

(THIS TRANSCRIPT IS FROM REALTIME CAPTIONING, WHICH WAS CREATED DURING THE BROADCAST TO FACILITATE COMMUNICATION ACCESSIBILITY AND IS NOT VERBATIM.)

### 3.1 Introduction

>> Announcer: The Bureau of Land Management presents live from the BLM National Training Center in Phoenix, Arizona the latest Planning/NEPA Forum on contract close-out. And now the host of your program, Cathy Humphrey.

>> C. Humphrey: Good morning. Welcome to our latest Planning/NEPA Forum. This is the third in a series of three broadcasts on how to improve contracting for BLM planning and NEPA documents. We're covering both direct and third-party contracting and contracts for EA and EIS level analyses.

In the first broadcast, Contract Initiation, we covered from the inception of a project to selection of a contractor. During the second broadcast, Contract Management, we talked about managing the communications, the mechanics, and the scope—or statement of work—for a contract. Today's broadcast, Contract Close-out, will include how to use contractors to support the administrative record and respond to litigation, and modifying and closing out a contract, as well as contractor performance.

Although we're focusing on contracting all or part of Resource Management Plans, NEPA documents or other aspects of the process like conducting public meetings or creating the administrative record, the principles can be applied to contracts for other program work like habitat assessment, species surveys, computer modeling. And most of the principles can also be applied to Assistance Agreements.

I would like to thank everybody who responded to the Metrics That Matter evaluations. You gave us some really great comments this time, and I would like to go over a few of them and respond to them.

I don't know if you know this, but the comments you send us are anonymous, and one person graciously said here she would like to help put together a handbook or some sort of training guide to third-party contracting. That's terrific, but trouble is, I don't know who you are. So if you remember that you volunteered for that, you can send me an e-mail separately and we'll see what we can do.

Somebody else provided a detailed comment about the PowerPoints that we provided prior to the second broadcast, and they asked us to provide the PowerPoints, three to a page, with the white background rather than posting the PowerPoints that we show on the screen with the dark background so that you each don't have to get rid of the background and figure out how to print it three-per-page, and all that. Well, that's a great comment and all I have to say is “duh” to us. Thanks for pointing that out. So we fixed the PowerPoints, all three broadcasts-three per page, white background.

Now, apparently there's a three-second delay when calling in, and that's probably a little bit distracting. So you can either e-mail, fax or text us or you can, if you want to call us, you can just step out of the room while you're calling.

And there was a person that said they didn't agree with everything that we were saying on the panel, that they didn't want memorandums of understanding to become commonplace or required for third party contracts because in their realm, “most of us” understand what needs to be done. That is definitely not a typical situation, but we want you to know it's your call. A lot of what we're saying here is just the panel

members' opinions. It's not required.

Another person said that we should have a contracting officer's representative or COR from the National Operations Center, the NOC. They could be here on the panel and ask questions after the presentations and they would represent the viewing audience. Well, we do have a contracting officer from the NOC and both Chris and I are CORs, and Molly is a Project Manager. So we represent the district, state, and national level, and two of the representatives, Molly and Chris, are very representative of the viewing audience.

One other person thought that we should spend a little bit more time on direct contracts since we have no control over third-party contracts. I just want to remind everyone that even if a NEPA analysis is prepared by a third-party contractor, it is the BLM's decision whether to permit the action or not. Therefore, we DO have control over the quality and the content of the analysis. And third-party contracts seem to be much more commonplace these days. So that's why we've been spending so much time on those.

And this is one of my favorite ones... Some of the commenters aren't so crazy about this telecast format. One person felt that the prepared presentations and talking heads gets a little bit stale. Well, I don't think you would get much argument on that, not even from us on this panel, and I would love it if you would come down to the National Training Center and help us with an upcoming broadcast and help us develop something more exciting and more creative. That would be great.

So, again, I would like to thank you for the brilliant comments. They were specific and they were helpful. You did just what we asked. So thank you.

Like on the other broadcasts, today we're going to emphasize how to improve the process and the products rather than dwelling on what's not working.

As you're listening today, I'm sure that some questions will pop up in your head. So since we can't see you raise your hand, you can either jot them down now and then you'll be ready to jump in during the Q&A segment or you can text us at any time and that way we'll get to your question as soon as we can. As always, at the end of our show you will be able to interact with our panel directly.

You can call, fax, e-mail or text. So get ready to write down our contact numbers because they are going up on your screen soon. We're going to put up the phone, fax, e-mail and text info on the screen. Just one more thing, if you contact us, especially by text, include your name and location. That helps us out.

As you can see the phone number is 1-877-862-5346. The fax number is 602-906-5701. And the e-mail and text address is BLM TC [telecast@blm.gov](mailto:telecast@blm.gov). As I was alluding to before, if you're not able to mute the sound of the broadcast in the room, then it's better to either e-mail, text, or fax us your questions or step out of the room because there might be some feedback in addition to the three-second delay.

In a minute I will introduce our panel. They will first talk about the role of contractors in creating the administrative record and responding to litigation, and then they'll talk about modifying and closing out contracts and they'll talk about contractors' performance. After that, it will be your turn to participate by asking questions on any part of the contracting process; not necessarily just what you hear today, you can ask questions about the entire process. And then if you have some best practices you would like to share, we'd also like to hear those. And, then, we thought we would mix it up a bit.

We have invited three contractors to share their ideas on how to improve the contracting process from their experiences working with several BLM offices and other agencies. I don't know if you remember, last time Cindy said we should look at it from the contractor's perspective. So we're going to invite them and see what they have to say. And then finally, we will end with some closing comments from our panel.

Because we have so many exciting things to share with you, we're planning to go for two hours today. The past two broadcasts have been 90 minutes. I hope you're able to stick with us the entire time.

I would like to ask you one small favor... I know when you're sitting out there in the field and you're watching us on TV it's easy to sit around and chitchat amongst yourselves and get distracted, but some of your co-workers might actually want to pay attention. So if you could help us all out and help your co-workers out by sitting quietly for the next two hours and listen to what's being said. You never know, you might leave the room all bedazzled and excited about what you've heard and how you can improve the process in your office.

So now it's time to introduce our panel. If you've watched the other broadcasts, it will be like I'm reintroducing you to some of your favorite neighbors that you used to invite over to your barbecues. We lucked out and we were able to get our favorite panel members back. So let's head out to Spokane to see Chris Carlton. Chris has been a planning and NEPA program lead at the Wyoming State Office in Cheyenne for the past five years and he recently accepted a P&EC job at the Spokane District in Washington state. Chris started with the BLM in 2008. He began his career as a NEPA contractor and he has more than 15 years' experience with the Federal contracting process. Chris is a COR. He has been a COR for five [RMP] contracts. It's great you could join us.

>> C. Carlton: Thanks, Cathy. It's great to be back with the rest of the team. Sorry I can't be there in person but it's still good to see you all again.

>> C. Humphrey: All right. Now back here in the studio we have Cindy Kleinholz who is a contracting officer primarily dealing with environmental contracts at the National Operations Center in Denver, Colorado. She began working for the BLM in 2010 and was involved with Federal contracting for many years before that. Hi, Cindy. It's good you could come down.

>> C. Kleinholz: Thanks for having me, Cathy.

>> C. Humphrey: Finally, Molly Cobbs who is the Planning and Environmental Coordinator for the Anchorage office in Alaska. Molly also started with the BLM in 2010 and began her career as a NEPA contractor and has more than 10 years' experience with the Federal contracting process, much on BLM projects. Over the years Molly has been the NEPA lead Project Manager for six BLM EISs. Molly, I bet you're so glad you could come down here in the spring. It's a little nicer here than in Anchorage.

>> M. Cobbs: You're right. Thanks for having me back.

>> C. Humphrey: All right. So that is our panel. And just as a reminder, like I mentioned before, we have a few other guests who we will introduce just before the presentations, just before their presentations.

On our second broadcast, Contract Management, I did a somewhat detailed recap of what we talked about on the first broadcast, Contract Initiation, including talking about the terminology. So I hope everyone saw one or both of the previous broadcasts because instead of doing yet another recap up front, what we're going to do this time is we'll summarize some of the best practices at the end of the show.

### 3.2 Administrative Record

Although we did a broadcast in March 2011 that talked about project files and administrative records, and that, of course, can be found in the Knowledge Resource Center web site, and although we touched on the administrative record and project files on the previous two contracting broadcasts, today Molly is going to get into more detail on the contracting aspects of **project files and administrative records**. Molly?

>> M. Cobbs: Thanks, Cathy. Although we're covering administrative record in this broadcast, which is dedicated to contract close-out, we don't want to imply that records management can wait until the end of your contract process. So if you recall from the first two broadcasts, we've highlighted the steps along the way where you should be considering administrative record management in your contracted project.

In the first broadcast, we suggested looking for unique approaches to records management and proposals from potential contractors, and then spelling out the BLM's requirements on this point explicitly in the statement of work. In the second broadcast, we provided suggestions on how to manage the tasks of compiling a record by periodically checking in on records development or listening -- listing one primary point of contact for records management.

When we use contractors for Land Use Planning and NEPA efforts, the majority of records are on a day-to-day basis handle, if not even generated, by the contractor. It's the sum of these records, the sum of those records is used in the BLM's reaching a decision on a project and ultimately become the BLM's project record or decision file and in the case of appeal or litigation, before the interior board of land appeals, IBLA, or a court, it becomes our administrative record.

