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2.1 Introduction

>> C. Humphrey: Good morning in the West Coast and good afternoon in the East Coast. We know you have a lot on your mind right now but for the next 90 minutes we hope you can set aside your concerns and join us for our latest Planning/NEPA Forum.

This is the second in a series of three broadcasts on how to improve contracting for BLM planning and NEPA documents. While we're focused on contracting all or parts of resource management plans, NEPA documents, or other aspects of the planning and NEPA process, like scoping meetings or setting up the administrative record, the principles we'll discuss today can be applied to other contracts to accomplish your program work, for example, habitat assessments, species surveys or GIS and modeling contracts.

Most of the principles that we'll talk about can also be applied to assistance agreements. So we'll cover both direct and third-party contracting and contracts for EA and EIS-level analysis.

I want to thank everyone who sent in comments by Metrics That Matter for the first contracting broadcast. We made some changes based on your input and one of the comments that we got said that the closed captioning covered up the text on the lower third of the screen. For example, we put phone numbers and that kind of thing on there. The only solutions that I can offer for today's show is you could either turn off the closed captioning--if it's not needed by somebody in the room. The second option would be that you could ask us what's covered up when you -- by text, e-mail or fax. Or if you want, you can wait until it's posted to the Internet to see what's on the bottom third there. Not the best option, but those are the three options I can think of for you.

Then we got a comment from one or two of you who said that a lot of what we talked about last time was already taught in classes for contracting officer representatives or CORs, but you have to realize that this is new information for others. So even if you've been a COR for a very long time and been to a lot of trainings, you might actually pick up something new today.

So, in Broadcast 1, we talked about Contract Initiation where we went over the inception of a project until the contractor is selected. The topic of today's broadcast is Contract Management, and we'll talk about how to manage the communication, the mechanics and the scope--or the statement of work--of a contract. Broadcast 3 in the series will focus on Contract Close-out, and that will include contract modifications, administrative procedures and what the contractor's role is in responding to litigation.

Now, this third broadcast was scheduled for March 28th, but it might be postponed due to the travel and other restrictions we're all undergoing but we'll e-mail every one of you who registered for this broadcast. We'll let you know any updates as we know them.

Today, like last month, we want to emphasize how to improve the process and the products. We don't want to dwell on what's not working. We want to make it a positive experience. So although we've done the best we could to incorporate your questions and your feedback from the Metrics That Matter, I'm sure that additional questions will pop up. So as you think of them, be sure to just jot them down, and that way you'll be ready to jump right in when we open it up for you to interact with the panel. You can call us, fax us, e-mail us or text us.

So get ready to write down our contact numbers because they are coming up on your screen now. One more thing, if you contact us, especially by text, include your name and location. As you can see the phone number is 1-877-862-5346. Fax is 602-906-5701. And the e-mail or text address is BLM_TC_telecast@blm.gov. If you are not able to mute the sound of the broadcast in the room when you call us, then it's probably better if you e-mail, text or fax your questions.

Now I'm going to introduce the panel, and then I will summarize what we talked about on the Contract Initiation broadcast. Molly will talk about managing communication. Chris and Cindy will talk about managing the mechanics. That will be followed by a discussion about managing the scope or the statement of work. After that, it will be time for you to interact with the panel. It will be in about an hour. Finally, we'll end up with some helpful tips. So be sure to stick around for the entire 90 minutes, you don't want to miss that.

So here is our panel. If you saw the first broadcast, it will be like I'm introducing you to some old friends because we are lucky enough to have the same panel. I'd like to start with our northernmost guest, Molly Cobbs is the Planning and Environmental Coordinator for the Anchorage District Office in Alaska. She has been with the BLM since 2010. Before that she was a NEPA contractor for seven years and much of that she worked on BLM projects. Over the years, she has been the NEPA lead for six BLM Environmental Impact Statements. Hi, Molly.

>> M. Cobbs: It's great to be back.

>> C. Humphrey: Next, further south to the Wyoming State Office in Cheyenne is Chris Carlton. He is a NEPA lead and contracting officer's representative, a COR, for five RMP contracts. He started with the BLM in 2008 and he, too, started his career as a NEPA contractor. He has more than 15 years of experience with the federal contracting process. Hi, Chris. Good to see you.

>> C. Carlton: Thanks, Cathy. It's great to be back.

>> C. Humphrey: Working our way south to the National Operations Center in Denver, Colorado, Cindy Kleinholz. She is a contracting officer who deals mostly with environmental contracts. Cindy has worked for the BLM since 2010. Before that she has been involved with federal contracting for several years. Hi, Cindy. Nice to see you again.

>> C. Kleinholz: Cathy, it's wonderful to be here.

>> C. Humphrey: And that is our Panel. Next I'm going to recap what we talked about on Broadcast 1. If you weren't able to watch it or if you forgot what you saw because, you know it was a month ago, we started by **reviewing terminology and definitions**, including what is a contract.

- A **contract** is a legally enforceable agreement between two or more parties.
- A **contractor** is the person, group or entity that's hired to perform the work.
- **Externally generated actions**, which you probably all know, are initiated from a non-BLM or group, for example a **proponent or applicant** who requests an authorization or a permit from the BLM.
- A **third-party contract**, that's when a proponent hires a firm to do the NEPA analysis for a proposed project. Typically, this is done when the proponent wants the NEPA to be completed faster. However, even though the proponent hires the contractor, we (the BLM) are still responsible for reviewing, analyzing and approving the NEPA analysis. One of the things that Molly will be talking about today is how to manage the communication to minimize or eliminate bias in NEPA documents that are prepared through these third-party contracts.
- **Internally generated actions** are those created by us, the BLM, and some of these examples are a proposal to restore a riparian area, or one to build a wildlife guzzler.
- **Direct contracts**, those are when the BLM hires a firm or company to perform a service, for example, to complete a NEPA analysis and documentation for a proposed Resource Management Plan or other project.

Next, we talked about **what, why and when** the BLM would pursue a contract. Basically what it boils down to is contractors are typically used to supplement the lead agency's expertise, resources or time that it takes to conduct the technical analysis or complete the steps necessary to comply with NEPA in a timely manner.

After the terminology, Cindy went over some key pieces of the **Federal Acquisition Regulations**, or the FAR, which I'm sure we all know are the federal rules and regulations as to how the government will acquire goods and services from sellers.

- Cindy described what an **acquisition package** typically includes, and she also talked about the time frames required to put one together.
- Then she talked about some of the methods to **solicit contracts**.

The next topic that we tackled on broadcast one was **how to write better statements of work**. Molly talked about the importance of describing both the sideboards and the specific work that needs to be done by the contractor. For complex projects, she had a recommendation to break down the work into phase, task and subtask, which may be obvious to some people but still we thought it was a great way to organize your thoughts when you're writing a statement of work.

Now, a couple of tips that I remember from broadcast one are to think like a contractor and don't be afraid to iterate when you're writing your statement of work with your resource specialists. Complex projects often take several passes to get all the pieces right.

Molly provided some questions, or prompts, to consider when finalizing statement of work. If you take a look at those prompts, I think they'll help you be more thorough when you're writing your own statement of work. Of course, it's always a good idea to reach out to other offices and see if they have something you can start with, but I think that her prompts will help you stay focused on your project because, you know, sometimes when you rely too heavily on someone else's work you may forget something that pertains to your project but not theirs.

Then, the next thing we did, is we moved on to **evaluating the proposals** after you receive them. Cindy talked about the four primary evaluation criteria that they typically use, and those are:

- the technical approach,
- organization and personal experience or expertise,
- past performance, and
- (for direct contracts), fee.

Cindy and Molly talked about the make-up of the evaluation team and the process. And Molly provided some specific tips when evaluating each criterion, and then Cindy gave us the contracting officer's perspective, which I don't think we typically consider.

The next topic we talked about was **MOUs**, or memoranda of understanding. Chris described the **purpose** and the **value** of a well-written MOU, and he talked about the similarities between MOUs and contracts. MOU's are being used a lot more often and effectively when entering into third party contracting situations, especially in certain locations, certain states. MOUs are also used a lot to clarify the roles and responsibilities of cooperating agencies when they're involved with us in a project.

