



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

THIRD PARTY ENVIRONMENTAL CONTRACTING HANDBOOK

Deepwater Ports Standards Division
CG-5225

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(Supersedes April 2004 version)

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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 Coast Guard, as well as other Federal and state regulators, in applying statutory and regulatory requirements. If you want to discuss an alternative approach (you are not required to do so), you may contact Mr. Mark Prescott, Chief, Deepwater Ports Standards Division (CG-5225) who is responsible for implementing this guidance.

Nothing in this handbook should be construed to alleviate the USCG's responsibility for complying with NEPA requirements that are required by applicable laws, regulations, and USCG policy. As applicable, the state(s) environmental laws and regulations 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 in order to ensure compliance with applicable laws, regulations, policy or requirements relating to the administration of the DWP license application and for compliance with NEPA. 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.

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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 Deepwater Ports Standards Division (CG-5225), 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: <http://www.uscg.mil/hq/cg5/cg522/cg5225>

1-2: Background

In 1974, Congress passed the Deepwater Port Act (DWPA), as amended (33 USC 1501, et seq.). As defined in the original DWPA, a deepwater port is “any fixed or floating manmade structure other than a vessel, or any group of structures, located beyond the territorial sea and off the coast of the United States and which are used or intended for use as a port or terminal for the transportation, storage, or further handling of oil for transportation to any State...” 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 or into the United States and transporting oil or 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.

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 MARAD and the USCG to accept and process applications for liquefied natural gas (LNG) deepwater ports.

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 DWPA. This Act specifically requires the Secretary of the U.S. Department of Transportation (DOT) (“the Secretary”) to approve, approve with conditions, or deny any license application. The Secretary has further delegated this approval authority to the Administrator of the Maritime Administration, and the processing of license applications to the Commandant of the USCG and MARAD.

Upon receipt of a license application, MARAD and the USCG, in cooperation with other involved Federal agencies and departments, will comply with the National Environmental Policy Act of 1969

(NEPA), 42 USC 4332, et seq. In order to comply with NEPA, an environmental analysis and review must be conducted for each DWP license application that is submitted.

Given the abbreviated timeframe (Refer to Appendix C) resources, and levels of expertise needed to provide adequate information to the decision makers, the USCG uses contractors to review applications, and verify and develop information for environmental review of these projects. There are two means by which to obtain environmental/technical support services:

- Use 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,
- Use 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 USCG to review and select. The applicant directly funds the contract, while the actions of the TPC are directed 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 agreements to prepare and develop an Environmental Impact Statement (EIS) 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, as well as outlines the tasks, duties, responsibilities and timeline to comply with the NEPA requirements under the DWPA. The TPC hired under this third party contracting mechanism will provide assistance to the USCG's Deepwater Ports Standards Division (CG-5225).

Under this voluntary program, the TPC is:

- Selected by and works under the technical direction of the CG-5225 staff;
- Responsible for conducting environmental analyses and preparing documentation, which will include environmental impact statements (EISs) or Environmental Assessments (EAs) and may include state environmental documents to support the Record of Decision; and,
- 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 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.

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

- Submit a draft RFP (to ensure that MARAD and USCG programs and NEPA requirements are included) to CG-5225 for review and approval (required) along with a list of prospective TPCs (recommend a minimum of 3 to 5). The applicant may include additional provisions within the RFP and subsequent contracts that the USCG agrees are consistent with this handbook, NEPA, etc. (Refer to Section 4-5);
- Upon receipt of CG-5225 approval of the draft RFP, send a final RFP to each prospective TPC, copy to CG-5225. 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 best candidates (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;
- Establish 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 best qualified TPC packages, which must include Organizational Conflict of Interest (OCI) statements, technical and cost proposals, project time line, and draft third party contract;
- For each proposal submitted to CG-5225, include an OCI¹ certification, stating that the applicant has reviewed both the OCI statement and abstract, and that the applicant has determined that the prospective TPC is capable of impartially performing the environmental services required. 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-5225;
- Forward the three best qualified TPC packages with the exception of cost proposals to CG-5225. In lieu of the full cost proposal, forward a full description of the level of effort which the prospective TPC included with their cost proposal (Refer below); 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;

¹ Refer to guidance concerning the USCG's OCI requirements in Chapter 4. Examples of forms may be found in Appendices D, E and F. Questions concerning OCI matters should be directed to CG-5225 project staff.

