



**U.S. Department of Homeland Security  
U.S. Coast Guard**

# **THIRD PARTY ENVIRONMENTAL CONTRACTING HANDBOOK**

*Office of Operating and Environmental Standards  
(CG-OES)*

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## **Disclaimer**

This guidance is not a substitute for applicable legal requirements, nor is it itself a rule. It is not intended to, nor does it impose, legally binding requirements on any party. It is a tool which may assist industry, environmental contractors, applicants for licenses to construct and operate deepwater ports, and the U.S. Coast Guard (USCG), as well as other Federal and state agencies, in applying statutory and regulatory requirements. If you want to discuss an alternative approach (you are not required to do so), you may contact the Chief of the Office of Operating and Environmental Standards (CG-OES), or his/her delegated representative, who is responsible for implementing this guidance.

Nothing in this handbook should be construed to alleviate the USCG of its responsibility for compliance with the National Environmental Policy Act (NEPA) and other applicable laws, regulations, and USCG policy. As applicable, the environmental laws and regulations of adjacent coastal State(s) must also be complied with. This information has been provided for guidance only and may not be all-inclusive. The USCG reserves the right to make amendments, changes, additions, and/or deletions to this document at any time. The DWP license applicant understands that third party contracting is a voluntary program and that the applicant is neither compelled to use this process, nor will an applicant be penalized should this process not be used.

# Table of Contents

<b>1-1: Purpose</b>	<b>5</b>
<b>1-2: Background</b>	<b>5</b>
<b>1-3: Program Purpose and Objectives</b>	<b>6</b>
<b>1-4: Pre-filing Recommendation</b>	<b>7</b>
<b>2-1: Selection Process</b>	<b>8</b>
<b>2-2: Guidelines for Developing a Request for Proposal</b>	<b>9</b>
<b>2-3: Selection Criteria</b>	<b>11</b>
<b>2-4: Minimum Threshold Standards and Disqualifiers</b>	<b>12</b>
<b>3-1: Environmental Contract Deliverables</b>	<b>13</b>
<b>3-2: Environmental Contract Basic Assumptions and TPC Performance Requirements</b>	<b>15</b>
<b>3-3: Risk Contract Deliverables</b>	<b>20</b>
<b>4-1: Organizational Conflicts of Interest - General</b>	<b>23</b>
<b>4-2: OCI Disclosure &amp; Representation (OCI Statement) Requirements</b>	<b>24</b>
<b>4-3: Ex-Parte Communication</b>	<b>25</b>
<b>4-4: Indemnification and Hold Harmless</b>	<b>25</b>
<b>4-5: Additional Contract Provisions</b>	<b>26</b>
<b>4-6: Dispute Resolution and Termination of Contract</b>	<b>26</b>
<b>4-7: RFP Record Keeping</b>	<b>26</b>
<b>Appendix A: Regulatory References and Executive Orders (E.O.)</b>	<b>28</b>
<b>Appendix B: Schedule of TPC Deliverables for EIS Document</b>	<b>30</b>
<b>Appendix C: Organizational Conflict of Interest - Applicant Certification</b>	<b>32</b>
<b>Appendix D: Organizational Conflicts of Interest Representation/Disclosure</b>	<b>33</b>
<b>Appendix E: Indemnification and Hold Harmless Form</b>	<b>35</b>

## Acronyms

BOEM	Bureau of Ocean Energy Management
CAA	Clean Air Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CG-0941-E	Coast Guard Office of Maritime & International Law: Environmental Law Division
CG-OES	Coast Guard Office of Operating & Environmental Standards
COMDTINST	Commandant Instruction
CWA	Clean Water Act
CZMA	Coastal Zone Management Act
DOT	Department of Transportation
DHS	Department of Homeland Security
DWPA	Deepwater Port Act
DWP	Deepwater Port
EA	Environmental Assessment
EIS	Environmental Impact Statement
EIR	Environmental Impact Report
EPA	Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
FMP	Fishery Management Plan
FONSI	Finding of No Significant Impact
FR	Federal Register
FWS	Fish and Wildlife Service
IRA	Independent Risk Assessment
LNG	Liquefied Natural Gas
MARAD	Maritime Administration
NEPA	National Environmental Policy Act
NOAA	National Oceanographic & Atmospheric Administration
NMFS	National Marine Fisheries Service
NPDES	National Pollutant Discharge Elimination System
OCI	Organizational Conflict of Interest
OCS	Outer Continental Shelf
PBR	Potential Biological Removal
PL	Public Law
POC	Point of Contact
RFP	Request for Proposal
ROD	Record of Decision
SHPO	State Historic Preservation Office
SIP	State Implementation Plan
TPC	Third Party Contractor
USACE	U.S. Army Corps of Engineers
USC	United States Code
USCG	U.S. Coast Guard





# Chapter 1: Introduction and Overview

## 1-1: Purpose

This handbook describes the voluntary program for the use of Third Party Contractors (TPCs) to assist the Maritime Administration (MARAD) and U.S. Coast Guard (USCG) in processing applications for licensing deepwater ports (DWP) regulated under Title 33, Code of Federal Regulations (CFR), subchapter NN, Parts 148, 149, and 150. It applies government standard contracting processes; establishes procedures for selection and acceptance of a TPC; discusses roles and responsibilities of involved parties; and provides procedures to coordinate these activities between the Coast Guard Headquarters Office of Operating and Environmental Standards (CG-OES), MARAD, the applicant, and a selected TPC.

DWP license applicants, TPCs, MARAD, and USCG personnel engaged in the DWP licensing process are encouraged, but are not required, to follow the procedures set forth in this document. This handbook is available online at: <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Commercial-Regulations-standards-CG-5PS/Office-of-Operating-and-Environmental-Standards/vfos/DWP/>

## 1-2: Background

In 1974, Congress passed the Deepwater Port Act (DWPA or the Act) (33 USC §§ 1501 - 1524). The basic tenets of the original DWPA are to:

- Authorize and regulate the location, ownership, construction and operation of deepwater ports in waters located beyond State seaward boundaries;
- Provide protection for the marine and coastal environment by preventing or minimizing any adverse impact which might occur as a consequence of the port;
- Protect the interests of the United States and those of adjacent coastal States in the location, construction and operation of deepwater ports;
- Protect the rights and responsibilities of States and communities to regulate growth, determine land use and otherwise protect the environment in accordance with law;
- Promote the construction and operation of deepwater ports as a safe and effective means of importing oil into the United States and transporting oil from the outer continental shelf (OCS) while minimizing tanker traffic and the risks attendant thereto; and,
- Promote oil or production on the OCS by affording an economic and safe means of transportation of OCS oil to the United States mainland.

Since 1974, the DWPA has been amended on several occasions. Originally, the DWPA only applied to facilities used to import oil. However, on November 25, 2002, the Maritime Transportation Security Act (MTSA) of 2002 was signed into law. MTSA amended the DWPA to include natural gas, which allowed the MARAD and the USCG to accept and process applications for liquefied natural gas (LNG) deepwater ports. Most recently, the Coast Guard and Maritime Transportation Act of 2012 amended the definition of deepwater port to allow for the export of oil or natural gas through a deepwater port. Under current law, the (abridged) definition of deepwater port, is: “[A]ny fixed or floating manmade structure other than a vessel, or any group of such structures, that are located beyond State seaward boundaries and that are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil or natural gas for transportation to or from any State....”

The DWPA stipulates that no individual, public or private corporation, partnership or other association, or government entity may engage in the ownership, construction, or operation of a DWP except in accordance with a license issued pursuant to the Act. The Act specifically requires the Secretary of the U.S. Department of Transportation (SECDOT or the Secretary) to approve, approve with conditions, or

deny any license application. The Secretary delegated the authority to issue, transfer, amend, or reinstate a license for the construction and operation of a DWP to the Maritime Administrator. The Secretary delegated the authority to process applications for the issuance, transfer, or amendment of a license for the construction and operation of a deepwater port to the Commandant of the USCG<sup>1</sup> and MARAD.

Upon receipt of a license application, the MARAD as the lead Federal agency, in cooperation with other Federal agencies and departments including the USCG, is required to comply with the National Environmental Policy Act of 1969 (NEPA), 42 USC 4332, et seq, as amended. In order to comply with NEPA, an environmental analysis and review must be conducted for each DWP license application that is submitted. Moreover, the USCG supports the MARAD by preparing the environmental impact statement on their behalf.

Given the abbreviated timeframe (refer to Appendix B), large scope of resources, and advanced levels of expertise required to develop a comprehensive and legally sufficient environmental impact statement/assessment, the USCG uses contractors to assist in the review of application contents, and verify and develop information for environmental review of these projects. The result is intended to inform decision makers, the interested public, and other federal and state agencies on the potential direct, indirect and cumulative impacts of the proposed action. There are two means by which environmental/technical support services are obtained:

- The Federal Acquisitions process, which authorizes the USCG to contract and fund environmental/support services. The costs are billed back to the applicant as a reimbursable cost to the Government; or,
- The third party contracting mechanism, in which the applicant issues a request for proposal (RFP) to provide environmental/technical support services, evaluate the proposals, and submits a list of recommended TPCs for the USCG to review and select from. The applicant directly funds the contract; the actions of the TPC are directed exclusively by the USCG. Use of the third party contracting mechanism is voluntary.