We won't go into great detail about what needs to go into an administrative record or how to develop or structure the administrative record on this broadcast, but for specific details on what needs to be contained in the record, refer to that March 2011 broadcast that Cathy just mentioned. It's posted on the KRC page. Additional guidance on what needs to be contained in the record can also be found in the BLM's NEPA handbook or on the NEPA web guide.

For many offices the term project records, decision file, project file, administrative record and case file are used interchangeably. For our purposes today we're going to define and differentiate those terms as follows. **Case file:** think of the case file as an activity log on a particular case or application. Case files document the transactions and are the activity occurring on a particular request. For example, noting that an applicant's application for payment has been received or processed. Case files don't necessarily contain resource or issue-specific information considered in a decision on an action, although they certainly could. The content of a case file is determined by program-specific BLM guidance and will differ depending on the type of matters or case. We won't spend too much more time on case files today.

**Project records or decision files:** this is really the heart of our discussion today. Project record or decision file is the contemporaneous record or body of evidence--the rationale behind a decision. It's basically our blueprint for a decision or roadmap for a decision. Project records should be maintained for all decisions the

BLM makes. The project records should contain the complete story of the BLM's decision-making process, including any options considered and rejected by the BLM. It should include relevant and substantive information presented to you or relied upon or reasonably available to the decision-makers at the time the decision was made. It should also establish the BLM complied with all relevant statutory, regulatory and agency requirements and it should demonstrate that the BLM followed a reasoned decision-making process.

Many offices refer to this as their administrative record or project record or decision file, and that's fine. The differences are subtle. Today, however, we're going to refer to this as the project record, because there is a difference, although subtle, between a project record as we just described and a true administrative record for judicial review.

So let's take a look at that difference. In litigation, under the administrative procedure act, or APA, or an appeal before the IBLA, the full project record, as we've just described, is used to create an **administrative record** for judicial or administrative law judge review. In many cases, the project record and the administrative record are identical. However, they may vary depending upon the project or the specific lawsuit.

Work with your solicitor's office to determine what records exactly need to be included in the administrative record as other guidelines and implementing guidance may factor into what goes into the final record. In certain limited IBLA circumstances, staff may be called in to hearings or prehearing conferences, but APA, Administrative Procedure Act litigation, is based solely on the record. So unlike many legal proceedings, it does not present an opportunity to call in and question actual witnesses to ascertain what occurred or what factors influenced the decision. An APA litigation, the administrative record is the only "witness".

For more information on how the project records and administrative records are related as well as on how they differ, check out the 2006 memo from the Office of the Solicitor in Washington. It's titled "Standardized Guidance on Compiling a Decision file and Administrative Record," and we posted it on the KRC page for your reference.

>> C. Humphrey: I would like to recap the definitions to see if I got them right: A case file is basically the activity log for a project. A project record or decision file is the evidence supporting a decision. And the admin record supports the judicial review, and it might serve as the lone witness in litigation?

>> M. Cobbs: Correct.

>> C. Humphrey: Okay. I would like to move on and talk a little bit more about **Roles**. So what can you tell us about the roles of the contractor, solicitor's office and your local BLM office in compiling project records for NEPA documents that are contracted?

>> M. Cobbs: Well, by nature of their role on a project, the contractor is typically the entity closest to the individual records. The e-mails, the reports, the meeting minutes and other federal records, et cetera. The contractor's roles and responsibilities in developing, maintaining, and delivering the project records includes but aren't limited to:

- developing specific categories for indexing the record;
- identifying an internal strategy for managing and maintaining incoming records;

- gathering, generating, and cataloging individual records and records materials;
- maintaining the records—both the body of the record, as well as the record's index;
- compiling the record; and, finally,
- producing and delivering the final record to BLM.

As we've discussed numerous times, the BLM assumes ultimate responsibility for the administrative record prepared by the contractor. The BLM's roles include:

- establishing and communicating our expectations for the record;
- ensuring that the record is being maintained throughout the life of the project versus being prepared in a mad scramble right before or right after a decision is signed;
- ensuring that our internally generated records (such as minutes from ID team meetings or any internal correspondence) make it into the record;
- ensuring that the record is substantially complete before a decision is signed; and
- in appeal or litigation scenarios, certifying the true and correct copy of the administrative record.

In litigation or appeal scenarios where the BLM is compiling an administrative record for the court or IBLA's review, the solicitor's office can assist with organizing the administrative record. The solicitor's office will often review records to see if they need to assert privileges, and, if necessary, the solicitor's office will also negotiate those privileges with any Department of Justice attorneys involved.

The solicitor's office can be consulted regarding documents that may be questionably relevant to the record. Because the administrative record is filed with the IBLA or the court, the solicitors or our Department of Justice attorneys must be comfortable with the documents that are included or not included in the record in the event that they're questioned about the record during litigation.

>> C. Humphrey: Molly, I was curious, does a contractor have a role when we're responding to appeals or in litigation?

>> M. Cobbs: Good question. In short, typically, no; although there can be exceptions. Let's look at this closer. Roles, responsibilities, and expectations concerning contractor involvement in appeal or litigation response should be spelled out in a statement of work. But more often than not, our statements of work typically defer on this point, and that's okay, because we rarely plan to be challenged or sued.

Most of the time when we bring a contractor in to support the BLM's response to an appeal or litigation, we would pursue a contract **modification**, which Cindy and Chris discussed in the second broadcast. For all contracted NEPA planning projects, the contract should state that the contractor is to protect and hold confidential any pre-decisional, deliberative or attorney-client privileged materials that they may come across during the life of a project. And they may need to be reminded of this obligation when difficult or controversial decisions are being considered and even during litigation.

Now, it's possible that a plaintiff/litigant will approach a contractor and try to obtain information from them to use in litigation against the United States Government, but hopefully you'll have a relationship with the contractor such that they would let you know of any such attempt. However, if the contractor appears to be giving out privileged information to a third party, you should notify a solicitor immediately and should probably make a note that that's probably a contractor with whom we shouldn't pursue work in the future.

So beyond stating the importance of protecting all of the relevant privileges in your contracts, let's talk about the contractor's actual responsibilities in the event that we're sued or appealed. Ideally, the contractor delivers the record to the BLM. Then a decision is signed and the record is considered closed. Generally speaking, at that point the contractor is under no further obligation beyond the delivery of a complete and adequate project record to BLM—unless, of course, you've specified otherwise in your contract.

Now, the statute of limitations on litigation brought under the Administrative Procedures Act is six years. Therefore, it's unlikely that a contractor will still be under agreement with us at the time of litigation. And as we've said, the Administrative Procedures Act litigation is based solely on the administrative record, so nobody is going to subpoena the contractor, or even BLM employees, for that matter. So other than preparing the complete project record before a decision is signed, which we would then develop into an administrative record at the time of legal challenge, the contractor does not generally have a role in litigation.

If you are sued, which, as we said, could occur up to six years after the decision, you could go back to the contractor to see if they have any additional documents that they may have forgotten to include in the original project record. And you could perhaps hire them back on temporarily to assist in revising or reorganizing the records.

So practically speaking, this would be extraordinarily challenging for a couple of reasons. First and most notably, staff turnover. Particularly if the decision is several years old, you may need your old contractor's help to make sense of the project record. But given both BLM and private sector turnover rates these days, how practical is this, really? It's highly likely that neither the BLM staff nor the contractor staff would be the same such that any staff on board would have the historical knowledge of the project or the ability to locate an obscure record from years ago.

Second, it's also possible you will not find out until you're sued that the contractor did a less than perfect job of putting documents together into an adequate record. While you could go back to the contractor and try to hold them to the terms of the original contract, if they put that record together in a cogent fashion, it's a challenging process. Post-hoc and after-the-fact construction of records is generally prohibited, and beyond that, it may even invite legal arguments over the record itself. Lastly, not to mention it's incredibly frustrating.

So the best advice that we can offer on this point is that if a challenge or litigation is imminent or even likely, it's best to do the work up front. Hopefully this underscores the take-away messages of the first two broadcasts—to be explicit in your statement of work about what you need to be in the record and how it's maintained, and to communicate regularly with the contractor on this point.

If you haven't accounted for contractor support in appeal or litigation response in your statement of work, but you would like for the contractor to provide this service, then you'll need to consider a contract modification. Similarly, although we haven't touched as much on it in these broadcasts, if you're contracting a large project, an EIS, for example, and you receive a large Freedom of Information Act, FOIA request, you may need or want the contractor's support and assistance in fulfilling that FOIA request, particularly if they're the ones handling or managing the records being requested. And in this case, again like the previous scenario, you'll need to consider a contract modification if it hasn't already been spelled out in your statement of work.

>> C. Humphrey: So let's review the roles again for an **Administrative Record**.

- The contractor typically develops the process to manage and categorize the documents and the index. They compile and maintain the record, and then they deliver the final record to the BLM.
- The BLM is ultimately responsible for the record, so it's our role to set and communicate the expectations, of course, in the statement of work. It's our role to do periodic quality control checks, to compile our own internal documents, and to make sure the record is complete before the decision is signed and then, finally, to certify the record before it goes to court.
- And the solicitor's role is to help organize the record, give advice, and review for privileged documents.

