any post-award OCI issue or problem identified by the applicant shall be reported directly to the OEP Environmental Project Manager in writing.**

Subcontractors also must submit an OCI Statement and, where necessary, a mitigation plan to resolve real or perceived OCIs.

### **Off-the-Record Communications**

In order to avoid all possibilities of prejudice, real or apparent communications between the applicant and contractor are subject to the Commission's off-the-record communications (sometimes referred to as ex parte) rule found at 18 CFR 385.2201. Note that the restrictions on off-the-record communications do not apply during the Commission's Pre-Filing Process. However, the OEP staff will treat most communications between itself or the third-party contractor and the applicant during this

period as subject to public disclosure to ensure openness of the NEPA process. An off-the-record communication is a written or oral communication that is:

- off the record; and
- relates to the merits of a pending proceeding.

The Commission will treat the prohibitions on off-the-record communications as being applicable to communications between an applicant and a third-party contractor under Commission supervision and control. The contractor shall report all such communications to GAL. Exceptions are listed at 18 CFR 385.2201(b) and (e).

All inquiries regarding OCI and off-the-record communications should be directed to GAL. Contact information is listed at the end of this chapter.

## **Contractor's OCI Disclosure and Representations**

### **Requirements**

All contractors must provide the information and assurances called for by this section.

The contractor must submit (as a separate volume) the following documents from each of the entities listed herein: <sup>12</sup>

1. Either (a) the OCI Representation Statement (representing that the contractor has no OCIs), or (b) the OCI Disclosure Statement (in the event that the contractor has information relevant to a potential OCI). (See Appendix A.) If the OCI Disclosure Statement is signed, provide an attachment showing the information required.

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12 The types of entities or individuals required to complete the forms listed above are as follows:

1. The prime contractor.
2. The subcontractor(s) (unless the subcontractor(s) is only providing supplies) and consultants at every tier.
3. All affiliates of the foregoing if the prime or subcontractors do not file on their behalf.
4. Any entities owned or represented by the chief executives or directors of: the prime contractor; any of the subcontractors, except for those only providing supplies; and any of the consultants.
5. Chief executives and directors - if they will be involved in performing the proposed work of: the prime contractor; the subcontractors at every tier (except for subcontractors which are only providing supplies); consultants at every tier; and all affiliates of the foregoing.

2. The OCI Questionnaire (see Appendix B). If you answer any questions "YES," provide an attachment showing the requested information in detail. Please do not reference any information in other sections of your proposal.

## Notice

Apart from other remedies allowed by law or contract, any deliberate non-disclosure or misrepresentation of facts relevant to the OCI disclosure required by the Commission may result in, among other things, termination of the contract, or disqualification of the contractor from future third-party contracts. See, for example, 18 U.S.C. § 1001.

## Discussion

It is the policy of the Commission to identify and avoid or mitigate an OCI before selecting a third-party contractor. Generally, to determine whether an OCI exists, the Commission considers questions, such as the following:

- Are there conflicting roles or interests which might bias a contractor's judgment or create a negative appearance in relation to its work for the Commission?<sup>13</sup>
- Could the contractor gain an unfair competitive advantage based on the performance of the contract? Would the contractor be placed in the position to review its own work?
- What percentage of the contractor's total income in recent years resulted from arrangements with any project-related entities?

GAL will determine whether an OCI exists after examining:

- all relevant facts submitted by the contractor;
- the statement of work; and
- information gained from other sources.

If an OCI does exist, GAL may require the contractor to submit an acceptable mitigation plan. If the conflict cannot be resolved through an adequate mitigation plan, the contractor will be ineligible for selection or for proceeding with the third-party contract.

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<sup>13</sup> These may include work for the applicant on this project, or for applicant or another energy firm in the same general project area, especially if the work is for a similar project.

To avoid the potential for actual or perceived OCI after a contract is signed under this RFP, the contractor must not enter into any agreements with the applicant to perform any function on this project outside of that contemplated in this RFP, until after completion of the contracted scope of work. The contractor must similarly avoid agreeing to perform any function for another company on a similar project in the same geographic area, and over the same time period if the facilities would be located in the same area or if there could be a perception that there would be a conflict.

