IMPROVING CONTRACT MANAGEMENT BY END USERS

Recommendations Handbook for Professional Services Contracts

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PREFACE

This Recommendations Handbook supports the New Mexico Department of Transportation’s (NMDOT) personnel training program aimed at improving the development and administration of non architectural and engineering (non-A&E) professional services contracts. This Handbook follows the chronology for a project’s life, from the point at which the initial solicitation is developed through monitoring of the ongoing project, and ending with closure and final evaluation of goals. It includes recommendations for contract management strategies, contract development techniques, examples of the contract development process, and an analysis of the prospective effectiveness of these recommendations. In addition, guidance is offered in the areas of contract management, development of adequate scopes of work, and specifying deliverables, budgets, and milestones. The Handbook uses flowcharts to describe regulatory procedures and documentation requirements at the various stages of the contracting process for various contract types: sole source, competitive proposal, emergency procurement, and small purchase (< $50,000). Also considered are ethical issues that may arise in different stages of managing contract performance.

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DISCLAIMER

This report presents the results of research conducted by the authors and does not necessarily reflect the views of the New Mexico Department of Transportation. This report does not constitute a standard or specification.
ABSTRACT

The New Mexico Department of Transportation (NMDOT) identified the need for improvement of both quality and consistency in developing and managing contracts. Therefore, this Recommendations Handbook has been developed to support NMDOT’s personnel training program. It aims at improving the development and administration of non architectural and engineering (non-A&E) professional services contracts. To this end, the Handbook takes a step-by-step approach in guiding project managers and contract administrators in formulating, awarding and monitoring contracts. At each step, guidelines are offered – do’s and don’ts in specifying and monitoring contracts; such as the scope-of-work to be performed, time and budget constraints, and the expected deliverables. References are made to state and federal procurement statutes and regulations. Flowcharts detailing the procedures to be followed and the documentation required are also provided. Ethical considerations in each stage of the contract life are identified.
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INTRODUCTION

The purpose of this Recommendations Handbook is to provide project managers and contract administrators a practical guide of the NMDOT contracting process. The focus is on non-architectural and engineering (non-A&E) Professional Service Agreements (PSA), including competitive proposals, emergency procurement, small purchases (not exceeding $50,000.00), and sole source agreements. The Handbook follows the chronological life of a project, from developing the scope of work and administering the request for proposal (RFP) to the closure and evaluation phase. Guiding principles and recommendations are provided for each stage in the contract management/administration process, along with descriptions of the responsibilities of the project manager and the contract administrator. Flowcharts are used to outline administrative procedures and procurement regulations to be followed, and documentation requirements. Also included are ethical considerations to support a more effective project management and contract administration process.

MOTIVATION FOR RECOMMENDATIONS HANDBOOK

As part of the project “Improving Contract Management by End Users”, the New Mexico Tech research team interviewed New Mexico Department of Transportation (NMDOT) project managers and contract administrators to gather information about their views regarding ongoing contract management/administration practices at the agency. The survey questions considered various steps in the contracting process: developing the scope of work and RFP, awarding the contract, negotiating amendments to the original contract, and evaluating contract performance. A summary of the main concerns and observations compiled after the interviews is presented below.

- Agency personnel experienced in the contracting process expressed frustration with having to learn the process on their own, without formal training or orientation.

- Agency personnel are confused about the contracting process; especially the forms and documents required for the different types of contract.

- Project management and contract administration duties are often conducted by the same person; usually the person “who knows the most about this type of work”. Unfortunately, this person does not always have experience or training in project management and/or contract administration.

- Responsibilities of persons holding the same job title in different Bureaus vary tremendously. These responsibilities are often not clear to the individuals when they initially start working in these positions.

- Filing procedures for contract-related documents vary from Bureau to Bureau. In most instances, documents related to each contract are kept by a single individual who is in charge of managing the contract. No procedures are currently in place to ensure various managerial practices: (1) filing and organization of all necessary documents; and (2) transfer of all
documentation to the appropriate personnel should the individual in charge of the contract leave the Bureau or the NMDOT.