Chris listed the **critical components** of an MOU, and these are:

- project description and statutory requirements,
- the description of the partners,
- the purpose and authority for the MOU, and my favorite section,
- the roles and responsibilities of all parties; that's basically the meat and potatoes of the MOU.
- Also, another critical component is how to resolve conflicts.
- Then there's a section designating the representatives of each cooperating agency.

We got a few comments in the Metrics That Matter that some of you wanted more information on MOUs, and then others of you were annoyed we didn't post the PowerPoints prior to the broadcast. So, in response, we sent you an e-mail this morning with the PowerPoints for today, which there aren't as many as they were last time, and we uploaded a couple example MOUs for you to look at, as well as other references and examples. We've got the PowerPoints for both Broadcast 1 and Broadcast 2 on our KRC, or Knowledge Resource Center.

That's a lot, but that is a summary of what we covered last month.

2.2 Managing the Communication

>>C. Humphrey: And now, we're going to talk about **Communication**. As you know, almost anything can be improved with better communication. Especially when we're talking about people that are in different geographic locations, they have varying professional backgrounds and experiences and priorities, because, after all, you know, the BLM is a federal agency with a multiple use mission and most contractors that we're working with, they work for several clients at the same time, each client with their own mission.

So, come with us – let's continue our quest to improve our process by talking about how to manage communication when contracting out planning and NEPA projects. And, of course, we're focused on planning and NEPA. You can use these tips for managing any type of contract. Molly?

>> M. Cobbs: Today we're going to focus on **two facets of communication** on contracted projects. The first, facilitating efficient communication within your project team, and then the second, managing communication and third-party contracts to minimize or eliminate undue influence by the proponent or special interests.

When working with a contractor, it's critical that you and your team define how communication will occur throughout your project. Crafting that definition of project communication is specific to the type of project you're working on and the level of complexity or controversy involved.

For our purposes today, communication refers to all forms of project correspondence between all parties involved. This includes but isn't limited to telephone calls, conference calls, e-mails, meetings, letters, data delivery and the general flow of information between you as the project lead, the contractor, the contracting officer, the project proponent, if there is one, your local team, your local internal BLM team, any external agencies, and any cooperating agencies that you may have.

As we discussed in Broadcast 1, the development of effective memorandums of understanding is a solid starting point for defining and managing your project communications. In all cases, from simple and straightforward, to the most highly complex project, the purpose of defining how communication will occur is to facilitate efficient, timely and appropriate communication between all parties involved with your project.

Before we dive in, I'd like to stress **two principles** that apply to all project communications, regardless of just how simple or complicated your project may be. First, project communication should always be professional, ethical and above-board. In every e-mail, on every phone call or in every water-cooler or hallway conversation we need to be cognizant to be above-board and on the record as we communicate about projects. Unprofessional e-mails, personal notes in margins or field journals will inevitably find their way into the public record. If you wouldn't be comfortable with your notes or comments being read in a staff meeting, or even seeing them in the newspaper, you might not want to put them in writing.

Keep in mind, however, that there are also times when it might be best to hash out things verbally, face to face, before committing it to writing. For example, project strategy discussions or discussions on politically-sensitive topics.

The second key principle is that communication records, such as meeting notes, call logs -- notes, call logs and letters are central records for the file and must be meticulously maintained.

Let's look at a couple of ways of defining **communications on a direct contract**. For example, on an RMP contract or simple EA contract. The easiest means of directing communication would be to **establish one point of contact** for the agency and one point of contact for the contractor. Each of those individuals would be responsible for disseminating information to the responsible parties throughout the life the project.

One advantage of the single point of contact method is it limits potential for conflicting information or direction. One obvious disadvantage is it can be inefficient. During periods of high activity on a project, those single points of contact can also become inundated with project correspondence, which can ultimately lead to a juggernaut in the process.

Another means of managing communication on contracted projects would be to have individual agency specialists coordinate directly with their contractor counterparts. The advantage of this method it is allows numerous facets of the project to advance simultaneously. One obvious disadvantage is it can be difficult from a recordkeeping standpoint and also runs the risk of certain facets of the project maybe going down to a rabbit trail if clear or central direction is lacking.

A **hybrid** of these methods would be to identify a both ends within the BLM and in the contractor's end a project lead and an assistant lead to be carbon copied on all project communications.

Although this can be cumbersome, particularly from an e-mail management standpoint, it is an effective means of circumventing the two disadvantages we just discussed preponderance additionally, there may be phases of the project that are more conducive to having multiple points of contact. For example, during data collection or impact analysis phase, whereas other phases of the project such as delivering feedback and comments during the BLM review period may be better scaled back to a single point of contact.

The size of your team or types of resource specialties involved may also help you frame your communication strategy. Socioeconomics and air quality are two key examples of resource areas that may be most conducive to direct communication between specialists because your COR and the Project Manager may have limited technical expertise in these areas. However, in that case, the leads for the contractor and the BLM should continue to remain involved to ensure effective management.

On direct contacts, one area of communication already overlooked is **communication with your contracting officer** or COR, and if you'll recall from Broadcast 1, Cindy really encouraged communication with the contracting officer early and often. So when developing your communication strategy, be sure to identify where in the process and how you will communicate key milestones, issues or other contract-related items with your designating contracting officer or COR.

Let's switch gears to talk about **communication in third-party contracts**. In third-party contracts, the primary players are the BLM, project proponent and the contractor. As you may recall from Broadcast 1, one of the primary concerns in a third-party contract is that of undue influence by the project proponent. Undue influence, or the appearance thereof, can take on many forms, ranging from subtle to blatant.

As Chris described in Broadcast 1, contractors are in a really tough position of being paid by the proponent but being accountable to the BLM. So this can create conflict if the expectations or line of communication are gray, or if appropriate communication protocols are ignored.

On the more subtle end of the spectrum, undue influence could consist of a contractor sharing internal draft documents or deliverables with the proponent prematurely and in turn the proponents striking out key analysis findings that maybe aren't favorable to their project, eliminating otherwise reasonable alternatives on the basis of cost alone or even withholding or preventing key data from making it into the analysis.

It's a little more uncomfortable to talk about, but on the more flagrant end of the spectrum, undue influence can consist of bribery or blackmail by proponent or special interests. For example, promising cash incentives or gifts for producing certain findings or conditioning future work, contracts, on desired outcome or ends. Fabricating data and analyses or in any other way artificially manipulating the process to produce certain end results is not only unethical but also illegal. Allegations of impropriety in our analysis or in our decision-making process can really put us in a sticky position.

Communication protocols and comfort levels about communication on contracts varies widely from state to state. However, a conservative approach to managing communications on third-party contracts is to strictly limit direct communication between the project proponent and the contractor to those discussions regarding payment and budget only. Proponent - contractor communication that are not directly associated with budget or payment documents should be directed to the BLM.

Conversely, the BLM should really have no involvement in proponent - contractor communications regarding those payments for contracted services. Of course, some proponent - contractor communication about the completion status of tasks or deliverable as it relates to payment invoicing is assumed. Particularly when working on a third-party EIS contract, it's important to distance the project proponent from the collection, evaluation, and analysis of data, references, and source material so as not to introduce bias into the process.

In general, it's a good rule of thumb to have all contractor-prepared deliverables delivered directly to the BLM only.

Now, there are certainly times when direct proponent - contractor communication is necessary and can be even beneficial. For example, the proponent could be useful in clarifying technical details about project design, engineering, or construction. Similarly, if you have a cooperative proponent, it can be really helpful to the process to brainstorm with them directly on any project design features that could be incorporated to minimize impacts up front.

In these cases the proponent and contractor should use the BLM as the conduit for information, communicating back and forth only through the BLM or with direct BLM oversight. Ultimately, although the proponent can be helpful in verifying the technical accuracy of the descriptions and what-not in the documents, the proponent has no role in determining adequacy of the analysis or in approving deliverables.