Now, the contractor's role in supporting legal challenges, of course, their role needs to be described in the statement of work; their primary role is to craft an excellent record. And then beyond that, they must protect the privileged document and if we need their help to make sense of the record or respond to a FOIA request, it will require a contract modification. Right?

So, Molly, what best practices or what kind of tips can you share with the audience about managing the **Project Record** on projects that are contracted?

>> M. Cobbs: Sure. These will sound similar to some of the tips we offered in the first and second broadcast, but here's a handful of suggestions and best practices for you to consider when developing a project record when you have a contractor involved. First of all, what are our internal expectations? It's important that we identify and agree on these as a team and that we then clearly articulate these expectations in our requests for proposals, statements of work, and in our start-up meetings with the contractor.

Secondly, check with your regional solicitor's office for current format requirements for administrative records delivered both to the IBLA as well as to the court. For example, it's a best practice to have both hard copy and an electronic copy of all records. And in an appeal situation, right now IBLA is wanting a hard copy of all records; whereas in the case of litigation, the courts are typically preferring to have the record electronically. So having records available in both formats ultimately gives us the greatest flexibility at the end of the contract.

Third, work with the contractor to develop a framework category for the administrative record up front.

Fourth, define your communications protocol with the record in mind. Anticipate how you'll need to direct traffic on communications, correspondence and deliverables to best expedite the compilation of records into the overall project record. Because the statute of limitations is six years under APA, as we've said, you may have to revisit records that haven't been touched in years, maybe even for projects that were completed before you were even on board in your office. In these cases, wouldn't you want the record to be organized in an intuitive, logical fashion? Think about this as you organize your files moving forward as well as the records index.

Lastly, consider including a read-me file. Ask the contractor to write up a memo about how they organized the files. A read-me file or a how this record is organized memo to accompany the final hard copy record or the electronic version can be really useful.

I'm going to sneak in one more tip: periodically check in with the contractor; possibly even ask to review the record at regular intervals. And I mentioned this in the last couple of broadcasts, but, for example, I like to know that the record is current within one month's time, and I'll often ask to see a printout of the index of records at the end of the month for concurrence with each invoice. Or you could even consider asking to see a printout of the records index at the end of each major task.

The main take-away message for you regarding the various project record responsibilities, including responsibilities in appeal or litigation scenarios, is this: the contractor should deliver a complete and organized record to the BLM just before a decision is signed. It is then the BLM's responsibility to ensure the adequacy and thoroughness of that record before that decision is reached. This means being engaged with the records development all along the way as well as reviewing and accepting the final record deliverables before the decision. Once we make that decision, that decision is ours alone. And in that sense, contractors have a pretty limited role in any follow-on appeals or litigation.

So if you need or expect additional support from your contractor in an appeal or litigation scenario, make sure the specific tasks, type of assistance or other work products are clearly spelled out in a statement of work or contract modification. Ultimately, and I'm sure you've heard this, our decisions are only as solid as the records supporting them. So make sure that you, your team and your contractor are confident in your project records.

>> C. Humphrey: So I would like to highlight a couple of the best practices for developing a project record or administrative record:

- Figure out what we want and put these expectations as well as the communication protocols in the statement of work.
- Check in frequently with the solicitor and the contractor.
- Develop the “read me” file that explains the organization of the record. I think that probably will go a long way.
- Make sure the record is complete before the decision is signed.

### 3.3 Contract Modification

>>C. Humphrey: All right. I would like to move now away from project files and administrative records and I want to go to Spokane and hear from Chris. He has been awfully quiet. Chris, can you talk about **Contract Modification** as little bit?

>> C. Carlton: Sure, Cathy. So, we are in a situation where we have to have a contract modification, and just a couple of quick notes. Obviously that's required when there is a change to the statement of work. We need to make a change. There are a few things we need to consider.

- We need to make sure that that modification has a cost estimate.
- We need to make sure that we have sufficient detail.
- And we need to make sure that we have an explanation and a signed and funded purchase request that corresponds to that government cost estimate.
- And then, finally, we need to make sure that, just, some of the nuts and bolts. We provide the contracting officer enough time to get together the estimate from the contractor and to take care of their part of the process.

That's just a few of the highlights.

You know, in a lot of the cases, a lot of work can be done before going to the contracting officer. As a COR, one of the things that I do is when I reach a point in the project where it's evident that a contract modification is needed, I'll try to think of what exactly do we need, and where are we, and how do we need to get there? I definitely don't want to do this twice, and I don't think the contracting officer does, either. So maybe a little planning up front seems to really help save big headaches down the road.

As a COR, I really want to make the contracting officer's job as easy as possible and have them do the least amount of work that they can, and try to do as much up front work as I can. So what can I do? Well, talk with the ID team, management, and the contractor.

This may sound similar to what we talked about in the first and second broadcast and what Molly went over. Similar to the original statement of work development process that Molly went through in a lot of detail, we need to engage the ID team and we really need to talk to the relevant specialists and design a framework to meet the government's needs. We need to decide how much of the new workload we can do in house and how much needs to be contracted out. Then develop that cost estimate for that workload.

The biggest difference between this and the original RFP is that now we have a contractor on board, and this gives us some advantages. We've had some experience and some time working with that contractor. We probably have a good handle on how the BLM and contractor are working together to execute this particular contract. And we also have the contractor's input into what needs to change for a modification.

So, remember, while the COR cannot obligate the government in any way, the COR can still engage in those discussions with the contractor about what's going to take to get the project where it needs to go. Remember, we've hired this contractor based partially on their demonstrated past performance. So they likely have some good experience that would help us structure our needed modification. It can definitely be useful to have that contractor's input, but we need to remember this is still inherently a government function and we definitely don't want the contractor involved in deciding or developing the final statement of work or anything remotely connected with the government cost estimate. That needs to be absolutely our own. We need to maintain that separation. That's our internal product.

In the past I've had contractors that will provide what I call a rough order of magnitude or kind of a ballpark guess as far as what a certain action might require in labor and time and level of effort, not necessarily in dollars. Remember, only the contracting officer can request a formal estimate from a contractor for a modification. So as a COR, I can't ask them for an estimate. But if I have the contractor's labor rate from the original technical proposal and get an idea what they think it might take in terms of hours, I could probably get a pretty good guess of what an estimate might be.

So, remember, a lot also depends on the contractor. Some of them may be more than willing to give you this rough order of magnitude. Some of them may only respond to the contracting officer directly. And some may be willing to have kind of a verbal dialogue but might be a little hesitant to put anything in writing. This really depends on the relationship and kind of the level of authority that contracting manager has -- or the contractor's Project Manager, rather.

So in summary—we need to be clear about what our needs are. Don't let the contractor's views on a needed modification drive us to do what we think we need to—we need to develop that on our own. We need to engage the contractor and keep that arm's length distance while we do so between us and them for the

details, especially when it relates to cost. And remember only the contracting officer is able to request a quote or obligate the government in any way. If you're using some of these tools to prepare the statement of work can help to minimize the contracting officer's workload or time and give him or her a clean, well-prepared statement of work that will get through the process very quickly.

>> C. Humphrey: Thanks, Chris. I like to highlight a couple points.

- Whenever there is a change to the statement of work, we need to do a modification, and modifications are the same as the original statement of work.
- We need to figure out what we want and be able to clearly explain it.
- It may or may not require extra money. I've worked on lots of modifications that don't require extra money increase.
- And then the CORs can talk to the contractor to help narrow down the specifics of what's needed but can't make any promises on money.
- And the other point you said, the government cost estimate is an internal government product.

### 3.4 Contract Close-out

>> C. Humphrey: All right, so that's contract modification. Now we're going to move on to **Contract Close-out**. So we're going to talk about what contracting officers and CORs need to do to close out a contract. Chris, tell us, why is closing out a contract important? Why can't you just move on to the next project?

>> C. Carlton: So, Cathy, why is close-out important? Well, it's important for a number of reasons. First, as we've already talked about, we know that we need the admin record for our appeal and protest period. We also know that we need to kind of finalize the contract, receive the deliverables, get final copies of all of our documents and materials opinion well, now that we've done that, what do we use those materials and those files for?

It really can be anything, which is part of the reason we need to do a good job when it's fresh and the project is still in our minds and we know what we've been working on, and we have access to the full team of both BLM specialists and contractor personnel in order to prepare those materials. So as you work with the contractor in preparation for closing the contract, it might be helpful to remember that the documents and the organization of them may be relied on way down the road, years down the road, because sometimes despite our best efforts, the language in a decision record or project document is not as clear as we would like it to be. And when that happens, we're going to turn to the project file to figure out how to interpret it.

Once the ROD is signed, the project still needs to go forward in implementation, and we'll likely be working on it for a while—months; years, in the case of an RMP; potentially even a couple of decades. So we'll be referring to that ROD, the document, but also referring to the project files to answer those "what do we mean here" questions.

I don't know how many times you've been the new specialist assigned or a new Project Manager assigned and been faced with that question of "so, what did we mean there? Why did we write this this way? Where do we look for that?" We're going to look, if it's not clear, in the project files. One of the resources that as a Project Manager or a specialist you may be called on to rely on is the clear, consistent project file from years gone by.

This is something we may not be concerned about during the NEPA process; and maybe once that appeal period is passed, we may think, “Hey, great, the risk is gone,” or “the concern is gone.” But there’s going to be staff coming in down the road that’s going to need to rely on that and, really, we will need that file to guide our implementation. Again, effective close-out provides us not only the documents, but also an organization that allows us to use them and solve those questions pretty easily down the road.