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

USCG Responsibilities

Upon receipt of this information, the CG-5225 staff will:

- Review each TPC proposal for completeness, and evaluate each proposal against the USCG minimum threshold standards contained in Section 2-2;
- Review descriptions of level of effort;
- Interview prospective TPCs (at CG-5225's discretion);
- Make a final selection of the TPC within ten (10) business days; 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;
- USCG may review contract prior to final execution for conformity with RFP if desired by applicant.
- 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-5225.

Following final contract agreements, the TPC will attend a project "kick-off" meeting with the USCG and MARAD. The kick-off meeting allows the opportunity for the TPC to meet the USCG and MARAD project staff and understand the expectations for the deepwater port license application process. A kick-off meeting will also be held with the applicant.

2-2: Guidelines for Developing a Request for Proposal

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. (Refer to Disclaimers in Section 1-5, and Indemnification and Hold Harmless information in Section 4-4 and Appendix F.); and
 - A statement that the final selection of the TPC will be made by CG-5225.
- A section describing the third party arrangement that contains:
 - A statement that CG-5225 project staff will be solely responsible for determining the scope of the environmental document and the technical quality of the work; and
 - A statement that the TPC will prepare the environmental document under the technical direction of CG-5225 project staff.

- A section describing the third party selection process (Refer to Section 2-1);
- A statement that requires notification to CG-5225 project staff 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-5225 project staff;
- A section describing the third party screening criteria and the USCG's minimum threshold standards (Refer to Section 2-2) that will be utilized;
- A draft copy or summary of the application and any appendices;
- A detailed description of services and tasks required of the TPC (Refer to Sections 3-1 and 3-2);
- 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-5225 staff, will answer any 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 (USCG's OCI disclosure requirements is presented in Chapter 4) indicating that the TPC has no financial or other conflicting interest in the outcome of the project;
 - An OCI Questionnaire (Refer to Appendix F); and,
 - 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 a RFP, third party contractor proposals 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;
 - 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 (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;
- An itemized estimate of costs;
- 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 of the proposals have been prioritized, the applicant should select the three (3) highest scoring prospective TPCs and forward to the USCG (CG-5225) 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, and applicable state, environmental laws.
- Extent of the prospective TPC's history and prior experience in managing major NEPA reviews and preparing NEPA environmental documents for energy facilities within the past three years.

LNG, 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, 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 and environmental laws, and with other Federal agency offices that will be involved (EPA, NOAA, MMS, USACE offices).

2-4: Minimum Threshold Standards and Disqualifiers

The following criteria determine if a potential TPC has met the minimum standards. A proposal that does not meet minimums for **all** of these 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 questionnaire and the OCI statement have both 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 F).

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 Environmental Document Requirements

3-1: 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-5225 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 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 agencies and the applicant that represent stakeholders, affected landowners or other interested parties; and,
 - Appropriate tribal entities.
- Draft and Final Scoping Meeting Plan;
- Newspaper notices of Public Scoping Meeting(s);
- Posters/Handouts for Public Scoping Meeting(s);
- Public Scoping Meeting Report/Summary;
- Data Gap Analyses (ongoing throughout NEPA review);
- 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 et seq. 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.
- 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, but generally about 25-30;
- 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. Number of copies to be determined, but generally around 250-300; CDs may be required in place of, or in addition to hard copies;
- Draft EIS Public Comment Meeting Plan;
- Newspaper notices of Draft EIS Public Comment Meeting(s);
- Posters/Handouts for Draft EIS Public Comment Meeting(s);
- Draft EIS Public Comment Meeting Report/Summary;

- 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-5225 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 the EIS and mail as specified in the Distribution List. Number of copies to be determined, but generally around 250-300; CDs may be required in place of or in addition to hard copies;
- Newspaper notices of License Hearing(s); and,
- Posters/Handouts for License Hearing(s);
- 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 3-3 for specific requirements for the administrative record);
- 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-5225 staff;
- Reports from internal comment resolution database upon request of CG-5225 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 3-3);
- Development and maintenance of an interactive database to track comments on the Draft EIS and, at the request of CG-5225 staff, to track all agency comments from completeness, scoping, and internal drafts of the EIS. CG-5225 staff must be given access to the database;
- Verify the accuracy, validity, integrity and completeness of environmental information and advise CG-5225 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-5225 project staff review.