Here are a handful of communication questions you may want to think about when managing your next contract and developing a communication strategy:

- Who are the primary points of contact going to be?
- Who should be included on all correspondence?
- Will you have a regular or standing conference call or meeting?
- If it's a third-party contract, what proponent-contractor communications are authorized and are not authorized?
- What BLM oversight is necessary on communications? And who will provide that oversight?
- How will products and deliverables be routed for review? And how will comments be routed back to the contractor?
- How will you track project progress?
- When and how will you communicate progress or issues with the contracting officer or COR?
- How will critical correspondence be logged and filed for the record?
- Who will handle media or Congressional inquiries?
- How about questions from other BLM offices or other contractors engaged in related projects?
- Will the contractor be required to work through the BLM to make contact with subject matter experts outside of BLM, for example, state agencies?
- How will you communicate with your cooperating agencies?

>> C. Humphrey: So, Molly, let's say that the interdisciplinary team and the Project Manager answer the questions to inform their communications strategy. How would you recommend that they document these?

>> M. Cobbs: Well, many project teams develop a written agreement outlining how and when communications will occur among all project players. This can be developed as a standalone

communication strategy or protocol document, or it can be addressed as a key section in a project management plan or project work plan.

In the case of third-party contracts, it may be beneficial to your team to pursue the former and more formal vehicle for documenting your communication strategy. Depending on the nature of the contract, it may be beneficial to identify some of the communication basics in the statement of work or in the MOU. The final format or type of communication strategy document will vary depending on the project. But the main message is to make sure it gets documented somehow, somewhere.

In summary, when pursuing a NEPA or planning contract, we encourage you to define your team's communication strategy, document it, and then stick to it. Ultimately, a well-defined communications strategy will really benefit your day-to-day activities on contracted projects as well as the overall defensibility and integrity of the project.

>> C. Humphrey: Thanks, Molly. As part of the contracting process, what you're saying is to consider communication, not only just within the ID team, but among the different BLM offices and between the BLM, contractor, and proponent--if there is a proponent--and then everyone should figure out how communication should work in their group and then write it down, whether it's in the statement of work, MOU, or interdisciplinary team agreement. Doesn't really matter [which one you use].

You advise people to communicate ethically and keep records—document, document, document. And then the theme I heard for communication with third-party situations is to avoid undue influence. And then if you don't know how to develop a communications strategy, I really like the questions that you put out there get people started. Then, as we've said several times, and you'll hear us say it again: document everything.

2.3 Managing the Mechanics

>>C. Humphrey: All right...so, that is communication, and now we're going to talk about **managing the mechanics** of a contract. What this includes is the day-to-day tasks of getting a project done. It will include managing the deliverables, the changes to the document and the admin record. After we talk about that, then we'll move into some of the rules of contract management--that is, invoicing and the roles of the contracting officer and the COR (contracting officer's representative).

Chris, you have been on both sides of this. You have been a contractor. You've been a COR, Project Manager, a Resource Specialist. Give us some ways how to effectively manage a contract.

>> C. Carlton: Sure, Cathy. I just want to kind of reiterate what both Cathy and Molly have said. As we've talked about, communication is a critical component of an effective working relationship with the contractor. One of the tendencies of a team over the long and complicated process of something like an EIS or an RMP is to develop a feeling of familiarity and friendship with the rest of the team. Now, while this is a great benefit to the project, there always must be

clear boundaries for daily interaction between the specialists and the contractor throughout the process and that interaction will be guided by the communication protocol.

Well, in addition to communication, what do we need? Managing a contract requires us to **manage the deliverables**. We've asked the contractor to prepare something for us. Typically, although they're providing a service under the contract, the something they provide is a tangible product, like a socioeconomic study, a draft RMP, et cetera. We refer to these products as deliverables.

Often the first time the BLM is going to see that deliverable is when it's provided to us as a draft document for review. This first review is a critical time and both the BLM and the contractor should be prepared to review the document in the agreed upon period and to provide and respond to timely, effective comments in that period. We all realize that things come up throughout the process, but it's really important to get as much as possible covered in that first review. So, for the BLM Project Manager, that means coordinating schedules of key employees well in advance to make sure that the necessary review can be completed by the appropriate staff.

Some additional considerations include things like field work season, end of year or use-or-lose schedules, what other EISs or EAs are going on in that office, new management transitions—do you really want to schedule the RMP the first week you have a new Field Manager in the office? Once we've established those expectations for both the BLM and the contractor, now it's time to consider the product we actually received. Most of the contractors out there really want to do a great job because, first, they get paid for it and they rely on good past performance to win future projects, and, second, like us, they believe in what they're doing and they want to be professional and do the best job they can.

So, despite that, for any number of reasons, sometimes the documents or services that they provide are really not up to snuff. What do we do in that case? The first step is really to figure out both what is deficient and what is necessary to correct it. This is similar to what an effective comment from the public or other stakeholders would be on draft NEPA documents. Those of you familiar with NEPA can probably relate to this. We need to identify the problem, what needs to be done, and provide enough detail for the contractor to get the picture.

Additionally, tying action items to all comments will facilitate a more timely and accurate response from the contractor. Instead of commenting something like "what about visual resource management," perhaps instead comment something like "Visual Resource Management Class II is inappropriate in this area because there are three wind projects currently under development. Revise the proposed management to consider these projects."

The next tip is to talk to your appropriate contractor point-of-contact. Figure out what caused the problem--is the document too vague, too long, too detailed, is it not clearly written or maybe confusing to the reader? For example, maybe a draft air quality report failed to consider all the effects the BLM thought it should.

Sometimes it's as easy as a call from the BLM specialist to the contractor's specialist (following the communication protocol, of course) to get the issue resolved. Then there's really nothing that needs to continue up the chain and everyone is happy. But definitely feel free to run any scenarios or questions by your contracting officer.

Another suggestion for effective document management is to have a format agreed on by the BLM Project Manager and the contractor, ahead of time, to receive comments, such as a comment sheet, use of track changes, or use of ePlanning. Whatever that format is, BLM staff should use it to make their comments. It's hard to compile comments provided in multiple formats and increases the chance something is going to get lost or missed.

As a follow-up to that, a comment tracking sheet also provides a way to track how the comments are going to be addressed and responded to.

One more suggestion... the Project Manager might want to take the time to consolidate and scrub those comments for consistency and clarity. Sometimes different specialists may provide conflicting comments, which can put the contractor in a position of being unable to resolve all of them in the BLM's preferred way. So the Project Manager and even the authorized officer will need to determine which comments go forward to the contractor or maybe find a way to remove the contract but capture the concern expressed in a way the contractor can effectively respond to.

Another tool we can use to make the process easier is the BLM provides all the comments to the contractor at once. What I mean by this is we really shouldn't provide our comments piecemeal or after the deadline we've agreed to, because the contractor has likely already moved on and begun responding to our first set of comments. That definitely doesn't mean we need to let a document go out with major flaws we don't catch until after that date. Most of the time, these late-breaking issues can be resolved by mutual goodwill and compromise.

Now we've received our document back from the contractor and it's perfect. Well, maybe not always perfect. While it would be great if the contractor could address every comment the way we think they should, that might be a little unrealistic.

One way to increase the effectiveness of this commenting process is maybe to add an intermediate step where the BLM and contractor meet to discuss the comments. In preparation for this, the contractor's Project Manager could compile a list of questions from his or her specialists where they may need more direction or information to respond to a BLM comment. Doing this during the document revision process can help keep progress going and maybe prevent another round of back-and-forth comments. Again, being proactive and responsive is a great idea for both parties.

>> M. Cobbs: Chris, something we have been using effectively during document reviews is the idea of holding a live document review workshop or some of you may be familiar with them as projector parties. For this we invite the contractor into our office, we have our ID team

assembled, and we review the document on a big screen in our conference room, and we make changes live. This allows us to both make changes and get approval on those changes in real time.

>> C. Carlton: That's a great suggestion, Molly. It really can make the process flow better. So when we get our document back, take the time to search for flaws. Check and see how the comments we made have been addressed. If it's just a couple of missed comments, then a specialist and the BLM Project Manager can probably resolve them. If the way the comments were incorporated indicates a bigger issue or maybe a broad-scale problem, we might involve the CORs and potentially the contracting officer as well.

