

April 8, 2013

The Honorable John Kerry
Secretary of State
U.S. State Department
2201 C Street NW
Washington, DC 20520

Harold Geisel
Deputy Inspector General
U.S. State Department
Office of Inspector General
HOTLINE
P.O. Box 9778
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Dear Mr. Secretary and Mr. Geisel:

We are calling for an investigation into the proposal process for the Keystone XL pipeline's "Draft Supplemental Environmental Impact Statement (SEIS)" due to incomplete statements on the Organizational Conflict of Interest (OCI) questionnaire by Environmental Resources Management (ERM), and the determination by the State Department Contracting Officer that ERM did not have any conflicts of interest, despite clear evidence to the contrary.

The State Department's SEIS for the Keystone XL pipeline, released on March 1, 2013, claimed that the pipeline would not have major impact on the environment.

However, Environmental Resources Management (ERM), the consulting firm hired to perform the SEIS, has had direct business relationships over the past three years with fossil fuel companies that have financial interest in the project. This conflict of interest was not accurately disclosed in ERM's answers on a State Department's OCI questionnaire.

In the OCI, the State Department asks¹ (page 42), "Within the past three years, have you (or your organization) had a direct or indirect relationship (financial, organizational, contractual or otherwise) with any business entity that could be affected in any way by the proposed work?" ERM's Project Manager, Steve Koster, checked "No" but misled on the Yes/No questionnaire by stating that, "ERM has no existing contract or working relationship with TransCanada."

But, unredacted² versions of the ERM proposal show that three experts had done consulting work for companies with a stake in the Keystone XL pipeline's approval. The consultants had worked for TransCanada and other oil companies within the past three

¹ <http://keystonepipeline-xl.state.gov/documents/organization/205729.pdf>

² <http://www.motherjones.com/politics/2013/03/keystone-xl-contractor-ties-transcanada-state-department>

years, including an existing business relationship with ExxonMobil.

Andrew Bielakowski, ERM's Deputy Project Manager for the Keystone report, has worked on three previous pipelines for TransCanada, and consulted on projects for ExxonMobil, BP, and ConocoPhillips. Another ERM report contributor worked as an employee for Shell Oil³, and a third consulted for Koch Gateway Pipeline Company. These companies have a financial interest⁴ in the Keystone XL Pipeline.

ERM had another odd statement in its proposal to the State Department. ERM answered "No" to the question, "Are you (or your organization) an 'energy concern?'" The definition of "energy concern" in part reads "Any person... significantly engaged in the business of conducting research," related to an activity such as "transporting by pipeline...minerals...for use as an energy source."

The State Department Contracting Officer should have flagged these inconsistencies on ERM's Organizational Conflict of Interest questionnaire, when he/she reviewed ERM's proposal.

Because this was not flagged, we are calling for the State Department Inspector General to pursue an investigation into how the Contracting Officer overlooked these discrepancies on ERM's documents, and given these incomplete statements, whether ERM is a "responsible party" under the Federal Acquisition Regulation.

The Federal Government has strict ethics rules to prevent Organizational Conflicts of Interest (OCIs) from impacting the impartiality of government contracts and to prevent hiring contractors who cannot provide independent and unbiased services to the government. Before the State Department could choose ERM as the contractor, the "Contracting Officer" had to make an "affirmative determination of responsibility." All government contractors (including ERM) must be deemed responsible, in part by meeting strict ethics guidelines, known as "collateral requirements."

According to current collateral requirements, contractors must be found "nonresponsible" when there are unavoidable and unmitigated OCIs. We believe that the Contracting Officer should have deemed ERM "nonresponsible" because the company serves as a contractor for major fossil fuel companies that have a stake in the Keystone XL pipeline.

The undersigned are calling for a State Department investigation into the matter. ERM's incomplete statements on their proposal and the determination by the Contracting Officer that ERM did not have any conflicts of interest, despite clear evidence to the contrary, are grounds for further investigation.

Sincerely,

³ http://business.financialpost.com/2011/10/24/economic-benefits-will-likely-win-keystone-xl-approval-shell/?_lsa=6421-e085

⁴ http://www.cjr.org/the_observatory/the_kochs_and_keystone_xl.php?page=all

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