

Press Guidance

August 3, 2012

RELEASED IN FULL

New Keystone XL Pipeline: Third-Party Contractor Chosen

Key Points:

REVIEW AUTHORITY: Oscar Olson, Senior Reviewer

- **After a detailed review process, the Department of State has selected Environmental Resources Management (known as "ERM") to serve as an independent third-party contractor for the review of the new Keystone XL Presidential Permit Application.**
- **The Department selected ERM from a set of proposals received in response to a Request for Proposals sent out on June 15. We reviewed each proposal based on the technical approach, management plan, personnel, workplan, and proposed schedule and on the organization's qualifications and experience.**
- **ERM will assist the Department in conducting a thorough analysis of the new route in Nebraska (in cooperation with the State of Nebraska) and in analyzing any relevant new significant information that has become available since the Final Environmental Impact Statement (FEIS) for the previous Keystone XL project application was completed in August 2011. This information will be compiled into a Supplemental Environmental Impact Statement (SEIS).**
- **Consistent with standard federal third-party contracting practice, which is used to save taxpayers' dollars, the selected contractor will work**

directly with, and under the sole direction of, the Department of State on the assessment, while the applicant, TransCanada, will pay for the work.

- We will conduct our review in a rigorous, transparent and efficient manner, using existing analysis as appropriate.

IF ASKED:

- When we announced consideration of an alternate route through Nebraska last November, our best estimate on timing was that we would complete the review process in the first quarter of 2013. It is unlikely that the review process will be completed before the first quarter of 2013.

Hard Q&A: Who is the Third-Party contractor selected for the Keystone review process? How did the Department choose them? What was TransCanada's role? What will the Third-Party contractor do? Can the Department begin work on the SEIS before Nebraska finishes their work of choosing a route within the state?

Q: Has the company we selected worked with TransCanada before?

- No, ERM has neither worked directly for TransCanada before, nor has it worked as a third-party contractor for a federal agency reviewing a TransCanada project. This is also true for subsidiaries of TransCanada.

Q: Will you provide the conflict of interest statements and/or the contract from the winning bidder?

- Yes, we intend to post the contract from the company we selected on the project web site as soon as we have vetted it to remove any confidential business information.

Q: To what companies did you send the RFP? What criteria did you use to choose these companies?

- We sent the RFP to ten companies. To develop this list, the Department consulted with five other federal agencies involved in similar third-party contracting in determining a list of qualified potential contractors. (PHMSA, DOE, FERC, BLM, and DOA/RUS)
- We also asked the applicant (TransCanada) to submit suggestions.
- We then vetted this list of over twenty potential contractors, considering factors including financial stability, capacity, and experience with NEPA and Environmental Impact Statements. This vetting process resulted in a list of ten companies to which we sent the RFP.
- We do not generally reveal the names of companies who decide not to submit proposals.

Q: Was Cardno/Entrix one of the companies on the list to receive a request for proposals?

- Yes.

- IF ASKED about OIG Report or conflict of interest and C/E: We are satisfied with the work the Cardno/Entrix has done with us in the past. The report from the State Department's Office of Inspector General confirmed there was no conflict of interest in our selection of Cardno/Entrix to serve as third-party contractor for the Keystone XL review process in 2009.

Q: Did Cardno/Entrix submit a proposal?

- No. Cardno/Entrix did not submit a proposal, however, they were listed as a subcontractor on one of the proposals we received. Cardno/Entrix was not a subcontractor to the offer we selected.
- We evaluated all the proposals on the same basis: looking at the technical approach, qualifications, project management, organizational qualifications and experience, and workplan.

Q: What other companies submitted Proposals?

- The Department sent the RFP to ten companies and received three proposals in response: from Environmental Resources Management, ICF International, and Ecology and Environment, Inc.

Q: Why did you not accept applications from any company that is interested? Why did you limit the list?

- It is common practice among federal agencies to solicit proposals for third-party contractors from a targeted field of potential applicants. We developed the list of potential third-party contractors to whom we sent the RFP in close consultation with other agencies with expertise in this area.

Q: How did Cardno/Entrix's role as a sub-contractor affect your review of the ICF bid?

- All three proposals were subject to the same review process and held to the same standard.
- We are satisfied with the work the Cardno/Entrix has done with us in the past. The report from the State Department's Office of Inspector General confirmed there was no conflict of interest.

Q: What role is TransCanada playing in the process of choosing a contractor?

- TransCanada will be paying for the work done by the independent third-party contractor. However, the Department selected the independent third-party contractor consistent with guidance developed in response to the OIG report that minimizes the role played by an applicant in screening and selecting a contract. The Department has the sole authority to supervise and direct the contractor's work on this project.

Q: Did TransCanada submit contractor recommendations like they did last time?

- Yes. As is common in federal third-party contracting, we did ask the applicant (TransCanada) to submit suggestions for potential contractors. We subjected the names TransCanada submitted to the same vetting process as the recommendations received from other federal agencies.

Q: How have we changed the contractor hiring process in light of the OIG review last year?

- The Office of the Inspector General, in its February 2012 review of the Department's permit process for the Keystone XL pipeline, made three recommendations for handling applications for presidential permits. We have taken specific actions to address each recommendation, namely:
 - We have maximized the Department's control of each step for selecting an independent third-party contractor.
 - We require permit applicants and potential independent third-party contractors to not only submit a disclosure of potential conflicts of interest, but to also provide a detailed description of their internal processes for determining potential conflicts. These disclosures are reviewed by attorneys in the State Department's Office of the Legal Adviser.
 - We have created and filled a full-time position for an expert on the National Environmental Policy Act.