So we've talked a little about communication, we've talked about managing the documents we receive. Let's move on to the **administrative record**. We'll touch on it briefly today and get into more detail in Broadcast 3.

The admin record is a crucial part of any NEPA action. It forms the basis of record of review that goes before the IBLA or court in determining whether we did our job right. Basically, like UFOs, if it's not in black and white (or color) in the record, it didn't happen, no matter how much we think it did. With a poor administrative record we'd end up in the Area 51 of NEPA documents—lots of rumors but no proof.

So to keep the record up to date, it's important to have planned periodic updates. Whether the record is being maintained by the contractor or by the BLM, we need to identify a clear and consistent process for sending documents to that record. This process should include what types of documents, in what format, and to whom they're going to be sent.

We might want to have a key single point of contact. This really should be a group mailbox or a group inbox or common folder. We don't want to rely too heavily on any individual person for this function.

Another idea is to provide training to the staff on the why and the “what” of the admin record. Understanding the role of the admin record in the process helps remind us why we need to have it and really underscores the importance of keeping all of our decisions clear, well-reasoned, and in the public's eye. This will continue the long tradition of the courts offering the agency judicial deference. Judicial deference means as long as we did our job, the courts will generally uphold the decisions we make and will not try to substitute their judgment for that of the agency empowered to make the decision.

The next topic we're going to touch on is **how to improve the process**. I think we've all heard from everyone on the panel to document. Everything that we do in a contract needs to be documented somewhere. Contract disputes are really no place we want to have a he said/she said discussion because it's only going to add badly for all the parties.

Second tip, manage the relationships of the key personnel. A good working relationship can do far more to keep a project on track than any well-written scope of work. And finally, treating all

parties like partners and remembering the contractor is here to support the BLM's needs as we defined them in the scope of work, as well as maintaining a professional relationship, all help to keep the project going smoothly.

>> C. Humphrey: Thanks, Chris. Of course, as the host, I have to highlight a few of the points of what you said that I thought were particularly important. One thing I heard you say is that the ID team needs to review the products within the schedule. We all agreed on the schedule, so we need to adhere to the schedule. And you advised the BLMers to write effective comments, just like we ask the public to, include both the problem and the solution. One of the suggestions that I thought about is we (in our EA class) we teach people to review a document from a broad-scale and mid-scale and a fine-scale level so that the broad-scale you'll be able to tell right away if there are big sections missing or major problems. Mid-scale you get more into the details. The fine scale is probably left more for the technical editor. That might be a way to review the documents.

You also suggested using a tracking sheet, everybody agrees to the tracking sheet and then [they should] use it from there. And then the Project Manager should coordinate comments to eliminate inconsistencies.

Then a couple suggestions on the admin record, first of all you suggested training your staff, and we do have a broadcast on administrative record that people may want to go to. It's in the Knowledge Resource Center. You suggested to identify one point of contact, that the admin record goes through. One of the things I really liked that you said is to update the admin record regularly rather than waiting until the end of a project, like a seven-year project and updating it then. And then, of course, be thorough.

We got a suggestion from Wyoming, and that was to create two indexes for the administrative record--one that tracks the privileged information and one that is without. That way you'll have two indexes easily ready to go to whatever audience would take those. All right. That was great. So, Cindy, what can you tell us about managing mechanics from your perspective as a contracting officer at the NOC?

>> C. Kleinholz: Thank you, Cathy. As always I must echo what Chris and Molly and you have said, document, document, document. As you remember from the first broadcast, get your contracting staff involved early and often. The contracting staff can save you valuable time and resources during the management phase. If you have questions or concerns, ask.

What does managing mechanics mean to a contracting officer? Well, it means that we're moving from the award phase and the acquisition process into the performance phase. What we end up doing is we provide signed copies of all documents to all parties that are involved, and we complete the delegation of authority letter to the contracting officer's representative and the contractor.

By delegation of authority, the contracting officer's representative has specific responsibilities that include monitoring the contractor's performance to ensure the work that we've asked the

contractor to do is being done, informing the contracting officer when the contractor's performance is outside of the scope, and reviewing the accuracy of the contractor's invoices and certifying to reflect a complete payment.

>> C. Humphrey: So I'm sure some of you are wondering why we're starting to stumble a little bit. We're having some issues with the teleprompter a little. So I'm sure that you can all bear with us a little bit. All right.

So... I would like to know if any of you have any examples of when we asked a contractor to do work that was beyond the scope?

>>M. Cobbs: I'd like to offer one. One that comes to mind is a BLM project for a transmission line right-of-way, and we asked the contractor to prepare three visual simulations for the new line, and when the products were delivered, the simulations were done using photographs that had been taken during the summer, but then upon review, the BLM realized that, you know, maybe we would like to see what the simulations look like using a winter background. So we asked the contractor to run three more simulations using a winter background. Well, even though we only used three simulations for the EIS analysis, in the end we had then asked for six total simulations, when the contract only called for three. That's a good example.

>> C. Kleinholz: That's a really great example, Molly, because that happens quite frequently. A couple of the other COR responsibilities are:

- report suspected fraud, bribery, or any other improper conduct to your contracting officer
- assure the contracting officer has the necessary clearances to gain access to the BLM facility and any computer systems they may need
- conduct meetings with the contractor to discuss the project status and identify any changes.
- Document whenever you have any contact with your contractor and keep it in the COR working file or what I call the daily log, which can be subject to review. Documentation should be in typewritten form. E-mails are very acceptable. However, handwritten notes are okay provided that the notes indicate the date and the contractor's name.

>> C. Humphrey: Cindy, that's a good list of COR responsibilities. What about some of the responsibilities that are not under the COR's purview?

>> C. Kleinholz: Another good point, Cathy. The things that contracting officers representatives are not authorized to do are included also in the delegation letter that goes out to themselves and to the contractor.

Here are a few things that a COR is not authorized to do:

- Make commitments for promises or contractors relating to award of contracts,
- Instruct the contractor to start or stop work at any time,
- Approve delivery or disposition of government furnished property not specifically delineated in the contract,

- Provide verbal or written guidance to contractors that might be interpreted as a change in the scope or the terms of the contract.
- Modify the scope of work as specified in the terms of the contract.

And we'll discuss modifications later today and in Broadcast 3.

>> M. Cobbs: So, let me make sure I understand. You're saying as a project leader, even as a COR, would I have the authority to ask the contractor to do something different, say, produce two internal drafts instead of one, or change the schedule, or hold an additional meeting, or are those changes that need to be conveyed by the contracting officer?

>> C. Kleinholz: Molly, these can be gray areas, but the general across the board answer is no. That's a great question. You do not have the authority to ask the contractor to make these changes. These types of changes need to be communicated by the contracting officer. It's the COR's responsibility to ensure the contractor is doing what they say they are doing and meeting the deadlines using the reporting process that we asked them to do as they accepted and we accepted in their proposal. These items need to be modified as they often are in a modification or written agreement upon modifications needed to be signed by both parties. We will cover that in a little bit more today also.

>> C. Humphrey: One of the critical elements of managing a contract is **invoicing**. So tell us about that.

>> C. Kleinholz: Okay. Invoicing is one of the most critical things that a COR can do. They need to ensure that the invoices are correct and match the progress to the deliverables in the agreed upon contract. The way that we do invoices have changed in the past couple of years.

As of May 1st, 2011, new awards must be submitted electronically through the U.S. Department of Treasury, and it's called the Internet Platform Payment System or IPP. A proper invoice requesting payment must comply with the payments identified in the FAR, or Federal Acquisition Regulations, and a prompt payment clause in the contract. The following documents are required to be submitted as an attachment to the IPP invoice:

- A summary of charges claimed,
- Reports of deliverables or milestones,
- A detailed breakdown of the level of effort charged by labor category.

The contractor must use the IPP web site to enroll and access and use the IPP for submitting requests for payment. Contractors get help with the enrollment by contacting the IPP production help desk by e-mail or phone.