- Because the scope-of-work from the RFP is usually copied into the contract, it is imperative that it properly reflects the needs of the Bureau and the NMDOT.

- The amendment process is often considered lengthy, burdensome, and sometimes confusing.

- Bureaus that delegate contract administration duties to a single individual tend to have a better understanding and a more positive view of the contracting process.

The concerns and observations outlined above provide the motivation for a practical guide aimed at improving project management and contract administration practices at the agency. To this end, it is instructive to clarify the roles and responsibilities of project managers and contract administrators.

PROJECT MANAGEMENT AND CONTRACT ADMINISTRATION

Effective project management and contract administration are essential to a project’s success. Although the same individual may be responsible for performing both duties, managing the project and administering the contract, the underlying duties are distinct and encompass different responsibilities. A general overview of the roles and responsibilities of project managers and contract administrators is presented below, and more detailed descriptions are included in the sections dedicated to each chronological phase of the project.

Though distinct, the roles and responsibilities of project managers and contract administrators are complementary. The main responsibilities of the project manager are to serve as a liaison between the contractor and the NMDOT and to monitor the project, assuring that milestones are observed and deliverables are completed. Accordingly, project managers review progress reports submitted by the contractor, verify that the work performed meets the project’s scope-of-work, and that projects are completed in a satisfactory and timely manner.

In contrast, the main responsibilities of contract administrators are to ensure contract compliance with NMDOT rules and regulations, to oversee contractors’ payments, to notify contractors and to process amendments and extensions. Accordingly, contract administrators are expected to assist the project manager when initiating a new contract, as well as remind the project manager of the contract termination date in a timely manner (usually thirty days prior to the termination date).

RULES AND ETHICAL CONCERNS

Rules and procedures employed by agencies around the world are developed to assure that:
- the contracting agency’s needs are met;
- a fair cost is determined for the project;
contracts are executed in a straightforward and successful manner;
high quality products and services are delivered;
all parties involved have their rights protected;
disputes and litigation are avoided.

In addition to following these rules and regulations, professional ethics are critical in assuring satisfactory contract performance. Ethical concerns may arise in soliciting and evaluating proposals, and in awarding, negotiating and monitoring contracts. Some of these concerns may be unique to a particular NMDOT Bureau or Division, while others may be universal across the NMDOT Agency.

Agency personnel must remain vigilant to ethical dilemmas that may arise at various stages in managing/administrating contracts. Disregard of ethical issues can result in inefficient use of public funds; for example, overpayment, cost overruns and schedule delays. Furthermore, ignoring ethical concerns can result in costly litigation or violation of procurement rules and regulations; such as, the New Mexico Administrative Code (NMAC 1.4.1), and Chapter 13, NMSA 1978 Procurement Code. For these reasons, ethical concerns are identified and discussed throughout the various sections of this handbook. Weblinks to specific procurement codes and regulations are provided below. Agency personnel are urged to review these links and consult with other staff in developing awareness of the current procurement codes and regulations.

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**CHRONOLOGICAL LIFE OF A PROJECT**

The chronological life of a project begins with the development of the scope of work. Then if the contract is not achievable by small purchase, emergency or sole source an RFP must be established. Accordingly, the chronological life of a project can be divided into five main phases, namely: (1) development of the scope of work and request for proposal (RFP), (2) proposal evaluation and selection, (3) contract negotiation, (4) monitoring the contract, and (5) closure of the contract and final deliverables, as shown in Figure 1. Each phase is described individually in the Handbook, including guiding principles and recommendations and a summary of the roles of the project manager and the contract administrator. In addition, flowcharts are provided detailing the administrative procedures at each phase, as well as documentation requirements and regulatory and ethical considerations.
FIGURE 1 Five Main Phases of a Project
DEVELOPING THE SCOPE OF WORK AND THE RFP

Preparing a sound scope of work and RFP is not a simple task: it assumes agency personnel understand a given problem well enough to describe it to prospective contractors, along with the actions needed to fix it. A poor understanding of the underlying problem leads to a vague scope-of-work statement and poorly defined deliverables, milestones and performance measures. To avoid eventual contract failure, costly litigation or ethical concerns, the RFP should clearly specify the underlying criteria for evaluating proposals and selecting the most qualified firm.

