

## **“Internal and External Costs of NEPA Contracting: The Key to being Cost Effective”**

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### **What NEPA analysis steps should an agency retain for internal analysis as opposed to hiring an outside contractor?**

Participants in Shipley Group workshops have often asked the above question and related questions. Such questions grow from their having had mixed or limited success contracting out (or “outsourcing”) tasks related to a NEPA analysis.

Answers as to what NEPA tasks an agency should retain vary greatly. Answers unfortunately affect staffing questions when an agency decides to limit internal NEPA tasks to some arbitrary percentage of a federal employee’s job description.

Decisions about what NEPA tasks to shift over to contractors (outsourcing) should depend on the following considerations:

- 1. Nature of the proposed action—from complex to less complex**
- 2. Legal responsibilities for adequate NEPA information**
- 3. Efficient and cost-effective management of contractor tasks**

These considerations are important if an agency feels that it is cost effective to move certain NEPA tasks to an outside contractor. Such a decision has legal implications. Also, a conclusion that an outside contractor is a cost-effective option might fail to consider the costly nature of hours spent by agency specialists working with a contractor to guarantee adequate NEPA information.

#### **1. Nature of the proposed action—from complex to less complex**

Agencies considering a contractor for NEPA tasks should assess the complexity of the tasks. The more complex the task, the more likely the contractor will require detailed direction. Such is the case, for example, when a contractor’s project leader is not

already familiar with the resource conditions and the agency’s management direction for these resources. This project leader will have to spend days or weeks getting up to speed on crucial background information.

As a personal example of such a situation, in the mid 1980’s I was hired by a National Forest to help them with their Land Management Plan and associated EIS. My primary on-site assignments were to get up to speed on their management situation and to help them write their purpose and need (an early and crucial NEPA requirement).

The Forest Service Planner (my contact person) sent me several hundred pages of background information (baseline surveys, etc.), which I reviewed before going to the forest office. The first morning, I met with the entire team, and we reviewed the planning tasks and questions, using a huge map of the National Forest land. I began asking many questions, and I continued to ask questions for the next several days.

Finally, about my third or fourth day in their office, the Forest Planner turned to me and asked: “You really don’t know enough about our resources to even draft the purpose and need, do you? You expect us to give you the necessary information, and that is what you’ll write up for us.”

What had dawned on him was the reality that his outside contractor was not fully knowledgeable about his complex proposed action (management decisions covering several hundred thousand acres of federal land). The economic reality is that a contractor usually launches a project by billing an agency for the time required for the contractor’s staff to review background information. Such reviews can add thousands of dollars to the contractor’s bill without providing you a deliverable!

So as I recommend above, an agency should always assess how complex NEPA tasks are before deciding to move such tasks out to a private contractor.

Complex proposed actions--ones requiring detailed agency information and key agency planning decisions-- likely merit extensive internal NEPA

analysis, not outside contracting. Examples would be the complex planning decisions in a Forest Service Land Management Plan or a Bureau of Land Management Resource Management Plan. Both of these documents require extensive agency information: existing resource conditions, management options, social and economic considerations, and the legally driven agency mission goals and objectives.

Agencies that choose to contract out such complex actions run the risk of having to provide much of the analysis information to the contractor. Agency employees managing such contacts often comment that they have had to do most of the conceptual work for the contractor. The contractor merely records and then publishes information generated by agency employees.

Less complex proposed actions are easier for a contractor to handle. Such actions would include a proposed action that has a limited project area, a narrow range of actions, and potentially minor resource impacts. Examples would be a habitat improvement project (such as eliminating salt cedar at a specific site), replacing an existing building, changing grazing practices on an allotment, or adding turnouts to an existing highway.

Notice that these examples of less complex projects include proposed actions that have a well-defined project area, include a limited range of actions, and have easily projected impacts. Even in such instances, however, agencies must provide guidance to contractors as to the agency's legal or regulatory requirements.

## **2. Legal responsibilities for adequate NEPA information**

A federal agency should retain those steps in a NEPA analysis that directly affect its legal authority under NEPA. This authority is most obviously used when an agency decisionmaker is responsible for deciding if submitted NEPA information is legally sufficient under NEPA and CEQ regulations.

I recommend that an agency retain the following key steps in a NEPA analysis, even when a proposed action is not complex (as described above):

1. Identifying and writing the agency's purpose and need for an agency action
2. Describing a proposed action in detail and assessing its potential for risks or controversy
3. Evaluating and prioritizing scoping information for inclusion in one or both of the preceding tasks
4. Developing a range of reasonable alternatives, based on both the agency's purpose and need and on scoping information
5. Setting quality standards for a legally adequate effects analysis
6. Choosing the proposed action or an alternative and preparing a decision rationale for this choice
7. Allocating funds for activities that support all internal or external (contracted) tasks

The preceding tasks are legal checkpoints in any NEPA process (whether done internally or by an external contractor). An agency and the appropriate decisionmaker necessarily retain legal responsibility for each of these tasks.