>> C. Humphrey: So that invoicing, something else we've heard a lot about is the **Prompt Payment Act**. What can you tell us about that?

>> C. Kleinholz: The Prompt Payment Act is a rule that ensures federal agencies pay vendors in a timely manner. That is one reason it's very important for CORs to look at and approve invoices, is

that we -- if we do not meet that obligation, there is a percentage of interest that is charged as a penalty against the government. A monthly report is generated by the BLM for how much interest we've paid.

>> C. Humphrey: I'm sure nobody out there has ever been on that list, right?

>> C. Kleinholz: Never.

>> C. Humphrey: So, Cindy, I know you wanted to go into more detail, for example, listing the responsibilities of agency heads, but in the interest of time, our viewers who are interested in that type of detail can go to the FAR, part 32.903, and you can read all about it. It's very easy to find that by doing an Internet search.

So what you said that jumped out to me the most was that everyone needs to pay attention to the delegation letter that differentiates between the COR duties and the contracting officer duties, and something that the folks out there may not have known, it was kind of new to me, is there are some new invoicing procedures. So you talked about both what and how the contractors submit their invoices, and then you talked about the responsibilities of the COR, including to approve invoices promptly.

2.4 Managing the Scope

>>C. Humphrey: So now that we have talked a little bit about the risks of repeated reviews of documents, different methods of reviews and delays, it's important to realize these things can put us into a position where we're beyond the original terms of the contract, or beyond the scope. When we talk about managing the scope, we're really talking about how the contractor will fulfill the statement of work. Now, Chris, what would you say are some of the most common challenges to staying within the scope of the contract and what solutions can you share with us?

>> C. Carlton: Thanks, Cathy. First, it is critical to manage expectations. Let's take a look at how unmanaged expectations can impact the scope. I find it useful to use a two-phased analysis. The first question is: what did we ask of the contractor? Is what we asked within the scope? And the second question that can be helpful is: did they do it? If not, what are we going to do?

I think we've all heard different scenarios come up. One I've heard relatedly is a specialist who says, well, the contractor didn't know anything about the section. They really didn't do a very good job and I ended up having to rewrite the whole thing. So using those couple of questions, the first question comes to mind is, what was the contractor's role in the document? And what did we ask them to do? Often we hire contractors in the RMP process, for example, to support our skills and not to replace them. So when a biology section comes into the BLM for review, it's good to remember that it was probably written by somebody that is a well-qualified biologist as a contractor but may be unfamiliar with the planning area in the same level of detail as the BLM specialist.

That's part of the point. The contractor staff is going to use the information available. Most of that information is provided by the BLM in order to do the best job they can. This does illustrate the importance that we need to provide the best information we have, and we also need to convey specifically what we want in that section to the contractors. As a reminder from Broadcast 1, pursuing a contract does not eliminate our responsibility for either the data or the decision and the analysis.

Another consideration in that scenario, that specialist may or may not have even been consulted on the statement of work. If he or she was, maybe what they wanted to see in there was pared down, maybe a management decision changed it before it went into the contract, or maybe it really was misinterpreted. As you can see, for any other reasons the contractor's expectations and the specialist's expectations may differ a lot. This can result in the specialist being unhappy with the work, which may conform to the terms of the contract but still not be what he or she wants to see. This is definitely an issue for the BLM management team to have as far as an internal discussion first.

As a note to the specialist, when developing the statement of work, be very clear about what you want to see in that contract, why it needs to be there, and how it really helps the analysis. As a note for the Project Managers, this illustrates the importance of getting good input from specialists about what needs to go in that statement of work and maybe not just relying on a cookie cutter from another project.

>> C. Humphrey: So another topic related to scope, one of my favorite subjects, is managing the schedule. What can you tell us about that fellow that we refer to as the time line creep?

>> C. Carlton: There is an easy assumption that because the contractor works for the BLM, and not the other way around, they're on our schedule. It's helpful to remember that when we negotiate and sign a contract, we're committing to the terms—including the schedule—in that statement of work. So when we delay getting materials to the contractor, that really does have a ripple effect. And those ripple effects can be cumulative.

For example, a one-week delay by the BLM getting a document to the contractor or GIS layer to the contractor, could result in up to a month delay in getting the deliverable back or Record of Decision date. Sometimes it's because we're all busy. But sometimes it's because maybe the meeting location we needed for that meeting is now booked. We have to delay our meeting.

Maybe the contractor is occupied with other work. Contractors, like the BLM, have to manage workload for their employees as well, and often ours is not their only project. The Project Managers there will assign and forecast staff time to meet multiple deliverables for multiple contracts. Sometimes if we miss our window for time we can't really expect a contractor to now blow off a deadline for another client to make it up for us.

While as federal employees our daily needs and deadlines change constantly—as you might remember from the first broadcast—because a contract is a written agreement between two

parties, a change in our priority requires us to do a contract modification in order to change the contractor's operation.

>> C. Humphrey: So, Cindy, let's say that that time line creep has gotten the best of us or maybe there's something else happened and a **modification** is needed. So what does a contracting officer need in order to process a modification?

>> C. Kleinholz: That depends on the changes that you're making. If you're only changing, let's say, the name to the contracting officer's representative or the contracting officer themselves, all I need is an e-mail. Once I get that e-mail, I'll look into FBMS to make sure the COR is in the system and that they have a COR certification on file with their state procurement analyst. With simple modifications like this example, I would type it out, sign it and forward it to all parties that I'm dealing with.

But let's say we have a change in number of printed copies to the Record of Decision. We've asked for 10, and now we want 100. What would I be looking for? A funded purchase request and a short description explaining why we need more copies. Once I have that, I would contact the contractor to see if they agree, ask how much they're going to charge the BLM for the other 90 copies. Then I would put together the modification. The contractor signs it, that is, if they agree to accept the changes. The government signs indicating agreement. The modification is released into FBMS and the funds are obligated.

>> C. Carlton: Cindy, just one note on that, one of the things that I tend to do first before knowing that I need a funded purchase request is look at it, Are there places I can deobligate funding in that current contract? Is there a "no additional cost" option? Can I find tasks maybe I don't need as much as I need this modification? Definitely that's something I would want to run by contracting officer before pursuing, but it may be something to consider in these tight budget times.

>> C. Humphrey: What's different, Cindy, between a simple modification that we the BLM can do without needing an agreement, and changes that require both parties' agreement.

>> C. Kleinholz: The two basic types of contract modifications that we use are a **unilateral modification**, just what it implies, a change that the government identifies as a needed change stayed by the government with no real input required by the contractor. Like I said, usually a change in personnel, contracting officers' name, contracting officer's representative. These are simple changes.

A **bilateral modification** is a contract modification that is signed by the contracting officer and the contractor. Bilateral modifications are used, for example, to make administrative changes, issue change orders, and make authorized changes by clauses other than the changes clause. For example, a property clause, the option year clause, a suspension of work clause. And to issue termination notices. When we're talking about making changes to the scope, it would be a bilateral modification.

>> C. Carlton: It really sounds like what we're saying is that the scope is a boundary, and we can only go so far with our comments before we have to adjust that boundary through a modification.

A couple of examples that come to mind, new guidance comes out all the time for BLM specialists, but the BLM can't really enforce or expect the contractor to respond to it if it goes beyond that original scope or statement of work without a contract modification. Some recent policy changes that we all may be familiar with are things like lands with wilderness characteristics (or Secretarial Order 2310), sage grouse, new trails manuals, the recreation management guidance, just to name a few. As you can see, our needs are constantly changing our responding to our changing needs may require a change in the scope of the contract through a modification.

>> M. Cobbs: You're so right. Things are always changing. We're never going to intentionally ask for something that doesn't meet our needs. However, we may fail to clearly articulate what those needs are or what we require to meet those needs, and as you've said are our needs may change for reasons beyond our control. Regardless, we are still responsible for the content on which our decisions rely. Quality assurance is, therefore, our responsibility.