- Assist CG-5225 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, facilitator, court reporter, security);
- 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-5225, in a timely manner, of any matters, whether procedural or technical, that may affect performance on the contract.

3-2: Basic Assumptions and Contractor 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-5225 expectations. This list is not exhaustive. Any questions regarding these assumptions should be addressed to CG-5225 staff.

General

- Once the applicant has contracted with the selected TPC, the TPC will be supervised by the CG-5225 staff. If needed, a workspace for the TPC, including a phone and a computer, will be provided by CG-5225 at U.S. Coast Guard Headquarters. 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-5225 staff will have technical direction over the scope, content, and quality of the contractor's work, and will independently evaluate the results of the contractor'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 EAs and EISs 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 contractor will provide the applicant with a written monthly progress report along with their invoice. This progress report must be reviewed and approved by CG-5225 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-5225 staff do not audit contractor 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 et seq.;
- 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-5225 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-5225 project staff prior to discussions with cooperating agencies or others;
- Although CG-5225 project staff will generally communicate with the TPC through the TPC’s project manager and deputy project manager, CG-5225 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;
- Personal communications, meeting notes and phone logs used as references must be documented in the administrative record (Refer to Section 3-3). 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). 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, 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, 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-5225 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, port location, pipeline route and landfall, construction methods, port design, and technologies used during operation must be developed;
- At the direction of CG-5225, 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 the potential to have a 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 should:

Make arrangements to print and mail the Interim Draft, Draft and Final EIS to the CG-5225 approved distribution lists. The mailing of the Draft and Final EIS should take place concurrently with the submission of five bound copies 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 delivery to EPA HQ). A commercial carrier with tracking capability (i.e., FedEx or similar) should be used for all Federal and state government offices.

- Produce the documents on CD in an easy to read format. These CDs will be mailed to addressees who have requested them; and,
- Prepare draft newspaper notices prior to all public scoping and public comment meeting(s)/license hearing(s) and, upon approval by CG-5225 project staff, make arrangements to publish newspaper 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 twice within the two weeks prior to the meeting.

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-5225 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:

- 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-5225 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-5225 project staff in writing but takes no action on the task;
- CG-5225 project staff evaluates whether the identified task is required;
- If work is deemed necessary, CG-5225 project staff will ask the TPC for a written scoping of effort and estimate of impact on the schedule;
- If CG-5225 project staff agrees with the TPC's proposed scope and schedule, CG-5225 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-5225 project staff when the contract has been modified; and,
- CG-5225 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-5225 project staff.

Conduct, Confidentiality and Conflict of Interest

- 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-5225 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-5225 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-5225 project staff; and,
- Requests by the TPC for additional material, or for clarification of information, will be forwarded to the applicant by CG-5225 after a determination is made that this material or information is necessary. CG-5225 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-5225 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-5225 project staff has been allowed to participate in the discussion.

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.

The contractor may work on the project for the applicant after CG-5225 has made its final contractor selection, so long as there was no prior agreement(s) in place between the applicant and contractor.

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 D. All OCI materials submitted to CG-5225 (including the contractor's OCI Statement, mitigation plans, and the applicant's certification) will be reviewed by CG-0942 and CG-0944 legal staff.

The selected contractor 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-5225 has selected a contractor, or a contract award from the applicant, the contractor will be required to immediately stop work. The contractor or applicant must notify CG-5225 of the OCI immediately upon discovery of same. CG-5225 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-5225 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 a statement of **Organizational Conflicts of Interest Disclosure or Representations** (OCI Statement; Appendix E) as part of their proposal. Specifically, contractors must reveal all relationships, including ownership interests, with all USCG affected 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 (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 E); and,
- If the OCI Disclosure Statement is signed, an attachment must show the information required in Appendix E.

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 contractor which are not otherwise disclosed, authorized or previously revealed to CG-5225. 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., NGO's, members of the public, industry stakeholders) and the TPC are prohibited.