To help ensure a fair evaluation of proposals the RFP must define the selection criteria and explain how they are applied in the selection process. The selection of the ‘most qualified’ firm may take into consideration a variety of evaluation criteria: contractors’ qualifications, cost and budgetary concerns, unique resources, and the firm’s reputation and past experience in completing projects with similar characteristics on time and on budget. The quality of the proposal may also be considered: originality and feasibility of solution proposed, organization and definition of tasks to be followed, and conformance with budget specifications. Scoring and evaluating these criteria is a challenge in selecting among competitive sealed proposals, involving a tradeoff analysis of strengths and weaknesses.

Finally, it is important to note that RFPs are not necessary for small purchases of $50,000 or less, sole source procurement, or emergency procurement. Procurement rules for these alternative contract types are covered in Sections 1.4.1.50, 1.4.1.53, and 1.4.1.58 of the New Mexico Administrative Code (NMAC) 09-30-05, respectively.

GUIDING PRINCIPLES AND RECOMMENDATIONS

- Project managers, contract administrators and technical experts should participate in writing or reviewing the problem statement, determining the proposed actions, and drafting a preliminary list of deliverables.

- A proposed budget and a realistic timeframe should be determined and carefully considered in the determination of the scope-of-work.

- A preliminary list of deliverables should be clearly defined and approved by technical experts.

- Selection criteria should be clearly defined and approved by technical experts, the project manager and the contract administrator.

- The draft of the scope-of-work should be reviewed and checked for consistent interpretations by circulating it among agency personnel (i.e., upper management within the respective Bureau or Division and personnel from the Procurement Services Bureau). Upon edit, the final draft should leave no impression of vagueness.
• Agency personnel should reach a consensus that the final draft provides the foundation for describing the scope-of-work in the RFP.

For training purposes two examples of scope-of-work are given below. Example A is considered to be a model example, containing sufficient detail and precision to perform the underlying project successfully and monitor the contractor and deliverables through various phases of the project. Example B is lacking in these qualities in terms of omitting key details in outlining the project, and providing a weak description of expected deliverables, the project timetable and milestones.

SCOPE OF WORK EXAMPLE A

1. The Contractor shall develop and produce a Construction Manual that will be used as a parallel reference to the Department’s current 2007 Standard Specifications for Highway and Bridge Construction, hereinafter referred to as the Department’s “Standard Specifications”.

2. The Construction Manual, at a minimum, shall contain clarification to areas within the Department’s Standard Specifications that may appear to be ambiguous, unclear or in a legal context that is not easily interpreted.

3. The Contractor will also be required to incorporate suggestions into the Construction Manual for dispute resolution between the NMDOT and an awarded construction contractor and simple trouble shooting solutions related to common problems/issues related to road construction projects.

4. The Contractor shall meet with the Department’s Design Team, which will be made up of District Engineers, Construction Engineers, Project Engineers, Project Managers and other pertinent Department staff, twice (2) a month throughout the development of the Construction Manual for input and progress. All meetings will take place in Santa Fe, NM.

5. As a tool for developing subject matter for the Construction Manual the Contractor shall research information obtained by the Department from other states and any other internal sources that may be of value for the Construction Manual.

6. The NMDOT is currently in the process of updating all Divisions to the Standard Specifications. Once the updates have been completed (tentatively Feb/March 2012) the Contractor shall incorporate any relevant revisions/updates into the Construction Manual.

