

NEPA CONTRACTING REFORM GUIDANCE

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NEPA CONTRACTING REFORM GUIDANCE

Overview

To reduce the cost and time of the NEPA process, it is critical to do it right the first time.

An effective NEPA Contracting Strategy includes:

- ▶ defining early what contractors should accomplish
- ▶ establishing contracts ahead of time
- ▶ minimizing cost while maintaining quality by
 - maximizing competition and use of incentives
 - using past performance information in awarding work
 - managing the NEPA process as a project

This guidance provides:

- ▶ model statements of work
- ▶ information on contract types and incentives
- ▶ direction on effective NEPA contract management by the NEPA Document Manager
- ▶ a system for measuring NEPA process costs
- ▶ NEPA contractor evaluation procedures
- ▶ details on the DOE NEPA Web site

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NEPA CONTRACTING REFORM GUIDANCE

1. INTRODUCTION

Objectives

Under broad initiatives for "reinventing" government -- and more specifically for improving government contracting -- this guidance aims to improve the Department of Energy's (DOE's) National Environmental Policy Act (NEPA) contracting. Contractors extensively assist DOE's NEPA process, and contractor costs account for a very large part of total NEPA process costs. To minimize the cost and time for document preparation and review and make the NEPA process more useful to decision makers and the public, contracting arrangements must support the preparation of quality documents within the constraints of schedule and budget.

Applicability

This Contracting Reform Guidance applies to all contracts under which NEPA process support is provided. While this guidance does not recommend any specific role for DOE Management and Operating contractors or the National Laboratories in the NEPA process, the guidance applies to any such support they may provide. This guidance is not intended, however, to express a preference for using contractors to prepare NEPA documents when Federal personnel are available to perform these tasks. Indeed, DOE personnel should be used to the maximum extent practical to prepare high priority NEPA documents or those that present unusually controversial or sensitive issues.

Contact

This guidance was prepared in partnership with the Offices of Human Resources and Administration and General Counsel, and in consultation with the Office of Chief Financial Officer. Comments and questions should be directed to the Office of NEPA Policy and Assistance (EH-42) (telephone: 202-586-4600, fax: 202-586-7031, or e-mail: nepa.contracting@spok.eh.doe.gov).

2. NEPA CONTRACTING STRATEGY AND GUIDANCE OVERVIEW

The NEPA Process is Part of Project or Program Planning

The NEPA process (specifically the preparation of an environmental assessment or environmental impact statement) is an integral part of the planning for a proposed Federal action, such as a project or program. The NEPA process is a means of bringing environmental factors into decision making, along with technical and economic considerations, at an early stage of planning. Through the NEPA process, alternative ways of meeting the agency's needs are identified and potential environmental impacts of a proposed project or program and reasonable alternatives are compared. The NEPA process is a stage in the evolution of a proposed action and should not be divorced from this larger enterprise. The NEPA process is not an end in itself, and managing the NEPA process is not conceptually different from managing other aspects of a project or program.

Background on Improving DOE NEPA Contracting

A NEPA Contracting Quality Improvement Team (the Team) established by the Secretary in June 1994 recommended innovative contracting mechanisms and incentives for NEPA applications. The February 1995 Team Report identified several specific contracting improvements to reduce the cost and time of the Department's NEPA process. The Secretary distributed the Team Report to Secretarial Officers and Heads of Field Organizations in March 1995 and directed the Assistant Secretary for Environment, Safety and Health to oversee implementation of its recommendations. The team's recommendations have been incorporated into this NEPA Contracting Reform Guidance. Copies of the Team Report are available from the Office of NEPA Policy and Assistance.

The Team had noted that DOE environmental impact statements frequently cost too much, with preparation time often too long, and document quality often too low. The Team recognized that these problems sometimes are related to the complexity of the decisions that are the subject of many DOE NEPA analyses. The Team concluded, however, that the more significant part of the problem lies in poor planning and management of the NEPA document preparation process by DOE, including the use of contracts without incentives.

Doing It Right the First Time

Too often, in an effort to meet stringent project decision schedules, DOE managers expend substantial contract resources on NEPA document preparation before DOE has completed its scoping process and determined key issues. Not surprisingly, DOE then judges the contractor's initial products to be misdirected, confusing, and needing considerable redrafting. Ironically, the contractor's technical analysis often has been more accurate and usable than the narrative framework in which it is presented. This suggests that the contractor mainly lacked policy guidance that only DOE could provide, such as scoping results.

Doing work over costs more and takes longer than doing it right the first time. Therefore, this guidance emphasizes the importance of early DOE planning and detailed statements of work to obtain optimal results from NEPA process contracts.

The overall remedy to these problems, in summary, is to "do it right the first time."

NEPA Contracting Strategy

To address the deficiencies described above, an effective NEPA contracting strategy needs to:

- Determine early in the NEPA process what tasks the contractor should accomplish.

DOE needs to develop very specific statements of work that contain clearly-stated, results-oriented performance criteria and measures.

- Engage the contractor expeditiously so as to meet demanding schedules.

DOE should establish contracts in advance, where practical, so that contractors will be available when the work is needed.

- Minimize cost while maintaining quality by:
 - Maximizing competition.
 - Using past performance information as a factor in awarding future work.
 - Using incentives to motivate superior contractor performance.
 - Applying standard project management techniques to NEPA contract management.

- Evaluating DOE-wide NEPA contracting experience to determine further improvements.

This strategy is the basis for this guidance.

Guidance Outline

This NEPA Contracting Reform Guidance covers several interrelated topics:

- Statements of Work: Decisions about NEPA contracting, including the most appropriate contract type for a particular NEPA process, are based on and flow from a results-oriented statement of work. Detailed specification of the desired deliverables, schedule, and clear, objective performance standards in a statement of work promotes contractor efficiency, timeliness, and good quality deliverables. Greater specificity of measurement tools and incentives in statements of work also facilitates contract management, and simplifies the performance evaluation process because the contractor's attainment of contract requirements can be easily determined. In Section 3, the guidance provides model statements of work for NEPA scoping and document preparation, with a sample schedule of contract deliverables to support a 15-month environmental impact statement.
- Contracts and Incentives: To improve DOE's NEPA process, NEPA support contractors must be motivated to deliver products of higher quality, more quickly, and at lower cost, and their services must be available when needed. Section 4 of this guidance provides general background on contract types and incentives and applies this information to NEPA support contracting.
- The NEPA Document Manager and Effective NEPA Contract Management: NEPA Document Managers should manage the NEPA document preparation process as a project and conduct the process as a team effort. Project management methods may be used to track and manage the technical progress, cost, and schedule of contracted work. Section 5 of this guidance discusses the role of the NEPA Document Manager, the importance of early planning, the NEPA process as a team effort, internal scoping, document management plans, providing technical direction, and the need for continuing education.
- NEPA Process Cost Measurement: Tracking and Reporting: Contracting improvements pose the greatest potential for cost savings in the NEPA process, but DOE needs good cost information to fully realize and demonstrate such savings. Section 6 of this guidance provides a Cost Measurement System.

- Contractor Performance Evaluation: Federal procurement regulations require agencies to evaluate the quality of contractor deliverables and other desired contractor performance elements and to use past performance information in awarding new contracts. Section 7 describes how to obtain past performance information for offerors of NEPA support services and how to use past performance information in awarding new contracts. The guidance provides a form for evaluating the performance of NEPA contractors that is compatible with the general DOE program for contractor evaluation.
- DOE NEPA Web and Related Information Resources: To provide for its rapid dissemination and easy access, DOE has made NEPA information available on the Internet via the World Wide Web. Section 8 of this guidance describes the DOE NEPA Web and related environmental information and guidance on contracting. The DOE NEPA Web site is updated frequently.

3. STATEMENTS OF WORK

Foundation for Selecting Contract Type and Incentives

The statement of work defines the services DOE is procuring to support its NEPA process. The statement of work is the Department's key direction to the contractor, and its specificity is critical to reducing costs while increasing the timeliness and quality of NEPA support. The NEPA Document Manager, in close cooperation with others involved in internal scoping, is the best person to prepare the statement of work.

- A statement of work forms the basis of the Contracting Officer's decisions on contract or task type (generally, fixed-price versus cost-reimbursement) and incentives to encourage attainment of desired outcomes and reward superior performance.
- A statement of work should emphasize what the contractor is to accomplish rather than how the work is to be done.
- A highly performance-specific statement of work permits prospective NEPA contractors to price their offers more accurately and allows price competition to be effective. Vague statements of work will elicit vague proposals, with budgetary allowances to protect the offeror from underestimating the complexity or scope of the job. It then becomes harder for the source selection team to compare proposals on the basis of technical adequacy or value for cost. The greater the specificity, the better the potential fit to a fixed-price contract. Low specificity generally requires a cost-reimbursement type contract.
- A statement of work may specify performance elements (for example, document quality, cost, and timeliness) that DOE wishes to link to incentives. Contract incentives are discussed in Section 4 of this guidance.
- A clear, results-oriented statement of work facilitates DOE evaluation of NEPA contractor performance when the contract work is completed (discussed in Section 7 of this guidance).

Phased Contracting and Separate Statements of Work

Experience has shown that the NEPA process cannot be accurately forecast for many proposed actions. In fact, the more that information gained from the NEPA process influences project

planning, the more difficult it may be to predict contracting requirements. This makes internal scoping and statement of work preparation inherently difficult. For example, to use a fixed-price contract type for document preparation, the statement of work must be very specific. This in turn means that the NEPA process must be very predictable, the level and types of analyses known, public interest accurately gauged, and impact types and significance anticipated correctly.

One solution to this dilemma, for an environmental impact statement, is to prepare separate statements of work for the public scoping process and document preparation. This approach could be implemented as distinct tasks within a single contract, or, when consistent with the NEPA process schedule, in separate contracts. Using separate statements of work for public scoping support and document preparation support could convey several benefits:

- DOE could provide opportunities for diverse contractors, including small and small disadvantaged businesses, who may be qualified to support scoping activities but not the technical analysis required for document preparation.
- Because the scope of work for public scoping support can usually be quite specifically defined, performance incentives (discussed in Section 4) could more readily be incorporated in public scoping contracts.
- Phased contracting, when consistent with the overall schedule for the NEPA process, could support the development of a more specific statement of work for environmental impact statement preparation, based in part on information obtained from the public scoping process.

If the phased approach is followed, coordinated planning is needed to ensure that scoping information is completely and efficiently transferred. The document preparation contractor must become familiar with materials from the scoping phase and will undergo a "learning curve."

Model Statements of Work

To facilitate phased contracting as an alternative to the Department's usual NEPA procurement practice and to increase the level of detail in statements of work, this guidance provides two model statements of work (Exhibits 3.A and 3.B), one for the public scoping process for an environmental impact statement and another for preparing a draft and final statement. The model statements of work provide lists of typical contract deliverables. A sample timetable (Exhibit 3.C) illustrates how these contract deliverables could fit into a 15-month schedule for issuing an environmental impact statement (from issuing the notice of intent to issuing a final environmental impact statement).

While the models provide generic language, users should customize them to meet individual needs and provide project- and site-specific information. Of particular importance is project- or site-specific discussion of the purpose and need for agency action, alternatives to be analyzed, the nature and extent of required interagency consultation, the depth and breadth of impact analysis to be provided, and analytical models to be used.

DOE personnel should prepare the notice of intent to prepare an environmental impact statement and the statement of purpose and need for agency action because these items constitute policy positions. Therefore, the model statements of work do not cover these items, and they are not included in the schedule of contractor deliverables. (It may be appropriate, however, for a contractor to prepare an initial draft of a notice of intent.) The scoping results document is listed as the last deliverable for the scoping contract.