>> C. Humphrey: Thanks, Chris. Now I know why closing out a contract is so important!

And as always, not only are there the COR considerations but there are regulations that we need to follow to complete the process. So, Cindy, what can you tell us about the FAR, what the FAR says about contract close-out.

>> C. Kleinholz: Thanks, Cathy. I would like to start off by reminding you of the importance of communication, especially during contract close-out. As I have discussed many times in the past, good communication along with good documentation shared with your contracting staff can save you a lot of time, money, and headache. And remember from the first broadcast, get your contracting staff involved early and often when challenges arise with your contractors.

So, what is contract close-out and what does it mean to the contracting staff? Well, it may be different than what you think. As you can see on the screen, the FAR as it pertains to firm fixed-price contracts, which most NEPA projects fall under, says that a contract file should be closed within six months after receiving evidence that the contract is complete.

The FAR also covers when a contract file should **not** be closed. For example, when the contract itself is in litigation or under appeal, when a decision has been made to terminate a contract, but all termination actions have not been completed. You can see the full text in the FAR part 4.8.

So does this FAR definition agree with your definition and roles as to what contract close-out means? Probably not. Let’s talk a little bit more about it. Contract close-out means we agree to close the contract because they’ve completed the work to the government’s satisfaction and the contractor has received the agreed upon compensation.

>>M. Cobbs: Cindy, I want to clarify that last point. It may be confusing with some of the concepts I discussed earlier in the broadcast regarding project files in litigation. To be clear, you’re saying that the contracting officer’s contract file cannot be closed if the **contract itself** is under litigation, not when the project decision is under appeal or litigation?

>> C. Kleinholz: That’s a good clarification, Molly, between the litigation on a contract file and a decision file.

Another part of a close-out is **Records Retention**. Records retention is yet another thing to think about while completing or closing your contract. I often suggest to CORs that the length of time they could keep their personal records—not the official records—typically depends on the success, length, and the complexity of the contract.

Remember that even if you have been promoted, left your position, or retired, you may be called upon to discuss or even testify about how your project went with your contractor. As contracting staff, we do not

maintain your records or logs. It's only our responsibility to maintain the official contract file, even after it's been sent off to the National Archives, which is for six years and three months. On my larger contracts, I maintain my notes and e-mails for a few years just to refresh my memory if needed.

Part 4.703 of the FAR covers what the contractor's roles and responsibilities are for their records retention. Here's a good rule of thumb... when dealing with records retention, please contact your records -- your state records manager and/or your FOIA staff. On your screen you'll see just a few of the contracting staff's requirements maintained by the FAR. As you can see, different types of contract documents have different retention periods.

>> C. Humphrey: So this is probably going to make you cringe but I'm going to boil down what you said in like a couple of sentences. Okay?

- Contract files must be closed within six months after the work is complete unless the contract itself is being litigated.
- How long you keep your own personal files and notes depends on how the contract went. For example, if it was a simple, small contract, and if it went well, you don't need to keep the records as long as if the contract is long and arduous. And then, of course, you still need to adhere to the guidance in how long to keep records from the Administrative Procedures Act and the FAR.
- And the other thing I heard you say is no matter how far you run, no matter how far you hide, you can never get away from the contracting officers!

>> C. Kleinholz: That's a very good summarization.

### 3.5 Contractor Performance

>>C. Kleinholz: So now let's talk more about records retention to contract performance. I get questions from the CORs all the time on how can I rate the contract performance at the end of the contract. A few years ago the government implemented the Contractor Performance Assessment Reporting System or CPARS. This is a web site where the good, the bad, and the ugly can be entered as -- as to how the contractor performed on each contract. You can see the address to the CPARS site on your screen.

One of the things I continually speak to CORs about is if you are dissatisfied with your contractor's performance, you really shouldn't have waited until the end of the contract to voice that concern. By waiting to discuss performance issues with the contractor, it is unfair to your contractor, it's unfair to the government, and it can open a whole other can of worms. Please ensure that you have your factual documentation to support your allegations, because I can guarantee you the contractor will have their own documentation as to what the government did or did not do. Furthermore, within the CPARS process, the contractor gets to rebut any comments they don't agree with.

>> C. Humphrey: Chris, you have been a COR for several RMPs, and so I'm sure you have a lot of experience dealing informally with contractor performance. So I'm curious if you feel a contractor is not performing to the government satisfaction, then what kind of things do you do to remedy the situation informally, and especially doing it without going to the contracting officer?

>> C. Carlton: Well, Cathy, that's a great situation that I think a lot of CORs end up in -- or a lot of project managers end up in working with contractors. It really depends. It's kind of a gray answer. But like most things, it really does depend on the situation.

If it's—at least for me—if it's a contract that I've been involved with from the very beginning and I feel like I have a pretty confident understanding of the circumstances and what's been going on and the history, I may be more willing to have kind of a direct conversation with that contractor Project Manager and just say, "Look, I think we have some performance issues; we may have some concerns that we need to take care of."

And I'll make sure that I have documentation and I can look back through my notes and kind of support those statements. On the other hand, if I've just been given a new project (and I think that's more common for a lot of us; it's pretty rare to be on a five-year contract from start to finish for a lot of places), as a new Project Manager, I would be a little hesitant to do that because I don't know the history of both sides. I don't know when, if one person is saying there's a performance issue with the contractor, what does the statement of work say? Is there some personality conflict or history in there?

So I would probably, in a situation like that, make sure to document what I hear from both the BLM and from the contractor, have that informal conversation, and just say, "hey, you know, what's going on?" Get both sides of it. So I may be a little more hesitant to kind of be direct or say this is not doing what we need to do to the contractor/Project Manager. Give it a little time, see what happens and if the situation kind of resolves itself. If not, then there's some documentation and backup to go back to the contractor with and engage the contracting officer at that point.

>> C. Humphrey: I think that's good. Cindy, what does the FAR say about evaluating contractor performance?

>> C. Kleinholz: FAR 42.15 gives directions on how to complete performance evaluations of contractors. Policy says past performance evaluations should be prepared as specified in paragraphs B-G at the time the work under the contract or order is completed. In addition, interim evaluations shall be prepared as specified by the agencies to provide current information for source selection purposes.

For contracts or orders with a period of performance, including options that are exceeding one year, these evaluations are generally for the entity, division or unit that performed the contract or order. The content of the evaluation should be tailored to the size, content, and the complexity of that contract—the contractual requirement. I suggest that you ask your state contracting staff or your state procurement analyst what evaluation methods that they require or prefer.

Performance evaluations through CPARS are only for direct contracts, not third-party contracts. As we discussed previously, as the BLM, we're only responsible for the content, not the contractor performance. So, I won't go much further into details on CPARS process, but you're more than welcome to look at the web site and work closely with your contracting staff to complete the requirement.

Now, I know what you are I thinking out there in the field. I have a contractor who did a bad job, so how can I let people know about their poor performance? Well, the whole purpose of these three broadcasts is to help you improve your process. When you involve your contracting staff early and often, then it's much easier to head off performance issues so that you don't end up in a situation where the contractor doesn't provide a high-quality product or deliverable. The reality is that often issues arise because the SOW (statement of work) doesn't sufficiently lay out our expectations in a detailed and clear manner.

Chris, what are some other things that you have done to informally give feedback or direction to the contractor?

>> C. Humphrey: Chris, you're on mute. Good.

>> C. Carlton: Sorry about that. Thanks, you missed the great introduction. So much of it depends on the relationship and rapport with that contractor. You know, it really does come down to being able to pick up the phone, have that conversation with the contracting Project Manager and say, you know, look, how are things going? Just a periodic check-in.

On several RMP contracts, it's pretty common to spend a lot of time in the field. Maybe the contractor and I will end up in a situation where we've got a little down time and we just can have that informal conversation. How do you feel the contract is going? What is the BLM doing, not doing for you? You know, not a big formal written list or anything like that, but just a conversation about what do you see working, what would help, what would make this process go a little bit better?

I've found the more that I can engage in that and get a sense of how the project is going, the better understanding I have and the easier it is to kind of head off problems before they become problems that need to go through the contracting officer. So, again, to me it's really all about the relationship and about being able to have a conversation that doesn't have to escalate and can get situations resolved and keep the project moving forward.

>> C. Kleinholz: Thanks, Chris, I appreciate your input.

So I've covered the mechanics and policy but now let's give you a real-life example based on my experiences with environmental type contracts, specifically, the admin record, the ROD, or public comment; things like that. I was involved in an RMP where the BLM interpreted the statement of work to read one way. But the draft chapter was delivered in an entirely different manner by the contractor because the contractor interpreted the statement of work totally different. In this case, like so many others, communication broke down.

So I recommended the field staff ask the following questions of themselves and of the contractor: what does your statement of work say? Have you reviewed and confirmed the agreement to the quality assurance, quality control measures required to fulfill the contract for final delivery of the product?

Additionally, here's some possible talking points to consider:

- Review the decision file, tasks and requirements; is the file complete? Is anything missing? Discuss clarifications and questions regarding the file.
- Review your QA, QC actions. Has everyone done what they're supposed to do?
- Discuss clarifications and questions regarding critical tasks.
- And if necessary, develop a corrective action plan. If necessary.