(Note: refer specific questions about the IG review process to the IG office – Doug Welty, 202-663-0377)

Q: Decision Timing: When will the Department make a decision?

- In June, Governor Heineman of Nebraska said that their review of the new proposed route, which began in April 2012, will take six to ten months.¹
- Last November, when we announced consideration of an alternate route through Nebraska, our best estimate on timing was that we would complete the review process in the first quarter of 2013. It is unlikely that the review process leading to a Supplemental EIS will be completed before that time.

Q: What role is Nebraska playing in this review process?

- Nebraska and the Department have signed an MOU and will coordinate as Nebraska conducts its review process pursuant to state law.

Q: Can the Department begin its work on the Supplemental EIS before Nebraska finishes choosing and vetting the route through their state?

- Yes, the Department of State and the Nebraska review processes will proceed at the same time. The Department of State has signed a Memorandum of Understanding with the Nebraska Department of Environmental Quality to ensure that to the extent possible, we coordinate our efforts to achieve an efficient review process that avoids duplication of effort.
- Department of State representatives have already participated in four local outreach sessions in Nebraska in coordination with NDEQ and communicate with them regularly.

Q: Is the Department of State involved in the permitting process for the TransCanada pipeline project through Oklahoma and Texas?

- The Department of State is not involved in permitting domestic pipelines that do not cross an international border.

¹ TransCanada delivered their new route plan to the state of Nebraska on April 18, 2012, according to Media Reports. The Nebraska Department of Environmental Quality held their first review meetings in May. TransCanada filed an application for a new Presidential Permit with the Department of State on May 4, 2012.

Q: Who has permitting authority for the Cushing-to-Gulf portion of the pipeline, since the Department of State does not?

- TransCanada will need to meet other legal requirements at the state and federal level as they work to build the southern section of the pipeline (from Cushing, Oklahoma, to the Gulf Coast).

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Background

By Executive Order (E.O. 13337), the President has delegated authority to the State Department to receive applications for the construction, connection, operation and maintenance of facilities at the borders of the United States, including petroleum pipelines, and to issue or deny Presidential Permits for such facilities based upon whether they are in the national interest of the United States. Upon receipt of a Presidential Permit application, the Department conducts an environmental review of the proposed project consistent with applicable environmental laws and regulations.

The State Department received a pipeline permit application from TransCanada Corporation in September 2008 and sent out the notice of receipt in November 2008. We released a Draft Environmental Impact Statement in April 2010 for public comment. We released a Supplemental Draft Environmental Impact Statement in May 2011. We released the final Environmental Impact Statement in August 2011. We announced the need for additional assessment of alternate routes in the state of Nebraska on November 10, 2011. In December, Congress passed the Payroll Tax Extension Act with a provision requiring a decision on the Keystone XL pipeline within 60 days. On January 18, the Department announced its decision to deny the Keystone XL permit application based on the fact that the Temporary Payroll Tax Cut Continuation Act, passed by Congress in December, did not provide sufficient time for the Department to obtain the information necessary to assess whether the project was in the national interest. As the President said on January 18, "This announcement is not a judgment on the merits of the pipeline, but the arbitrary nature of a deadline that prevented the State Department from gathering the information necessary to approve the project and protect the American people."

On May 4, 2012, TransCanada submitted a new Presidential Permit Application for a revised Keystone XL pipeline project, including a new route in Nebraska, terminating at Steele City, Nebraska.

New Nebraska Law

After the President denied the original Keystone XL permit in January 2012, the Nebraska Department of Environmental Quality (NDEQ) determined under the existing Nebraska law it had to cease review of a new route. In April 2012, the Nebraska legislature authorized the NDEQ to restart its review, even if there was not an active permit application pending before the State Department. NDEQ restarted its review on April 19, 2012.

The NDEQ ran several public meetings in May 2012. OES/ENV DOS representatives were present at those meetings.

The MOU

The Department of State has signed a Memorandum of Understanding with the Nebraska Department of Environmental Quality to ensure that to the extent possible, we coordinate our efforts to achieve an efficient review process that avoids duplication of effort. The MOU was finalized on May 24, 2012.

Nebraska Lawsuit

According to press reports, on May 24, 2012, several Nebraskans filed a lawsuit against the state, saying the law giving the governor of Nebraska authority to approve oil pipelines is illegal. The Department has no role in this lawsuit.

Decision to Prepare a Supplemental EIS

In early June, the Department, in discussion with CEQ and EPA, decided to prepare a Supplemental EIS on the new application. The June 15 Federal Register contained a Notice of Intent "to inform the public about the proposed action [to prepare an SEIS], announce plans for scoping opportunities, invite public participation in the scoping process, and solicit public comments for consideration in the scope and content of the SEIS." The NOI also started a 45-day scoping period which will conclude on July 30th.

Selecting a Third-party Contractor

On June 15, the Department sent the Request for Proposals for a third-party contractor to a pre-vetted list of about ten qualified companies. Following the receipt of complete proposal packages from at least three candidate companies, the Department reviewed the packages and selected ERM as the best applicant.

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