One question we heard from the field through the comments and the Metrics That Matter is once we've identified a quality issue with the deliverables, what leverage do we have to remedy the issue? There's a spectrum of options available. At the softer end of the spectrum, the BLM can ask for a rework or do over. This is typically coordinated through the COR. At the more formal end, the BLM can consider withholding payment or a percentage of payment for the task in question. Again, coordinated through the COR with concurrence of the contracting officer.

Beyond that, we are can consider issuing a poor performance review, which has implications for those contractors pursuing future government contracts. This is typically run first through the contracting officer with input from the COR.

And finally, as a last resort, we also have the option of terminating the contract, and this is a contracting officer's decision.

>> C. Humphrey: So these remedies are for direct contracting. How does that differ if it's a third party contract?

>>M. Cobbs: In third-party contracts, the BLM has two options—we either approve or deny the deliverables or work products.

In the case of the latter, a remedy for poor quality deliverables is limited to just denying the product, in which any case, any necessary scope modifications or contract adjustments to improve that work occur between the proponent and the contractor, not BLM. In situations where we get pushback from the proponent on addressing quality issues, we have the option to pursue dispute resolution as is hopefully spelled out in your MOU.

>> C. Humphrey: So to summarize what I heard on scope, some of the things I'd like to highlight is, Chris suggested to ask yourself what did we ask of the contractor in the statement of work, and then ask yourself did they do it? If not, what should we can do?

The other thing was specialists should help write the statement of work, and even if they don't, they should have a copy of the statement of work and refer to it throughout the contracting process.

I think it's a good reminder that we're agreeing to both the products and the time lines.

And then Cindy talked about the difference between unilateral and bilateral modifications and how she processes them.

And then if we're not satisfied with the product, of course, considering the scope and statement of work, then Molly mentioned the four remedies we have for direct contracts; and as she mentioned, that was one of the questions we got. All right.

2.5 Questions & Answers

>> C. Humphrey: So now we are at the point, we have given you most of all of our wisdom, not all of it, but now it's your turn to ask questions, provide your perspective, if you have any best practices that you'd like to share with the rest of BLM that's watching, then this is the time to do that. The phone number, fax number, e-mail or text address are now on your screen.

As you're gathering your thoughts, because I know it always takes everybody time to gather your thoughts and start buzzing in, then we'll start with a few questions or comments we got from you over the past couple of months, and to ensure that we don't lose you before the end of the broadcast, the panel will be revealing their top tips of successful contract management. So be sure to stay tuned until the very end.

We got a question just a couple minutes ago, and this is from Casper, and I don't know if the comment came before I talked about this or not, but the question is regarding the **administrative record**, are there additional courses that focus specifically on the administrative record?

I mentioned that on our Knowledge Resource Center, the KRC, we do have a broadcast that we did about, I think maybe it was two years ago, 90 minutes, I think, and it's all about the project file and the administrative record. So what I do if I don't have it bookmarked is Google "BLM KRC administrative record" and you'll find it.

Anybody else out there yet? It sounds like we have a call from Dave at the NOC. Dave, are you there?

>> Caller: Yeah, I'm here. Actually, there's three questions here. The first question deals with -- from the last broadcast, a **checklist** for CORs being completed and sent to the CORs. It was promised during the previous broadcast. I wanted to know what the status was.

The second one is dealing with **rejecting invoices**. It's a cumbersome process, and there's various reasons for rejecting invoices, but there's got to be some better guidance in providing us CORs how to reject the invoices and making sure they're sent to the proper person, because going through FBMS, I've had to do that a couple of times, and it looks like everything went through, and then I find out it didn't go to the right person. So we need additional guidance on that. Then the third question is: do contractors get paid for BLM **delayed openings or early closures** due to inclement weather?

>> C. Humphrey: I'll take the first one. That -- I think if you're talking about what I think you're talking about, Molly prepared a lot of lists and questions and that kind of thing that I thought would make a good checklist for CORs, and so I think if this is what you're talking about, I was the one that promised and have I done it yet, no, not yet. But I'll get to it. And can I give you a time line -- let's say a week or two, and what I would do is I will post it to that KRC web site and then we'll send an e-mail to everybody and tell you that it's there. That's the first question.

The second question, a process for rejecting invoices. Do you want to take that one?

>> C. Kleinholz: I will. Hi, Dave. I know that it is cumbersome, and as we all know, that most everything that we don't do very often can be cumbersome, especially with FBMS. I'm not on that team. I know they're constantly trying to improve those scenarios. We do have a couple of experts around the NOC, or what I call experts, that can help. One of my suggestions I usually give to my COR is to call the help desk, come over, let me see if I can work it out with you, and if you're long distance to call me. So those are some of the things. But it is not a fun process. We're hoping to get a little bit better handle on that. The suggestions continually go to the FBMS team. So that's really the only answer I can give you right now.

>> C. Humphrey: Okay. Then did you catch the third one about contractors getting paid for delayed --

>> C. Kleinholz: It depends on what you have written into your scope and what's fair. We're not there to put Mercedes in their driveways, but we're also not there to break their bank. So once again, it goes back to the relationship you've built with your contractor, what's fair. I mean, if it's a snow day, that's one thing. But if it's something that's outside of everyone's control, that may be a new negotiated thing.

>> C. Humphrey: Great. I hope we got answers to your questions. I heard Dave hung up.

Now we've got, I think it's Brian, from Idaho. Brian, are you there?

>> Caller: Yeah, we're here. This past year in the spring of 2012 we had a large-scale wind energy project where we put it on hold or suspended the project, and the same day that we suspended

the project, our State Director signed a letter issuing [inaudible] project, the third party contractor -- they basically **ceased all work** on the project. So we got left hanging.

This is more for Cindy. Maybe some of these more controversial projects we should really look at what language we put into these agreements or the MOUs—where they're being paid by a proponent, because it did leave us hanging in a lot of ways. We had a lot of monitoring going on, a lot of different activities that were going on associated with the project that we were then being questioned by environmental concerns, etc., what was going to happen with those activities.

>> C. Kleinholz: I'm going to start that, to be very honest, I don't deal with third-party contracts. The contracts that I'm responsible for go through the solicitor's office. So at that time they may suggest that we take language out or put it in. So I'm going to say that if you're doing some third party agreements or MOUs then maybe you need to run them through a solicitor's office, but I think Molly or Chris may be able to speak to that a little bit more.

>> Caller: This contract had been through the solicitors. It was something I inherited as a new manager. It's just it took an unexpected turn of events. We felt we would have a little bit of time to work with the proponent to wrap up the project. The one thing we did as a Field Office, we sent a formal request to the proponent of what we felt it would be monetarily would take our staff to mothball the project and put it into something that could be picked up in the future, but we didn't expect the quick turnaround that the company did. They were sending out e-mails that day ceasing work. So, Chris -- I've worked with Chris before. Have you experienced this with any of your big external third-party contracts?

>> C. Carlton: We haven't had it to the same kind of degree whereas that immediate but we've had similar things happen on other projects where, for example, the proponent revises the project to a great enough degree that they need to reconsider their contract or maybe they want to resolicit for a new contractor. In a situation like that, really, the best advice is, really show why you want to get everything lined out in your MOU ahead of time.

If you think there's going to be ongoing monitoring or research that needs to be done to inform that analysis, really try to get that covered and put that contingency stuff in there, because it's ultimately between kind of the proponent and that contractor what they're going to continue to commit to, but if they're doing a NEPA analysis that we are going to rely on, we need to do our best to get in those documents our expectations and have them continue to fund them in this event. Definitely can understand why the company might be reluctant to do that, but that's really where that MOU becomes a critical piece of the process.

>> C. Humphrey: Does that answer it, Brian?

>> Caller: To some extent. Because you have to remember, it's not really a financial obligation for them to continue paying. I'm just asking the question, should we possibly put stronger language, because, I mean, it was at our request that the project was postponed, and getting them to

continue to pay for work, I'm just more asking for any suggestions. I think that I would probably look at a future MOU from my standpoint -- I more brought it up just to share it with the group.

>> C. Humphrey: That's a good point. Maybe if anybody out there is listening that's experienced a similar thing, if you have some good language in an MOU, if you send it to me, then I can post it to that KRC web site so that everybody can see it.