The model statements of work can be adapted to obtain well-defined, results-oriented statements of work in a range of contracting situations. For example, an organization that has established a single contract to prepare multiple NEPA documents as a series of tasks could adapt the model for each such task. If one contract is awarded for scoping and environmental impact statement preparation, the statements of work could be combined to cover both phases. The model statement of work for environmental impact statement preparation could also be modified for environmental assessment preparation.

Exhibit 3.A: Model Statement of Work for Support of Public Scoping for an Environmental Impact Statement ¹

1. Objective

The objective of this contract is to provide the Department of Energy (DOE) [specify Office name] with technical support services for public scoping for an environmental impact statement (EIS) to assess the environmental impacts associated with [specify the proposed project or program].

2. Background

[Provide relevant information on DOE's mission and the proposed site(s) of the proposed project or program.]

[Specify number/maximum number] EIS scoping meetings will be held in [specify location(s) and date(s), if determined].² DOE has scheduled the Notice of Intent to prepare the EIS to be published on [specify date], and public scoping meetings within [specify number] weeks thereafter.

DOE will establish an EIS Advisory and Review Team under the direction of the NEPA Document Manager with representatives from DOE Headquarters and Field Offices, as appropriate. [Discuss contractor relationship to team.]

[Discuss role of site advisory board in the scoping process.]

3. Scope of Work

The Contractor will arrange for and provide all logistical services necessary for [specify number/maximum number] public scoping meetings and receipt of public comments. The Contractor will catalog, collate, characterize, and summarize all comments received. Public scoping for the EIS will be conducted in accordance with all applicable requirements, including the requirements of the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500-1508), and DOE NEPA regulations (10 CFR Part 1021). Public scoping for the EIS will reflect application of "Effective Public Participation under the National Environmental Policy Act," issued December 1994 by the DOE Office of Environment, Safety and Health. The Contractor will provide all support services necessary for the scoping meetings and all records from the meetings, including transcripts of proceedings and oral comments, written comments, and documents and exhibits submitted.

¹ Generic language is provided to the extent possible. Placeholders for project- or site-specific discussions are indicated in brackets. An electronic file of this model statement of work is available on request from the Office of NEPA Policy and Assistance.

4. Requirements³

The Contractor shall perform the following:

1. The Contractor shall comply with all DOE safeguards and security requirements regarding entry to DOE and Site facilities.
2. The Contractor shall prepare a [specify draft EIS-specific Public Participation Plan⁴ or a work plan to apply an existing Public Participation Plan] that describes the interactions DOE will have with potentially affected communities; other Federal, State, Tribe, and local government agencies; private organizations; and the public at large. The Plan shall include methods to facilitate the involvement of minority and low-income communities. The Plan will address methods, public hearings, tours, maintenance of correspondence and document distribution lists, use of DOE public reading rooms, and any public interactions that DOE may prescribe or the Contractor proposes and DOE accepts for inclusion. The Contractor will revise the Public Participation Plan based on DOE instructions and submit the final plan to DOE for approval.
3. The Contractor shall support DOE in interactions with other government agencies at the Federal, State, Tribe, or local level and with other stakeholders. [Specify assistance needed.]
4. The Contractor shall use [specify software] for word processing. The Contractor shall use a computer-based system to enter, track, and retrieve public comments and their responses, and shall prepare a comprehensive distribution list of interested and affected parties.
5. The Contractor shall participate in technical meetings and progress review meetings. [Specify frequency and location of meetings.]
6. The Contractor shall provide planning, coordination, and logistic support for [specify number/maximum number] public scoping meetings to be held in [specify location(s)] in response to the Notice of Intent to prepare the EIS. The Contractor shall, at DOE's direction: establish the facility, date, and time for each scoping meeting and make necessary reservations; provide publicity, incoming toll-free phone line, setup, registration, security, handout copying and distribution, audio-visual and computer support, moderator, court reporter, language translator, and takedown support for the meetings; assist in preparing written instructions for all key meeting personnel, including opening and closing statements; and assist with preparing presentation materials.

³ If appropriate, the requirements statement may be written to allow DOE the option of making an assignment to a contractor by writing "if directed by DOE" before "the Contractor shall" or by indicating that DOE "may direct the Contractor to... or itself may..." However, this would lower the specificity of the statement of work, make proposing more difficult for offerors, and would tend to raise costs of the contracted work.

7. The Contractor shall perform quality-control review of transcripts, and shall provide DOE with transcripts of the public scoping meetings and copies of written comments. The Contractor shall assist DOE in distributing transcripts and comments.
8. The Contractor shall provide a scoping results document that catalogs, collates, categorizes [specify how; for example, by geographic location and by subject areas], and summarizes all comments received during the scoping meeting process.

5. Government-Furnished Information

1. Organization Public Participation Plan.
2. Quality Assurance Plan.
3. "Effective Public Participation under the National Environmental Policy Act," DOE, Office of Environment, Safety and Health, December 1994.
- [4. Specify other relevant guidance.]

6. Deliverables

The Contractor shall provide:

1. A draft [specify EIS-specific Public Participation Plan or work plan to apply an existing Public Participation Plan] for DOE review.
2. A revised [specify EIS-specific Public Participation Plan or work plan to apply an existing Public Participation Plan] for DOE approval.
3. [Specify number] copies of transcripts of the public scoping meeting(s).
4. [Specify number] copies of written public comments.
5. An electronic file and [specify number] copies of a public scoping results document and a distribution list.

Exhibit 3.B: Model Statement of Work for Support in Preparing an Environmental Impact Statement¹

1. Objective

The objective of this contract is to provide the Department of Energy (DOE) [specify Office name] with technical support services for preparing and issuing an environmental impact statement (EIS) and related documents to assess the environmental impacts associated with [specify the proposed project or program].

2. Background

[Provide relevant information on DOE's mission and the proposed site(s) of the proposed project or program.]

EIS scoping meetings [will be/have been] held in [specify location(s)] [and at other nearby communities potentially affected by the proposed project or program]. A Final EIS is scheduled for [specify quarter/year] and a Record of Decision for the EIS is scheduled to be issued by [specify quarter/year].

DOE will establish an EIS Advisory and Review Team under the direction of the NEPA Document Manager with representatives from DOE Headquarters and Field Offices, as appropriate. [Discuss contractor relationship to team.]

3. Scope of Work

The Contractor shall support the preparation of the EIS in accordance with all applicable requirements, including the requirements of the National Environmental Policy Act of 1969 (NEPA), Council on Environmental Quality regulations implementing NEPA (40 CFR Parts 1500-1508), and DOE NEPA regulations (10 CFR Part 1021). The EIS will reflect application of "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements," issued May 1993 by the DOE Office of Environment, Safety and Health. The Draft EIS will be prepared in accordance with the results of the public scoping process.²

[Include statement of purpose and need for DOE action.]

The EIS will analyze the environmental impacts of [specify the proposed project or program] for the preferred alternative (if one exists), a no-action alternative, and other reasonable alternatives. The analysis shall address direct, indirect, and cumulative effects on public and worker health and safety, air quality, water resources, biotic resources, ecosystem functioning,

¹ Generic language is provided to the extent possible. Placeholders for project- or site-specific discussions

cultural resources, socioeconomics, land use, and environmental justice. The analysis shall include potential effects from [specify, as appropriate: for example, construction, operation, and closure of facilities; onsite and offsite transportation of radioactive, hazardous, and mixed wastes; radiological and nonradiological releases under routine and accident conditions].

To the extent possible, the EIS will take into account any decisions that result from [specify other NEPA documents].³

4. Requirements⁴

The Contractor shall perform the following:

1. The Contractor shall comply with all DOE safeguards and security requirements applicable to DOE [and Site] facilities, documents, and information. The Contractor shall comply with all DOE [and Site] security requirements regarding handling of classified information. [The Contractor shall provide a minimum of [specify number] personnel who hold DOE "Q" clearances or who have held DOE "Q" clearances within the past four years and for whom not more than four years have passed since the last security clearance investigation.]⁵ [In the event that a classified appendix to the EIS is required, the Contractor shall prepare this classified appendix and will do so in either a DOE-approved security facility or in DOE-secured space.]
2. The Contractor shall support DOE in interactions with other government agencies at the Federal, State, Tribe, or local level. [This support shall be limited to document preparation and logistic support.] [This support shall include technical consultations with other Federal agencies, such as the Fish and Wildlife Service of the Department of the Interior, to address compliance with laws and regulations regarding other environmental review requirements, such as those regarding endangered species and cultural resources]. The Contractor shall also support DOE in interactions with other stakeholders [specify the assistance needed].
3. The Contractor shall use [specify software] for word processing. Algorithm software may be proprietary but calculations obtained from applying such software must be provided to DOE.

³ Specify past, present or reasonably foreseeable actions that should be included in the analysis of cumulative impacts.

⁴ If appropriate, the requirements statements may be written to allow DOE the option of making an assignment to a contractor by writing "if directed by DOE" before "the Contractor shall" or by indicating that DOE "may direct the Contractor to . . . or may itself . . ." However, this would lower the specificity of the statement of work, make proposing more difficult for offerors, and would tend to raise costs of the contracted work.

⁵ If security clearances are needed for contractor staff, they generally cannot be provided within the timeframe of an EIS. A proposal that does not provide sufficient staffing with the needed security clearance may not be responsive.

4. The Contractor shall establish and maintain a computer-based comment and document control system to enter, track, and retrieve public and internal comments and their responses; track revisions of text; and manage a comprehensive distribution list of interested and affected parties.
5. The Contractor shall participate in regular meetings and special progress review meetings. The Contractor shall participate in DOE review sessions of draft documents. [Identify frequency and location of meetings].
6. DOE shall not provide office space; the Contractor shall maintain offices in [specify location of Site or Area Office]. The Contractor shall operate the office with work space, support space, and conference space sufficient for a minimum of [specify number] employees on a full-time basis. The office should also include sufficient work space for [specify number] visiting DOE or other agency staff. The office should have conference space available for a meeting of [specify number] people.
7. DOE will provide available environmental and safety baseline documents, information, and computer files as necessary to support preparation of the EIS.⁶ The Contractor shall independently assess the adequacy and completeness of this baseline information, bring data gaps, omissions, or inconsistencies to the attention of DOE and, based on the Contractor's judgment of the importance of the data to understanding the impacts of the proposed project or program, request additional information or data needed to prepare the EIS. If directed by DOE, the Contractor shall conduct additional data collection and field studies under a data collection plan approved by DOE; statement of work, schedule, and budget will be modified as appropriate. The Contractor shall maximize the use of existing programmatic, environmental, and safety information documents in preparing the EIS.
8. The Contractor will present for DOE approval an analysis plan that documents the methodologies, models, assumptions, and associated data needs.
9. The Contractor shall coordinate and integrate the data and analysis inputs of supporting DOE, State, Tribe, and other Federal or Contractor personnel whom DOE may ask to provide information in specialized areas of expertise.
10. The Contractor shall provide support to DOE in implementing the Public Participation Plan in the manner and at the level required by DOE. This support will include routine and special mailings [provide detail], preparing presentation materials, establishing and staffing a toll-free telephone line, and other forms of communication.

⁶ In the interest of being specific, list document titles, authors, dates, and relevance.

