



U.S. Department
of Transportation
Federal Highway
Administration

Memorandum

Subject: CEQ Regulation, 40 CFR 1506.5(c)
Contractor Disclosure Statement

Date: JAN 12 1982

From: Director, Office of Environmental Policy
Washington, D.C.

Reply to
Attn. of: HEV-11

To: Regional Federal Highway Administrators,
Regions 1-10, and Direct Federal Division
Engineers

We have received a number of inquiries asking for an interpretation of the provision in 40 CFR 1506.5(c) which requires contractors who prepare environmental impact statements (EIS's) to execute a disclosure statement specifying that they have no financial or other interest in the outcome of the project. The questions concerned the role a prime contractor and a subcontractor might have in the EIS preparation and in the subsequent design for a selected alternative.

Subsection (c) of 40 CFR 1506.5 is addressed to that situation where an EIS is prepared "by a contractor selected by the lead agency or where appropriate under § 1501.6(b), a cooperating agency."

The FHWA recognizes that in the preparation of an EIS a State works closely with consultants who might later have an interest in performing all or part of the final design on a selected alternative. We do not believe subsection 1506.5(c) was promulgated with the intent to upset the traditional Federal/State relationship. Rather, we interpret this section to apply only to those highly unique cases in which a contractor independently prepares an EIS for the State which then adopts the EIS as its own.

When a contractor (and/or subcontractor), in the role of a consultant, prepares studies which the State incorporates into an EIS which the State has taken an active role in preparing, it is not necessary for that contractor to execute the disclosure statement required by subsection 1506.5(c). Our experience confirms that State agencies act in good faith in choosing consultants for environmental studies and that the analysis contained in the EIS is the agency's own, culled from a variety of studies, public input, and other assistance which it has received during the preparation of the EIS.


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