

From: NEPA & Environmental Planning: Tools Techniques and Approaches for Practitioners

SECTION 3.3.6 Awarding Contracts Prior to Completing NEPA

Actions involving awarding of contracts require special consideration. The interim action criteria presented in 40 CFR 1506.1 may prohibit award of a final contract for the proposed action prior to completing NEPA. This is because the award of a final contract may limit the choice of reasonable alternatives or bias a final decision in favor of proceeding with a particular cause of action. However, NEPA's requirements do not necessarily prohibit award of a nonbinding contract that is contingent on first completing NEPA.

Sec. 1506.1 Limitations on actions during NEPA process.

(a) Until an agency issues a record of decision as provided in Sec. 1505.2 (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

1. Have an adverse environmental impact; or
2. Limit the choice of reasonable alternatives.

(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in paragraph (a) of this section, then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

(c) While work on a required program environmental impact statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

3. Is justified independently of the program;
4. Is itself accompanied by an adequate environmental impact statement;
and
5. Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.