11. The Contractor shall prepare a preliminary Draft EIS. The Contractor shall submit preliminary Draft EIS text, figures, and tables to DOE for review and shall participate in internal accuracy reviews. The Contractor shall support the compiling, tracking, and answering of DOE-provided comments and recommended changes to the preliminary Draft EIS. The Contractor shall perform revisions based on DOE instructions.
12. The Contractor shall support the presentation of the preliminary Draft EIS to the DOE EIS Advisory and Review Team. This support includes, but is not limited to, printing multiple copies of the preliminary Draft EIS and distributing them for review, collating comments, and revising the preliminary Draft EIS as required.
13. The Contractor shall prepare draft distribution letters and support distribution of the Draft EIS to appropriate government agencies and elected officials, and to all other interested or affected parties.⁷
14. The Contractor shall support the public hearing(s) on the Draft EIS. DOE anticipates holding public hearing(s) in [specify location(s)]. The Contractor shall establish the facility, date, and time (and reservations for same) for each public hearing; provide publicity, setup, registration, security, handout copying and distribution, audio visual and computer support, moderator, court reporter, language translator, and takedown support for the hearings; assist in preparing written instructions for all key hearing personnel, including opening and closing statements, if necessary; assist with preparing presentation materials; and provide timely distribution of hearing transcripts and written comments to public reading rooms and other interested and affected parties.
15. The Contractor shall categorize, collate, and assist in analyzing the comments received on the Draft EIS. The Contractor shall assist in preparing draft responses based on DOE instructions to all public comments for use in preparing the Final EIS, shall identify revisions needed in the Final EIS, and shall prepare a preliminary Final EIS that incorporates those revisions. After review by the DOE EIS Advisory and Review Team, the Contractor shall revise the draft responses based on DOE instructions.
16. The Contractor shall support additional review of the preliminary Final EIS, including responses to comments, and revise the document as required.
17. The Contractor shall assist in preparation of the Final EIS. The Final EIS shall include corrections, revisions, additions, and deletions to the Draft EIS based on comments by the public; State, Tribe, and local governments; other Federal agencies; or other information. The Contractor shall provide a means to identify and track review comments and text changes. Upon receiving approval from DOE, the Contractor shall provide [specify number] copies of the Final EIS, including all public comments and responses, for submittal to [specify Area Office/Operations Office/Program Office/Office of Environment, Safety and Health/Office of General Counsel] for final review and approval.

⁷ This statement of work assumes that DOE will procure printing of the approved Draft EIS and Final EIS

18. The Contractor shall prepare draft distribution letters and support distribution of the Final EIS to appropriate government agencies and elected officials, and to all other interested or affected parties.
19. The Contractor shall categorize, collate, and assist in analyzing any public comments received on the Final EIS. The Contractor shall assist in preparation of recommendations on disposition of any comments received.
20. The Contractor shall prepare a draft Record of Decision based upon the Final EIS and further direction from DOE. DOE will prepare the final Record of Decision.
21. During the course of the analysis for the EIS, it may become apparent that mitigation could reduce, avoid, eliminate, or compensate for the environmental impacts of a proposed action or alternative. If the analyses indicate the potential for such mitigation, the Contractor shall identify the mitigation for DOE to consider incorporating into the proposed action or alternative. The Contractor shall prepare a draft description of mitigation measures or a draft Mitigation Action Plan as directed by the NEPA Document Manager. The Contractor shall revise the Mitigation Action Plan based on DOE instructions.
22. The Contractor shall provide [specify number] copies of both DOE's draft Record of Decision and the final Mitigation Action Plan for DOE review and approval. The Contractor shall support the distribution of the approved Record of Decision to appropriate government agencies and elected officials, and to all other interested or affected parties, including all who provided comments on the Draft EIS.
23. The Contractor shall compile the Administrative Record file for the EIS and shall deliver the completed Administrative Record file to the location designated by the NEPA Document Manager.

5. Government-Furnished Information

1. Organization Public Participation Plan and, if available, EIS-specific Public Participation Plan.
2. Quality Assurance Plan.
3. Notice of Intent to Prepare an EIS.
4. Scoping Results Document.
5. Relevant programmatic, site-wide and other EISs for tiering purposes.
6. List of interested and affected parties.
7. Environment, Safety & Health baseline documents.

8. "Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements," DOE, Office of Environment, Safety and Health, May 1993.
9. "Effective Public Participation under the National Environmental Policy Act," DOE, Office of Environment, Safety and Health, December 1994.
- [10. Specify other relevant guidance.]

6. Deliverables

The Contractor shall provide:

1. A detailed list of information needs and data requirements that have not been provided by DOE.
2. A preliminary Draft EIS for DOE review.
3. A Draft EIS for DOE approval.
4. A camera-ready approved Draft EIS.
5. Draft distribution lists and draft transmittal letters for the Draft EIS.
6. [Specify number] transcripts of the public hearings on the Draft EIS for distribution within DOE and to public reading rooms.
7. Draft responses to public comments on the Draft EIS for DOE review.
8. A mitigation description, or draft Mitigation Action Plan (if required) for DOE review.
9. Final responses to public comments on the Draft EIS for DOE review (to be included in the Final EIS).
10. A preliminary Final EIS for DOE review.
11. A Final EIS for DOE approval.
12. A camera-ready approved Final EIS.
13. Draft distribution lists and draft transmittal letters for the Final EIS.
14. A draft Record of Decision.
15. A final Mitigation Action Plan (if required).

16. Draft responses to public comments (if received) on the Final EIS and, if directed to do so by DOE, revised responses.
17. The EIS Administrative Record file.
18. Cataloged and packaged original field notes, reference documents, photographs, graphics, and maps used in preparation of the EIS and supporting analyses for delivery to DOE upon completion of this contract.
19. An electronic copy of the Final EIS in a format specified by DOE.

7. Timeframes for Completion of Deliverables

Scheduled timeframes for completion of deliverables under this contract are as follows:

Deliverable 1	[1st Quarter] ⁸
Deliverable 2	[2nd Quarter]
Deliverables 3 through 5	[3rd Quarter]
Deliverables 6 through 7	[4th Quarter]
Deliverables 8 through 13	[5th Quarter]
Deliverables 14 through 19	[6th Quarter]

⁸ The deliverable schedule and accompanying timetable in Exhibit 3.C correspond to a 15- month schedule from Notice of Intent to Final EIS.

4. CONTRACTS AND INCENTIVES

Objectives of NEPA Contracting

Contractors may perform activities in virtually all aspects of DOE's NEPA process: public involvement, scoping, data collection and analysis, document preparation, and responding to technical public comments. Key objectives of contracting for NEPA process support are to reduce the costs of these services while maintaining quality contractor performance and to have contractor services available in time to be useful.

Contract Types¹

Although Contracting Officers select and negotiate contracts for NEPA process support based on the statement of work (see Section 3), NEPA Document Managers and others who have NEPA process responsibilities should understand general contracting options and discuss with their Contracting Officers the best way to contract for their particular needs.

There are a number of ways to describe the types of contracts used in Federal acquisitions.

- Government contract types, for example, may be categorized according to the basic types of **pricing arrangements** used:
 - The **fixed price** contract, where the contractor is paid a specified price for performing the work.
 - The **cost reimbursement** contract, where the contractor is reimbursed for the allowable costs incurred in performance of the contract.

In their purest forms, these types of contracts are distinguished by the **degree of risk** of the cost of performance that is allocated to the contractor.

- In the **firm fixed price contract**, the contractor must complete the work to receive the price, which is pre-established and is not influenced by the cost of performance.

Thus, if the costs are greater than the price, the contractor will suffer a loss. Conversely, the lower the cost, the greater will be the profits.

¹ This subsection is based on Formation of Government Contracts (Second Edition), Chapter 7, 1986, by John Cibinic, Jr., and Ralph C. Nash, Jr., George Washington University, Government Contracts Program.

- In contrast, under a **cost plus fixed fee contract**, the contractor's fee is not affected by the cost of performance because incurred cost will be reimbursed and the amount of the fee is fixed.

If the costs of performance are higher than estimated, the contractor is not obligated to complete the work if the Government does not furnish additional funds. Further, it is unlikely that the contractor would incur any liability for defective or untimely work.

Refinements in contracting techniques have resulted in a variety of types of fixed price and cost reimbursement contracts, which alter the normal risk distribution and distinctions between these basic contract types. The major category of contract types that fall in this middle ground are called **incentive contracts**, wherein the parties share the risk by negotiating arrangements that alter the contractor's fee based on the cost of performance, schedule for delivery, or quality of performance.

- Government contract types also may be categorized according to form or structure. For example, under **level of effort contracts**, the Government relieves the contractor of risk by contracting for a level of effort rather than for a completed job or task.
- The Government also uses several different types of **indefinite delivery contracts**, the most common being requirements contracts and indefinite quantity contracts. **Task order contracts**² are a type of indefinite delivery/indefinite quantity contract that may be particularly useful in improving the NEPA contracting process, as discussed further below. A task order contract does not specify a firm quantity of services (other than a minimum or maximum quantity) and provides for the issuance of orders for the performance of tasks during the period of the contract.

Exhibit 4 summarizes the characteristics of various types of Federal contracts.

Selecting a Contract Type for NEPA Support

Type of contract should encourage efficient and economical performance.

There is no one best contract type for NEPA process support. While DOE's NEPA process support has historically been performed under cost reimbursement contracts, other types of contracts, including fixed price where appropriate, may encourage more cost effective performance. In some cases, it may be best to conduct different aspects of the NEPA process under different types of contracts.

NEPA and procurement personnel need to closely and continuously cooperate to:

² Federal Acquisition Streamlining Act of 1994 and 48 CFR 16.501-1.

- select the most appropriate type of contract.
- develop contract provisions that specify performance requirements.
- motivate contractor performance.

Task order contracts can make contractors available to work on short notice.

Of special applicability to NEPA activities are contracts under which tasks may be placed for work. These may be useful for an organization that will conduct multiple NEPA processes or where several organizations are interested in teaming together to place their requirements in one contract. A substantial portion of the procurement process to establish such contracts may be completed before the need for specific tasks has materialized. The contractor thereby is made available to begin work shortly after tasks are developed and assigned. This arrangement minimizes lead times for start of work once the contract has been awarded.

Multiple task order contracts provide incentive for lower cost and higher quality in addition to making contractors available to work on short notice.

If sufficient NEPA work exists for one or more organizations, multiple task order contracts may be issued. Under this approach, a single solicitation results in contract awards to more than one company for NEPA support services. In accordance with the terms of the contracts, the contractors are then provided a fair opportunity to be considered for individual tasks. This approach seeks to enhance price competition for work under the contract as well as reward better performers with future tasks.

Performance Incentives

Contracts for the preparation of environmental assessments and environmental impact statements should contain incentives to encourage superior performance. The term "incentive" is used very broadly in this guidance to refer to a circumstance that motivates a contractor to produce desired outcomes.

Incentives can be financial or nonfinancial.

- Financial incentives include the possibility of monetary awards or future work (such as extensions (the exercise of "options") or additional tasks under an existing contract).
- Nonfinancial incentives include the possibility of outstanding performance evaluations, favorable recommendations, and commendations (such as a "contractor of the year" award), which may be used as past performance information in future competitions.

To have effective incentives for desired performance elements -- such as quality of deliverables, cost, or schedule -- a contract must specify measures and expectations.

- **Measures** are the characteristics by which the product (environmental assessment, environmental impact statement, or parts thereof) will be evaluated. A measure for document quality, for example, could be consistency with a list developed by the NEPA Document Manager of requirements for document content. A measure for cost could be dollars of deviation from a cost estimate proposed by the contractor. A measure of timeliness could be days of deviation from a schedule for the NEPA process deliverables.
- **Expectations** are the standards that DOE desires the contractor to achieve. Using the examples above, expectations could be that all document requirements will be met, the cost estimate not exceeded, and the deliverable dates attained. An expectation should be measurable (that is, it should be possible to tell whether the expectation was met), economical to apply (should not require elaborate procedures or analysis), and attainable (should not penalize the contractor for circumstances not under its control).

Incentives should be tailored to the individual NEPA process.

Incorporating Incentives in NEPA Contracts

Provide threshold levels of performance for quality, timeliness, and cost.

Incentives should be crafted in a way that avoids encouraging contractors to focus on some elements of the work at the expense of others. Therefore, at a minimum, baseline criteria (threshold levels of performance) for adequate quality, timeliness, and cost for all elements of work under the contract should be present in all NEPA support contracts. Incentives may be developed for elements of the work where superior performance is particularly important to the NEPA process.