## Definitions

1. The term "organizational conflicts of interest" means that a relationship or situation exists whereby an contractor (including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors where they may be performing services similar to the services provided by the prime) has past, present, or currently planned interests that either directly or indirectly (through a client, contractual, financial, organizational or other relationship) may relate to the work to be performed under the third-party contract and that (a) may diminish its capacity to give impartial, technically sound, objective assistance and advice, or (b) may result in the contractor gaining an unfair competitive advantage. OCI does not include the normal flow of benefits from the performance of the contract.
2. The term "affiliates" means business concerns that are affiliates of each other when either directly or indirectly has the power to control another, or when a single third-party controls or has the power to control both.
3. The term "energy concern" includes:
  - a. Any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;
  - b. Any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;
  - c. Any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;
  - d. Any person significantly engaged in development, production, processing, sale or distribution of nuclear materials, facilities or technology; and
  - e. Any person:

- (1) significantly engaged in the business of conducting research, development, or demonstration related to an activity described in paragraphs (a) through (d); or
- (2) significantly engaged in conducting such research, development, or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Chair of the Commission.

## **Contacts**

Direct all inquiries regarding OCI and off-the-record (ex parte) communications to:

General and Administrative Law (GC-13)  
[gal\\_ethics@ferc.gov](mailto:gal_ethics@ferc.gov)  
Telephone (202) 502-6457

**APPENDIX A****COMPLETE EITHER THE REPRESENTATION OR THE DISCLOSURE –  
NOT BOTH****OCI Representation Statement**

I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, no facts exist relevant to any past, present or currently planned interest or activity (financial, contractual, personal, organizational or otherwise) that relate to the proposed work; and bear on whether I have (or the organization and any of its affiliates has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice; or (2) being given an unfair<sup>1</sup> competitive advantage.

Signature : \_\_\_\_\_ Date : \_\_\_\_\_

Name : \_\_\_\_\_ Title : \_\_\_\_\_

Organization : \_\_\_\_\_

**OCI Disclosure Statement**

I hereby certify (or as a representative of my organization, I hereby certify) that, to the best of my knowledge and belief, all relevant facts -- concerning past, present, or currently planned interests or activities (financial, contractual, organizational or otherwise) that relate to the proposed work and bear on whether I have (or the organization has) a possible conflict of interest with respect to (1) being able to render impartial, technically sound, and objective assistance or advice, or (2) being given an unfair competitive advantage—are fully disclosed on the following page(s) and formatted to show:

- For ease of presentation, the OCI information is divided into four parts, indicating whether the possible OCI is: organizational, contractual, financial, or other;
- The company, agency, organization in which I (or my organization) have a past, present, or currently planned interest or activity (financial, contractual, organizational, or otherwise);

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<sup>1</sup> An unfair competitive advantage does not include the normal flow of benefits from the performance of the contract.

- A brief description of the relationship;
- The period of the relationship;
- The extent of the relationship (such as value of financial interest of work; percent of total holdings, total work, etc.); and
- A mitigation plan, if necessary.

Signature : \_\_\_\_\_ Date : \_\_\_\_\_

Name : \_\_\_\_\_ Title : \_\_\_\_\_

Organization : \_\_\_\_\_

**APPENDIX B**

Name of Person  
or Organization: \_\_\_\_\_

**OCI Questionnaire<sup>1</sup>**

1. Will you (or your organization) be involved, or have you previously been involved, in the performance of any portion of the project under this solicitation, aside from your organization's proposed work as a third-party contractor?  
☐ No.  
☐ Yes. The portion of the proposed work; the proposed hours and dollar value; and the type of involvement are fully disclosed on the attached pages.
2. What is (are) the major type(s) of business conducted by you (or your organization)? Please reply on the attached pages.
3. Do you (or your organization) have any affiliates?  
☐ No.  
☐ Yes. The name and a description of the major type(s) of business that each affiliate conducts are disclosed on the attached pages.
4. Will any of the following be involved in performing the proposed work under this solicitation: (a) any entities owned or represented by you (or your organization); (b) your organization's Chief Executive or any of its directors; or (c) any affiliates?<sup>2</sup>  
☐ No.  
☐ Yes. A full disclosure and discussion is given in the attached pages.