>> Caller: That would be great, Cathy. Thank you. You all have a good day.

>> C. Humphrey: All right. Thanks. Doesn't sound like we have any other callers waiting, so let's take -- here is a question from the last broadcast that was left over. The question is: How would you address a situation where an **invoice** is charged 80% of the task charges to the Senior staff lead but only 50% of the task has been completed and a good amount of that work was done by junior-level staff?

>> C. Kleinholz: I can start the process and have the CORs jump in. One of the things is when you suspect that's happening is you contact your contracting officer right away, and then we go back and we review what resumes they've sent in. We go backwards and we really do kind of an investigation to find out what was going on. Are they sending things out that we think should be senior scientists or biologists? You know, and they're sending their interns? That's one of the things we can do. And we can always reject that portion of the invoice, and then once the investigation comes up with the answers, then we're more than happy to have them resubmit and we can pay them at that time. Does that help?

>> C. Humphrey: Does anybody have anything to add to that?

Here is another one. How about: how do you deal with a situation when there are **personality conflicts** between the BLM Project Manager or the staff and the contractor? Chris, do you want to --

>> C. Carlton: Sure. I've had a situation like this on a contract before, and, really, there's no easy answer, but the best suggestion I can give is document everything. In that case I asked both the contractor to send me an e-mail or a description of what they thought was going on, the BLM Project Manager to do the same thing, and whichever it appeared to me as the COR was causing a bigger challenge, I would just -- if it felt like it was the contractor's contracting manager I would raise that to the contracting officer.

If it appeared that the personality issue was with the BLM staff, raise that up to the authorized officer or that supervisor and see if it can be resolved that way. As a COR, there's really not much you can do about that situation. There are always personality challenges in any project but just try to get the right people involved and respond to it that way.

>> C. Humphrey: Do you have anything to add?

We got a text from Michelle in Las Vegas, and this one is to you, Cindy. So, as a COR responsible for reviewing **invoices that are submitted via IPP** but the vendor's invoice requisition package is not attached in FBMS for the COR review, is it okay to tell the vendor to send -- an E-copy of the invoice to the COR when submitting through IPP?

>> C. Kleinholz: I'm going to say yes just so there's not a delay in payment, because we do have the limited days to turn that around. I would go back to your contracting officer and let them know that that's going on, and possibly it's just an education point on the contractor that needs to be addressed. It's not a perfect system. We've been going for about two years, and it's getting better. So that would be one of my suggestions. But you can look at -- just make sure what you're paying for matches what you have' gotten.

>> C. Humphrey: Thanks.
We have a call from Grand Junction, I think from Colin.

>> Caller: Hi, Cathy. I have three questions. We do a lot of third-party EAs here, and we've heard from our State Office that maybe we don't need to do an **MOU** for those third-party EAs. I just wanted to get your thoughts on that. That's the first question.

The second one is, we normally do use an MOU, but we don't have a lot of clear language in there about **guidance on when we allow communications** between the proponent and the contractor, and we usually allow unlimited communications between the contractor and the proponent without us being present if they're talking about the proposed action. It sounds I can you guys are recommending that we always be present for those communications. Can you give us a little more information about that?

>> C. Humphrey: Okay.

>> C. Carlton: I'll talk to the MOU and maybe Molly can talk to the other part. As far as the MOU, it sounds like from what you've already said you have some questions about the communication piece, and even though it's an EA and not necessarily an EIS, I would look very carefully and consider the level of complexity, the degree of potential controversy, those types of things, who else is involved. It may be worth having that MOU in place if it's a little bit of a complicated EA, if it's likely to be potentially controversial. Or if for any other reason you feel the need to manage those expectations and set clear boundaries with you, the proponent, and the contractor.

>>M. Cobbs: One point I would like to offer on the MOUs is in a third-party situation, absent an MOU, you really don't have any agreement in place with the proponent. I feel like it leaves you a little bit naked. So I think MOUs are especially important for third-party contracts.

On your question about BLM presence for communications, like I said, this varies widely from state to state, and it also varies considerably on EAs versus EISs. I don't see any major red flags with the proponent and the contractor having discussions when framing the proposed action. Like I said, in the presentation, the proponent, their knowledge is quite useful in helping to make sure that we accurately identify the technical specifications, how they're going to construct, how

they're going to demobilize, how they're going to operate. Where the real concern comes in, and this is just my opinion, where I think it's especially important to have direct BLM oversight is if there's any potential for the proponent and contractor to interface in the effects piece of the project. Does that answer your question?

>> Caller: Yeah, I think so. Thanks.

>> C. Humphrey: Okay. Didn't sound completely convinced. I think we have time for maybe one more, maybe two. This is one that came in before, and it is: Are there opportunities to periodically **review contractor performance** at periods that are separate from the invoices and the deliverables? And what advice can you provide regarding periodic contractor performance reports?

>> C. Kleinholz: Let me start that one, Cathy. That is a normal process within a construction project, that you kind of review what's going on and who is doing what and that kind of thing. In services, it's a little different. But you're more than welcome to ask for that. Just as long as you know that it's coming up, the contractor, that is, if they know that's what you're going to ask for.

I've had a couple experiences where my contract was getting off a little in the weeds and I said, let's start doing monthly progress reports, and that seemed to remedy what was going on. It can be anything from them telling us what they did and us giving them some feedback with our disagreements, and then them kind of responding back saying, "Well, no, we actually did do that." It usually works out okay. But, yes, you're more than welcome to ask for some sort of evaluation of how the contractor is doing, but ultimately the performance of the contracts at the end of the close-out period, which we'll be talking about in broadcast three.

>> C. Humphrey: Okay. Anybody else want to add to that? We have a couple other faxes that came in. Do you want to bring them to me, Andrew? Or not yet? All right. Then how about: **are there any penalties for schedule delays or incomplete tasks?** I don't know about reading the whole thing.

>> C. Kleinholz: Chris and I discussed this the other day; that once again, if it's written in your proposal and their statement of work and how they reply and it goes back to the relationship/communication portions, I think a contractor knows when they're not doing a good job. Also one of the things that I usually ask the BLM for is what documentation do you really have? Because nine times out of ten that contractor is going to have every e-mail, every delay, every single thing we've talked to them about sent them and they can say, no, this is what I was going from, and it gets a little bit murky right there. But, yeah, we can always withhold payment, reduce some of the payment, we can talk to them about it, things like that. Chris?

>> C. Carlton: I agree. I mean, one of the things that is a challenge is a lot of times the contractor will have every single piece of communication well documented and sometimes the BLM will not. So if we feel we're not getting what we should be getting for what we're paying, until we know what it is we're not getting and why and what we need to do to get it, it's really hard for us to go

forward, and even as a COR, it's hard for me to go to the contracting officer to say I need your support to go back to the contractor and get this redone if I can't say why it's defective. So, again, document everything and be very clear about how it relates to the statement of work and why it isn't what we asked for.

>> C. Humphrey: Okay. It sounds like Dave is calling back again from the NOC. Dave?

>> Caller: Yes, thanks again for taking my call. I have two questions, and this may be more directed to Cindy. **What is the maximum time** in general **to award a contract** when the contracting officer receives an accepted statement of work, and independent government cost estimate from the COR, and we're using a blanket purchase agreement contract, which already has prequalified contractors? That's the first one.

The second one is we know that communication between the contracting officer and CORs is essential. When there is a contractor debriefing after an award, and this would be for non-selection, **should the COR be involved in the [debriefing] call** or meeting with the contractor? And if not, should the COR be aware of the results of a contractor debriefing, if not invited to participate by the contracting officer? Thank you.

>> C. Kleinholz: Dave, I'm going to take the last portion of that question, and then Cathy can regurgitate the first portion. Once again, it depends. I encourage and let my CORs know if we don't select and have everything documented in our evaluation process, there's a whole bunch of things that can happen, and they're not usually positive. So they need to be prepared to assist me in the debriefing.