Follow fundamental principles for any incentive.

Incentives should:

- Facilitate the attainment of specific contract objectives.
- Be well communicated to the contractor -- simple, declarative, and unambiguous (avoid competing or offsetting goals).
- Positively motivate contractor efforts and discourage inefficiency and waste.
- Be supported by identified performance, cost, and schedule baselines and appropriate tracking systems.

- Ensure that the contractor's accounting system is set up and administered properly.
- Ensure that DOE has the skills and resources to administer the negotiated arrangement.

Recognize that effective use of incentives requires good administration.

- Regardless of the mechanism used to motivate high contractor performance, good Departmental administration of a contract is key to the success of incentives.
- Creating incentives in contracts requires considerable skill. Contracts with technical performance incentives or multiple incentives should be negotiated in full coordination with technical specialists and contracting personnel.
- The more specific the statement of work or other parts of the contract are with regard to desired contractor performance, the easier it will be to establish incentives and evaluate contractor performance.

Implementation

Establishing task order contracts ahead of the need for specific NEPA document support can provide needed support on short notice, and greatly shorten overall NEPA process time. Caution should be exercised, however, to ensure that "stand-by" administrative costs are minimized. When multiple such contracts are awarded, competition for tasks may be especially effective in controlling cost and maintaining quality of the NEPA support work. Incentives also should be judiciously applied to enhance specific outcomes.

Exhibit 4: Characteristics of Various Types of Federal Contracts^{1,2}					
	FIRM FIXED PRICE (FFP)	INDEFINITE DELIVERY (ID)	FIXED PRICE ECON. PRICE ADJUSTMENT (FPEPA)	FIXED PRICE AWARD FEE (FPAF)	FP PROSPECTIVE REDETERMINABLE (FPPRD)
Principal Risk to Be Mitigated	None. Costs of performance can be estimated with a high degree of confidence. Thus, the contractor assumes the risk.	At the time of award, delivery requirements are not certain. Use: <ul style="list-style-type: none"> • Definite Quantity (if the required quantity is known and funded at the time of award). • Indefinite Quantity (if the minimum quantity required is known and funded at award.) • Requirements (if no commitment on quantity is possible at award.) 	Market prices for required labor and/or materials are likely to be highly unstable over the life of the contract.	Acceptance criteria are inherently judgmental, with a corresponding risk that the end user will not be fully satisfied.	Costs of performance can be estimated with confidence only for the first year of performance.
Use When:	<ul style="list-style-type: none"> • The requirement is well-defined. • Contractors are experienced in meeting it. • Market conditions are stable. • Financial risks are otherwise insignificant. 		The market prices at risk are severable and significant. The risk stems from industry-wide contingencies beyond the contractor's control. The dollars at risk outweigh the administrative burdens of an FPEPA.	Judgmental standards can be fairly applied by an Award Fee panel. The potential fee is large enough to both: <ul style="list-style-type: none"> • Provide a meaningful incentive. • Justify the administrative burdens of an FPAF. 	The Government needs a firm commitment from the contractor to deliver the supplies or services during subsequent years. The dollars at risk outweigh the administrative burdens of an FPPRD.
Elements	A firm fixed price for each line item or one or more groupings of line items.	<ul style="list-style-type: none"> • Performance period. • Ordering activities and delivery points. • Maximum or minimum limit (if any) on each order. • Extent of each party's commitment on quantity. 	A fixed price, ceiling on upward adjustment, and a formula for adjusting the price up or down based on: <ul style="list-style-type: none"> • Established prices. • Actual costs of the labor or materials. • Labor or material indices. 	<ul style="list-style-type: none"> • A firm fixed price. • Standards for evaluating performance. • Procedures for calculating a "fee" based on performance against the standards.³ 	<ul style="list-style-type: none"> • Fixed price for the first period. • Proposed subsequent periods (at least 12 months apart). • Timetable for pricing the next period(s).
The Contractor Is Obligated To:	Provide an acceptable deliverable at the time, place, and price specified in the contract	Provide acceptable deliverables at the per unit price when and where specified in each order, within the contractual ordering limits.	Provide an acceptable deliverable at the time and place specified in the contract at the adjusted price.	Perform at the time, place, and the price fixed in the contract.	Provide acceptable deliverables at the time and place specified in the contract at the price established for each period.
Contractor's Incentive (other than maximizing Goodwill)⁴	Generally makes a dollar of profit for every dollar that costs are reduced.	Incentives will vary depending on whether a fixed fee or cost-type compensation arrangement is employed.	Generally makes a dollar of profit for every dollar that costs are reduced.	Generally makes a dollar of profit for every dollar that costs are reduced; earns an additional fee for satisfying the performance standards.	From the period of performance, makes a dollar of profit for every dollar that costs are reduced.
A Typical Application	Commercial supplies and services.	Longterm contracts for commercial supplies and support services.	Longterm contracts for commercial supplies during a period of high inflation.	Installation support services.	Longterm production of spare parts for a major system.
Principal Limitations In FAR Parts 16, 32, 35, and 52	Generally not appropriate for Research and Development			Must be negotiated.	Must be negotiated. Contractor needs and adequate accounting system. Prompt redeterminations.
Variants	Firm Fixed Price Level of Effort.				Retroactive Redetermination.
<p>¹ This table is modified from Contract Specialist Workbook: A "How-To" Guide for Performing 78 Essential Duties (Second Edition), March 1993, Federal Acquisition Institute, Office of Acquisition Policy, General Services Administration (Appendix I, Unit 19, pp. 19.1-12 and 19.1-13); available on the Internet at http://www.GSA.gov/staffv/homepages/workbook.htm at the end of Unit 18.</p> <p>² The Federal Acquisition Regulation (FAR) also describes fixed-price level of effort contracts, which are not included in this table (48 CFR 16.207).</p>					

FIXED PRICE INCENTIVE (FPI)	COST PLUS FIXED FEE (CPFF)	COST PLUS INCENTIVE FEE (CPIF)	COST PLUS AWARD FEE (CPAF)	COST OR COST SHARING (C/CS)	TIME & MATERIALS (T&M)
Labor or material requirements for the work are moderately uncertain. Hence, the Government assumes part of the risk.	Labor hours, labor mix, and/or material requirements (among other things) necessary to perform are highly uncertain and speculative. Hence, the Government assumes the risks inherent in the contract - benefiting if the actual cost is lower than the expected cost; losing if the work cannot be completed within the expected cost of performance. Some cost type contracts include procedures for raising or lowering the fee as an incentive for the contractor to perform at lower cost and/or attain performance goals.				
A ceiling price can be established that covers the most probable risks inherent in the nature of the work. The proposed profit sharing formula would motivate the contractor to control costs and meet other objectives.	Relating fee to performance (e.g., to actual costs) would be unworkable or of marginal utility.	An objective relationship can be established between the fee and such measures of performance as actual costs, delivery dates, performance benchmarks, and the like.	Objective targets are not feasible for critical aspects of performance. Judgmental standards can be fairly applied. ³ The potential fee would provide a meaningful incentive.	<ul style="list-style-type: none"> The contractor expects substantial compensating benefits for absorbing part of the costs and/or foregoing fee, or The vendor is a nonprofit entity. 	Costs are too low to justify an audit of the contractor's indirect expenses.
<ul style="list-style-type: none"> A ceiling price. Target cost. Target profit. Delivery, quality, and/or other performance targets (optional). A profit sharing formula. 	<ul style="list-style-type: none"> Target cost. A fixed fee. 	<ul style="list-style-type: none"> Target cost. Performance targets (optional). Minimum, maximum, and target fee. A formula for adjusting fee based on actual costs and/or performance. 	<ul style="list-style-type: none"> Target cost. Standards for evaluating performance. A base and maximum fee. Procedures for adjusting the fee based on performance against standards. 	<ul style="list-style-type: none"> Target cost. If CS, an agreement on the Government's share of the cost. No fee. 	<ul style="list-style-type: none"> A ceiling price. A per hour labor rate that also covers overhead and profit. Provisions for reimbursing direct material costs.
Provide an acceptable deliverable at the time and place specified in the contract at or below the ceiling price.	Make a good faith effort to meet the Government's needs within the estimated cost in the Schedule.				Make a good faith effort to meet the Government's needs within the "ceiling price."
Realizes a higher profit by completing the work below the ceiling price and/or by meeting objective performance targets.	Realizes a higher rate of return (i.e., fee divided by total cost) as total cost decreases.	Realizes a higher fee by completing the work at a lower cost and/or by meeting other objective performance targets.	Realizes a higher fee by meeting judgmental performance standards.	If CS, shares in the cost of providing a deliverable of mutual benefit.	
Production of a major system based on a prototype.	Research study.	Research and development of the prototype for a major system.	Large scale research study.	Joint research with educational institutions.	Emergency repairs to heating plants and aircraft engines.
Must be negotiated. Contractor needs an adequate accounting system. Targets must be supported by cost data.	Must be negotiated and justified. The contractor must have an adequate accounting system. The Government must closely monitor the contractor's work to ensure use of efficient methods and cost controls. There are statutory and regulatory limits on the fees that may be negotiated. Must include the applicable "Limitation of Cost" clause from FAR 52.232-20 through 23.				Must be justified, and negotiated. The Government must closely monitor the contractor's work to ensure efficient performance.
Firm or Successive Targets.	Completion or Term.				Labor Hour.
³ The amount of the award fee is not subject to the Disputes Clause. ⁴ Goodwill is the value of the name, reputation, location and other intangible assets of a firm.					

5. THE NEPA DOCUMENT MANAGER AND EFFECTIVE CONTRACT MANAGEMENT

The Council on Environmental Quality's NEPA regulations address a Federal agency's responsibilities regarding a contractor-prepared EIS [40 CFR 1506.5(c)]. The regulations require the "responsible Federal official" to "furnish guidance and participate in the preparation and . . . independently evaluate the [document] prior to its approval and take responsibility for its scope and contents." In the DOE NEPA process, the NEPA Document Manager fulfills this role and acts as the interface between DOE and the contractor. NEPA contract reform depends in large part on effective contract management.

- The advice in this section is presented in a framework for contractor-supported document preparation, but the general principles apply as well to document preparation by applicants or in-house Federal staff. Under all these arrangements, effective management is needed to assure timely and cost-effective results.
- Established project management techniques and tools should be applied to the NEPA process as appropriate; managing the NEPA process is not conceptually different from managing other processes. A wide variety of techniques and tools is available, and no single approach is best for all situations. NEPA processes that involve complex issues and multiple sites need more intensive management than those that do not (the "sliding scale" approach).

This section addresses some of the responsibilities of the NEPA Document Manager under the DOE NEPA Order (DOE O 451.1, paragraph 5e): to conduct early planning, establish teams, conduct internal scoping, and manage the NEPA document preparation process.³ In order to meet these responsibilities, the NEPA Document Manager should be:

- Designated early enough in the NEPA process for a specific proposal to conduct internal scoping and take any training needed to improve NEPA or project management skills.
- Given adequate authority within a Field or Program Office to "own" the NEPA process for the proposed action and to resolve any conflicts between DOE and the contractor.

³ The NEPA Document Manager's responsibilities under the DOE NEPA Order to monitor cost (and schedule) and to evaluate contractor support are discussed in Sections 6 and 7, respectively. Other NEPA Document Manager responsibilities under the DOE Order, concerning public participation in the NEPA process and reporting on lessons learned after completion of an environmental assessment or environmental impact statement, are outside the scope of this NEPA contracting guidance. The Office of Environment, Safety and Health's "Guidance on Effective Public Participation under the National Environmental Policy Act," issued in December 1994, provides guidance on encouraging and facilitating public participation through the NEPA process.