From these discussions, hopefully the government and the contractor will then have an agreement on all tasks, quality standards, and a schedule that will be used to ensure a quality decision file by close of contract period. If needed, a modification can be issued to ensure that participants agree to the final quality management plan and action plan. This can help both the government and contractor ensure that they're on

the same page for the final tasks of the contract.

>> C. Humphrey: So now I'm going to briefly recap the section on contractor performance.

- First Chris talked about providing some informal feedback to the contractor, and, if necessary, the contracting officer, throughout the project, not just at the end.
- And then Cindy described a more formal method using that CPARS or Contractor Performance Assessment Reporting System.
- And then Cindy suggested a process on how to move forward if the deliverables don't meet the expectations.

So that was helpful.

### 3.6 Questions and Answers

>> C. Humphrey: Okay, so we have done our presenting. We're about an hour in. Now it's your turn to ask **questions**, provide your perspective, discuss best practices; anything that's worked for your office or your project that you would like to share.

The phone number, the fax number and the e-mail or text address are on the screen now. As you're gathering your thoughts, I'll just wait a second to see if anybody is really ready to chime right in. No chimers yet. So we, as usual, have a few questions we're going to start that we've gotten from you over the past couple of months. And don't forget you're going to hear from three contractors after the Q&A period. So be sure to stick around for that because you will not be disappointed in that.

The first question is: -- I think this one especially is for Cindy. **How do we deal with poor performing contractors and what can we do when they're third-party contractors?** Chris, I don't know if you've heard these questions much yet. So do you want to start?

>> C. Kleinholz: I'm going to start. Just like I talked about, we do have a few direct options in the direct contracting process. First, document all the facts. Talk with your contractor. And if necessary, get your contracting officer involved because there are a few contractual ways that we can nudge the contracting officer or -- or the contractor along. If that doesn't remedy it, then we can go for a little bit more aggressive solution.

>> C. Humphrey: Okay.

>> M. Cobbs: I'll speak to that third-party aspect. So in third-party contracts, the contract is held between the proponent and the contractor. So the BLM doesn't really have a formal mechanism for driving or responding to performance issues. So, really, the only remedy for us is to work with the proponent to see if they can leverage the contractor and it really underscores the importance of maintaining frequent communications with the contractors throughout, having a strong statement of work, and if all else fails, hopefully you've developed a Memorandum of Understanding, an MOU, with the proponent that allows for some sort of dispute resolution. Dispute could even go so far as to include performance issues with the contractor that they've hired.

>> C. Humphrey: Chris, do you want to add anything to that or --

>> C. Carlton: Sure. So as far as poor performance, I guess I come back to the question we've asked in the

past broadcasts... is it really poor performance? Take a look at the statement of work. What were the expectations? The fact it's not presented in a way we like or maybe in the manner or style we like doesn't necessarily mean that we can say it's poor performance if they met the terms of the contract. Maybe -- let's be sure it wasn't us not articulating what we wanted to see first. And then if that is the case, and it was pretty clear in the statement of work, then definitely go forward and say, we missed the bar, and what are we going to do to fix it?

>> C. Humphrey: Okay. As you are still gathering your thoughts out in the field, we'll catch another question. I'm not sure where these are from because we got these from, like I said, a couple of months ago when you asked us these. **Under what circumstances would we terminate a contract?** And this one is probably Cindy.

>> C. Kleinholz: Yep. Well, Cathy, and I think I've talked to Chris and Molly about this quite a bit, ideally termination is the last resort. There's two different types of termination. There's termination for default, which is error on the contractor or poor performance or not meeting schedules or there's a few other things financially that fall into that. The other type is [termination] for convenience. The government has a lot of leeway in that one. But ultimately, in my career, I've only terminated two contracts, and that was usually mutually agreed upon by the government and the contractor to where it was a benefit to the contractor due to they maybe overextended themselves or something like that, or back to the government, we just didn't need that service any longer. We thought we did. We don't have the crystal ball. So we just said, let's stop right now. No harm, no foul.

>> C. Humphrey: Do you have anything to add to that, Molly or Chris, do you have any thoughts? No? Okay.

Kind of along those same lines, and this might be fairly appropriate for what we're going through now with the sequestration, the question is: **how do you effectively mothball a contract so that it can be picked up again at a later date?** And first if you could define what mothball is.

>> M. Cobbs: We've heard this question a lot kind of around the water cooler in our offices. What's going to happen to such and such project if the budget is cut or if we can't hire summer seasonals. So mothballing is kind of this idea of putting a project on hold and just letting it sit, kind of in a holding pattern indefinitely until we have either the budget or the staff to finish it off.

So if you're faced with having to mothball a project there are two tips I would recommend. One is look for the next most logical point in your project. Like, what's a logical conclusion at which point to mothball. If you're right in the middle of alternatives development, maybe you want to see the alternatives development through to the end of that task and then kind of can it at that point. So look for a logical point in which to mothball.

The second tip I would offer on this, and it's similar to what we discussed with the administrative record, is to create a "read-me" file. If you think you're going to have to put a project on hold, it would really behoove you as Project Manager or someone who has been closely involved with the project to develop some sort of brief memo basically explaining what's been completed to date, what are the critical tasks that remain, is there anything still pending you couldn't resolve at the time you had to mothball it? Just kind of a -- best way to describe it is that memo so that two years from now when somebody else picks up the project they get a clear picture of where you were at the time the project went on hold.

>> C. Kleinholz: That's a good answer. I'm going to add some caveats to that, Cathy. First of all, I think it's situational. There's a lot of reasons that we could get to the mothball point. I try not to get there because there's -- on the contractor's side they could actually charge us for work that they've anticipated, people they've hired, a few financial issues could arise. If we need to do that, once again, I think good communication with the contractor, because they know, they read the news. They're well aware we may not have the money or the funds to either complete the project or, really, add to it as we anticipated to do it perfectly or all the way through. So just—communication, keep the lines open; things like that.

>> M. Cobbs: One final minor point on this, it's relevant to what we discuss with the administrative record, if you are faced with having to mothball a project and working with a contractor, make sure you get all of the records that have been generated up to that point before you put that contract on hold, before you put it -- before you make it dormant.

>> C. Kleinholz: That's a good point, because we've paid for those records to that point, and the government has the ownership to those.

>> C. Humphrey: Is there anything you want to add, Chris, to that?

>> C. Carlton: Yeah, I would like to just really quickly add on to what Molly was saying. One of the things it may be useful to think about is don't assume that the team that's working on it now will be the one to pick it up in the future, and don't assume it will go forward the way you might think it will. Plan for it to be pretty much easy to pick up by anyone at any time, and maybe consider having some kind of a review or sign-off by whatever the next level of review, management, State Office, Washington, whatever it is, kind of a preliminary review to put in writing so when you pick it up you know everybody in the chain had agreed that we did a good enough job to this point so now we can just pick up and move forward and not have to step back a few steps before continuing.

>> C. Humphrey: Cindy, I have a question about this. Let's say you do mothball a project and it's been whatever months, I don't know about years, and then you want to start it up again, do you have to develop a whole new contract?

>> C. Kleinholz: That's yet to be seen, Cathy. We don't have real clear direction. I think it's communication with your contractor what they can forecast. Right now if it's based on our current scenarios, we don't have real good direction on how to stop and restart something. Because then it gets into appropriation law issues of how the money flows.

>> C. Humphrey: Right. Okay.

>> C. Kleinholz: Good question.

>> C. Humphrey: All right. To be continued. So just in case anybody is still watching out there, because you're all so quiet, we only have two more questions that we gathered from all the questions you've asked us in the past, so if we don't hear anybody, I'm going to assume we have covered everything so clearly that you have no questions, which I'm not sure if that's the case.

We'll go through these two questions, and if there isn't anything else, even though we have plenty of time, we will just move to our contractors that we have. So you have a few more minutes to chime in. All righty. So the next question we have: **after all parties feel the contracted document is complete, what leverage can the BLM use to make sure we receive all the deliverables, like the metadata for the record?**

>> C. Kleinholz: I'm going to let Chris start with that one.

>> C. Humphrey: Did you hear that one, Chris?

>> C. Carlton: What leverage do we have to make sure that we've got all of the documents we need?

>> C. Humphrey: Yes, all the deliverables.

>> C. Carlton: You know, I guess it really comes down to as a COR I'm the one certifying and saying that we've received the services we were supposed to have received, and so before signing that invoice, one of my questions to the team is did we get everything we were supposed to get? Other than that, make sure that it's clearly spelled out in the contract. Make sure the statement of work is reasonable and we articulate what we want and do that well ahead of time.

Don't wait until contract close-out to suddenly say, oh, I didn't know, but we really want X, Y and Z. I think it's in our best interest to be clear up front all along about what X, Y and Z are going to be and to periodically remind the contractor that, hey, before we close this out we're going to need copies of all this stuff. What format are we getting them in? Answer those questions ahead of time so it doesn't become a back and forth as we are trying to get the final invoice paid.

>> C. Humphrey: I know one thing I have done, you kind of said this, Chris, but I won't sign off on the invoice unless I have everything, and we also structure the payment so that the bulk of the payment comes towards the end so that they have more incentive to get everything done and get us all the documents.

>> C. Kleinholz: Good point, Cathy. Depending on how your contract is structured, we can withhold payment. We can do a few creative things at the end, but I think in this industry I've found that most all contractors want to get this right, because it impacts them for the future, and it impacts the environment.