### **1-3: Program Purpose and Objectives**

This handbook provides a framework for managing third party contracts to prepare and develop an Environmental Impact Statement (EIS) and assist the Coast Guard in conducting an independent risk assessment (IRA) for a DWP license application in a manner consistent with the DWPA and NEPA. It describes how to solicit, evaluate, select, and award a third party contract, and outlines the tasks, duties, responsibilities and timeline to comply with NEPA requirements under the DWPA. The TPC hired under this third party contracting mechanism will provide assistance to the USCG's Office of Vessel and Facility Operating Standards (CG-OES) during development of the environmental document and the risk assessment report. The Coast Guard prefers that the TPC for the EIS and the IRA be the same contracting company; however, they can be two different entities if necessary.

Under this voluntary program, the TPC is:

- Selected by and works under the technical direction of the CG-OES staff;<sup>2</sup>
- Responsible for conducting environmental analyses and preparing documentation which will include environmental impact statements (EISs) or Environmental Assessments (EAs) and may include adjacent coastal State(s) and coastal zone State(s) environmental documents to support the Record of Decision; and,

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<sup>1</sup> Delegation from SECDOT carried over upon the USCG's transfer to the Department of Homeland Security.

<sup>2</sup> Coast Guard personnel assigned to the project may be sourced from various divisions within CG-OES depending on the particular expertise required.



- Paid by the DWP license applicant(s).

#### **1-4: Pre-filing Recommendation**

If a DWP license applicant intends to use the third party contracting mechanism, the applicant should start the process several weeks prior to filing the DWP license application. Applicants should meet with the USCG before submitting their application to discuss the timing of the third party contracting mechanism including the Request for Proposal (RFP) and start of contract. Timing of this process can be critical to the review of the application and preparation of the environmental document. Note that the USCG generally prefers that the TPC start working on the DWP project as soon as the application is submitted to the USCG and MARAD, starting with the USCG's completeness review.

## Chapter 2: Third Party Contracting

### 2-1: Selection Process

The following is a list of sequential steps to be followed by a DWP license applicant, prospective TPCs, and the USCG.

#### Applicant Responsibilities

- In order to verify sufficiency of the RFP, it is recommended that the applicant submits a draft RFP to CG-OES-2 for review; See also Section 4-5;
- Send a final RFP to each prospective TPC, copy to CG-OES-2. Each RFP should contain a list of selection criteria, a copy of this handbook, and an explanation of how the screening process will be used to select the preferred candidate (refer to Section 2-2). The same RFP must be sent to each prospective TPC;
- Provide each prospective TPC with sufficient information about the project to prepare a meaningful proposal and accurate cost estimate;
- Set a deadline by which the prospective TPCs must submit a completed proposal;
- Review and rank bid proposals with respect to technical, managerial, and personnel qualifications to ensure minimum standards have been met (refer to Section 2-2), completeness of the proposal, and to identify any disqualifiers (refer to Section 2-3);
- Select the three (3) best qualified TPC packages, which must include Organizational Conflict of Interest (OCI) statements (see Chapter 4), technical and cost proposals<sup>3</sup>, project time line, and draft third party contract;
- For each proposal submitted to CG-OES-2, include an OCI<sup>4</sup> certification and statement of impartiality. An actual or apparent conflict of interest shall disqualify a prospective TPC from further consideration unless a mitigation plan is proposed that avoids the conflict of interest to the satisfaction of CG-OES-2;
- Forward the three (3) best qualified TPC packages to CG-OES-2. The applicant should ensure the estimated total cost of performance on the contract is submitted separately and under seal (see FN 3); and,
- Throughout the selection process, and until a contract is awarded, the applicant will be the sole point of contact for both the USCG and any prospective TPCs.

#### Prospective TPC Responsibilities

- Prepare a proposal that satisfies the criteria listed in the RFP (refer to Section 2-2);
- Direct all inquiries and questions to the applicant;
- Submit the technical and cost proposals, (technical proposals to include manager and personnel information, and a timeline identifying both NEPA and DWPA milestones) to the applicant within the specified deadline;
- Submit all required OCI documents at submission;
- Include cost proposals that are clear; stand-alone descriptions of level of effort required, including a list of tasks/milestones, hours per labor category required, and a description of qualifications of personnel for each labor category (e.g., Scientist I = Graduate degree in relevant discipline with 10+ years technical and/or management experience, etc.); and,

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<sup>3</sup> Cost proposals should be broken into two parts: the estimated total cost of performance under the contract (sealed) and a breakdown of hours proposed for each labor category under each proposed task.

<sup>4</sup> Refer to guidance concerning the USCG's OCI requirements in Chapter 4. Examples of forms may be found in Appendices C and D. Questions concerning OCI matters should be directed to CG-OES project staff.

- Submit all required Indemnification and Hold Harmless Forms at the time of proposal submission.

### **USCG Responsibilities**

Upon receipt of this information, the CG-OES-2 staff will:

- Review each TPC proposal for completeness and evaluate each proposal against the USCG minimum threshold standards contained in Section 2-4;
- Review descriptions of level of effort;
- Interview prospective TPCs (at CG-OES’s discretion);
- Make a final selection of the TPC within ten (10) business days of receiving the prospective applicant's TPC proposals; and,
- Provide notification of final selection to the applicant.

### **Procedures after TPC Selection**

The USCG is not involved in contract negotiation. The applicant and the TPC will determine the appropriate method and schedule for payment. Upon receipt of notification of the USCG’s final selection, the applicant should:

- Notify all prospective TPCs, in writing, of their selection or non-selection;
- Create, finalize, and award the third party contract within fifteen (15) business days of receiving the USCG’s final selection; and,
- Provide a copy of the completed and signed contract between the applicant and the TPC to CG-OES-2.

Following final contract agreements, the TPC will attend a project “kick-off” meeting with the USCG and MARAD. The kick-off meeting allows the TPC, and, to a limited extent, the applicant, to meet USCG and MARAD project staff who will communicate expectations. There may be two separate meetings for the environmental and risk aspects of the contract(s).

## **2-2: Guidelines for Developing a Request for Proposal**

For the EIS and IRA contracts, at a minimum, an applicant's RFP to a prospective TPC should consist of:

- An introduction or cover section that includes:
  - The identification of the applicant with a designated point-of-contact;
  - The stated purpose and/or goals of the RFP;
  - A timeline or deadline for submission of a proposal to the applicant;
  - A statement that the RFP is not a Federal procurement action;
  - A statement that the parties agree to hold harmless and indemnify the USCG (see Indemnification and Hold Harmless information in Section 4-4 and Appendix E); and,
  - A statement that the final selection of the TPC will be made by CG-OES-2.
- A section describing the third party arrangement that contains:
  - A statement that CG-OES-2 and assigned project staff are responsible for determining the scope of the environmental document or risk assessment and the technical quality of the work; and,
  - A statement that the TPC will prepare the environmental document or risk assessment under the direction of CG-OES-2 and assigned project staff,
  - A statement that communication between the TPC and applicant, once the contract is awarded, shall be limited to communication regarding contract administration matters (e.g., invoices, financial transactions, changes in contract scope [see Section 3-2 “Out of scope activities”], per Section 4-3.

- A section describing the third party selection process (refer to Section 2-1);
- A statement that requires notification to CG-OES-2 of changes to key personnel (project director, project manager, deputy project manager, and resource leads) and their experience (curriculum vitae). Changes will not occur until accepted by CG-OES-2;
- A section describing the third party screening criteria and the USCG's minimum threshold standards (refer to Section 2-4);
- A draft copy or summary of the application and appendices;
- A detailed description of services and tasks required of the TPC (refer to Sections 3-1 to 3-3);
- The draft schedule for NEPA/DWPA activities and applicant's proposed schedule for construction and operation with dates for key milestones (refer to Appendix B);
- A statement that the applicant, not CG-OES-2 staff, will respond to questions from non-selected contractors following the contract award; and,
- A requirement that each bid address OCI by including:
  - Either an OCI Representation Statement or an OCI Disclosure Statement (see Chapter 4) indicating that the TPC has no financial or other conflicting interest in the outcome of the project;
  - An abstract listing all USCG regulated entities with which the TPC (and any subcontractors) has had a business relationship and whether that relationship results in an actual or apparent conflict of interest.