But there's also methods of if we're doing certain types of methods of contracting that we're not required to do a debrief. I usually try it by myself to debrief one time. If it's a whole bunch of technical questions, then I usually have a conference call with that contractor with the technical person right there with me. So once again, there's several factors that can go into how much we need to tell or have to tell the contractor that loses the bid. Then there's some other ways that we can work it in writing or verbally. So it just -- there's a whole bunch of little things contractually that can play into that. The simple way is to be professional and communicate with every party.

>> C. Humphrey: Okay. I didn't quite catch the first question and it sounds like he hung up. So --

>> C. Kleinholz: I can talk to that a little bit. I think he was asking about the time line. Once again, you are looking at a simple BPA award. Sometimes they are and sometimes they're not. I mean, I'm not real familiar with the scenarios. It goes back to Broadcast 1 where there are different times and those are directed by the FAR. It also depends on my workload. I mean, no one is taking my workload while I'm here. So I'm trying to do the best I can. So it just -- I'm trying not to sound like I'm covering for someone, but I don't know the specifics.

Dave, since you're in our office, you're more than welcome to come talk to any of us at any time and we could set up meetings with the branch chiefs or whoever you'd like to. So that's one of the ways to maybe answer some of your questions more specifically. Thanks.

>> C. Humphrey: That's good. All right. This is probably going to be the last one. This is a fax that we got from Price in Utah. I've heard this question a lot, actually. So the question is: **for third-party EAs can we set up a list of acceptable contractors** or, better yet, a list of contractors who successfully completed projects in, say, this Field Office or this district or maybe this state and then also a second part of that is how **can we discourage future applicants from contracting with them?** I don't know if that's a dicey subject or --

>> C. Kleinholz: I'll do the last part once again first. I'm not real familiar with third-party, but on any of the contracts that I utilize, it comes back to the past performance and the documentation that comes at the conclusion. Because that does not go just within the DOI areas, it goes through multiple areas throughout the government, and instead of giving that contractor an A, you have the opportunity to give them a C. So that's one of the things that we do as contracting officers, is we search to see if there's anything out there that's negative, or the contractor is not paying their people or their bills, and things like that, before you even find out who the bidders are. So there's not a way that we can just say no, but -- so, Chris?

>> C. Carlton: So, I think it really depends on whether we're talking about third-party or first-party contracts. I think, as Cindy mentioned, we have a lot greater kind of span of control over first-party, direct contracts. For third-party contracts, proponents are typically going to use a company that worked for them in the past, worked well for them, and got them to where they needed to be, and did an adequate job. They don't necessarily want to try somebody new if they don't have to. I think that's where it comes down to if we the BLM have had a bad experience with that company, be involved in that selection process.

In our last broadcast we had a debate about the degree to which we are involved in that, especially on something like an EA. That is some gray area but I think the bottom line is the BLM's input is definitely valued. We may not get the contractor that we absolutely want every time in a third party, however, I think we also have some influence with the proponent to make sure we get one that does an adequate job and we should pursue that input.

>> C. Humphrey: It sounds like we're going to go a couple minutes over. So if you guys could hang in with us until about five minutes after the hour. Another thing I wanted to add to this, I'm sure that the question is specifically for the third-party contractors because I've heard this discussion a lot, and I know in Farmington they have a certain process. I think they have a list of contractors and they encourage people to pick -- like rotate who they pick, if there are 10 contractors, they go one at a time. But I've heard other offices do it differently. This is a good question, anyway.

I don't know if we have any good answers for them. It doesn't sound like -- I think we've gotten all of our faxes. So that is just about all the time we have, but you really do need to hang in with

us because we have our tips coming up. So I want to thank everybody for your thoughtful input. It helps make this a more interactive session.

2.6 Conclusion

So, for the last 90 minutes or so we talked about how to manage the communication and the mechanics and the scope of a contract for planning or NEPA documents. And the third and final part of this series on contracting is called "Contract Close-out" and during that broadcast we'll talk about how to amend and close contracts and how to close them out and we'll define the contractor's role in completing the project file and the administrative record as well as responding to legal challenges.

I said this at the beginning of today's session but I'll say it again, we plan to hold the third broadcast at the end of March, but with the sequestration and the uncertainties, we might have to postpone. It changes from minute to minute. So we will e-mail you with any updates. So be sure that you're registered for this broadcast and you'll get the e-mails.

And we really hope that you'll join us for the upcoming broadcast, and I invite you to send any questions you have in advance. My e-mail address is on the screen. Anything that pops up, send it to me, and we'll address it.

As I mentioned before, this program will eventually be posted to our Knowledge Resource Center web site, and if you don't have the link, the easiest way, like I said earlier, is to do an Internet search. I just type in BLM KRC contracting and it will come up. All three broadcasts will be posted to the same page to make it easier for you.

And if you registered in DOI Learn for this broadcast, then we'll register you for Broadcast 3. Just like we did for this one. Also you'll get an evaluation e-mailed to you from MTM, Metrics That Matter, and those of you that have watched any of our shows or been to any of our trainings, as I've said probably 100,000 times we do take your comments seriously, as you can tell we incorporated them into this broadcast and like we suggest to the public, please be specific and detailed and we can address your comments a lot better.

So before you turn us off and get back to your other important work, our panel members would like to share some of their favorite tips. And I would like to start with Cindy Kleinholz from the BLM's National Operations Center.

>> C. Kleinholz: I would have to say that my top tips or top 10 tips or my top three would be keep your mind on your money and your money on your mind, which means, actively track your budget. Know where your funds are, what your limits are, and where you need to obligate those.

One of the other tips is engage your contracting officer early and often and communicate, communicate, communicate. Let your CO help you with any questions that you can have or concerns. Sometimes just vocalizing it will remedy it.

Hold kick-off meetings with your contractor and follow-up meetings as many times as you need. I know we get sick of meetings but sometimes it's just a meeting where we voice what the problem is and it goes away. That way also the contractor and the BLM are always on the same sheet of music.

>> C. Humphrey: Thanks, Cindy. All right, how about, let's hear from Chris Carlton from the Wyoming State Office.

>> C. Carlton: Thanks, Cathy. My top tips are, first, think ahead and think outside of the project. Anticipate curve balls. Our projects to get them completed require way more than just the NEPA process. We have considerations like are we getting a new Director, how is management going to change over the next few years. All of these bigger picture political, economic considerations. It really helps to be cognizant of those. Maybe you can't do anything about them during the process, but it's good to be prepared and that allows us to respond a little more effectively when changes do come down, and they will.

The second suggestion is coordinate project and staff schedules well in advance. Establish an effective MOU. And always try to get some advance draft, sneak previews. Stay in close coordination with your contractor. The sooner you can catch any challenges or issues, the faster and easier it's going to be to remedy them.

>> C. Humphrey: Thanks, Chris. Finally we'll end back up in the north with Molly Cobbs from the Anchorage District Office.

>>M. Cobbs: Thanks. Several of my top tips would be to be sure you define your communication strategy early in the project.

For third party projects, be sure to keep some distance between the proponent and the contractor because even the perception of impropriety can cause us some issues down the road.

The second tip I would offer would be check in with your contractor frequently. Whether or not you have an agenda, it never hurts to pick up the phone and call. You'll be surprised at what issues or questions emerge.

And similarly, from time to time, or actually pretty frequently, it's a good idea to check in or reference your statement of work. This will really help you stay close to the scope for which you're contracted.

And lastly, work with your contractor to develop a schedule for regular maintenance of the administrative record. For example, it may not be practical to maintain it daily, but you could consider asking contractor for updates to the record on the first of every month, or even quarter.

>> C. Humphrey: Thanks, Molly, Chris and Cindy. I hope we will see you three back for the third broadcast. And I want to thank the folks out in the field for listening to us. I know that it's been a little crazy the last few weeks, but we appreciate your time and attention.

If you would like to discuss any other planning or NEPA-related courses, then please don't hesitate to contact me or Tessa Teems here at the National Training Center.

That wraps up today's forum on Contract Management. We look forward to seeing you all next time when we talk about how to close out a contract. So long from Phoenix, and we'll see you later!

>>Announcer: This broadcast has been a production of the BLM National Training Center.

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