>> C. Humphrey: Thanks, Kim. We got a fax from Kim and she has a comment, more than a question. She says: **it's excellent to know the flexibility with contract modifications**. Inherently planning processes are iterative and dynamic and we can anticipate many issues and address them in the statement of work, but inevitably unexpected issues may arise, as we all know that have worked on planning documents, and being able to work with the contracting officer to address these situations and still stay on track is critical. So, yes, that's a good comment, Kim. Thank you.

So our last question is -- nobody else had anything to add? **What does the BLM consider appropriate penalties or consequences for nonconformance to the contract schedule and deadlines?** Who wants to start with this one?

>> C. Kleinholz: I'll take this one first. To my knowledge, there are no set penalties. If you write your contract a certain way, then there is a little bit more -- we can input a certain percentage, like, say, if we're not happy

with it we cut 10%. You know, it can either be the last year, the last whatever portion. But to my knowledge, there's not a set penalty. There's a lot of things that we have latitude to do, but once again, I want to stress that we make sure that our ducks are in a row, because when you start withholding money from a profit-driven company, they're going to bring out their big guns, and they're going to have every e-mail, everything laid out there, and they're going to show that they attempted to make it right. So, we do have some hidden ways to get their attention.

>> C. Humphrey: I know from my experiences, you were alluding to it, I have never seen it where it's always purely the contractor's fault. A lot of times it's partially our fault why the schedules are delayed and situations, and like Kim was saying, a lot of these contracts are so complicated with planning processes, things we can't anticipate. So would you suggest that we just modify the contract and modify the date?

>> C. Kleinholz: Usually it's a matter of getting one back on track to the scheduled point of -- draw a line in the sand is how I like to say it, Cathy. That was the past. We all know our roles now. Let's move forward. I'm going to say that usually works.

>> C. Humphrey: Chris or Molly, do you have anything to add to that?

>> C. Carlton: Sure. I think what Cindy said is dead-on about drawing a line in the sand. Think of the amount of work you put into getting the contract put together, getting the statement of work written, all of the time and effort that went into bringing this contractor on board and if it's a four- to five-year RMP contract, I would be hesitant to take any drawing lines in the sand action I didn't have to.

I think my first thing would be to try to resolve it working with the contractor, what were those expectations. To me, kind of the punishment type situation or the penalty type situation really is the last resort. I know as Cindy mentioned, penalty costs and liquidated damages are typically not allowed in contracts, and so we don't see those, but it's really rework or getting the team together to solve the problem more than getting into a situation where it's just punishment-oriented. I think we all agree we don't want to have to go through the contracting process again if we can avoid it.

>> C. Humphrey: That's for sure! So we thought that we were going to get lots of questions on this one since it's our last one. We didn't come up with as many questions as we have in the past. So that is all of our questions that we've gathered from you all in the past. So I think we should just move on, then.

### 3.7 Contractor Perspectives

>>C. Humphrey: Now what we're going to do is we're going to shift gears a bit and we are going to get some thoughts from three **contractors** who have worked extensively with the BLM.

The first person I'd like to introduce is Dave Davis, Senior Project Manager with HCR. He is on the phone with us from Battle Mountain, Nevada. He recently retired from the BLM after 35 years of federal service. So I would imagine that several of you recognize Dave. Hi, Dave. Nice for you to be with us.

>> D. Davis: Good morning and thanks for the invitation.

>> C. Humphrey: And now we'll go to Denver where we have Greg Larson with SWCA and David Batts with EMPSi.

Greg Larson is a Senior Project Manager for SWCA in Salt Lake City, Utah. Greg has more than 10 years resource management experience. And he is one of our instructors for the NEPA Analysis for EAs course, so a lot of you might recognize Greg. Greg, good to see you.

>> G. Larson: Hi, Cathy. Good to see you, too.

>> C. Humphrey: And sitting next to him is David Batts. He is principal of Environmental Management and Planning Solutions Inc., or EMPSi, out of Boulder, Colorado. David has more than 20 years' experience partnering with the BLM on all sorts of planning and NEPA projects. In fact he has helped us at the Training Center on a couple of courses as well. Hi, David, great to see you.

>> D. Batts: Hello, Cathy. Good to see you. Thank you.

### **Dave Davis, Senior Project Manager, HCR**

>> C. Humphrey: All right. What I would like to do is start with **Dave Davis** in Battle Mountain on the phone. Dave is a former BLM employee, and as a new contractor, what tips do you have that might make the contracting process easier for the folks out in the field?

>> D. Davis: Thanks for the invitation. I just started as a contractor. So I'd like to present some of the things that worked for me when my 35 years of government service really learned from the BLM perspective as opposed to a contractor's perspective, and most of this is related to third party as opposed to direct contracting. I was thinking about this, and trying to get three or four gems of wisdom down into 35 years of experience is a little difficult, but I came up with three topics that I thought would help people as they work on third-party contracts.

The first one is to develop a sufficient number of succinct, well-defined **selection criteria**. I usually like to use 9 to 12 in that area, and by succinct, what I would -- I'm trying to tell you is -- don't just simply say, contractor needs to demonstrate previous EIS experience. If you're doing a high-pressure gas line across multiple states, then your highest priority should be to demonstrate experience as having performed and prepared multi-state rights-of-way EISs of similar types (transmission lines or high-powered gas lines). So each one of your criteria should be very succinct and very easily interpreted.

Related to your proposals is you need to form a **Technical Proposal Evaluation Committee**, and I understand that you've talked about this in your previous sessions. I prefer to see 3 to 5 members on there consisting of preferably the BLM Project Manager; if it's a third party we're talking about here, a proponent representative, usually their Project Manager; and one or two seasoned BLM ID team members.

What you would do -- let's take a hypothetical number here. Say you've got 7 technical proposals to your RFP. So I would first propose that you give each of the team members a copy of each technical proposal and let them go off and evaluate the selection criteria and the technical proposal responses through those selection criteria individually. That avoids group think. And then what will happen is that the top 90, 95% ratings will flow to the top and you'll be able very easily to identify the top 2 or 3 out of the 7 proposals that were made who could best do your job and meet your needs for that environmental impact statement.

You heard this before, and I think this is absolutely critical. They started off early in the discussion today, the

NEPA document is the **BLM's document**. The BLM is ultimately responsible for the content of the NEPA document and the decision. That's absolutely true in third party. Sometimes I think we lose sight of that, at least in a particular -- once -- in Nevada I know we have.

Related to that and to make sure that you have a strong defensible document, I think the final tip I have to offer is that you have to have a strong BLM **Project Manager**. You have to have an excellent understanding of the NEPA process. They have to have an excellent understanding of case law. And in my view, most importantly, they have to have excellent leadership skills. And how do you get leadership skills? Well, the best way that we found in my years working in Battle Mountain was that we provided mentors. We took a well-seasoned, highly-trained and highly-competent project manager and we tied them in with somebody new that was going to start taking over projects and they participated -- for instance, in my projects and I sat in on some of their new projects and we walked them through over a year - 18 months [on] 3 or 4 projects. That's one of the best ways I know to learn how to develop leadership skills and project management skills.

The BLM also has training courses. The University of Phoenix has an online course you can take. I would encourage you, finally, to consider taking some of the fire line leadership courses. I'm certainly not trying to suggest that you should become a firefighter, but the fact of the matter is, whether you're a squad boss on a hand crew or a fire engine or an incident commander with a couple hundred people under your belt on a wildfire or some other kind of incident, there's a very good analog or good analogy between a PM and an incident commander. You have to have broad thought processes. You have to think about logistics. And you have to have good people skills to manage that project. So consider taking one or two of those courses, talk to your FMO, and see if you can possibly get some of those and then turn around and learn how to apply it to project management. And thanks for the invitation. That's about all I have to offer.

>> C. Humphrey: All right. Thanks, Dave. I think those were some helpful tips.

### **Greg Larson, Senior Project Manager, SWCA**

>> C. Humphrey: And now we will go back to Denver and let's go to **Greg Larson**.

>> G. Larson: Cathy, thanks for having me. I've got a few things to talk about today and I wanted to start with talking about some **reasons** that the BLM might contract.

- The first reason that the BLM might think about contracting is that it allows you guys to **build the exact team that you need** for a given project. That team could involve a full-service suite of NEPA services, an entire RMP or EIS. But it could also include hosted workers or just parts of the NEPA process, like comment coding, comment analysis. So there's a lot of reasons to just build the team that you need based on your office's specific expertise, vacancies and workload.
- The next big reason that the BLM might contract is to **meet project schedules** and be able to carry out multiple processes while focusing on your key priorities. Some good examples of this are oil and gas boom areas. Contracts there could be to help out with additional major federal actions, RMPs, EISs that come up, or even to take care of helping out with some of those APD [application for permit to drill] EAs, but to deal with unanticipated workload. The last great example is regulatory changes. Sage grouse is resulting for a lot of work for the BLM, programmatic EIS, dedicating staff to that process might involve putting contractors on other ongoing processes that you don't have to mothball those contracts like you talked about earlier.

All right. Next thing I want to talk about something that everyone has mentioned here quite a bit already, which is scopes of work and requests for proposal. I see those two things as being very closely related. The **scope of work** from a contractor perspective has three main points: it's a communication tool, it's a risk management tool, and it's a process document. You guys have already covered in a lot of detail just how specific an unambiguous scope of work needs to be.