In response to receipt of an RFP, TPC proposals for the EIS contract should contain:

- A management plan for the project which includes a description of the prospective TPCs technical and managerial experience in development of other environmental documents ;
- The disclosure of any proposed subcontractors and OCIs and Indemnification and Hold Harmless Forms for each;
- A description of the qualifications and experience (curriculum vitae) of both the TPC firm and key personnel (including subcontractors), to include:
  - A record and description of similar contracts and POCs;
  - Familiarization with NEPA requirements;
  - Familiarization with relevant USCG regulations;
  - Familiarization with Section 508 of the Rehabilitation Act and outreach to Limited English Proficient (LEP) communities;
  - Previous work completed for the USCG, EPA or other federal agencies;
  - A list of EA's or EIS's completed and for whom;
  - Familiarization with specific environmental laws of the adjacent coastal State(s), where applicable (i.e., experience with preparing dual documents (e.g., EIS and EIR)) to satisfy both Federal and State environmental requirements);
  - Approach to managing subcontractors and consultants; and
  - Experience drafting an EIS using subcontractors.
- A proposed schedule for completing major work tasks which highlights any differences from the applicant's proposed schedule as presented in the RFP. Any changes to the schedule presented in the RFP must be fully justified;
- A statement disclosing any potential OCI, and any proposed mitigation that avoids the conflict of interest;
- A breakdown of hours proposed for each labor category under each proposed task.
- Financial statements of the prospective TPC, or proposed subcontractor, for the previous 3 years, and disclosure of any bankruptcy, insolvency or other matters negatively affecting the financial interest of the prospective TPC or proposed subcontractor; and,
- An executed Indemnification and Hold Harmless Form.

In response to receipt of an RFP, TPC proposals for the IRA contract should contain:

- A management plan for the project which includes a description of the prospective TPCs technical and managerial experience in development of other risk assessment documents;
- The disclosure of any proposed subcontractors and OCIs and Indemnification and Hold Harmless Forms for each;
- A description of the qualifications and experience (curriculum vitae) of both the TPC firm and key personnel (including subcontractors), to include:
  - A record and description of similar contracts and POCs;
  - Familiarization with maritime environment, maritime operations, maritime safety and security, oil and/or gas industry as appropriate;
  - Familiarization with relevant USCG regulations;
  - Familiarization with oil spill, LNG vapor dispersion and pool fire modeling techniques, as appropriate for the project;
  - Previous work completed for the USCG, EPA or other federal agencies;
  - A list of risk assessments completed and for whom; and
  - Approach to managing subcontractors and consultants.
- A proposed schedule for completing major work tasks which highlights any differences from the applicant's proposed schedule as presented in the RFP. Any changes to the schedule presented in the RFP must be fully justified;
- A statement disclosing any potential OCI, and any proposed mitigation that avoids the conflict of interest;
- A breakdown of hours proposed for each labor category under each proposed task.
- Financial statements of the prospective TPC, or proposed subcontractor, for the previous 3 years, and disclosure of any bankruptcy, insolvency or other matters negatively affecting the financial interest of the prospective TPC or proposed subcontractor; and,
- An executed Indemnification and Hold Harmless Form.

## **2-3: Selection Criteria**

The applicant should review, evaluate and prioritize each proposal against the screening criteria listed in this section. Once all the proposals have been prioritized, the applicant should select the three (3) highest scoring prospective TPCs and forward to the USCG (CG-OES) for final selection. The USCG will verify the applicant's evaluation of the selection criteria and recommend a preferred candidate. The following criteria should be used in evaluating a prospective TPC's proposal.

### **General Experience and Availability**

- Ability to assign and commit sufficient key personnel for the duration of the project, including any delays associated with processing the application. (Note: Although the DWP timeline is 356 days, the regulatory clock can be stopped to allow time to gather additional information and perform analyses not provided in the application).
- Reasonableness of the prospective TPC's proposed level of effort required for the project as well as for each task and labor category as described in the cost proposal; demonstrated experience of subcontractors required for the project.
- Through past project management experience, proven ability to meet schedule requirements and possible shifts in project priorities.

### **Management Experience**

- Demonstrated ability to manage large, complex and potentially controversial energy projects.
- Ability to resolve problems and assign appropriate staff in a timely manner when presented with challenging situations, aggressive schedules and shifting priorities.

- Demonstrated experience of the TPC in managing the type(s) and number of subcontractors proposed.

### **NEPA and Related Federal Compliance Experience**

- Demonstrated experience (education and professional work history) of prospective TPC personnel assigned to the project.
- Familiarity with Federal environmental laws (see Appendix A), and applicable state requirements.
- For the environment, extent of the prospective TPC's history and prior experience in managing major NEPA reviews and preparing NEPA environmental documents (to include compliance with Section 508 of the Rehabilitation Act) for energy facilities within the past three years.
- For the risk assessment prospective TPC, extent of the prospective TPC's history and prior experience in managing and preparing risk assessments in the maritime environment, especially for energy related projects within the past three years.

### **LNG and Oil, USCG and DWPA Experience**

- Familiarity and experience with USCG, the Deepwater Port Act and related requirements. (Note: Not having participated in a prior DWP license project will not preclude selection).
- Experience with LNG, Oil, outer-continental shelf activities, and marine transportation projects.

### **Regional and Other Project-Specific Experience**

- Familiarity with the environmental evaluation of projects of comparable magnitude and scope in the region.
- History and work experience in the region where the applicant's facility will be located, with the adjacent coastal State(s) agencies (e.g. SHPO) and environmental laws, and with other Federal agency offices that will be involved (e.g., EPA, NOAA, FWS, FERC, BOEM, USACE offices).

## **2-4: Minimum Threshold Standards and Disqualifiers**

The following criteria will determine if a potential TPC has met the minimum standards. A proposal that does not meet **all** of the following criteria will not be considered for further review:

- All documents and materials requested in the RFP have been provided;
- All key items discussed in follow-up clarification meetings have been supplied or addressed;
- OCI statement has been completed and provided;
- OCI mitigation or explanation documents included (only if OCI has been noted);
- Adequate financial resources have been demonstrated, copies of the firm's most recent annual audit provided, and explanations given of any negative aspects of the latest financial audit statement; and,
- Indemnification and Hold Harmless Forms have been submitted (refer to Section 4-4 and Appendix E).

A prospective TPC may be disqualified from the selection process, or from final selection, based upon any of the following:

- Financial instability of the TPC, including but not limited to recent record of bankruptcy that could affect the performance of work required;
- Incomplete or inadequate proposal submitted; and submission of a proposal after the applicant's deadline; or,
- Identification of an OCI which cannot be resolved.

## Chapter 3: Tasks, Responsibilities, and Requirements

### 3-1: Environmental Contract Deliverables

Each contract for services between an applicant and a TPC should include, but not be limited to the following deliverables: (Note: All deliverables must be approved, and may be amended, by CG-OES-2 project staff).

#### Milestone Deliverables

- “Dear Interested Party” Letter, including graphics (i.e. maps of facility and associated components). (Note: TPC is responsible for developing, producing and mailing out the “Dear Interested Party” Letter);
- Searchable mailing list (updated as necessary) to track all mailings and include names, titles, and contact information including email addresses for:
  - Federal agencies (headquarters and appropriate field offices);
  - Appropriate state agencies;
  - Members of Congress;
  - Governor(s) and appropriate members of state(s) legislatures;
  - Non-governmental organizations;
  - General public who have expressed interest;
  - Lists obtained from cooperating federal/state agencies and the applicant that represent stakeholders, affected landowners or other interested parties; and,
  - Appropriate tribal persons.
- Analysis of Limited English Proficient (LEP) persons in the project area;
- Project website for posting relevant documents and information for the public meetings (if being held virtually), as well as meeting registration processes. Note that the website must be made compliant with Section 508 of the Rehabilitation Act, per <https://www.epa.gov/accessibility/>;
- Draft and Final Scoping Meeting Plan (in-person and/or virtual format);
- Newspaper notices of Public Scoping Meeting(s), to include translation into non-English languages as applicable;
- Posters/Handouts/Mailers for Public Scoping Meeting(s), to include translation into non-English languages as applicable;
- Public Scoping Meeting Report/Summary, to include translation into non-English languages as applicable;
- Data Gap Analyses (ongoing throughout NEPA review) that result in Information Requests to the applicant;
- Style guide that includes a Table of Contents (TOC) for the EIS or EA;
- Preliminary Draft EIS that conforms to the requirements of 40 Code of Federal Regulations §§ 1500 - 1508. This document may also include, as applicable:
  - Draft Biological Assessment (stand-alone);
  - Draft Essential Fish Habitat Assessment (stand-alone);
  - Independent air modeling and analysis of air impacts under the Clean Air Act (CAA) and under state laws as necessary;
  - Ichthyoplankton modeling; and,
  - Turbidity modeling, as required.
  - Oil spill (onshore & offshore) and fire modeling.
- Draft CAA General Conformity Determination, as required;
- Interim Draft EIS Distribution List;
- Interim Draft EIS: The TPC will be required to print, bind and mail as specified in the Distribution List. Number of copies to be determined or sent electronically;