Early Planning

NEPA document preparation often has been characterized by "crisis" management: NEPA requirements have been considered so late in a project planning process that NEPA document preparation has been largely driven by exigencies of the moment, with no overall goal and plan and with conflicting demands from several DOE sources. Also, DOE often directs contractors to start document preparation before DOE knows what it wants the contractors to do. As with any process, cost-effective and time-efficient NEPA process management requires good planning from the start.

- For a well-executed NEPA process, DOE managers must recognize the need for the NEPA process early in project planning. A manager responsible for a proposed project (e.g., a Head of a Field Organization or a Secretarial Officer) must designate a DOE NEPA Document Manager (DOE O 451.1, paragraph 5a(2)), and, to permit effective planning, should do so as early as possible.
- NEPA compliance should not be treated as "just another permit," decoupled from overall decision making for the proposed project. Rather, the NEPA process should be an integral part of early project planning (e.g., along with project description, technical analyses, cost studies, and policy determinations).
- The hallmarks of the NEPA process -- consideration of need, alternatives, consequences, and views of stakeholders -- are also the essence of effective project planning.
- An early decision regarding whether a contractor will support NEPA document preparation enables a contractor to participate in planning.
- Early determination of the level of NEPA documentation helps planning.

The NEPA Process as a Team Effort

Under the DOE NEPA Order (paragraph 1, Objective), the NEPA process should be a team effort. The team approach promotes timely decisions on important issues in the NEPA process, including general agreement on scope, thus avoiding false starts, redundant analyses, and schedule delays.

The NEPA process may involve several teams, depending on the complexity, importance, and urgency of the matter being addressed. Such teams may perform different activities, have

distinct (though possibly overlapping) membership, and be active at different times in the NEPA process. The NEPA Document Manager should establish and coordinate the teams in collaboration with the managements of the involved offices. The following describes one possible arrangement; in practice, the number of teams and their functions should be designed to fit the specific circumstances.

- A **document preparation team** prepares the draft document for DOE review and responds to comments, from both internal and public review, to prepare the final document. For a contractor-supported document, the NEPA Document Manager would provide overall direction to the team assembled and directed by the contractor project manager. The document preparation team could also include DOE personnel to provide Departmental expertise and viewpoints early in the document preparation process.
- An **advisory and review team** includes staff or middle-management level members from all relevant DOE offices to provide frequent advice, assistance, and review to ensure early recognition of policy, programmatic, and legal considerations. This group serves as the internal review team for draft documents.
- For proposed actions that involve multiple program areas or have broad policy implications, an **executive committee** of Assistant Secretary- or other senior manager-level members assures that the NEPA process will provide the environmental information that the decision makers want and need, resolves policy issues brought to it by the lower level team(s), and later concurs in and approves documents and assists in making final decisions.

Internal Scoping

The NEPA Document Manager should conduct internal scoping as early in the NEPA process as possible. Among other benefits, a successful internal scoping process helps to clarify DOE's needs and expectations to the contractor, enabling better use of incentives or fixed-price contracts. Therefore, to the extent possible, the NEPA Document Manager should conduct internal scoping before DOE issues a request for proposals (for a new contract) or requests task proposals (under an existing contract).

In the internal scoping process, the NEPA Document Manager should engage appropriate program and legal counsel staff of the responsible Program or Field Office, with staff of other affected offices, in:

- Defining the purpose and need for agency action, and identifying the proposed action and reasonable alternatives. For an environmental impact statement, obtain endorsements from top managers of all involved DOE elements of the most significant internal scoping results, including the statement of purpose and need, before using the results in a notice of intent or the contractor statement of work. NEPA Document Managers also should consider such endorsements for important environmental assessments.
- Identifying issues relating to the scope of the NEPA process -- such as stakeholder concerns, if known before public scoping.
- In light of the scope and issues, estimating resource needs: special expertise, level of effort (both Federal and contractor), timing and phasing of work.

Managing the NEPA Document Preparation Process

Managing is an active process of controlling and directing resources to an end product -- in the NEPA Document Manager's case, an environmental impact assessment process and its resulting documentation. The NEPA Document Manager needs a comprehensive plan and procedures for leading this process. Tools, training, and other resources may help the NEPA Document Manager.

A Document Management Plan May Be Helpful

The NEPA Document Manager may find it useful to establish a Document Management Plan to present a comprehensive strategy for completing a NEPA process on schedule and within budget requirements. The degree of formality and level of detail of any such Plan should correspond to the complexity of the NEPA process it addresses. Although elements of such a Plan may be obtained from other documents, such as the statement of work, other parts of the contract, or the office's Quality Assurance Plan, it may be useful to assemble them into a single reference.

- **Objective:** A Document Management Plan would facilitate effective management of the NEPA process and contractor support.
- **Timing:** After DOE awards a contract or assigns a task for preparation of a NEPA document, the NEPA Document Manager would prepare (or "assemble") a Document

Management Plan. Any such Plan would change as the NEPA process progresses to maintain an appropriate strategy as circumstances change.

- **Basis:** The Document Management Plan would incorporate the internal scoping process results and be based on the contract or task statement of work.
- **Content:** The level of detail of any Document Management Plan should correspond to the complexity of the NEPA process. Elements of a Plan could include:
 - The roles and responsibilities of the teams and their members.
 - The description of tasks and subtasks (including their sequence and linkages) to complete the NEPA process (called the Work Breakdown Structure in project management literature), at a level of detail commensurate with the level of resources being managed.
 - Estimates of the needed level of effort (staffing and hours, both Federal and contractor) to accomplish the tasks and subtasks.
 - A schedule for the tasks and subtasks, prepared in consultation with all involved parties.
 - Specifications for the contractor's interim progress and cost reports, and the NEPA Document Manager's process for reviewing and tracking progress and cost.
 - The frequency and nature of progress review meetings with the contractor.
 - A system for identifying and tracking the resolution of important issues during document preparation.
 - Assignment of responsibility for maintaining the NEPA process records.
 - Provision for recording observations to form the basis for reporting lessons learned and evaluating contractor performance.

Providing Technical Direction

When a NEPA document is being prepared primarily by a contractor, the NEPA Document Manager is the liaison between DOE and the contractor. Fulfilling the requirements cited at the beginning of this section to "furnish guidance and participate in the preparation and . . . independently evaluate the [document] prior to its approval and take responsibility for its scope and contents" depends on the NEPA Document Manager's ability to (1) direct the contractor and (2) marshal appropriate DOE resources.

- A Contracting Officer's Representative⁴ (COR) is the person authorized under a contract to provide direction to the contractor, and is responsible for tracking progress and verifying the accuracy and reasonableness of vouchers. Accordingly, it is best that the NEPA Document Manager be the COR. To be appointed COR by a Contracting Officer, a DOE employee must complete 24 hours of formal education in basic procurement or contract administration, or have had one year of experience as a COR at another Federal agency.
- If the NEPA Document Manager is not the COR, then the two should work closely together to effectively guide the contractor. This can be done best when the Contracting Officer grants the NEPA Document Manager limited authority to provide technical direction (but not to review vouchers).

In determining the requirements and technical direction for a specific environmental assessment or environmental impact statement, the NEPA Document Manager should consult DOE team members, cognizant NEPA Compliance Officers, and legal counsel. Based on these consultations, the NEPA Document Manager should explicitly direct and guide the document preparer on the document's scope, content, and layout. The NEPA Document Manager should provide this direction before significant document preparation effort is expended.

Resources and Continuing Education for the NEPA Document Manager

NEPA expertise, training, and tools are available to assist the NEPA Document Manager in managing the document preparation process.

- NEPA Expertise:
 - DOE maintains a system of NEPA Compliance Officers as a major resource of NEPA expertise, which would be especially useful to NEPA Document Managers who do not have substantial backgrounds in meeting NEPA

⁴ Variants of the term include Contracting Officer's Technical Representative.

requirements. The DOE NEPA Order (O 451.1, paragraph 5.d) includes among the NEPA Compliance Officer's responsibilities with respect to the NEPA process, to "coordinate NEPA compliance strategies for matters within the office's purview"; "assist with the NEPA process and document preparation"; and "advise on the adequacy of NEPA documents and other related documents."

- NEPA Document Managers and other DOE and contractor personnel involved in the NEPA process may attain a working knowledge of NEPA through training offered by the Office of NEPA Policy and Assistance, Program and Field NEPA Compliance Officers, and the private sector.
- Other Training: To effectively establish and manage contracts for the preparation of NEPA documents, NEPA Document Managers need to apply project and contract management techniques. The DOE Office of Human Resources and Administration provides project management and contracting training (listed in Exhibit 5). NEPA Document Managers may find the COR training useful, even if they will not serve officially as CORs.
- Tools:
 - Project management and tracking software (or simple techniques for short, well-characterized documents) are available. Current sources of information may be located on the Internet by performing a search using keywords such as "project management software."
 - An extensive set of NEPA Tools, including guidance, orders, and regulations, may be found on the DOE NEPA Web, described in Section 8.

Exhibit 5: DOE Training Resources for the NEPA Document Manager

The Department offers a range of training courses that the NEPA Document Managers can use to develop skills useful for managing the contractor-assisted NEPA process. The resources are listed in the Clearinghouse for Training, Education and Development, maintained by the DOE Office of Training and Human Resources Development. The Clearinghouse is a World Wide Web site located at: <http://cted.inel.gov/cted/>

The Clearinghouse contains up-to-date information on course content and scheduling. Registration information is available from office training coordinators. Courses on project management and contract management are summarized below.

Procurement and Assistance Skills Training Courses

Acquisition Management for Technical Personnel, on generating procurement requests, evaluating proposals, and participating in source selection activities; an initial course for prospective Contracting Officer's Representatives.

Contract Administration for Technical Representatives, on activities occurring during contract performance; a second course for prospective Contracting Officer's Representatives.

Performance-based Statements of Work, on developing technical requirements to be negotiated in contracts.

Project Management Skills Training Courses

Project Management Overview, on the DOE Project Management System: an overview of DOE project manager responsibilities for project initiation, planning, execution, transition, and closeout.

Cost and Schedule Estimation and Analysis, on developing project cost estimate and schedule baselines, and reviewing contractor cost and schedule estimates.

Project Execution, on the execution of projects according to the DOE Project Management System.

Best Practices in DOE Project Management, on project life cycle phases and DOE's current policies and trends for managing them.

Project Control Systems at DOE, on the elements of a project baseline, through multiple case study activities.

Budgeting and Accounting for DOE Program/Project Managers, on financial and managerial systems to accomplish the Department's budgeting and accounting processes.

6. NEPA PROCESS COST MEASUREMENT: TRACKING AND REPORTING

DOE Needs NEPA Process Cost Information

Although the Department has not tracked its NEPA process costs until recently, nor done so in a completely uniform fashion, certain basic conclusions can be drawn:

- The costs of both environmental assessments and environmental impact statements vary over very wide ranges.
- Routine environmental assessments and environmental impact statements cost DOE about \$20-30 million per year in total, and several major programmatic environmental impact statements have each cost tens of millions of dollars.
- By far, the major portion of DOE's NEPA process expenditure is for contractors that prepare NEPA documents.

These circumstances strongly suggest that there is room for greater efficiency and that contracting improvements pose the greatest potential for savings. This section describes a system for obtaining information about NEPA process costs, which may be used to achieve cost savings.

Cost tracking and reporting is necessary --

- To demonstrate commitment to cost control.
- To monitor progress, highlight successes, and learn from failures.
- To identify process strengths and weaknesses.
- To promote cost consciousness of NEPA practitioners.
- To help control costs of work in progress.
- To help project future costs for budgeting purposes and for specific NEPA process support procurements.
- To focus management attention and foster innovative cost control measures.

- To answer senior management and congressional inquiries about NEPA process costs, and whether DOE is getting sufficient benefit for its expenditures.

To satisfy these needs, DOE must identify bona fide NEPA process costs and collect cost data in a consistent and sufficiently unambiguous manner from all Department elements that conduct the NEPA process.