If an ex-parte communication occurs, the contractor will be required to immediately report this to CG-5225. This does not prohibit discussions between the contractor and the applicant about contract administrative matters, e.g. their payment, contract termination, etc.

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

U.S. Coast Guard (CG-5225)
Deepwater Ports Standards Division
2100 Second St. SW, Stop 7126, Rm. 1508
Washington, DC 20593-7126
Tel: (202) 372-1440

4-4: Indemnification and Hold Harmless

The applicant and each prospective contractor and subcontractor must complete and sign separate Indemnification and Hold Harmless Forms (Reference G).

Direct all inquiries regarding Indemnification and Hold Harmless statements to:

U.S. Coast Guard (CG-5225)
Deepwater Ports Standards Division
2100 Second St. SW, Stop 7126, Rm. 1508
Washington, DC 20593-7126
Tel: (202) 372-1440

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 approval of a LNG 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 contractor, 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-5225 can recommend termination of a contract to the applicant if the contractor, 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-5225 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-5225.

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. However, 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;
Archeological Resources Protection Act (AHPA), 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) M16475.1D: Implementing Procedures and Policy for Considering Environmental Impacts;
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.*;
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;

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

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.*;

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: Acronyms

USACE	U.S. Army Corps of Engineers
CAA	Clean Air Act
CEQ	Council on Environmental Quality
CFR	Code of Federal Regulations
CG-0942	Coast Guard Office of Environmental Law
CG-5225	Coast Guard Deepwater Ports Standards Division
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
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
LPG	Liquefied Petroleum Gas
MARAD	Maritime Administration
MMS	Minerals Management Service
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
SIP	State Implementation Plan
TPC	Third Party Contractor
USC	United States Code
USCG	U.S. Coast Guard

Appendix C: Schedule of TPC Deliverables for EIS Document

The TPC is responsible for deliverables according to the following generic schedule. The TPC and CG-5225 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
APPLICATION PHASE			
Receive Application		0	
Completeness Review	21	21	
Notice of Application in Federal Register	5	26	1
TPC selection			
TOTAL DAYS APPLICATION	26		
DRAFT EIS PHASE			
Notice of Intent to prepare EIS, request comments and public meetings in Federal Register	6	33	7
Scoping Period and Public Scoping Meetings	30	63	37
Prepare Preliminary Draft EIS (approximate)	38	101	75
USCG/MARAD Review PDEIS	14	115	89
Prepare Interim DEIS	7	122	96
Agency Review IDEIS	14	136	110
Prepare DEIS/DEIR - File with EPA	14	150	124
Publish/distribute DEIS- Notice of Availability/Notice of Hearings in FR	7	157	131
Comment Period / NEPA Public Hearings	45	202	176
TOTAL DAYS Draft EIS	176		
FINAL EIS PHASE			
Prepare Preliminary Final EIS/EIR (approximate)	14	216	190
USCG/MARAD Review PFEIS	14	230	204
Prepare and Distribute Interim Final EIS (optional)			
Prepare Final EIS/EIR – File with EPA	14	244	218
Publish/distribute FEIS/FEIR- Notice of Availability/Notice of Hearings in FR	7	251	225
TOTAL DAYS Final EIS	49		
FINAL COMMENTS, APPLICATION HEARINGS AND DECISION			
Public Comment Period on EIS/EIR and Application.**	30		
Application Public Hearings		266	240
Completion of Independent Risk Assessment			
Governor, Federal and State Agency Comment Period on EIS/EIR and Application	45	311	
Develop ROD and License conditions			
MARAD ROD	45	356	
Further detail conditions of the license			
MARAD License			

TIMELINE Overview

- 356 days from receipt of application to ROD – DWPA
 - 240 days from notice of application in FR to final hearings – DWPA
 - 45 days from final hearings for Federal/State Agency and Governor comment - DWPA
 - 90 days from final hearings to ROD-DWPA
 - 30 day scoping period – NEPA
 - 45 day DEIS comment period (includes public hearings) – NEPA
 - 30+ day FEIS comment period -NEPA/USCG
 - 2 weeks from publication to public hearings – 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
- ** 30 day comment period is from date of availability of FEIS, generally 14 day notice from NOA to final public hearing

Appendix D: 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 E: 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, 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 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:**

- 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.

Appendix F: 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: _____