- Draft EIS Distribution List;
- Draft EIS: The TPC will be required to print and perfect bind, and mail the Draft EIS as specified in the Distribution List. Digital media may be required in place of, or in addition to, hard copies. Additionally, the Draft EIS may be sent electronically upon agreeance from USCG and MARAD. This includes translation of the Executive Summary into non-English languages as appropriate. Note that all published documents must be made compliant with Section 508 of the Rehabilitation Act, per <https://www.epa.gov/accessibility/>;
- Draft EIS Public Comment Meeting Plan (in-person and/or virtual format);
- Newspaper notices of Draft EIS Public Comment Meeting(s), to include translation into non-English languages as applicable;
- Posters/Handouts/Mailers for Draft EIS Public Comment Meeting(s), to include translation into non-English languages as applicable;
- Draft EIS Public Comment Meeting Report/Summary, to include translation into non-English languages as applicable;
- Preliminary Final EIS, including responses to comments. Following the public comment period of the DEIS, the TPC will organize, analyze, and prepare draft responses to public/Federal/state/local agency comments (including those comments filed by the applicant). The draft responses will be provided to CG-OES-2 staff for further action;
- Final CAA General Conformity Determination, as required;
- Interim Final EIS Distribution List;
- Interim Final EIS;
- Final EIS Distribution List;
- Final EIS: The TPC will be required to print and perfect bind, and mail the Draft EIS as specified in the Distribution List. Digital media may be required in place of, or in addition to, hard copies. Additionally, the Draft EIS may be sent electronically upon agreeance from USCG and MARAD. This includes translation of the Executive Summary into non-English languages as appropriate;
- Newspaper notices of License Hearing(s), to include translation into non-English languages as appropriate;
- Posters/Handouts for License Hearing(s), to include translation into non-English languages as appropriate;
- Drafting assistance for the Record of Decision, as necessary; and,
- Development, preparation, and delivery of an administrative record to USCG upon issuance of the Record of Decision.

### **Cyclical, Ongoing or Upon Request Deliverables**

- Monthly updates summarizing the contents of the administrative record (refer to Section 3-2 for specific requirements);
- Agenda and minutes for all technical/management meetings including regular weekly or biweekly meetings and special management or technical meetings; these are often teleconferences;
- Monthly (or more frequent, if requested by USCG) progress reports;
- Reports from comment response database upon request of CG-OES-2 staff;
- Reports from internal comment resolution database upon request of CG-OES-2 staff;
- List of mitigation measures recommended for inclusion into the Record of Decision (ROD) and license, if license with conditions is granted; and,
- ROD support as required.

### **Ongoing Responsibilities**

- Ensure security of information in application by establishing a secure project site with limited access;



- Obtain signed confidentiality agreements from all project team members and subcontractors;
- Maintain the administrative record (refer to Section 3-2);
- Development and maintenance of an interactive database to track comments on the Draft EIS and FEIS. CG-OES-2 staff must be given access to the database;
- Verify the accuracy, validity, integrity and completeness of environmental information and advise CG-OES-2 of:
  - Sufficiency of information to identify the significance level of environmental impacts;
  - Sufficiency of supporting information to confirm applicant's statements;
  - Sufficiency of information to respond to questions from Federal, state and local agencies or from the public;
  - Sufficiency of information to develop alternatives analysis for both offshore and onshore components, including the no action alternative; and,
  - Identify data gaps for CG-OES-2 project staff review.
- Assist CG-OES-2 with scoping and other public coordination activities, including responsibility for development and implementation of a logistics plan for all public meeting(s) and license hearing(s), (e.g. arrangements for venue/virtual platform, facilitator, court reporter, security, non-English interpreters);
- Identify conflicting environmental requirements among federal and state(s) laws, and recommend solutions to resolve conflicts;
- Identify reasonable mitigation measures to resolve potentially significant environmental impacts; research the costs and benefits associated with implementation of each mitigation measure and the degree to which significant environmental impacts will be avoided; and,
- The TPC should inform CG-OES-2, in a timely manner, of any matters, whether procedural or technical, that may affect performance on the contract (see e.g., discussion in Section 3-2 regarding Out of Scope Activities).

### **3-2: Environmental Contract Basic Assumptions and TPC Performance Requirements**

The following section lists basic assumptions and lessons learned to guide the TPC and inform both the TPC and the applicant of CG-OES-2 expectations. This list is not exhaustive. Any questions regarding these assumptions should be addressed to CG-OES-2 staff.

#### **General**

- Once the applicant has contracted with the selected TPC, the TPC will be supervised by the USCG's assigned project staff. Although the applicant will pay for the TPC's work, the applicant will have no technical direction of the work done under the contract, and with the exception of the Project Description, will not be able to review the TPC's work product before release to the public. The CG-OES-2 staff will have technical direction over the scope, content, and quality of the TPC's work, and will independently evaluate the results of the TPC's work;
- All work products and deliverables must be compatible with the USCG HQ standard work station;
- The USCG and MARAD own all finished Draft and Final EISs and EAs and contents of the administrative record;
- TPC may be required to develop an Environmental Impact Report (EIR) (or equivalent) for appropriate state(s) in combination with the USCG EIS. In this case, the state lead agency will ensure that the EIR complies with state requirements; however, the USCG will retain overall management responsibilities regarding the document as a whole; and,
- The TPC will provide the applicant with a written monthly progress report along with their invoice. This progress report must be reviewed and approved by CG-OES-2 project staff prior to submittal to the applicant. The progress report should identify the progress of tasks defined

within the bid proposal, associated costs, potential problems and other information relevant to the invoice. Reports should not contain specific outcomes/details of analysis yet to be finalized or made public. Additionally, CG-OES-2 staff do not audit TPC efforts regarding level of effort or cost required to complete a given task (e.g. percent complete).

## **EIS General Guidance**

- The EIS should conform to the Council on Environmental Quality requirements specified at 40 CFR §§ 1500 - 1508<sup>5</sup>;
- The TPC is responsible for reviewing and independently verifying all materials in the application. Examples of independently verifying information include, but are not limited to: reviewing the same or different primary sources for technical background information and coming to the same conclusion, asking for expert review/input, checking model inputs, rerunning models presented by the applicant, running models where the applicant has not provided modeling results, redoing all calculations, seeking out and using information received from other government agencies and from non-government sources during the scoping and review processes for the preparation of the EIS;
- Throughout the life of the project, the TPC will set up and maintain a password protected call-in number for use during regularly-scheduled management and technical calls. The USCG should be able to use this call-in number if necessary for project calls even if the TPC is not on the call. No other project should use the same call-in number and password;
- The TPC will bring potentially controversial issues to the attention of the USCG project staff in a timely manner. The TPC should seek guidance from CG-OES-2 project staff if there is uncertainty as to whether an issue is controversial or not. As noted in “Conduct, Confidentiality and Conflict of Interest” below, the TPC may not speak or make promises on behalf of the USCG. All potentially controversial issues must be discussed with the CG-OES-2 project staff prior to discussions with cooperating agencies or others;
- Although CG-OES-2 project staff will generally communicate with the TPC through the TPC’s project manager and deputy project manager, CG-OES-2 reserves the right to speak directly with any member of the project team or ask that resource area leads participate in weekly or bi-weekly management meetings to discuss specific issues;
- The TPC is responsible for developing additional information requests to the applicant (data gap analysis) in a timely manner. Additional information requests and their responses will generally be posted on the Federal Docket after being cleared and vetted by the USCG;
- The applicant, in order to expedite the application review process, will be expected to provide a substantial level of background information and evaluations related to potential environmental effects and will be asked to provide all sources used to develop their application;
- The EIS should not cite the application as an authoritative reference. If material is included from the application, it must be independently verified using peer reviewed source reference. The impact analysis portions of the EIS generally should not contain text or analyses that have been cut and pasted from the application. The applicant should provide all figures and tables from the application in electronic form suitable for editing. All tables and figures must list a source of information other than the application;
- Pre-decisional language is not permitted in the EIS. All sentences that speak of the proposed action and/or potential impacts must use conditional language (i.e., “would” rather than “will”);
- The USCG generally does not state “no adverse impact” if there is a possibility, no matter how slight, of an adverse impact. All instances of “no adverse impact” should be brought to the attention of USCG staff;

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<sup>5</sup> For projects with applications filed prior to September 14, 2020, the TPC must confer with agency staff regarding which version of the CEQ regulations to follow. See 40 C.F.R. § 1506.13.

- Personal communications, meeting notes and phone logs used as references must be documented in the administrative record. Such references are NOT transferable from EIS to EIS (e.g., a personal communication in Project A FEIS cannot also be used in Project B); and,
- Internet sources of information should be noted in the reference section with the date the information was obtained and the person who obtained it. Such information cannot be transferred from project to project (e.g., an internet source referenced in Project A FEIS cannot also be used as a reference in Project B) unless the information is obtained and reassessed for the new project.