First of all, the communication tool: a good scope of work, or statement of work, should communicate the expectations for the contractor—responsibilities, schedules, what resources they need to provide, and what data they'll be provided. Having a contracting officer and officer representative on this program has been pretty insightful as far as risk management and change management.

A good scope of work is a risk management tool both for the contractor and for the BLM so they can accurately plan their budget and really set forth the assumptions for that scope of work in case of change or uncertainty on a project. NEPA projects do have a lot of uncertainty. The public is involved, and you never know exactly what you're going to hear from them. So you need to define those assumptions and build some cases in there to manage that risk on both sides.

Lastly, a good scope of work is a process document. It really lays out who is going to do what, when they're going to do it, how they're going to do it, the work flow, things like reviews, and there's no ambiguity about who is responsible for what part of the process.

Ideally an **RFP** also has a lot of those same details. The thing that I've seen that's the most helpful from the BLM is when the BLM is very realistic about the level of support that they need on a given project. That may be based on other ongoing projects or priorities in that office. It may just be based on the level of experience of the staff that are going to be involved there. Do they need a little more support from the contractor or a little less support from the contractor? It's important to know that because those are the things that come up as change further in the contract if not spelled out in a request for proposal.

Another thing I've seen that's very helpful is to streamline the RFP process by only asking for the information you need. On something where the technical approach is very well defined and included in the scope of work in the request for proposal maybe all that's needed is a statement of qualifications and a cost proposal based on that technical approach. That streamlines the contractor side and the BLM review side.

Lastly, be specific. The more specific the RFP is, the better the response you're going to get and the less holes the contractor needs to fill out, right? That makes your job comparing apples to apples a lot easier when you can do it.

The next thing I want to give a little input on is improving **communication** between your contractor and the BLM. I think you guys have already talked about the importance of writing a communication plan and more importantly sticking to that communication plan. You know, typically the plan is going to have some ground rules for communication, who can talk to who internally and externally, how to document those communications into the admin record and make sure that they're captured. That's really important.

The next point is to use a **knowledgeable and supported BLM Project Manager**. That's been stressed a lot by a lot of the presenters, and I can't overstate that. What makes a great BLM Project Manager? It's

someone who understands the scope and the services being offered. That allows you to build a level of trust with the contractor because you understand what the contractor is going to be giving you and your expectations. That makes the process of forming a rapport and a level of trust with the contractor much easier. They also know how to involve decision-makers at the right time in the process. They understand who the decision-makers are above them, how to get their buy-in on processes early so there are no surprises later in the process and they understand the team working underneath them and what kind of support they're going to need. So having a really strong BLM Project Manager is very important to the communication process.

Once you've got that PM, find a **communication** style that works with them. We all communicate a little bit differently. Some PMs like e-mail, some like phone calls. Just find a style that works, find a rapport, and stick to it. Keep communications simple and regular. Regular may be scheduled meetings. Regular may just be check-in calls when you need them. If you're going to schedule meetings, I think that's great to have a weekly or biweekly check-in, but make sure that you don't have meetings just for meetings' sake. Use an agenda. Focus on action items and what needs to get done. I think that will keep everyone involved.

For more complex communications think about using a memo or a call or a meeting to clarify exactly what needs to happen rather than trying to shoot an e-mail about a really complex thing. One of the BLM project managers I've really enjoyed working with, his motto is "**mesh** major on the majors, minor on the minors." I think that's great advice.

As far as **managing deliverables**, I have a couple tips there. The first one there is to make sure you build in time and budget for meaningful BLM review. That is BLM's primary responsibility in a contracting situation—to review the product and make sure that it meets the standards of the regulatory process you're engaged in and of the contract. So make sure that you build that time in. Just as importantly, make sure that your review team understands what they need to provide in that review. Not all reviews are the same. In the EA class, we teach a broad-scale, a mid-scale and a fine-scale review, and a lot of times with your team you're asking for that technical limited mid-scale review. And make sure that you understand exactly what your expectations are from the PM so they stay on track and don't waste their time.

Lastly, coordinate the reviews. Tell people early that the review is upcoming. Get on the schedule. Build it into your detailed project schedule so that everyone knows what the expectations are and when it's going to happen.

The last thing I want to talk about just a little bit is managing the **project file**, the **administrative record**. You guys have covered this very clearly. From a contractor's perspective, we like to know what your expectations are and then develop a simple process to meet those expectations. Things that I like to do there are having an e-mail that's dedicated, that you can just CC so that communications make it into the admin record easily. Having regular reminders to the team to send in documents. Having periodic agency reviews to make sure you're on the right track and you're coding things correctly.

The other thing is when you're developing a project file, I like to make that someone's primary responsibility, whether that's at the BLM or with the contractor. I have even seen this be a dedicated separate contractor who was responsible for just doing the administrative record and project management support. That works terrifically. If it's internal with the contractor, try to dedicate a team so that the Project Manager doesn't need to be focused on the administrative record as much and they can focus on the substance.

The last thing is there's a lot of tools out there. Technology has changed our ability to develop and facilitate the development of an administrative record. Use those tools. Know what they are. Those might be shared online databases, file sharing sites, whether dedicated to the project or within the BLM, an administrative record, e-mail, that kind of thing. Technology is a big help.

My last point on the administrative record is, I think Chris alluded to the fact it's a great tool to look back on on a project that had a decision several years ago to make sure you have your interpretation correct or implementation. My advice as a NEPA practitioner is to make sure that it's a fallback, though, and that your document doesn't require you looking back at the administrative record a lot. Your rationale for your conclusions, some of your assumptions, some of your thought process in developing alternatives and that kind of stuff ought to be in the document instead of the administrative record providing clarification. But a lot of that stuff is in the actual NEPA document.

Those are my tips and tricks based on my work with BLM, and I look forward to more of that with you guys. Thanks.

>> C. Humphrey: Great, Greg. Those are terrific.

### David Batts, Principal, EMPSi

>> C. Humphrey: Now we will finish up with **David Batts**. David has both direct and third-party experience at the BLM. David?

>> D. Batts: Great. Thank you, Cathy. My job as kind of the last speaker here is to reemphasize all the great points made today and I will pepper in a few of my lessons learned also. Before I start I want to give Cindy kind of a virtual gold star for some of the comments she made and specifically highlighting the fact that contractors wanted be to be a good partner with the BLM, and we want projects to be successful. However, when there are problems with projects, it's generally because expectations are not well articulated.

So that brings me to the first area that I like to talk about, and that is the **Statements of Work**. We've heard a lot about this. I'll just hit on a few of my pet peeves with it. First of all, the more detailed the scope of work, the better. If you have a vague scope of work, you will be getting vague responses in your proposals. I'll talk about that more in a moment. So please try to include as many details about the deliverables, time lines and specific expectations that you have. It is okay to try to put down qualitative ideas to allow us to get a better idea of what's inside your head. We also understand that it's very difficult to crystal ball the future, especially with planning projects. For example, perhaps the President's going to nominate half of your planning area as a National Monument. Those things we don't expect you to be able to forecast, but we do want to get the best information that you have at the time. We also recognize that we're not reinventing the wheel here. There's a lot of great scopes of work out there. Ask around. Talk to Cindy. Talk to other contracting officers who might be able to help you out and provide good guidance documents.

The next area is the **MOUs**, and it's been fascinating today on just the discussions I've heard. One, being we may not necessarily need MOUs for third party contractors. Then another conversation that came up about what kind of remedies do we have on third-party contracts? Well, I like MOUs for third-party work and here is why. Number one, contractors walk a very delicate line when we do third-party work. The proponents are paying us. Sometimes when they pay us they think they get to have access to us. That MOU gives us a tool

to ensure impartiality of our process. It allows us to remind them that we report to the BLM and we take direction from the BLM. So it gives us some leverage and protection. It also helps you because if you need a remedy, this is the vehicle that could be appropriate to add such clauses in the future.

The next area I would like to talk about is **Evaluating Proposals**. Really, a project is like a marriage. You're going to be spending a lot of time with these people. If you're doing a planning project, you're looking at three to five years of working with the same person. The project managers may spend more time together than they do with their own friends and family. So it's very important that when you're evaluating proposals to be hiring for the people. You will be spending a lot of time with them. So it's important to have people and firms with a proven track record. You'll have your past performance to rely upon, but it's really important to go ahead and try to get other references.

Luckily, it's a small world out there. Most people know each other within the BLM contracting world and P&EC world by just one or two connections. Start by asking around. How is this person? How is this company? What have you learned about them? Do your due diligence. Contractors, we do our due diligence before we work on projects. We like to know who that BLM Project Manager is, what their past experience has been, what areas of expertise they have. You need to do that and make sure you're comfortable working with them in the future.

I also would recommend doing interviews of some sort. BLM, this is not something that they typically do with solicitations. Most other agencies require interviews. It's really a good idea to sit down and have a face-to-face discussion with those people that you may be spending the next five years with.

Lastly, be sure that you understand and take a hard look at the **technical approach** and the **assumptions** in the proposal. If you have a vague scope of work, or if you do not clearly articulate your expectations in that scope of work, this is the part of the proposal where the contractor or consultant will come back and give you our interpretation. It's very important that you understand our interpretation, and the differences between assumptions and interpretations on those proposals are on the table. You may find you have apples to oranges when you do the spec analysis.