NEPA Process Cost Tracking and Reporting System

This section describes a uniform NEPA process cost measurement system, elements of which have functioned since late-1994. The system consists of the following steps.

- Each NEPA Document Manager tracks costs during a NEPA process to help control costs of work in progress and to record the information for later reporting. Promptly upon completing the NEPA process, the NEPA Document Manager fills out a Lessons Learned Questionnaire that includes a section for reporting cost information.⁵
- The NEPA Document Manager submits the completed Lessons Learned Questionnaire to the Office of NEPA Policy and Assistance, which compiles and disseminates individual and Department-wide results to the DOE NEPA community in Lessons Learned Quarterly Reports. These Quarterly Reports provide NEPA process improvement suggestions based on cost data and other information solicited in the Questionnaires.
- From time to time, the Office of NEPA Policy and Assistance analyzes cost data for trends and reports results and conclusions in the Quarterly Reports and at periodic meetings it convenes with the DOE NEPA community. Similarly, program and field offices may perform their own analyses, which may include cross-site and cross-program comparisons.

To be effective, this system requires a clear definition of NEPA process costs and a uniform

⁵ Specifically, environmental assessment costs should be reported upon completing the assessment and a determination based on the assessment. Environmental impact statement costs should be reported upon issuing the final statement. This approach omits the usually relatively minor costs associated with preparing a record of decision and, when appropriate, a mitigation action plan, which sometimes are issued well after the final statement. This approach, however, is consistent with the basis established for reporting NEPA process completion times (reference: Lessons Learned Quarterly Report).

reporting format.

Cost Definitions and Reporting Forms

This guidance provides definitions of key NEPA process cost elements and a reporting form. Using these tools should provide reliable, complete, and uniform reports on the costs of the NEPA process and not unduly burden NEPA Document Managers. This system, however, must be superimposed on an existing contracting and staffing framework that was not explicitly designed to provide this cost information. Consequently, each NEPA Document Manager will need to establish at the outset of each NEPA process, with the cooperation of Federal and contractor colleagues, an efficient case-by-case mechanism for tracking expenditures in various categories of activities.

NEPA Document Managers should obtain and report cost estimates on a good faith basis; informal arrangements may be quite effective for this purpose and accounting standards are neither necessary nor appropriate. A variety of tracking methods will result, but all NEPA Document Managers should avoid striving for unwarranted accuracy in determining minor costs.

Basic Definitions

NEPA process costs are expenses incurred by the Federal Government (not private applicants) that would not be incurred except for the NEPA process. It is difficult to estimate true NEPA process costs, however, because project or program planning, engineering, and general environmental compliance activities should be closely interwoven with NEPA compliance activities. The result is a degree of uncertainty in apportioning costs for work that may serve several purposes. The above definition is intended to minimize such uncertainty.

For example, **activities whose costs normally should not be attributed to the NEPA process** include engineering and design for the proposed action/preferred alternative, and detailed site characterization studies for engineering and construction purposes.

Activities whose costs normally should be attributed to the NEPA process include characterizing the affected environment, environmental impact analysis for the proposed action/preferred alternative and reasonable alternatives, document preparation and distribution, and public involvement activities that would not otherwise have been conducted.

Among the **ambiguous costs that will be counted as NEPA process costs** are those related to establishing the purpose and need for agency action and the reasonable alternatives, including associated conceptual design and engineering costs for reasonable alternatives. Such activities are explicitly needed for the NEPA process, but to a considerable extent they also are inherent characteristics of a good project or program management system. For clarity and consistency, however, these costs will be counted as NEPA process costs.

Certain other ambiguous costs also will be counted as NEPA costs. Costs for complying with environmental laws other than NEPA will be counted as NEPA process costs when the compliance process and associated information normally are integrated with and used in the NEPA process. Costs for conducting floodplain and wetland assessments and endangered species protection consultations, for example, are included as NEPA process costs, but costs for obtaining air and water discharge permits are not.

NEPA contractor costs are payments to a contractor for the full cost of work that falls within the definition of NEPA process costs, whether the contractor is engaged specifically for that task as a NEPA support contractor or performs the work as part of the duties of a Management and Operating contractor.

Although contractor costs account for the great majority of NEPA process costs overall, it is useful to record Federal staff participation costs for completeness and to enable studying cost differences for those situations where DOE prepares documents in-house. **Federal staff participation costs** are the salary, benefits and related support (rent, travel, etc.) costs for Federal personnel who participate substantially in the NEPA process for a specific proposed action, including planning, document preparation, management, and oversight functions. These costs should be based on estimates of the total full-time-equivalent labor (FTE-years) expended by DOE staff participants in direct support of that NEPA process, whether they are located in Field Offices or at Headquarters. For NEPA cost reporting purposes, an estimate of \$130,000 per FTE-year may be used for fiscal year 1997, based on broad DOE averages;⁶ NEPA Document Managers may describe and use an alternative method if they choose.

Reporting Forms

Exhibit 6.A is an environmental impact statement cost reporting form, and Exhibit 6.B is an environmental assessment cost reporting form, each accompanied by detailed instructions.

⁶ This figure should not be cited or used for other purposes without specific justification. The Office of NEPA Policy and Assistance will consult with the Office of Chief Financial Officer to revise this figure when appropriate. The result will be disseminated to the DOE NEPA community via the Lessons Learned Quarterly Report, the instructions for the Lessons Learned Questionnaire, and other means.

The reporting forms are a part of the Lessons Learned Questionnaire.

Exhibit 6.A: Environmental Impact Statement Cost Reporting Form

I. EIS TITLE:

EIS NUMBER: DOE/EIS-_____

II. COSTS BY EIS PHASE AND CATEGORY (\$1000)

COST CATEGORY	Planning • Internal scoping • Notice of Intent • Public Scoping	Draft EIS • Data collection • Analysis • Document preparation and distribution	Final EIS • Public participation • Responses to comments • Document preparation and distribution	CATEGORY TOTAL
A. NEPA Support Contractor(s)				
B. M&O Contractor(s)				
C. Federal Staff Participation				
D. Total for Phase				
E. Amount Budgeted				

III. SIGNATURE (NEPA Document Manager):

DATE:

Exhibit 6.A Continued

INSTRUCTIONS FOR COMPLETING ENVIRONMENTAL IMPACT STATEMENT COST REPORTING FORM

The Document Manager should submit this form to the Office of NEPA Policy and Assistance promptly upon the issuance of a final environmental impact statement (EIS).

NEPA process costs are expenses incurred by the Federal Government that would not be incurred except for the NEPA process. For example, **activities whose costs normally should not be attributed to the NEPA process** include engineering and design for the proposed action/preferred alternative, site characterization studies for engineering and construction purposes, and obtaining air and water discharge permits. **Activities whose costs normally should be attributed to the NEPA process** include characterizing the affected environment, environmental impact analysis for the proposed action and alternatives, document preparation and distribution, and public involvement activities that would not otherwise have been conducted. Costs for complying with environmental laws other than NEPA are included when the compliance process normally is integrated with the NEPA process, as for wetlands, floodplains, and endangered species. Costs related to establishing the purpose and need for agency action and reasonable alternatives, including associated conceptual design and engineering costs for alternatives, also should be counted as NEPA process costs.

Item II. Costs and Budget:

Row A: Payments to a NEPA support contractor(s) for work that falls within the definition of NEPA process costs.

Row B: Payments to a Management and Operating (M&O) contractor(s) for work that falls within the definition of NEPA process costs. NOTE: M&O contractors do not prepare EISs, but may provide information to be used in EISs.

Row C: Federal staff participation costs include salary, benefits, and related support (rent, travel, etc.) costs of Federal personnel who participate substantially in planning, preparing, managing or overseeing the EIS, whether located in the field or at headquarters, including Environment, Safety and Health and General Counsel staff. In estimating Federal staff participation costs for FY 1997, use \$130,000 per FTE-year¹ or describe and use an alternative method.

Hints for Rows A through C: Report costs as good faith estimates; accounting standards are neither necessary nor appropriate. Avoid striving for unwarranted accuracy in determining minor costs.

Row D: Enter for each EIS phase the sum of rows A through C.

Row E: Enter for each phase the amount budgeted at the start of the EIS.

Last Column: Enter the sum of the costs for all EIS phases for each cost category.

¹ This figure should not be cited or used for other purposes without specific justification. The Office of NEPA Policy and Assistance will consult with the Office of Chief Financial Officer to revise this figure when appropriate. The result will be disseminated to the DOE NEPA community via the Lessons Learned Quarterly Report, the instructions for the Lessons Learned Questionnaire, and other means.

Exhibit 6.B: Environmental Assessment Cost Reporting Form

I. EA TITLE:

EA NUMBER: DOE/EA-_____

II. COSTS BY EA PHASE AND CATEGORY (\$1000)

COST CATEGORY	Planning • Internal scoping • State/Tribe/Public notification	EA Preparation • Data collection/analysis • Document preparation • State/Tribe/Public review • Revision/printing distribution	Decision Making • Finding of No Significant Impact (when applicable)	CATEGORY TOTAL
A. NEPA Support Contractor(s)				
B. M&O Contractor(s)				
C. Federal staff participation				
D. Total for Phase				
E. Amount Budgeted				

III. SIGNATURE (NEPA Document Manager):

DATE:

Exhibit 6.B Continued

INSTRUCTIONS FOR COMPLETING ENVIRONMENTAL ASSESSMENT COST REPORTING FORM

The Document Manager should submit this form to the Office of NEPA Policy and Assistance promptly upon completing an environmental assessment (EA) and a determination based on the assessment.

NEPA process costs are expenses incurred by the Federal Government that would not be incurred except for the NEPA process. For example, **activities whose costs normally should not be attributed to the NEPA process** include engineering and design for the proposed action/preferred alternative, site characterization studies for engineering and construction purposes, and obtaining air and water discharge permits. **Activities whose costs normally should be attributed to the NEPA process** include characterizing the affected environment, environmental impact analysis for the proposed action and alternatives, document preparation and distribution, and public involvement activities that would not otherwise have been conducted. Costs for complying with environmental laws other than NEPA are included when the compliance process normally is integrated with the NEPA process, as for wetlands, floodplains, and endangered species. Costs related to establishing the purpose and need for agency action and reasonable alternatives, including associated conceptual design and engineering costs for alternatives, also should be counted as NEPA process costs.

Item II. Costs and Budget:

- Row A: Payments to a NEPA support contractor(s) for work that falls within the definition of NEPA process costs.
- Row B: Payments to a Management and Operating (M&O) contractor(s) for work that falls within the definition of NEPA process costs.
- Row C: Federal staff participation costs include salary, benefits, and related support (rent, travel, etc.) costs of Federal personnel who participate substantially in planning, preparing, managing, or overseeing the EA, whether located in the field or at headquarters, including Environment, Safety and Health and General Counsel staff. In estimating Federal staff participation costs for FY 1997, use \$130,000 per FTE-year¹ or describe and use an alternative method.

Hints for Rows A through C: Report costs as good faith estimates; accounting standards are neither necessary nor appropriate. Avoid striving for unwarranted accuracy in determining minor costs.

- Row D: Enter for each EA phase the sum of rows A through C.
- Row E: Enter for each phase the amount budgeted at the start of the EA.
- Last Column: Enter the sum of the costs for all EA phases for each cost category.

¹ This figure should not be cited or used for other purposes without specific justification. The Office of NEPA Policy and Assistance will consult with the Office of Chief Financial Officer to revise this figure when appropriate. The result will be disseminated to the DOE NEPA community via the Lessons Learned Quarterly Report, the instructions for the Lessons Learned Questionnaire, and other means.