### **Meeting Plans and Summary Reports**

- TPC is responsible for arrangements and logistics, including security, for all public meeting(s) and license hearing(s), whether conducted in-person or virtually. TPC should plan for at least one public scoping and public comment meeting, and a license hearing in each adjacent coastal State. If the onshore component is extensive (i.e., crosses county lines) more than one public scoping and public comment meeting may be required;
- TPC must prepare a Public Scoping Meeting Plan (draft and final) and a DEIS Comment Meeting Plan (draft and final) which incorporates lessons learned from the Public Scoping Meeting Plan. Unless meeting venues change between scoping and the DEIS comment meeting(s), the DEIS Comment Meeting Plan should be similar to the Public Scoping Meeting Plan; and,
- Within ten (10) days of receiving the meeting transcripts from the court reporter, TPC must prepare a Public Scoping Meeting Summary Report, (meeting transcripts including translated versions, breakdown of comments by topic/resource, and attendance) for each meeting.

### **Project Impact Analyses and Mitigation Measures**

- The EIS' impact analysis should be presented as follows:
  - Describe the potential impact;
  - Present quantitative analysis, as feasible;
  - State impact conclusion (e.g., adverse/beneficial, short-term/long-term, direct/indirect, negligible, minor/moderate/major);
  - Identify and describe reasonable mitigation measures, including known/estimated effectiveness of same;
  - State whether full implementation of mitigation measures may change previously stated impact conclusion; and,
  - Analyze alternatives (can be abbreviated by detailing only the differences between the proposed action and alternatives).
- Other EISs should only be referenced for their conclusions. All technical background information should be supported by direct review of credible primary references. If the TPC feels that it is appropriate to cite other EISs for information other than their conclusions, obtain approval from the CG-OES-2 staff assigned to the project prior to doing so; and,
- Mitigation measures should be included in a separate list, and should also be referred to within environmental consequences and public safety sections.

### **Cumulative Impacts Analysis**

- For each impact discussed in the project impact analysis, list and describe spatial and temporal overlaps with specific past, present and foreseeable activities that have also had an impact on that resource in that region;
- Analyses should take into account cumulative impacts on any management plan goals or take limits (e.g., Fishery Management Plans (FMPs), CAA State Implementation Plans (SIPs), Potential Biological Removal (PBR) for marine mammals); and,
- Include a cumulative impacts analysis for all alternatives.

## **Alternatives Analysis**

- Once the purpose and need for the proposed action is drafted, a reasonable range of alternatives to the proposed action including, but not limited to, offshore port and/ onshore terminal location, pipeline route and landfall, construction methods, port design, and technologies used during operation must be developed;
- At the direction of CG-OES-2, the TPC may be required to develop additional alternatives. Consequently, the applicant may be asked to develop information for alternatives not suggested in the application;
- Screening criteria must be developed for each alternatives category. The applicant's business plan and/or view of the economic viability of an alternative may be mentioned in the analysis but may not be used as screening criteria. The three initial screening criteria are: 1) has potential to reduce environmental impacts; 2) is viable; and, 3) meets most or all of the purpose and need for the proposed action. Secondary screening criteria must represent all the major environmental issues at hand for the particular alternative. For instance, if alternative construction techniques have a potentially large footprint on the seafloor and/or create underwater noise impacts on marine mammals, both of those issues must be reflected in the screening criteria;
- The EIS should describe each alternative and compare it against the screening criteria. At the end of each alternative subsection, there should be a conclusion sentence stating the reasons, related to the screening criteria, why or why not the alternative should be carried forward for detailed analysis; and,
- All alternatives must have sufficient analysis to make credible comparisons among alternatives. There should be a table at the end of each resource section comparing the impact of the alternatives to the proposed action.

## **Publication, Mailings, Newspaper Notices**

The TPC will make arrangements to print and mail the Interim Draft, Draft and Final EIS to the CG-OES-2 approved distribution lists, as required. The mailing of the Draft and Final EIS should take place concurrently with the electronic submission to the EPA HQ office and should arrive at their destinations before the EPA's Notice of Availability appears in the Federal Register (one week after submittal to EPA HQ). A commercial carrier with tracking capability (e.g., FedEx, UPS, USPS,) should be used for all Federal and state government offices. Additionally, the TPC will:

- Produce the documents on digital media in an easy to read format. The digital media will be mailed to addressees who have requested them;
- Prepare draft newspaper, social media, and other public notices prior to all public scoping and public comment meeting(s)/license hearing(s) and, upon approval by CG-OES-2 project staff, make arrangements to publish notices in newspapers local to the meeting/hearing venues. For cost purposes, assume at least three widely circulated newspapers in the local project area. Newspaper notices should not be placed in the classifieds or legal section and should be run at least twice within the two weeks prior to the meeting/hearing; and,
- Prepare notices for non-English speakers (if identified in the LEP analysis) for inclusion in newspaper notices or by other means to ensure outreach to these communities.

## **Administrative Record**

The administrative record is a collection of the entirety of the information and data relied on to prepare the EIS. The record includes all data, information and analyses, either generated by other sources or obtained from other sources, used to support the analysis and documentation. CG-OES-2 project staff will provide the TPC with an administrative record matrix to ensure all data is captured for the proposed project. The administrative record index will evolve over the course of the EIS development. The TPC should at a minimum:

- Organize all data and information to compose the record in a current, accessible file, indexed by topic;
- Propose an initial index for review and approval by CG-OES-2 project staff with the first end-of-month progress report and before scoping occurs;
- Include communications of all types (e.g., memoranda, internal notes, telephone conversation records, letters, e-mails, facsimiles, and minutes of meetings), as well as public outreach materials, such as newsletters, newspaper advertisements, and other public notices. All data and reference material should be included as part of the administrative record. All references cited in the EIS should be traceable to the administrative record;
- The TPC should maintain and keep up-to-date the administrative record throughout the entire EIS development process; and,
- The TPC should submit the index and a summary of the contents of the administrative record as a part of each end-of-month progress report.

### **Out of Scope Activities**

During the process of correcting application deficiencies, tasks outside the original scope of work specified in the contract between the TPC and applicant may be identified. These tasks may arise from internal review, through coordination with cooperating Federal or state agencies, or via public comment. The process for the TPC to conduct out-of-scope activities is as follows:

- TPC identifies a task that may be outside the scope and informs CG-OES-2 project staff in writing but takes no action on the task;
- CG-OES-2 project staff evaluates whether the identified task is required;
- If work is deemed necessary, CG-OES-2 project staff will ask the TPC for a written scoping of effort and estimate of impact on the schedule;
- If CG-OES-2 project staff agrees with the TPC's proposed scope and schedule, CG-OES-2 project staff will inform applicant that the out of scope task is required and ask that the applicant modify the contract; and,
- The applicant will inform CG-OES-2 project staff when the contract has been modified; and,
- CG-OES-2 project staff will inform the TPC to proceed with the task.

Note: Hours worked on the task prior to modification of the contract between the applicant and TPC may not be billable. Also note that the applicant and TPC may not discuss implications of the out-of-scope task on the project schedule. All concerns regarding project schedule should be discussed with CG-OES-2 project staff.

### **Conduct, Confidentiality and Conflict of Interest**

- No TPC or sub-contractor may talk to non-governmental entities (e.g., non-governmental organizations (NGOs), members of the public, industry stakeholders) about the project without prior approval of CG-OES-2 project staff;
- No TPC or sub-contractor may talk to members of the press about the project. If approached by the media, immediately refer them to CG-OES-2 project staff;
- No TPC or sub-contractor may publish articles about the project or post comments on the project docket without prior approval of CG-OES-2 project staff;
- No TPC or sub-contractor may represent themselves as agents of the USCG;
- No TPC or sub-contractor may make presentations about the project without the prior approval of CG-OES-2 project staff; and,
- Requests by the TPC for additional material, or for clarification of information, will be forwarded to the applicant by CG-OES-2 after a determination is made that this material or information is necessary. CG-OES-2 will serve as the primary point of contact for all Federal or state agencies

who wish to engage the applicant regarding data gaps or information requests. The applicant may communicate directly with the TPC only on billing and contract issues; all other communications must take place with CG-OES-2 project staff present. If billing or contract issues involve project management or NEPA issues (project schedule, regulatory clock stop/start dates, outstanding data gaps, etc.), the communication must cease until CG-OES-2 project staff has been allowed to participate in the discussion.

### **3-3: Risk Contract Deliverables**

The TPC will be responsible to do and deliver the following for Phase I and Phase II (Note: Please reference the example statement of work provided as part of the pre-application materials for further details regarding Phase I and Phase II. All deliverables must be approved, and may be amended, by CG-OES-2 project staff).

#### **Project Administration**

- **Project Plan & Timeline:** The TPC shall confirm its technical approach and key milestones no later than **ten (10) business days** from start of contract date for discussion and comment. The TPC shall prepare a project plan and schedule. The project plan will outline the key milestones and tasks as described in this section. Contract schedule dates for deliverables may be extended during the period of performance only at the discretion or approval by CG-OES-2.
- **Progress Reports (E-mail, Teleconference or Site):** The TPC shall provide regular updates on specific technical activities to the CG-OES-2 project staff via regularly scheduled e-mail, teleconference call or site visits. The progress reports shall occur at a time mutually agreed upon by both the TPC and CG-OES-2. The reports shall include, but not be limited to, the following:
  - Summary of the progress;
  - Problems encountered;
  - Planned activities during the next reporting period;
  - Recommended changes in strategy and any foreseeable problems; and
  - Unforeseen costs.