If a contractor completes any of the preceding seven tasks, the agency decisionmaker must be satisfied that the content meets all legal expectations (under both NEPA and any other relevant environmental statutes).

The listed seven tasks closely parallel a July 2004 list the Forest Service published in an amendment to its internal NEPA handbook. This amendment stated that Forest Service decisionmakers have the legal responsibility to guarantee that critical steps in a NEPA analysis are in full compliance with NEPA (and other relevant laws).

This legal responsibility means that an agency has to set quality expectations for any contractor working on NEPA tasks. Without clear (and preferably written) quality standards, a contractor's deliverables are unlikely to be 100 percent satisfactory.

### 3. Efficient and cost-effective management of contractor tasks

I recommend that an agency decisionmaker make a realistic estimate of the time and money necessary for efficient and cost-effective management of NEPA tasks assigned to a contractor. Too often, such internal management tasks are not carefully identified, and rarely are their costs factored into an agency's current budget.

Often, the only cost stated for an EIS or EA is the contractor's bill for tasks completed. However, what are the associated internal agency costs of the contractor's work on an EIS or EA?

What internal management tasks should a realistic estimate include? Here are the major ones:

1. Detailed statement of work that accurately tells the contractor what is expected
2. Realistic estimates of what will constitute an adequate discussion of major NEPA steps (for example, purpose and need, mitigations in alternatives, and baseline geographic and temporal boundaries).
3. Data adequacy standards for resource impacts of major concern
4. Careful disclosure of the context and intensity for each impact discussed in the EIS/EA
5. Linkage of impact discussions to the eventual decision document (FONSI or ROD)

Statements of work are often far too general and generic to be really helpful as a tool for directing and monitoring a contractor's deliverables. (This problem is addressed in item 1 in the preceding list.) In some instances, a statement of work will say that the contractor shall deliver chapters for an EIS that are consistent with CEQ regulations and agency NEPA guidelines. But CEQ is too vague to be helpful, and agency guidance is often little better. Contractors wind up using their experience with prior NEPA contracts, which is often very uneven. The result is that text for major chapters often has to be rewritten several times before it approaches what the agency really wants.

A good statement of work takes days of work, both from the contracting officer and from agency technical specialists. Similarly, a good statement of work is sufficiently detailed that internal agency specialists can realistically estimate how much time (and money!) the contractor should spend to produce an acceptable product. From my experience, very few statements of work are carefully written, and almost none are specific enough to allow for accurate time estimates.

As an example, suppose the statement of work says that the contractor is responsible for conducting a single scoping meeting. What does this statement of work requirement include? Does the contractor send out and post announcements of the meeting? How many of the contractor's staff should attend? Will the contractor's staff conduct the meeting and make content presentations? Will the contractor be responsible for recording comments (or merely summarizing them)? What about time for analyzing written comments submitted at the meeting (as often occurs)? Will this analysis of the comments be turned into a newsletter, and who is responsible for sending out the newsletter? Who compiles the mailing list? The tasks go on and on.

This is why a statement of work that only lists the one scoping meeting is too vague to be very helpful. Such statements of work are why many contracted EIS/EA projects wind up far over budget and come in months or even years after the original deadline.

Data adequacy standards are another overlooked problem in many statements of work. Too often, guidance to the contractor is that an analysis task should include an adequate discussion of water quality impacts. The statement of work includes no list of mandated references (especially those internal to the agency and perhaps not widely known). The statement of work deliberately does not set up a modeling approach or a sampling program. All such decisions are left to the contractor.

In cases where a statement of work is vague or silent, the old adage applies: "Pay me now or pay me later!"

In such cases, the agency technical specialists should provide for the statement of work a carefully written task description that includes the following:

- Mandated literature for the contractor to use
- Any required models or methodologies
- Minimum content and editorial standards for the resulting resource reports

If specialists do not provide these requirements before the statement of work goes out, they will wind up doing so after the agency awards a contract. Or even worse, agency specialists will spend days or weeks reviewing and rewriting contractor deliverables that do not address the minimal quality criteria for the relevant resource information.

**Summary:** Senior elected officials (and even some agency managers) sometimes argue that contracting (or outsourcing) NEPA analyses (and documents) is a cost-effective option. I believe this viewpoint is not always realistic, especially if agency managers honestly tally both the internal and external costs of NEPA contracting.