PORT INFRASTRUCTURE DEVELOPMENT PROGRAM

Project Readiness Webinar

Project readiness consists of assessing two factors:
- Technical capacity
- Environmental risk.

- Project readiness reviews evaluates an applicant's preparedness to move a proposed project forward once it receives a PIDP grant. Applicants should include information with their application that, when considered with the project budget information, is sufficient for MARAD to evaluate whether the project is reasonably expected to begin in a timely manner and meet both the obligation and expenditure of funds deadlines.

- **The review process assesses a project's likelihood to be ready for obligation of funds by September 30, 2027 and the ability to liquidate these obligations within five years of obligation (readiness factor).**

- An overall Project Readiness rating (Low Risk, Moderate Risk, High Risk) will be assigned based on the poorest risk rating earned in either Technical Capacity or Environmental Risk.

NEPA

THE NATIONAL ENVIRONMENTAL POLICY ACT

- The National Environmental <u>Policy</u> Act (NEPA) of 1970

- Requires that all Federal Agencies consider environmental impacts of all **actions** that they are considering or undertake

- NEPA requires agencies to assess the environmental effects of proposed **actions PRIOR** to making a decision to move forward

- <u>All</u> MARAD grant and loan programs are subject to NEPA.

- NEPA must be completed before a Grant Agreement can be executed and funding can be obligated.

- That means, for the most part, the grant project cannot be started before NEPA is completed. Except for some pre-approved exceptions, that means until NEPA is completed, there can be no procurement, no bidding, no construction.

- Categorical Exclusions (CE)
  – category of actions that individually or cumulatively have no significant effect on the quality of the human environment

- Environmental Assessments (EA)
  – includes those actions for which the significance of the impacts are uncertain

- Environmental Impact Statement (EIS)
  – cover those actions that have been determined to have significant environmental impact

- A CE is one of three basic types of NEPA analysis.

- A CE is a category of **actions** that, for many reasons, an Agency has determined do not generally result in significant environmental impacts.

- Common misconception that a CE means no NEPA analysis is required.

- CE's must still be documented and retained by MARAD.

- significantly affects public health or safety;
- highly uncertain, involve unique or unknown risks, have disproportionately high and adverse effects on minority and low-income populations, or that are substantially controversial on environmental grounds;
- establishes a precedent or for future actions that have the potential for significant impacts;
- requires federal or state permits (e.g. in-water work)
- violates Federal, state, tribal or local environmental laws, rules or regulations;
- project has substantial public interest; or
- significantly affects protected resources such as eligible or listed properties on the National Register of Historic Places, threatened/endangered species, and wildlife refuges.

- National Historic Preservation Act

- Separate from NEPA, but required to be completed prior to finalizing NEPA

- For <u>EVERY</u> project, consultation with SHPO is required <u>PRIOR</u> to initiating the project (including Categorical Exclusions)

- Endangered Species Act

- Part of the NEPA process (including Categorical Exclusions)

- For <u>EVERY</u> project, consultation with NOAA National Marine Fisheries and US Fish & Wildlife is required <u>PRIOR</u> to finalizing NEPA and initiating the project

- NEPA is not a permit. It is a process.

- Securing local/state/federal permits does not equal NEPA compliance.

- Compliance with other environmental laws does not absolve MARAD of the responsibility to also comply with NEPA.

- States have a process similar to NEPA. A State NEPA document cannot be used in place of a Federal NEPA document (however, the State NEPA document can be used to create a Federal NEPA document).

- Even if another agency has completed NEPA for the project, MARAD is still required to complete NEPA.

- If an agency, such as the Corps of Engineers, has already prepared a NEPA document for a project, MARAD can sometimes adopt the NEPA that has been done. But MARAD needs to evaluate that NEPA documentation for sufficiency before making that determination. The document must cover the entirety of the project, be up to date, and meet MARAD NEPA standards.

- If MARAD is able to adopt another agency's NEPA document, there is still a process to evaluate and document that adoption. Sometimes consultations need to be re-initiated to fulfill agency responsibilities.

The average timeframe for the different levels of NEPA documents are as follows:

- Categorical Exclusion: 3 months

- Environmental Assessment: 12 months

- Environmental Impact Statement: 24 months

CEQ Phase 2 Regulations establish the following timelines:

- EA: 12 months

- EIS: 24 months

- The grantee will be responsible for putting together a schedule for NEPA completion in cooperation with MARAD

- MARAD will provide the grantee with a start date for NEPA

How can you prepare for NEPA to expedite the time between Grant Award and Obligation of Funds?

- Most common is early coordination with USACE. This can "unofficially" happen prior to grant award.
  - USACE typically designates MARAD as the federal lead for NEPA and Section 7 consultations.

- Retain services of an environmental consultant prior to grant award.
  - MARAD does not recommend grant recipients prepare NEPA documents without an experienced and knowledgeable NEPA consultant.

- Plan to utilize non-invasive surveys/studies as part of pre-award activities.

- Begin discussions with MARAD NEPA staff as soon as possible after grant award.

- Plan early for a MARAD NEPA staff site visit soon after grant award. Engage service agencies and, if needed, include them on the site visit.

Environmental risk assesses:

1. Description of the Project: How in depth is the project and where is the project located?

2. NEPA Status: Has NEPA started? What is the Project schedule? Has NEPA been accounted for in the schedule?

3. Risk and Mitigation: Is there any project controversy identified? Is the project impacting resources that will require mitigation? Who owns the land?