#### **Meetings and Site Visits**

The meeting and site visit work required of the TPC includes, but is not limited to, developing materials for meetings, participating in meetings, preparing reports summarizing the results of the meetings/process, and preparing a written summary of comments/issues for subsequent review and action. The decision to hold these meetings in-person or virtually will be made by CG-OES-2.

- **Kickoff Meeting:** An initial meeting at the beginning of each Phase with CG-OES-2 and the TPC will be scheduled either at the CG-OES-2 headquarters or via virtual conference to review the details of the scope and set milestones for deliverables of the contract.
- **HAZID Workshop:** The TPC shall facilitate and maintain a record for the HAZID Workshop near the local US Coast Guard Sector or virtually, as decided by CG-OES-2. CG-OES-2 shall provide the attendee list but at a minimum will include the TPC, Applicant representative, local Coast Guard Sector representatives, MARAD, and CG-OES-2. The Applicant will only attend the project description portion of the HAZID in order to deliver the initial presentation and answer questions from the workshop attendees.
- **Phase II Workshop(s):** The TPC shall facilitate and maintain a record for the risk mitigation workshop(s) and coordinate the location near the local Coast Guard Unit or virtually. CG-OES-2 shall provide the attendee list but at a minimum will include the TPC, Applicant representative that can answer questions about intended mitigation measures, local Coast Guard Sector representatives, MARAD, and CG-OES-2.
- **Phase I & II Report Milestone Meeting (as needed):** The TPC shall coordinate the project closure meeting that will discuss the details of the final Phase I & II Report. Participants will be limited to

## Reports and Results:

- HAZID Workshop Summary: The TPC shall prepare a HAZID workshop summary that includes a risk register with the list of scenarios identified in the workshop.
- Draft Phase I Report: The TPC shall prepare Draft Phase I Report for CG-OES-2 review and approval prior to the publication of the final version.
- Phase I Results: The TPC shall use the following guideline to provide the conclusions of Phase I of the risk assessment:
  - Vessel Traffic Frequency Analysis with estimated frequency of powered and drifting collisions
  - Likelihood of pipeline failure
  - Discharge quantity
  - Physical Effects modeling
    - Accidental
    - Intentional
  - DWP Risk Assessment
    - Accidental
    - Intentional
  - Impacts to public safety, environment, and property
- Final Phase I Report: The TPC is responsible for preparing the final Phase I Report. The Phase I Report shall be unclassified and shall **not** contain any Sensitive Security Information (SSI). The Phase I Report will be included as an appendix in the Draft Environmental Impact Statement (DEIS) which will be published for public comments. The technical approach and results of the physical effects modeling performed during Phase I can be either included in the Phase I report, or as an alternative these sections can be placed in a separate appendix and referenced in the Phase I report. The report shall include, but not be limited to the following sections:
  - Executive Summary
  - Acronyms
  - Definition of Terms
  - Purpose and Objectives
  - Description of Technical Approach, including modeling approach
  - Risk Results, Modeling Results and Conclusions
  - List of Contributors
  - References
  - Published Guidance
  - Scientific Documents
  - Other technical reports
  - HAZID Summary
- Revised Phase I Report: If public comments on the Phase I Report included in the DEIS require changes/modifications to the Report, the TPC shall make those changes as advised by CG-OES-2 and prepare a revised Phase I Report. The revised report will be included in the Final Environmental Impact Statement.
- Draft Phase II Report: The TPC shall prepare a Draft Phase II Report for CG-OES-2 review prior to the publication of the final version. If needed and requested by the Coast Guard, a preliminary report on the proposed mitigations, shall be prepared by the TPC and submitted to the Coast Guard before the record of decision is issued in order for the Coast Guard to assess the environmental impacts of those mitigations and incorporate into the EIS.
- Final Phase II Report: The TPC is responsible for preparing the final Phase II Report. The Phase II

Report shall be unclassified, but treated as containing SSI. The report shall include, but not limited to the following sections:

- Executive Summary
- Acronyms
- Definition of Terms
- Purpose and Objectives
- Description of Technical Approach
- Baseline Risk Assessment
- Mitigated Risk Assessment
- Risk Findings and Conclusions
- List of Risk Mitigations
- List of Contributors
- References
- Published Guidance
- Scientific Documents
- Other technical reports



## Chapter 4: Contract Administration

### 4-1: Organizational Conflicts of Interest - General

The term "Organizational Conflicts of Interest" (OCI) means that a relationship or situation exists whereby a contractor, including chief executives and directors, to the extent that they will or do become involved in the performance of the contract, and proposed consultants or subcontractors, where they may be performing services similar to the services provided by the prime contractor, has past, present, or currently planned interests that either directly or indirectly, through a client, contractual, financial, organizational or other relationship, may relate to the work to be performed under the third-party contract, and may:

- Diminish its capacity to give impartial, technically sound, objective assistance and advice; or,
- Result in the contractor gaining an unfair competitive advantage.

The term OCI does not include the normal flow of benefits from the performance of the contract.

The term "affiliates" means business concerns that are associated with each other when either directly or indirectly one concern or individual controls, or has the power to control, another, or when a third party controls or has the power to control both.

The term "energy concern" includes:

- Any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;
- Any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;
- Any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power; and,
- Any person significantly engaged in development, production, processing, sale or distribution of nuclear materials, facilities or technology.

#### Existence of OCI's

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

- Result in an unfair competitive advantage to a contractor; and/or,
- Impair the contractor's objectivity in performing the contract work.

OCIs typically exist where the contractor, its affiliates, employees or its subcontractors have a past or ongoing financial interest in a project that is covered by the third-party contract. For example, an OCI exists if the contractor:

- Has been involved with the applicant on the project before it is proposed to the USCG, or while it was pending before the USCG; or,
- Has a financial or other interest in the outcome of the USCG's decision.

Should an actual or apparent conflict of interest exist, the contractor's mitigation plan should describe the mechanism used to assure availability of, and access to resources. In addition, it should include the mechanism used by the project manager(s) to gather resources to assure continuation and completion of assigned tasks when an actual or apparent OCI is present.

The applicant will review each OCI Statement and abstract to determine if the contractor is capable of impartially performing the environmental services required under the contract based upon the information provided to the applicant in the OCI statement and taking into account any mitigation plan submitted by the contractor. A format for this certification is included in Appendix C. All OCI materials submitted to CG-OES-2 (including the contractor's OCI Statement, mitigation plans, and the applicant's certification) will be reviewed by appropriate USCG legal staff.

The selected TPC will have a continuing obligation to identify conflicts that arise because of changes in corporate identity, affiliation, structure, ownership, or changes to the contract. In the event an OCI is discovered after CG-OES-2 has selected a TPC, or a contract award from the applicant, the TPC will be required to immediately stop work. The TPC or applicant must notify CG-OES-2 of the OCI immediately upon discovery of same. CG-OES-2 will take appropriate action to determine what steps must be taken to avoid or mitigate the OCI.

Subcontractors and affiliates must submit an OCI Statement and, where necessary, mitigation plans to resolve real or perceived OCIs.

### **Role of USCG**

It is the policy of the USCG to identify and avoid, or to mitigate, an OCI before selecting a TPC.

The USCG generally considers two factors to determine whether an OCI exists:

- Are there conflicting roles (including potential financial involvement) which might bias a contractor's judgment in relation to its work for the USCG?
- Is the contractor being given an unfair competitive advantage based on the performance of the contract?

If an OCI does exist, CG-OES-2 will require the contractor to submit an acceptable mitigation plan. If the conflict cannot be resolved through a mitigation plan, the contractor will be ineligible for selection or for proceeding with the third-party contract.

## **4-2: OCI Disclosure & Representation (OCI Statement) Requirements**

All prospective contractors must submit an Organizational Conflicts of Interest Representation/ Disclosure (Appendix D) as part of their proposal. Specifically, contractors must reveal all relationships, including ownership interests, with all USCG regulated businesses, including related shipping, refining, connecting pipeline, wholesale, retail, or financing of the material transported through the port or of a technological substitute. Contractors must state whether or not there is an OCI, and if so, to what extent. If an actual or apparent conflict is identified, a detailed mitigation plan to resolve and isolate any OCI must be provided. Guidance regarding the OCI Statement, including requirements and definitions, are provided in this section.

### **Documents to File**

The TPC must submit the following documents:

- Either the OCI Representation Statement (refer to Appendix C) representing that the TPC has no OCIs, or OCI Disclosure Statement in the event that the TPC has information relevant to a potential OCI (refer to Appendix D); and,
- If the OCI Disclosure Statement is signed, an attachment must show the information required in Appendix D.

Note: Apart from other remedies allowed by law or contract, any deliberate non-disclosure or misrepresentation of facts relevant to the OCI disclosure required by the USCG may result in disqualification of the contractor from this and future third-party contracts.