7. CONTRACTOR PERFORMANCE EVALUATION

Purpose and Benefits

Government procurement officials increasingly recognize that performance evaluation supports incentives embodied in contracts and creates its own incentives for superior performance. Beginning in 1993, through a sequence of policy statements, laws, regulations, and guidance, the Federal Government has committed to systematically evaluate contractor performance and to use past performance information in awarding most competitive contracts. These actions are summarized in Exhibit 7.A. The incentive effect can work through several mechanisms:

- Performance evaluation can be used to determine incentive fees, if specified in the contract, thus promoting superior performance by providing the contractor direct, near-term financial reward for attaining specified goals.
- Even without incentive fees, knowledge of the factors upon which performance will be evaluated encourages a contractor to focus attention and direct efforts to those performance elements.
- A contract manager's awareness of the need to evaluate performance at the completion of work encourages closer management of work performance.
- Use of contractor past performance information as a factor in awarding future work provides the contractor long-term financial incentives to perform current tasks well.

In addition to these mechanisms, evaluation provides valuable feedback to the contractor by identifying elements of performance that could be improved in the future.

Compatibility of the General DOE and NEPA Contractor Evaluation Programs

DOE has developed a general program for evaluating contractor performance to implement the 1995 amendments to the Federal Acquisition Regulation (FAR). The DOE Procurement Executive implemented the Federal requirements by providing guidance, procedures, and a schedule for the systematic collection, evaluation, maintenance, and use of information pertaining to DOE contractor performance evaluation. In summary, the DOE-wide program requires a Contracting Officer to evaluate contractor performance when work under the contract

is completed and provide interim evaluations, due to the Office of Procurement by May 1 each year, when the contract period of performance exceeds one year.

The DOE NEPA Order (DOE O 451.1, paragraph 5e(7)) requires NEPA Document Managers to evaluate contractor performance upon completion of each environmental assessment and final environmental impact statement and discretionally at other times.⁷ NEPA Document Managers should provide completed NEPA evaluations to their respective Contracting Officers and a copy to the Office of NEPA Policy Assistance. By providing essential performance information from the technical office to the procurement office, the NEPA evaluation provides timely input to the general evaluation.

DOE NEPA Contractor Evaluation Procedures

The NEPA Contractor Performance Evaluation Form,⁸ which is provided at the end of this section, emphasizes performance elements that are specific and important to NEPA contracting. These elements correspond to the more generic evaluation criteria in the standard form that Contracting Officers prepare and submit for inclusion in an electronic database of contractor evaluations, the Past Performance Data Base.

- **Adopting the Evaluation Form:** NEPA Document Managers should provide the blank form to current NEPA contractors promptly for their information and to new NEPA contractors at the start of work.
- **Preparing the Evaluation:** NEPA Document Managers should solicit the participation of the NEPA Compliance Officer, staff of other DOE offices participating in the NEPA process and, as appropriate, decision makers.
- **Providing the Evaluation for Contractor Review:** The NEPA Document Manager must provide the evaluation to the contractor for review for a minimum of 30 days. The contractor may respond with comments, rebutting statements, or additional information. The NEPA Document Manager may change the evaluation based on the contractor's response.

⁷ The Office of NEPA Policy and Assistance conducted a nine-month Pilot Program (September 1995 through May 1996) for evaluating NEPA contractor performance, which provided NEPA Document Managers experience in evaluating performance of NEPA contractors and helped define a suitable evaluation form and procedures.

⁸ The evaluation form, which does not bear the page numbers or footers of this guidance document, may be photocopied for use. In addition, copies may be obtained from NEPA Compliance Officers and the Office of NEPA Policy and Assistance, and will be available on the DOE NEPA Web.

- **Providing the Completed Evaluation Form to the Contracting Officer:** The NEPA Document Manager should provide the completed NEPA evaluation form to the Contracting Officer after the contractor has reviewed and signed the form. The Contracting Officer should retain the completed NEPA evaluation form and use it to prepare the evaluation for electronic filing in the Past Performance Data Base.
- **Providing a Copy to the Office of NEPA Policy and Assistance:** The NEPA Document Manager should provide a copy of the evaluation to the Office of NEPA Policy and Assistance, which will look for lessons learned and potential for improving the evaluation process.
- **Retaining and Releasing Evaluations:** Contractor evaluations are labeled and protected as Source Selection Information and are exempt from release in response to requests under the Freedom of Information Act. Consistent with the FAR (48 CFR 42.1503 (e)), completed evaluations shall not be retained for longer than three years after completion of contract performance. During the period that the evaluation may be used to provide source selection information, Contracting Officers and NEPA Document Managers may release evaluation information only to Federal Government personnel and the contractor whose performance is being evaluated.

Past Performance Information in NEPA Source Selection

The Federal Government, including DOE, has committed to using past performance information in competitive procurements to (1) award contracts to firms with a history of high quality, responsive work and (2) create an incentive for high performance in current contracts. Past performance information is

. . . relevant information regarding a contractor's actions and performance under previously awarded contracts. It includes the record of conforming to contract requirements and to standards of good workmanship; the record of controlling and forecasting cost; adherence to contract schedules, including the administrative aspects of performance; the history for reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the contractor's businesslike concern for the interest of the customer.⁹

Sources of Past Performance Information

⁹ 48 CFR 42.1501 (60 FR 16720; March 31, 1995).

Information on past performance of a contractor offering NEPA support services should be obtained from several sources.

- A solicitation for offers (often referred to as a request for proposal) for NEPA support services should direct offerors to identify references from current contracts and relevant contracts completed within the last three years.
 - Requesting multiple references for each contract tends to increase reliability and breadth of information obtained from the references. To make the process manageable, however, the solicitation may limit the number of current and relevant contracts to be identified.
 - Procurement officials contemplating awards (often referred to as the source selection team) should develop a reference interview protocol for obtaining performance information from previous clients as identified by the offeror and verifying key elements of performance information submitted by the offeror.
 - FAR, 48 CFR §15.610(c)(6) and §15.1003(b)(4) prohibit release of the names of individuals providing reference information about an offeror's past performance.
- A solicitation also should state that an offeror's proposal should provide information (other than references) on past performance, such as problems encountered in past contracts and corrective actions taken, and relevant quality awards or certificates received.
- Federal procurement officials may obtain past performance information from the bidder's Contracting Officer for past contracts.
- Evaluations for fee payments or other purposes also may be used for past performance information.

Evaluating Past Performance Information in Source Selection

The source selection team should solicit information on all relevant dimensions of contractor performance, including:

- Conformance of services to contract requirements (quality of reports, adequacy of correction of deficiencies).

- Adequacy and effectiveness of contractor's quality assurance system.
- Timeliness (including adherence to contract delivery schedules, resolution of delays).
- Cost efficiency.
- Reasonableness and cooperativeness.

The performance elements considered during source selection should correspond to the most important factors anticipated in the NEPA processes covered by the scope of work, and, to the extent practicable, also should correspond to the performance elements on which DOE will evaluate the selected contractor.

Past performance information is subjective, in part, and must be interpreted and considered within the context of all other available data. The source selection team must judge the extent to which performance of previous contracts is likely to predict success under the contract contemplated, and assign an appropriate weight to this information. The Office of Management and Budget's Office of Federal Procurement Policy recommends that the past performance evaluation criteria in a solicitation be assigned at least 25 percent of the noncost evaluation factors or at least equal the weight assigned to other significant noncost evaluation factors, i.e., technical approach, qualifications of key management and technical personnel, planning and organization.

If an offeror has not had past performance relating to the solicitation, the source selection team will not evaluate the offeror favorably or unfavorably on this factor,¹⁰ and the offeror must receive a neutral evaluation for past performance.¹¹ A solicitation should clearly identify how a lack of past performance will be evaluated.

Sample Request for Past Performance Information

Exhibit 7.B is a sample request for past performance information to be included in a Request for Proposals (in Section L; Instructions). The NEPA Document Manager (or Contracting Officer's Representative) and the Contracting Officer, when working together to plan a NEPA process support procurement, should develop an information request that is tailored to the specific circumstances of the NEPA document(s) to be prepared under the contract.

¹⁰ Federal Acquisition Streamlining Act, Section 1091(b)(2).

¹¹ Federal Acquisition Regulation, 48 CFR 15.608(a)(2)(iii).

Exhibit 7.A: Government-wide Commitments to Performance Evaluation and Use of Past Performance Information

- The Office of Management and Budget, Office of Federal Procurement Policy, in its 1993 Policy Letter on Past Performance Information (58 Federal Register 3573, January 11, 1993), established a policy that requires Federal agencies to prepare evaluations of contractor performance and to phase in the use of past performance as an evaluation factor for competitive contracts.
- The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103-355) states in Section 1091 that past performance of an offeror is one of the relevant factors that agencies should consider in awarding contracts.
- The Federal Acquisition Regulation (48 CFR Parts 9, 15, and 42) was amended (60 Federal Register 16718, March 31, 1995) to establish procedures, requirements, and a schedule for evaluating contractor performance at contract completion and for using past performance information in procurements.

In summary, the Federal Acquisition Regulation requires an evaluation when the work under a contract is completed, and as required for contract administration purposes, for contracts valued at or above:

\$1,000,000	beginning July 1, 1995
\$ 500,000	beginning July 1, 1996
\$ 100,000	beginning January 1, 1998

Agencies must specify past performance as an evaluation factor in solicitations for offers for all negotiated contracts with estimated value in excess of:

\$1,000,000	issued on or after July 1, 1995
\$ 500,000	issued on or after July 1, 1997
\$ 100,000	issued on or after January 1, 1999

- The Office of Federal Procurement Policy's "Guide to Best Practices for Past Performance" (Interim Edition, May 1995) contains additional recommendations, lessons learned, and examples to assist in implementing contractor evaluation programs and using past performance information. In Appendix 1, twenty agencies, including the Department of Energy, pledged to use contractor past performance information in awarding contracts in recognition that doing so provides incentives to "strive for excellence."

**Exhibit 7.B: Sample Request for Past Performance Information
in Request for Proposal Instructions, Section L**

Each offeror will be evaluated on its performance under existing and prior contracts for similar products or services. The source selection will focus on information that demonstrates quality of performance on contracts that are similar in size and complexity to the procurement under consideration. Performance information will be used for both source selection responsibility determinations and as an evaluation factor. If an offeror does not have past performance relating to the solicitation, the source selection team will not evaluate the offeror favorably or unfavorably on this factor. [Provide specific procedures for this case.]

Offerors shall submit the following information as part of their proposal for both the offeror and proposed major subcontractors:

- A. A list of NEPA-related contracts completed during the past three years and all NEPA contracts and those involving environmental impact analysis currently in process. Contracts listed may include those entered into by the Federal, state, and local governments, and commercial customers. Include the following information for each contract:
 - 1. Contract title, number, start and end dates
 - 2. Total contract value
 - 3. Contracting officer and telephone
 - 4. Technical monitor name and telephone (Contracting Officer's Representative or equivalent)
 - 5. Description of work performed and list of major deliverables
 - 6. List of major subcontractors and role performed in work

- B. The offeror may provide information on problems encountered on the contracts or subcontracts identified in the list provided and corrective actions taken to resolve the problems. Offerors should not provide general information on their performance on the identified contracts or subcontracts. DOE will obtain general performance information from the references.

- C. The offeror may describe any relevant quality awards or certifications received. Identify whether the award was to the entire company or a division. Describe when the award or certification was bestowed. If the award or certification is more than three years old, present evidence that the qualifications still apply.