4. Environmental Permits and reviews: What other permits or environmental reviews will the project need to obtain, and by what agencies (Federal, State and Local)? What is the status of those permits?

5. Environmental Risk: Low, Moderate, High

Applications should include:

- Project schedule and information showing that project will begin construction in timely manner, consistent with all applicable local, State, and Federal requirements, which should identify:

  – All major project milestones

  – NEPA or environmental review status

  – Other required approvals or permits from other agencies

- Environmental risks and any related mitigation strategies

- Describe any prior consultation with MARAD's Office of Environmental Compliance

Avoid:

- **Underestimating NEPA**

    - MARAD reviewers assess PIDP applicants to determine whether applicants realistically consider NEPA complexity and permitting delays in their applications.
    - NEPA must be completed before ANY ground-disturbing activities or construction material purchases can be made.
    - Contact MARAD NEPA staff as soon as possible after grant award for insight.
    - Shovel-ready projects, or those with NEPA process already far along, while not a requirement for PIDP grants, generally move much more quickly.

- For more information about MARAD's NEPA process, please see MAO 600.1, which details the procedures MARAD uses for NEPA compliance.

- For questions, contact:

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PIDP

The Technical Capacity Evaluation Process

Technical Capacity evaluators consider three areas in their evaluation:

- **Experience of the grantee and understanding of Federal requirements.**
  - Does the applicant have a history of delivering similar projects? If not, has the applicant demonstrated an ability to manage the proposed project?
    - Is there evidence that the applicant has sufficient capacity and resources to deliver the project?
  - Does the applicant have experience with US DOT grants? Does the applicant have experience with other types of grant-funded projects?
  - Is there sufficient information in the project narrative to be able to conclude that the applicant is aware of, and will comply with, the Federal requirements applicable to PIDP?
    - For a comprehensive list of these, see the FY23 Terms and Conditions document available here: https://maritime.dot.gov/grants/federal-grant-assistance/federal-grant-assistance

Technical Capacity evaluators consider three areas in their evaluation (cont'd):

- **Information about the project and project schedule.**
    - How well developed is the project? Is it a concept or is there evidence of some level of underlying design effort? (Identify the level of design: 10%?, 30%?)
    - How detailed is the project schedule? Does it include key milestones appropriate to the complexity of the project?
    - Is the project budget reasonable and is the level of detail appropriate?
    - How current is the project design, schedule, and budget effort?

- **Understanding of project risks and discussion of mitigation strategies.**
    - Does the application include a discussion of project risks and related mitigation strategies?
        - The discussion need not be exhaustive but it should be detailed enough to convey to reviewers that the applicant understands the concept of risk mitigation.
    - Does the discussion relate the risks to the proposed project or are the risks general in nature?

See E.1.c. in the Notice of Funding Opportunity.

Avoid:

- **Unrealistic Scope**
    - The most common contributing factor to the delayed obligation of grant funds are changes to the project scope, schedule, or budget after a project has been selected for an award.
    - Is your project achievable as presented in your application materials? Consider whether the proposed project scope is overly ambitious.
    - Is the budget reasonable and based on a preliminary engineering estimate or some other reliable source of information?

    Unrealistic timelines.
    - Present a project timeline that is realistic and considers a reasonable amount of time (assume, for planning purposes, at least six months to a year or more) between award announcement and grant agreement execution)
        - Understand that you can NOT start construction activity until after the grant agreement is signed (executed).
    - Certain steps (NEPA review, Section 106 analysis, project risk register) <u>must</u> be completed prior to grant agreement execution

Avoid:

- **Unrealistic Funding**
  - Project budgets that are preliminary at the time of application frequently turn out to be insufficient to fund the full scope as described in the application.
  - MARAD will not add funds to a project and a grantee, if awarded full funding for its project, will not be eligible for additional DOT funding to cover cost increases.
  - Consider whether funding shortfalls could impact finalization of your project.
    - Inadequate budgets have impacted grantees' ability to deliver projects and frequently necessitated budget changes.
  - Other considerations:
    - Budget shortfalls resulting from increases in cost of materials and/or labor.
    - Failure to be able to deliver non-Federal funding commitment reflected in the grant application.
    - Additional funding from applicants to cover inflationary cost escalation is typically challenging, and it may take considerable time to identify additional funding (assuming additional funding can be found at all).
    - It's okay to include a reasonable cost contingency in your project budget.

Other types of events that delays grant agreement execution:

- Leadership changes (grant management team at the local level or leadership at the local level).

- Business fluctuations (private partners change, leave, or fail to provide funds).

- Grantee missteps (premature construction or work outside of scope).

- Insufficient cost estimates at application that prevent a grantee from providing the required letter of funding commitment (plans at less than 30% status are generally insufficient to develop an accurate budget or even understand the construction risks of the project.)

- Many State funding sources have strict time limits, and minor project delays can threaten viability of State funding (the non-Federal match).
  - An applicant should make it clear in its application that it is relying on State funding and identify any related funding considerations.

Final Webinar . . .
Joint EPA/MARAD Webinar
Thursday, April 11th
from 2:00 to 3:00 pm EDT

Further information: cleanports@epa.gov