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<sup>1</sup> All questions in the questionnaire apply to parent companies and affiliates as well. Whenever possible, each affiliate should submit a separate questionnaire. However, in the event each affiliate does not submit a separate questionnaire (for instance, to avoid completing a large number of questionnaires), this questionnaire must incorporate information regarding all affiliates.

<sup>2</sup> See Definitions in Chapter 4 (defining affiliates as businesses that directly or indirectly control or have the power to control another, or when a single third party controls or has the power to control both businesses).



5. Are you (or your organization) an energy concern?
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.
6. Do you (or your organization) have a direct or indirect relationship (financial, organizational, contractual or otherwise) with any business entity (including a parent company, affiliate, or any other business arrangement) that could be affected in any way by the proposed work under this solicitation?
- ☐ No.
- ☐ Yes. List the business entity(ies) showing the nature of your relationship (including the dates of the relationship, and the dollar value of any financial relationship) and how it would be affected by the proposed work under this solicitation.
7. What percentage of your total income for the current and preceding calendar years resulted from arrangements with any of the entities identified in Question 6 above?
- |     |   |      |   |   |    |   |   |   |
|-----|---|------|---|---|----|---|---|---|
| — % | For the current calendar year:          | from | / | / | to | / | / | . |
| — % | For the preceding calendar year:        | from | / | / | to | / | / | . |
| — % | For the second preceding calendar year: | from | / | / | to | / | / | . |
8. Do you (or your organization) currently have or have you had during the last six years any arrangements (for example, contracts and cooperative agreements) awarded, administered, or funded—wholly or partly—by the Commission or any other federal agency which relates to the proposed Statement of Work?
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.
9. Do you (or your organization) have or have you ever had any contracts, agreements, special clauses, or other arrangements which prohibit you (or your organization) from proposing work to be performed in this solicitation or any portion thereof?
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.

10. Do you (or your organization) have any involvement with or interest (direct or indirect) in technologies which are or may be subjects of the contract, or which may be substitutable for such technologies?
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.
11. Could you (or your organization) in either your private or federal government business pursuits use information acquired in the performance of the proposed work under this solicitation; such as:
- (a) Data generated under the contract?
- (b) Information concerning Commission plans and programs?
- (c) Confidential and proprietary data of others?
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.
12. Under the proposed work under this solicitation, will you (or your organization) evaluate or inspect your own services or products, or the services or products of any other entity that has a relationship (organizational, financial, or other, such as a client) with you (or your organization)? This could include evaluating or inspecting a competitor's goods and services.
- ☐ No.
- ☐ Yes. A full disclosure and discussion is given on the attached pages.
13. To avoid what you perceive as a possible OCI, do you (or your organization) propose to: exclude portions of the proposed work; employ special clauses; or take other measures?
- ☐ No.
- ☐ Yes. A full discussion is given on the attached pages.
- ☐ No possibility of an OCI is perceived. This answer is briefly justified on the attached pages.
14. What percentage of the revenue reported in this OCI statement is attributable to work as a FERC third-party contractor?
15. Are you (or your organization) performing any function for another company, either currently or in the past 24 months, on a similar project in the same geographic area?

- ☐ No.  
☐ Yes.

16. If the answer is yes, please list the name(s) of the project(s) and the work being performed.

I hereby certify that I have authority to represent my organization, and that, to the best of my knowledge and belief, the facts and representations presented on the four pages of this questionnaire and on the \_\_\_\_ pages of the attachment to it are accurate and complete.

**I recognize that OCI is an ongoing obligation requiring annual updating. Should I become aware of any actual or potential OCI during performance of this contract, I will advise the OEP staff and (*applicant name*) and file an amended OCI Statement with the Commission's General and Administrative Law section, Office of General Counsel within 30 days that includes proposed mitigation or explanation why none is needed.**

Signature : \_\_\_\_\_ Date : \_\_\_\_\_

Name : \_\_\_\_\_ Title : \_\_\_\_\_

Organization : \_\_\_\_\_

**APPENDIX C****CONTRACTOR CEII NON-DISCLOSURE AGREEMENT**

On behalf of [*contractor name*], I certify that [*contractor name*] will abide by the following terms with respect to critical energy infrastructure information (CEII) that the company has access to because of its work for the Federal Energy Regulatory Commission:

- Only authorized company employees with a need for the information will be given access to CEII. [*contractor name*] will maintain a list of each employee who is given access to CEII, including a listing of each project for which the employee has been given CEII.
- [*Contractor name*] will not provide CEII to or discuss CEII with anyone outside the company, except that CEII may be discussed with the project's owner, operator, or applicant.
- Any copies made of CEII will be marked as CEII, and treated as CEII.
- CEII will be used only in performance of [*contractor name*]'s work for the Federal Energy Regulatory Commission. When [*contractor name*] has completed work on the project, all CEII will be returned to the Commission.
- I acknowledge that a violation of this agreement may result in negative consequences and could affect [*contractor name*]'s ability to contract with the Commission in the future.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Representing: \_\_\_\_\_

Date: \_\_\_\_\_

**APPENDIX D****OCI Certification**

I, (*applicant representative*), am responsible for reviewing proposals received in response to (*applicant name*)'s Request for Proposals for the preparation of an Environmental (*Assessment/Impact Statement*) and related documents and services for the proposed (*project name*) Project.

I have reviewed the proposal of (*contractor name*) for Organizational Conflicts of Interest. I hereby certify that (*contractor name*) has complied with the OCI Representation or OCI Disclosure requirements of the RFP and that there are no real or apparent disqualifying conflicts of interest.

Signature : \_\_\_\_\_

Title : \_\_\_\_\_

Date : \_\_\_\_\_

**APPENDIX E**

*(Project Overview Map)*

**APPENDIX F**

*Appendix F, List of Available Background Documents, might be structured as follows:)*

The following background documents are available and should be reviewed by all contractors prior to preparation and submittal of proposals in response to this RFP:

- FERC staff's current Wetland and Waterbody Construction and Mitigation Procedures
- FERC staff's current Upland Erosion Control, Revegetation, and Maintenance Plan
- 1 set of (*draft*) alignment sheets
- 1 set of (*draft*) quadrangle maps
- (*any other major state or federal applications containing pertinent environmental data*)
- FERC FEIS for the (*name of recent FERC EIS*) Project (FERC Docket No. CPxx-000) or other recent FERC-issued EISs

These documents (, *as well as other project-related documents not provided with the RFP,*) are available for review at:

(*location*)

Contact: (*name*)  
(*telephone number*)

**APPENDIX G*****Sample Memorandum of Understanding***

*(The purpose of the MOU is to establish mutual agreement between the applicant, the third-party contractor, and the OEP staff regarding the roles and responsibilities of each party. Although the language may vary, the concepts as worded below must be incorporated into the MOU and included as mandatory provisions of the finalized contract.)*

**MEMORANDUM OF UNDERSTANDING****Between the****FEDERAL ENERGY REGULATORY COMMISSION****the (Applicant's Name) and****the (Contractor's Name)**

- a. **Background.** The Energy Policy of 1992<sup>1</sup> and related regulations provide for the use of third-party contracts to assist agencies in satisfying the requirements of the National Environmental Policy Act (NEPA).<sup>2</sup> In its "Forty Questions" issued in the Federal Register on 23 March 1981, the Council on Environmental Quality indicated the term "third-party contract" referred to contractors paid by the applicant but selected by the agency. 40 CFR 1506.5(c) further stipulates that the contractor must execute a disclosure statement prepared by the agency to avoid any conflict of interest. If the NEPA document is prepared with third-party contract assistance, the responsible agency must participate in the preparation and shall independently evaluate the NEPA document prior to its approval. The agency must also take full responsibility for the scope and contents of the NEPA document.

This Memorandum of Understanding (MOU) defines the roles and obligations of the Federal Energy Regulatory Commission (FERC), the private entity with a planned or pending application before the FERC (referred to as Applicant), and the independent contractor chosen by FERC staff (referred to as Contractor).

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<sup>1</sup> 16 U.S.C. 797d.

<sup>2</sup> 42 U.S.C. §§ 4321-4370h (2012).



The contract between the Applicant and the Contractor will be executed pursuant to the third-party contracting procedures set forth in 40 CFR 1506.5(c) and as described in the FERC Handbook for using Third-Party Contractors to Prepare Environmental Documents (August 2016).