Also, use it to help find a way to find delineators between the different bidders. Perhaps there will be some that are more insightful. For example, if you have a project that deals with wild horses, most people will realize that rangeland health, vegetation, AUMs, all those would be kind of critical parts to include in the tech approach, but maybe a more enlightened firm would look at the economics, the public controversy, and highlight how they might address those particular issues.

Recently we were awarded a contract, and on the debrief, the Project Manager told us your proposal wasn't what we were necessarily expecting. But after we read it, we realized it's what we needed. So that told me that that's important for us to show you how we interpret that scope of work to make sure we are all on the same page.

The next thing I like to hit on is **communication**. Here I'm going to give my gold star to Chris because he gets the relationship building. I can tell he has been in many long relationships. Projects are all about relationships and relationships are built on communication. At least that's what my marriage therapist tells me. It's great to have that plan, but you have to implement your communication plan. I think Greg did a great example of going through a lot of the details of those plans and what makes it successful. Two things I

would like to highlight are frequency. I'm a big believer frequent communication. You can never have enough communication.

On one of my most successful projects, which was the geothermal [indiscernible] programmatic EIS for the entire western U.S., it was completed in 18 months from Notice of Intent to Record of Decision. Now, I like to take a lot of credit—it was because of great skills, great expertise but I believe the number one reason we were able to make such a rigorous time frame was because the Project Manager on the BLM side and myself were on the phone on a daily basis. We knew what was going on. We could anticipate the critical paths and resolve them before they came up. Biweekly calls or weekly calls, I strongly do recommend them. I think they should be built into the scope of work and I believe that they should be funded to support it. You may be surprised that you don't think you have anything to talk about, but once you start talking you realize there are issues on it.

Second part of the communication plan is the chain of command. It is very important, as Greg mentioned, to make sure that you have that chain of command. I believe that BLM ID teams and consultant ID teams should interact fairly unconstrained, but we do have problems sometimes when those teams start to form new direction that's not in the scope of work. We need to make sure that chain of command brings those communications back up to the project managers to make sure that it is properly addressed in the scope of work.

Lastly, I'm going to bring this full circle to where we began today and wrap it up with administrative record. Many excellent points have been made today. I'm going to leave you with two take aways and I'm going to give Molly a great big gold star for one of my pet peeves with administrative record, and that is not starting early enough. Molly's point was get that index right at the beginning. No matter what project we do, even if it's not in the scope of work, the first thing we come up with is our administrative record index. We provide that to all our team members, all the BLM team members, so we're all on the same page how to set up our files from the get go. It sets the stage for compiling that record much more smoothly.

Greg mentioned a whole bunch of good technological ways of getting that information, since most of it is digital nowadays, into the record. There are some security concerns both for us being able to access BLM sites and you all being able to access some of our sites. So when we took on the administrative records for the greater sage grouse planning effort, we worked very closely with the NOC to set up a SharePoint site on DOI connect, and now that manages eight administrative records for that planning effort. And it provides a seamless way of everybody being able to connect in and deposit that information. So there's a lot of different ways to set it up, a lot of different tools available to you to make it effective. So with that I'm going to wrap up.

I want to thank Cathy for pulling together this consultant team panel and for that I'll give her a gold star for everything she does.

>> C. Humphrey: Thanks, David. That was great. You know, I heard a lot of the same thoughts from the perspective of contractors that we've been saying, but I did hear one thing new. What I heard was I think instead of playing the game six degrees of Kevin Bacon, maybe we could play six degrees of David Batts because he said BLMers know each other and contractors know each other. So you can see how connected we are. They've been saying some of the things we've been talking about the past couple of months.

### 3.8 Summary/Conclusion

>>C. Humphrey: So now what I want to do is wrap things up, and we're going to come back to our panel and get a few **closing comments** starting with Chris Carlton from Spokane. Chris?

>> C. Carlton: Thanks, Cathy. First, it's been a great experience being part of these presentations. Really appreciate the opportunity. A couple closing comments. I think we've seen consistent themes through all of our presentations and also we got those same things from some of the contractors:

- Make sure we're clear about what we want.
- Make sure we're building those relationships.
- And I think from the BLM side, make sure we're documenting everything, working with the contractor officer, and just communication and documentation seem to be kind of the critical paths for all of this.

So that was it. Thanks.

>> C. Humphrey: All right. Thank you, Chris. And now back here in the studio, Molly Cobbs, Anchorage District Office.

>> M. Cobbs: Thanks, Cathy. Over this series we've talked a lot about providing feedback to the contractors on how they're performing or the quality of their deliverables. But I want to switch it up a little bit and really encourage you BLM managers, planners, team leads out there watching to find opportunities along the way to evaluate your own performance, your inefficiencies -- your efficiencies and inefficiencies on contracted NEPA projects in your office.

At the end of a project, or maybe at the end of a major milestone, find 15 minutes or half an hour, tack it on at the end of the staff meeting or maybe hold a brown bag lunch. Gather your project team and have a quick brainstorm on what worked, what didn't work. If you want to, get a little more in depth with it, think about what approaches the contractor used that really worked well for your team or approaches that maybe got a little sidelined. What deliverables or techniques were particularly valuable? And we want to make sure we include that in our next statement of work for our next project. Make a note of what parts of the process sailed right through. What parts of the process there were maybe some juggernauts, and when did we contribute to the juggernauts? Were we slow on our review? Were our comments unclear?

Have these discussions with your team and maybe come up with a one-page Lessons Learned Memo that you can put in a file or that you could hand off to the next person who is pursuing contracted work. Yeah, take an opportunity for your own team to evaluate what was inefficient and what was efficient.

>> C. Humphrey: Thanks, Molly. I don't think we do enough of that. We will wrap it up with our contracting officer Cindy Kleinholz.

>> C. Kleinholz: Thanks, Cathy, I want to say first of all, I want to say a big, big thank you to Cathy. I have learned so much from her about NEPA, along with Chris and Molly, and it's just been an absolute pleasure to be down here at the NTC. You get a full grasp of what our mission is, and I forget that when I get back and I'm all cubby-holed in my contracting world. Plus, I want to thank you for including a contracting officer; we don't get invited a lot to trainings. So I appreciate that. I'm more than willing to share my little knowledge or directions any time to anyone.

And that brings me to another point of this—like David Batts said, we don't need to reinvent the wheel every time. There is somebody within this big nation of ours that has [gone] through something similar. It may not be 100%, but something similar. So if you can weed that out, find their lessons learned, it's going to make your process a whole lot easier.

And lastly, please don't be intimidated by any parts of the contracting. I personally believe, I think my Branch Chief Lorna Gunning believes, that we are a team and the sooner we get to be that team the more successful our project will be from start to finish.

>> C. Humphrey: Great. Thanks. Okay. So as I've mentioned several times, this program will eventually be posted to our Knowledge Resource Center web site, and if you haven't already bookmarked the link, which I'm sure you all have, then the easiest way to find it is just do an Internet search for "BLM KRC contracting". The series of three broadcasts, Contract Initiation, Contract Management, and Contract Close-out will all be posted to the same page to make it a little easier for you.

And, again, if you registered in DOI Learn for this broadcast, you will get an evaluation e-mailed to you from Metrics That Matter. You did such a great job last time providing us with specific detailed comments, we would appreciate it if you would just do it one more time. You can ignore those questions that don't apply, like the ones about pre-work and exercises. Just ignore them.

Maybe you could take a tiny bit of extra time to think about what else you would like to see on an upcoming broadcast. It looks like what we're talking about is the next one will probably be on Mitigation. So if you're interested in being involved in the broadcast, even if you don't want to present on camera, if you want to help us, give us some ideas of what should be presented, then just give me a shout.

And as you know, with all the travel restrictions that we have, we might be doing a few more of these broadcasts. So as we know, they're not quite as good as everybody seeing each other eyeball to eyeball, at least you are able to participate from home when you want to and ask questions in real time. And remember that the evaluation that I just talked about a little bit ago, they're anonymous. So if you want to volunteer to help out with a future broadcast, or if you want to help prepare guidance documents or something to post to the Knowledge Resource Center—whatever you want, just send me an e-mail directly.

I would like to thank Molly Cobbs and Chris Carlton and Cindy Kleinholz for all your time and effort to participate in these three broadcasts, especially Chris, who is moving this week. We appreciate your being able to participate with us.

And I would like to thank Dave Davis from HCR, and Greg Larson from SWCA, and David Batts from EMPSi for taking your time out to provide us with the contractor's perspective. You gave us some valuable gems, and I know it was kind of a last-minute scramble, but thanks for moving your schedules around.

But I would especially like to thank you, the viewers, for your time and your undivided attention. Without you, we wouldn't be here. We hope you learned a lot and that you got some great ideas you can implement tomorrow. If you would like to discuss any other planning- or NEPA-related courses, just go ahead and contact me or Tessa Teems here at the National Training Center.

Well, that wraps up early today's forum on Contract Close-out and that ends our three-part series on

improving Planning/NEPA contracting in the BLM. So long from Phoenix and we'll see you next time.

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

(THIS TRANSCRIPT IS FROM REALTIME CAPTIONING, WHICH WAS CREATED DURING THE BROADCAST TO FACILITATE COMMUNICATION ACCESSIBILITY AND IS NOT VERBATIM.)