### **Who Must File**

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

- The prime contractor;
- The subcontractor(s) (except if only supplies are provided) and consultants at every tier;
- All affiliates of the foregoing; and,
- Any entities owned or represented by the chief executives or directors of:
  - The prime contractor;
  - Any of the subcontractors, except for those only providing supplies;
  - Any of the consultants.

Chief executives and directors, if they will be involved in performing the proposed work of:

- The prime contractor;
- The subcontractors at every tier (except for those only providing supplies);
- The consultants at every tier; or,
- All affiliates of the foregoing.

### **4-3: Ex-Parte Communication**

Ex-parte communication refers to exchanges between the applicant and the TPC which are not otherwise disclosed, authorized or previously revealed to CG-OES-2. Ex-parte communications can be written or oral, are off-the-record, and deal with the merits of the DWP license application. Ex-parte communications between the applicant, non-governmental entities (e.g., NGOs, members of the public, industry stakeholders) and the TPC are prohibited.

If an ex-parte communication occurs, the TPC will be required to immediately report this to CG-OES-2. This does not prohibit discussions between the TPC and the applicant about contract administrative matters, e.g. their payment, contract termination, etc.

Direct all inquiries regarding OCI and ex-parte communications to:

Commandant (CG-OES-2)  
ATTN: Deepwater Ports  
US Coast Guard Stop 7509  
2703 Martin Luther King Jr Ave SE  
Washington DC 20593-7509  
Tel: (202) 372-1410

### **4-4: Indemnification and Hold Harmless**

The applicant and each prospective contractor and subcontractor must complete and sign separate Indemnification and Hold Harmless Forms (refer to Appendix E).

Direct all inquiries regarding Indemnification and Hold Harmless statements to:

Commandant (CG-OES-2)  
ATTN: Deepwater Ports  
US Coast Guard Stop 7509  
2703 Martin Luther King Jr Ave SE  
Washington DC 20593-7509  
Tel: (202) 372-1410

#### **4-5: Additional Contract Provisions**

When the contract between the applicant and the TPC is made, the applicant may insert any contractual provisions, terms and/or conditions that the USCG agrees are not inconsistent with this Handbook.

#### **4-6: Dispute Resolution and Termination of Contract**

The applicant's contract with the selected TPC must indicate the terms under which the contract may be terminated, and should include procedures following fulfillment of the contract or upon receipt of a DWP license from MARAD. The USCG must specifically approve any additional grounds, beyond those that are listed below.

At a minimum, the contract with the applicant may be voided and/or terminated if the TPC, or any of its subcontractors:

- Has unfavorable financial audit results (only if they impact a contract's ability to complete all tasks and deliverables including the NEPA documents);
- Submits erroneous or false documents, forms or statements; or,
- Fails to identify any pre-existing or new OCI(s).

CG-OES-2 can recommend termination of a contract to the applicant if the TPC, or any of its subcontractors:

- Fails to commit sufficient resources for timely completion;
- Fails or refuses to complete work tasks as specified by the contract; or,
- Fails to identify any pre-existing or new OCI(s).

Any recommendation to the applicant for contract termination must be in writing with copy to the TPC. In the event that a TPC's contract is terminated by the applicant, the applicant will submit a recommendation to CG-OES-2 on execution of a new contract with another TPC. If a satisfactory candidate is available, the selected TPC may be made from the original list of prospective TPCs. In the event of a termination prior to performance on the contract, the TPC will immediately transfer all administrative record materials and interim documents to CG-OES.

If the USCG has concerns related to performance of the TPC on the final contract, they shall be referred by the USCG to the applicant for resolution. The final contract should provide dispute resolution and termination for failure to perform clauses.

#### **4-7: RFP Record Keeping**

The TPC should maintain all records while under contract on the project. Records must include, but are not limited to:

- The applicant's RFP;
- Correspondence to/from the applicant pertaining to the RFP or RFP process;
- The USCG's letter of selection;

- OCI & hold harmless statements;
- Copy of the final contract, including any contract amendments or modifications;
- Subcontractor information along with copies of any contracts made with subcontractors;
- Confidentiality agreements signed by all team members and all subcontractors;
- Project status reports; and,
- Invoices.

## Appendices

### Appendix A: Regulatory References and Executive Orders (E.O.)

In constructing and operating a deepwater port, the licensee must comply with all applicable Federal, State, and tribal environmental statutes. For the purposes of information, the Federal environmental statutes and Executive Orders (E.O.s) that may apply, include, but are not limited to:

Abandoned Shipwreck Act (ASA), 43 U.S.C. 2102, *et. seq.*;  
American Indian Religious Freedom Act (AIRFA), 42 U.S.C. 1996, *et. seq.*;  
Antiquities Act, 16 U.S.C. 433, *et. seq.*;  
Archeological and Historic Preservation Act (AHPA), 16 U.S.C. 469;  
Archaeological Resources Protection Act (ARPA), 16 U.S.C. 470 aa–ll, *et. seq.*;  
Architectural Barriers Act, 42 U.S.C. 4151, *et. seq.*;  
Clean Air Act (CAA), Pub. L. 95–95, 42 U.S.C. 7401, *et. seq.*;  
Clean Water Act of 1977 (CWA), Pub. L. 95–217, 33 U.S.C. 1251, *et. seq.*;  
Coastal Barrier Resources Act (CBRA), Pub. L. 97–348, 16 U.S.C. 3510, *et. seq.*;  
Coastal Zone Management Act (CZMA), Pub. L. 92– 583, 16 U.S.C. 1451, *et. seq.*;  
Commandant Instruction (COMDTINST) 5090.1, USCG Environmental Planning Policy  
Community Environmental Response Facilitation Act (CERFA), 42 U.S.C. 9620, *et. seq.*;  
Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), also commonly referred to as Superfund, Pub. L. 96–510, 26 U.S.C. 4611, *et. seq.*;  
Consultation and Coordination with Indian Tribal Governments, E.O. 13175, 65 FR 67249;  
Coral Reef Protection, E.O. 13089, 63 FR 32701;  
Council on Environmental Quality Regulations for Implementation of NEPA (Title 40 Code of Federal Regulations parts 1500-1508);  
Deepwater Port Act of 1974 (Title 33 USC 1501);  
Deepwater Port Modernization Act of 1996 (USC 1501, *et seq.*);  
Emergency Planning and Community Right-to- Know Act, 42 U.S.C. 11001–11050, *et. seq.*;  
Endangered Species Act of 1973 (ESA), Pub. L. 93–205, 16 U.S.C. 1531, *et. seq.*;  
Energy Efficiency and Water Conservation at Federal Facilities, E.O. 12902, 59 FR 11463;  
Environmental Effects Abroad of Major Federal Agencies, E.O. 12114, 44 FR 1957;  
Environmental Quality Improvement Act, Pub. L. 98–581, 42 U.S.C. 4371, *et. seq.*;  
Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, E.O. 12898, 59 FR 7629;  
Federal Compliance with Pollution Control Standards, E.O. 12088, 43 FR 47707;  
Federal Insecticide, Fungicide, and Rodenticide Act, Pub. L. 86–139, 7 U.S.C. 135, *et. seq.*;  
Federal Records Act (FRA), 44 U.S.C. 2101–3324, *et. seq.*;  
Federalism, E.O. 13083,  
Fish and Wildlife Act of 1956, Pub. L. 85–888, 16 U.S.C. 742, *et. seq.*;  
Fish and Wildlife Coordination Act, (Pub. L. 85–624, 16 U.S.C. 661, *et. seq.*;  
Fisheries Conservation and Recovery Act of 1976, Pub. L. 94–265, 16 U.S.C. 1801, *et. seq.*;  
Flood Disaster Protection Act, 42 U.S.C. 4001, *et. seq.*;  
Flood Plain Management and Protection, E.O. 11988, 42 FR 26951;  
Greening the Government Through Leadership in Environmental Management, E.O. 13148, 65 FR 24595; 63 FR 49643;  
Historic Sites Act, 16 U.S.C. 46, *et. seq.*;  
Improving Access to Services for Persons with Limited English Proficiency, E.O. 13166, 65 FR 50121;  
Indian Sacred Sites, E.O. 13007, 61 FR 26771;  
Intergovernmental Review of Federal Programs E.O. 12372, 47 FR 30959;  
Invasive Species, E.O. 13112, 64 FR 6183;

Locating Federal Facilities on Historic Properties in our Nation's Central Cities, E.O. 13006, 61 FR 26071;

Magnuson-Stevens Fishery Conservation and Management Act as amended through October 11, 1996, 16 U.S.C. 1801, *et. seq.*;

Marine Mammal Protection Act of 1972 (MMPA), Pub. L. 92-522, 16 U.S.C. 1361;

Marine Protected Areas, E.O. 13158, 65 FR 24909;

Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92- 532, 16 U.S.C. 1431, *et. seq.* and 33 U.S.C. U.S.C. 1401, *et. seq.*;

Maritime Transportation Security Act of 2002 (PL 107-295);

Migratory Bird Treaty Act, 16 U.S.C. 703-712, *et. seq.*;

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190, 42 U.S.C. 4321, *et. seq.*;