The FERC staff of the Office of Energy Projects (OEP) will direct the activities of the contractor in the consultation, reviews, preparation, and processing of the documents within the scope of the contract. **The Applicant will not control or direct the activities of the Contractor, except with respect to the processing of invoices.**

**b. Obligations of the Applicant**

The Applicant agrees to perform the following tasks:

- I. Certify that the selected Contractor, to the best of its knowledge, has no financial or other interest in the outcome of the project. Specifically, the contract or project provides no unfair competitive advantage to the Contractor.
- II. The Applicant and the Contractor have no relationships that could impair the Contractor's objectivity in performing the contract work.
- III. Affirm that all communications with the Contractor will be restricted to financial components of its contract. Communications on the merits of the Applicant's project may only be conducted jointly with OEP staff, subject to any disclosure and ex parte requirements.
- IV. Be solely responsible for all Contractor and subcontractor fees, costs, and expenses.
- V. Retain no rights to the products of the contract.
- VI. Include the Applicant and Contractor roles and obligations outlined in this MOU as mandatory provisions in the contract between Applicant and Contractor.

**c. Obligations of the Contractor (and all subcontractors, as appropriate)**

- I. The Contractor certifies that it has no conflict of interest in performing the work required under the contract and certifies that it has no financial or other interest in the outcome of the Commission's review.

- II. The Contractor certifies that its Organizational Conflict of Interest (OCI) Statement provided to FERC for review prior to selection is accurate.
- III. The Contractor has a continuing obligation to identify conflicts of interest that may arise because of changes in corporate identity, affiliation, structure, or ownership, or changes to the contract throughout the actual performance period of the work. Therefore, the OCI Statement must be refreshed on an annual basis, at a minimum, and more frequently if the Contractor's business relationships have changed in a manner that affects the previously submitted OCI Statement.
- IV. In the event an OCI is discovered after award, the Contractor certifies that it will immediately notify the OEP Environmental Project Manager and will submit a plan to mitigate the conflict. The mitigation plan will be submitted to FERC's Office of General Counsel – General and Administrative Law for review and written determination as to whether the plan can be implemented within 30 days of the identification of an OCI.
- V. The Contractor agrees to only communicate with the Applicant on financial issues related to the executed contract, unless OEP staff is present and subject to any disclosure and ex parte requirements.
- VI. All work performed by the Contractor will be under the direction of and meet any timeframes established by OEP Staff. General duties of the contractor are listed in Chapter 2.4 of the Handbook for Using Third-Party Contractors to Prepare Environmental Documents. These duties are also listed within the sample Request for Proposals included in Chapter 3 of the Handbook.
- VII. The Contractor shall not replace the Project Manager, assistant Project Manager, or other key employee or subcontractor personnel without the prior consultation of the OEP staff.

**d. Obligations of OEP**

- I. OEP will select the Contractor, based on its independent review of the technical, managerial, personnel, and OCI aspects of each proposal.
- II. OEP will set the schedule for completion of the NEPA document and all associated documents.

- III. OEP will be responsible for providing technical direction to the Contractor throughout the NEPA review process.
- IV. OEP will identify all information necessary to complete its review and will decide on the inclusion or deletion of all material in the NEPA document.
- V. OEP staff has the right, at any time and in their sole discretion, to have any personnel of the Contractor, or the Contractor's subcontractor, either temporarily or permanently dismissed from the project.

**e. Expiration**

This MOU shall become effective upon signature of all three parties and shall expire following completion of the contracted scope of work as agreed to by the parties to the agreement.

**f. Termination**

This MOU may be terminated prior to expiration with the written consent of all three parties. Each party may initiate termination upon thirty (30) days written notice to the other parties. During the intervening 30 days, the parties agree to actively attempt to resolve any outstanding disputes or disagreements.

**g. Effective Date**

This MOU and any attachments hereto shall become effective upon signature of all three parties.

## SIGNATURES OF AGREEMENT

**Federal Energy Regulatory Commission**

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Signature

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Typed NameDirector, Office of Energy Projects

Typed Title

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Date**Applicant**

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Signature

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Typed Name

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Typed Title

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Date

**Contractor**

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Signature

---

Typed Name

---

Typed Title

---

Date