DOE NEPA Contractor Performance Evaluation

Source Selection Information; Not Subject to Release under Freedom of Information Act

1. CONTRACTOR/EVALUATION PERIOD

CONTRACTOR NAME AND ADDRESS _____ PERIOD COVERED BY EVALUATION: ____/____ through ____/____

2. CONTRACT/TASK INFORMATION

CONTRACT NUMBER _____ TASK NUMBER(S) _____

TYPE OF WORK PERFORMED (e.g., SCOPING, EA PREPARATION, EIS PREPARATION)

NEPA DOCUMENT NUMBER AND TITLE

3. OVERALL RATING AND RECOMMENDATION

OVERALL RATING

- Excellent Plus (5) Fair (2)
 Excellent (4) Poor (1)
 Good (3) Unsatisfactory (0)

RECOMMENDED FOR FUTURE CONTRACTS

- YES NO CONDITIONALLY

[Transferred from detailed evaluation in Item 5.]

[Explain No or Conditionally in Item 6.]

4. SIGNATURES

DOE NEPA DOCUMENT MANAGER
SIGNATURE

DATE

NAME/ADDRESS/PHONE/E-MAIL

[The NEPA Document Manager should provide the evaluation to the Contractor Project Manager for a minimum 30-day review; contractor comments on the evaluation should be noted in Item 7.]

CONTRACTOR PROJECT MANAGER
SIGNATURE

DATE

NAME/ADDRESS/PHONE/E-MAIL

[The Contractor Project Manager should return the signed evaluation to the NEPA Document Manager.]

CONTRACTING OFFICER NAME/ADDRESS/PHONE/E-MAIL

[The NEPA Document Manager should send the evaluation to the Contracting Officer and a copy to the Office of NEPA Policy and Assistance.]

5.

EVALUATION OF NEPA SUPPORT SERVICES

Evaluation Scale: Excellent Plus: Exceptionally high performance, including exceeding contract requirements.
 Excellent: Exceptional strength resulted in achieving all contract requirements.
 Good: Effective performance with minor issues that did not impact achievement of all contract requirements.
 Fair: Performance supported achievement of most contract requirements.
 Poor: Weakness compromised achievement of contract requirements.
 Unsatisfactory: Contract requirements were not achieved because of failings in this performance element.

If scope of work did not require this performance element or rating official could not evaluate this element, note in comment box.

5a. QUALITY	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
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Comment on technical accuracy, appropriateness and thoroughness of analysis, other aspects of deliverable quality:

[____ Comment continued in Item 6.]

5b. COST CONTROL	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
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Comment on contractor's adherence to established budget, assignment of personnel of appropriate technical expertise, appropriate and efficient use of resources, accurate and complete billing, relationship of negotiated cost to actual cost, other aspects of cost-effectiveness:

[____ Comment continued in Item 6.]

5c. TIMELINESS OF PERFORMANCE	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
--------------------------------------	----------------	-----------	------	------	------	----------------

Comment on contractor's provision of input to initial schedule, timely project startup, adherence to established schedule, identification of potential delays, proposal and execution of measures to avert delay, on-time submittal of deliverables, on-time contract administration, no liquidated damages assessed, other aspects of timeliness:

[____ Comment continued in Item 6.]

5d. RESPONSIVENESS	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
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Comment on contractor's responsiveness to Contracting Officer/Document Manager instructions, communication links at project and technical levels, response to work scope changes, response to special requests, ability to address and resolve problems, other aspects of responsiveness:

[____ Comment continued in Item 6.]

5e. APPLICATION OF REQUIREMENTS AND GUIDANCE	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
-----------------------------------------------------	----------------	-----------	------	------	------	----------------

Comment on contractor's knowledge of requirements and guidance, meeting of requirements, and application of guidance, other aspects of consistency with requirements and guidance:

[____ Comment continued in Item 6.]

5f. INNOVATION	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
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Comment on contractor's ability to develop new strategies or approaches to project implementation, original analytical techniques, cost and schedule reduction ideas, and other aspects of innovation:

[____ Comment continued in Item 6.]

5g. PLANNING	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
Comment on contractor's ability to develop comprehensive project plan, adjust plan to changes in project needs, other aspects of planning: [____ Comment continued in Item 6.]						
5h. STAFFING	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
Comment on adequacy and qualifications of contractor's staff to meet project management and technical needs; availability, continuity, and performance of key personnel; ability to provide needed staffing during peak activity periods or unplanned circumstances; other aspects of staffing: [____ Comment continued in Item 6.]						
5i. COMMUNICATIONS	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
Comment on clarity and effectiveness of contractor's communication with Contracting Officer/Document Manager, other contractors, subcontractors, and others on technical, schedule and cost issues, on routine matters and on problems/issues, businesslike correspondence, and other aspects of communications: [____ Comment continued in Item 6.]						
5j. DELIVERABLES	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
Comment on clarity, appropriateness, and editorial and design quality of contractor's written deliverables, including text, figures, graphics, other aspects of deliverable quality: [____ Comment continued in Item 6.]						
5k. TEAMWORK/COOPERATION/BUSINESS RELATIONS	Excellent Plus	Excellent	Good	Fair	Poor	Unsatisfactory
Comment on cooperation and coordination with Contract/Document Manager, other contractors, subcontractors, review team, and others; effective pro-active management, flexibility, effective contractor-recommended solutions, willingness to put in extra effort to get tasks completed; other aspects of teamwork and cooperation: [____ Comment continued in Item 6.]						
SUMMARY OF PERFORMANCE EVALUATION	Excellent Plus (5)	Excellent (4)	Good (3)	Fair (2)	Poor (1)	Unsatisfactory (0)
a. QUALITY						
b. COST CONTROL						
c. TIMELINESS						
d. RESPONSIVENESS						
e. APPLICATION OF REQUIREMENTS AND GUIDANCE						
f. INNOVATION						
g. PLANNING						
h. STAFFING						
i. COMMUNICATIONS						
j. DELIVERABLES						
k. TEAMWORK/COOPERATION/BUSINESS RELATIONS						
OVERALL EVALUATION [Transfer response to Item 3.]	Excellent Plus (5)	Excellent (4)	Good (3)	Fair (2)	Poor (1)	Unsatisfactory (0)

6.

NEPA DOCUMENT MANAGER COMMENTS

[Attach additional sheet(s) or documentation if necessary; sign and date in Item 4.]

ITEM NUMBER	COMMENTS

7.

CONTRACTOR PROJECT MANAGER COMMENTS

[Attach additional sheet(s) or documentation if necessary; sign and date in Item 4.]

ITEM NUMBER	COMMENTS

8. DOE NEPA WEB AND RELATED INFORMATION RESOURCES

DOE has established the DOE NEPA Web to promote effective use of the experience gained and information generated in the DOE NEPA process, as well as to enhance public involvement. The DOE NEPA Web is a computer-accessible medium that contains information of interest to the NEPA practitioner and the public. DOE augments and updates its NEPA Web frequently.

Major Contents of the DOE NEPA Web

- **DOE NEPA Announcements:** This category provides information regarding public involvement opportunities and other DOE NEPA activities. A public section contains listings of notices of intent to prepare NEPA documents, scoping meetings and hearings, draft documents available for comment, and other notices of availability.
- **DOE NEPA Analyses:** This category provides the user with the ability to browse or search the full text of many DOE NEPA documents. Documents are listed by DOE organization or site.¹² Users can also search NEPA policy-related information. An additional database contains information on all DOE EISs, including EISs whose text is available electronically.
- **NEPA Tools:** This category contains NEPA reference material, including DOE guidance (for example, Recommendations for the Preparation of Environmental Assessments and Environmental Impact Statements), the NEPA Order (DOE O 451.1), and NEPA regulations (DOE and Council on Environmental Quality), international and environmental law documents from the Indiana University Law Library, and other references (including the DOE NEPA Stakeholders Directory). Additional NEPA tools are available via the Council on Environmental Quality Web (see below).
- **DOE NEPA Process Information:** This category provides information on DOE NEPA documents that are being prepared. It includes the DOE Environmental Impact Statement and Environmental Assessment Status Chart (revised monthly), which users may download and print from their own computers. Process information also includes the NEPA Lessons Learned Questionnaire and Quarterly Reports. The Questionnaire can be completed and submitted electronically from the DOE NEPA Web.

¹² Information on DOE sites and programs is also available through the Information Services section of the DOE Home Page (URL: <http://www.doe.gov/html/dae/infolink/infolink.html>) and the DOE National Laboratories and Programs Home Page (URL: <http://www.esd.ornl.gov/dae-labs/dae-labs.html>).

- **Council on Environmental Quality (CEQ) Web Site:** This link allows the user to directly access the CEQ Web Site. This site is the official repository of the national NEPA dataset. Among many other subjects, the CEQ Web Site provides general information such as CEQ Regulations, Federal Agency NEPA Liaisons, titles of environmental impact statements filed with the Environmental Protection Agency (EPA), EPA Regional Review Coordinators, Explanation of EPA Ratings, and the EPA Office of Federal Activities Data Management Manual; Bibliography (Justice Department annual summaries of NEPA litigation decisions, Indiana Law Library international and environmental law documents); and Administration Achievements.
- **NEPA Links:** NEPA Links allow the user to quickly access NEPA, environmental, and geographical information in other agencies' Web sites. Listings in this category include the Departments of Agriculture and the Interior, National Aeronautics and Space Administration, U.S. Global Change Research Information Office, the Canadian Environmental Assessment Agency, and more. A link to Envirotext allows users to search environment, safety, and health Federal and state statutes and regulations, as well as Indian Tribal Codes and Treaties, and International Agreements.

Accessing the DOE NEPA Web

Minimum requirements for accessing the World Wide Web are:

- A 486SX 66 megahertz (Mhz) microprocessor with 8 megabytes (MB) random access memory (RAM), a Super VGA monitor (with 256 color capable video card), Windows 3.1, and a dedicated network connection or a 14,400 bps modem and a point-to-point protocol (PPP), serial line Internet protocol (SLIP), or compressed SLIP (CSLIP) account. (MacIntosh users should have at least 6 MB RAM, System 7, and a color monitor.)
- Web browser (e.g., Microsoft Internet Explorer or Netscape Navigator)

Requirements may vary for MacIntosh and UNIX based systems. DOE employees should contact their systems administrator for assistance with Internet connections.

To access the DOE NEPA Web from a Web browser, type the Uniform Resource Locator (URL) address in the "URL" field: **<http://tis-nt.eh.doe.gov/nepa>**

Submitting NEPA Documents for Inclusion in the DOE NEPA Web

The DOE NEPA Web is the official repository of the Department's online NEPA information. When an environmental assessment or environmental impact statement is issued, the NEPA Compliance Officer is responsible, under the DOE NEPA Order, for providing an electronic file and five copies of the document to the Office of NEPA Policy and Assistance, which then adds documents to the NEPA Web to the extent practical. Transmittal memoranda should refer to the inclusion of electronic files. Disks should be labeled with title and DOE NEPA document number, and should indicate all software used for word processing and graphics. Any part of the document that is not available electronically should be identified. Electronic DOE NEPA documents should be prepared in accordance with the DOE Office of Environment, Safety and Health Electronic Publishing Standards and Guidelines.¹³

Web Resources Relevant to Contract Reform Topics

- DOE Office of Procurement and Assistance Home Page
URL: <http://www.pr.doe.gov>

This resource contains a broad range of DOE Headquarters procurement internal information, including DOE Acquisition Letter guidance and best practice reports. It contains contractor evaluations in a password-protected section of the Web. This Home Page also contains rapid links to Procurement and Acquisition Home Pages in the Operations Offices and Energy Technology Centers.

- DOE Office of Field Management, Office of Project and Fixed Asset Management
Good Practice Guides

URL: <http://www.fm.doe.gov/FM-20/guides.htm>

The Office of Field Management provides a series of project management guides that may be useful to the management of the NEPA Document Process. Titles include Project Management Overview, Work Scope Planning, Baseline Development, Baseline Change Control, Project Execution and Engineering Management Planning, Project Budget Process, Project Reviews, Quality Assurance, and Performance Measures.

¹³ As of December 1996, this document was pending approval; the approved document will be available through the Environment, Safety and Health Web Site at <http://tis-hq.eh.doe.gov>