National Historic Preservation Act of 1996 (NHPA), Pub. L. 89- 665, 16 U.S.C. 470, *et. seq.*;

Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001, *et. seq.*;

Navigation and Navigable Waters, Title 33 Code of Federal Regulations, Chapter I—Coast Guard, Department of Homeland Security; Subchapter NN—Deepwater Ports, Part 148 (Deepwater Ports: General), Part 149 (Deepwater Ports: Design, Construction, and Equipment) and Part 150 (Deepwater Ports: Operations);

Noise Control Act of 1972, Pub. L. 92-574, 42 U.S.C. 4901, *et. seq.*;

Pollution Prevention Act of 1990 (PPA), 42 U.S.C. 13101-13109, *et. seq.*;

Protection and Enhancement of Cultural Environmental Quality, E.O. 11593, 36 FR 8921;

Protection and Enhancement of Environmental Quality, E.O. 11514, 35 FR 4247;

Protection of Children from Environmental Health and Safety Risks, E.O. 13045, 62 FR 19885;

Protection of Wetlands, E.O. 11990, 42 FR 26961;

Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, E.O. 13990, 86 FR 7037;

Recreational Fisheries, E.O. 12962, 60 FR 307695;

Rehabilitation Act of 1973 Section 508, 29 U.S.C.794d

Resource Conservation and Recovery Act of 1976 (RCRA), Pub. L. 94- 580, 42 U.S.C. 6901, *et. seq.*;

Responsibilities of Federal Agencies to Protect Migratory Birds, E.O. 13186, 66 FR 3853; Safe Drinking Water Act (SDWA), Pub. L. 93-523, 42, U.S.C. 201, *et. seq.*;

Tackling the Climate Crisis at Home and Abroad, E.O. 14008, 86 FR 7619;

Toxic Substances Control Act (TSCA), 7 U.S.C. 136, *et. seq.*; and

Wild and Scenic Rivers Act, Pub. L. 90-542, 16 U.S.C. 1271, *et. seq.*

## Appendix B: Schedule of TPC Deliverables for EIS Document

The TPC is responsible for deliverables according to the following generic schedule. The TPC and CG-OES staff assigned to the project will coordinate with the TPC to finalize the project's timeline.

### DEEPWATER PORT ACT APPLICATION TIMELINE

**NOTE: The DWPA statutory timeline may be suspended (Clock Stopped) at any time in the process if additional data must be gathered and analysis conducted (see 33 CFR § 148.107).**

MILESTONES / DELIVERABLES	DELTA DAYS	356 DAY CLOCK	240 DAY CLOCK
<b>APPLICATION PHASE</b>			
Receive Application		0	
Completeness Review	21	21	
Notice of Application in Federal Register	5	26	1
TPC selection			
<b>TOTAL DAYS APPLICATION</b>	<b>26</b>		
<b>DRAFT EIS PHASE</b>			
Notice of Intent to prepare EIS, request comments and public meeting(s) in Federal Register (FR)	6	33	7
Scoping Period and Public Scoping Meeting(s)	30	63	37
Prepare Preliminary Draft EIS (approximate)	38	101	75
USCG/MARAD Review PDEIS	14	115	89
Prepare Interim DEIS	7	122	96
Federal Agencies Review IDEIS	14	136	110
Prepare DEIS/DEIR - File with EPA	14	150	124
Publish/distribute DEIS - Notice of Availability/Notice of Meeting(s) in FR	7	157	131
Comment Period / NEPA Public Meeting(s)	45	202	176
<b>TOTAL DAYS Draft EIS</b>	<b>176</b>		
<b>FINAL EIS PHASE</b>			
Prepare Preliminary Final EIS/EIR (approximate)	14	216	190
USCG/MARAD Review PFEIS	14	230	204
Prepare and Distribute Interim Final EIS			
Prepare Final EIS/EIR - File with EPA	14	244	218
Publish/distribute FEIS/FEIR - Notice of Availability/Notice of Hearing(s) in FR	7	251	225
<b>TOTAL DAYS Final EIS</b>	<b>49</b>		
<b>FINAL COMMENTS, APPLICATION HEARINGS AND DECISION</b>			
Public Comment Period on EIS/EIR and Application.**	30		
<b>Application Public Hearing(s)</b>		<b>266</b>	<b>240</b>
Completion of Independent Risk Assessment			
<b>Governor, Federal and State Agency Comment Period on EIS/EIR and Application</b>	<b>45</b>	311	
Develop ROD and License conditions			
<b>MARAD ROD</b>	<b>45</b>	<b>356</b>	
Further detail conditions of the license			
<b>MARAD License</b>			

\*\* 30 day comment period is from date of availability of FEIS, generally 14 day notice from NOA to final public hearing



## **TIMELINE Overview**

- 356 days from receipt of application to ROD – DWPA
- 240 days from notice of application in FR to final hearing(s) – DWPA
- 45 days from final hearing(s) for Federal/State Agency and Governor comment - DWPA
- 90 days from final hearing(s) to RODDWPA
- 30 day scoping period – NEPA
- 45 day DEIS comment period (includes public meeting(s)) – NEPA
- 30+ day FEIS comment period -NEPA/USCG
- 2 weeks from publication to public meetings(s) – USCG guideline
- EIS's must be filed with EPA on a Friday – officially publish following Friday – EPA Requirement
- Takes 4-5 days to get a FR notice published in the FR
- For the risk assessment, Phase I is completed in 120 days from the kickoff meeting and ends with final acceptance of the Phase I report. Phase I needs to be completed prior to publishing the DEIS. Phase II is completed in 60 days from the Phase II kickoff meeting and ends with final acceptance of the Phase II report. Phase II needs to be completed prior to the ROD.

## Appendix C: Organizational Conflict of Interest - Applicant Certification

(Applicant's letterhead)

### OCI Certification:

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

I have reviewed the proposal of **(name of TPC)** for Organizational Conflicts of Interest. Based upon a review of the information contained in the OCI Representation or OCI Disclosure and any abstract or mitigation plan submitted by **(name of TPC)**, in my opinion, **(name of TPC)** is capable of impartially performing the environmental services, assuming proper implementation of any mitigation plan submitted by **(name of TPC)**.

Signature:

Title:

Date:

## Appendix D: Organizational Conflicts of Interest Representation/Disclosure

COMPLETE EITHER THE REPRESENTATION OR THE DISCLOSURE STATEMENT -- NOT BOTH

### OCI Representation Statement:

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_ Organization: \_\_\_\_\_  
Title: \_\_\_\_\_

### OCI Disclosure Statement

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

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
Name: \_\_\_\_\_ Organization: \_\_\_\_\_  
Title: \_\_\_\_\_

\* An unfair competitive advantage does not include the normal flow of benefits from the performance of the contract.

\*\* **Format the attachment as follows:**

#### For all OCI's:

- Divide the following data into four parts: organizational, contractual, financial, and other;
- The company, agency or organization in which there is a past, present, or currently planned interest or activity (financial, contractual, organizational or otherwise);
- Brief description of relationship;
- Period of relationship;
- Extent of relationship (e.g., value of financial interest of work; percent of total holdings, total work, etc.); and,
- Mitigation plan, as necessary.

#### Additionally, for OCI's involving other applicants, include the follow:

- For any contract with a current DWPA license applicant, describe the services rendered (write EIS, complete permits etc.); and whether the other applicant is applying for a license in the same region (e.g. Gulf of Mexico).

- Describe the efforts you have made to ensure that all contracting parties are aware of your contractual relationship with all other pending applicants.
- Describe the efforts you have made to protect proprietary data.
- Describe other mitigation steps, if any.

## Appendix E: Indemnification and Hold Harmless Form

**(Applicant, TPC or Subcontractor Letterhead)**

**TO: (Title, name and office of USCG point-of-contact)**

**FROM: (Name and title of applicant, TPC or subcontractor point-of-contact)**  
**(Name of applicant, TPC or subcontractor)**

**DATE: (Insert Date)**

**SUBJECT: Indemnification and Hold Harmless statement for the (applicant or project name)**  
**Deepwater Port Project**

**(Applicant, TPC, or subcontractor)** has agreed to observe and abide by federal regulations and U.S. Coast Guard policies pertaining to this Deepwater Port project and license application process. In addition, **(applicant, TPC or subcontractor)** agrees to indemnify and hold harmless the United States Coast Guard, the Department of Homeland Security, the Maritime Administration, the Department of Transportation, and all of their personnel from and against any claims, judgments, or lawsuits arising from damages alleged to have been caused by, or attributed to, the conduct of **(applicant, TPC or subcontractor)** in connection with the administration or supervision of the contract, or for the environmental services described within the contract.

Furthermore, the scope of this contract, and any subcontract, is limited to actions designed to further the Application and accordingly constitute costs to be reimbursed by the Applicant pursuant to 33 U.S.C. Section 1504. As the Applicant is paying contract costs directly, all parties acknowledge that no Federal funds are payable under this contract and hold harmless the Department of Homeland Security, the Department of Transportation, and their employees as to all payments under the contract.

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

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