7. Deliverables:

   a. Kick Off Meeting: Upon issuance of a fully signed contract the Contractor shall meet with the Department’s project manager and members of the Design Team to
discuss the project, finalize the project schedule, which shall be incorporated by reference into the final contract, and coordinate future meetings.

b. Preliminary Draft: At 30% completion of the Construction Manual the Contractor shall prepare and submit to the Design Team a preliminary draft of the document for review and approval. Review and approval will be conducted by the Design Team within a thirty (30) day period.

c. Secondary Draft: At 60% completion of the Construction Manual the Contractor shall prepare and submit to the Design Team a secondary draft of the document for review and approval. Review and approval will be conducted by the Design Team within a thirty (30) day period.

d. Tertiary Draft: At 90% completion of the Construction Manual the Contractor shall prepare and submit to the Design Team a tertiary draft of the document for review and approval. Review and approval will be conducted by the Design Team within a thirty (30) day period.

e. Final Draft – at 100% completion of the Construction Manual the Contractor shall prepare and submit to the Design Team a final draft of the document for review and approval. Review and approval will be conducted by the Design Team within a thirty (30) day period.

Failure by the Contractor to meet the agreed upon dates for submittal of any subsequent drafts will result in liquidated damages in the amount of $100/day to be paid by the Contractor to the Department for every day past the draft submittal deadline.

8. At completion of the project the Contractor shall provide all documentation to the Department in editable electronic format and printed bound copy.

**SCOPE OF WORK EXAMPLE B**

The Department intends to develop a “design team” that will consist of professionals with extensive experience and knowledge to aid the consultant in the development of the Construction Manual. The consultant is to develop a Construction Manual for side by side reference with the current 2007 Standard Specification for Highway and Bridge Construction. The Standard Specifications has two (2) divisions that are currently being updated (Division 100 and Division 400). The consultant will be required to accommodate the updates of these divisions within the newly created Construction Manual document. The consultant will provide five (5) stages for review and comment by the NMDOT as detailed below.
Kick Off
30% - Preliminary Draft
60% - Draft
90% - Final Draft

Submittal
The Consultant will be allowed to and is encouraged to interview District Engineer(s), Construction Engineer(s), Project Engineer(s), Project Manager(s) and other pertinent Department staff from any District(s) prior to preparing the preliminary draft (30%). There will be a review / comment period of 30 days prior to the development of any subsequent draft. Regular review and design team meetings will part of the contract and negotiated after selection is made.

All documentation will be provided in editable electronic format and printed bound copy.

Comparing the scope-of-work examples is instructive, insofar as illustrating how peer reviews and subsequent revision/editing improve the scope-of-work description. Example A provides a better guide to prospective contractors on the criteria and process for selecting the preferred proposal, and the expected project deliverables and milestones. Also Example A outlines the process by which the Project Manager and Contract Administrator will monitor the successful contractor through various phases of the project, in terms of the expected deliverables, the project timetable and milestones.

ETHICAL ISSUES

- Scope-of-work should NOT favor particular contractor(s)
- Scope-of-work should NOT be left vague to allow for easy changes and/or to accommodate particular contractor(s)
- Problem statement or scope-of-work should NOT be discussed with contractors before the RFP is issued
- Confidentiality of sealed proposals should be exercised and respected
- Procedures set forth for sealed competitive proposals should be closely followed

ROLES OF PROJECT MANAGERS AND CONTRACT ADMINISTRATORS

Role of Project Managers

The main role of the project manager during this first stage of the project is to serve as a leader for the team responsible for defining the problem and writing the scope of work and RFP. Responsibilities of the project manager during this phase include:
• Obtainment of RFP template from the Procurement Services Bureau
• Selection of a panel of technical experts to form an evaluation committee
• Coordination and moderation of meetings for problem discussion and definition
• Drafting scope-of-work for the RFP, carefully considering the available budget and timeframe
• Determination of deliverables
• Establishment of evaluation criteria
• Distribution of scope-of-work draft to contract administrator and members of the evaluation committee for review and approval
• Submission of the scope-of-work draft to the Procurement Services Bureau for review, approval and advertisement

**Role of Contract Administrator**

During this first stage of the project, the contract administrator’s main role is to aid in the development of the scope-of-work, the budget, and the list of deliverables.

**ADMINISTRATIVE PROCEDURES AND DOCUMENTATION REQUIRED**

The Procurement Services Bureau recommends project managers to anticipate a total of three to five months from the initiation of the RFP to the negotiation and finalization of the contract. Two to three months would be dedicated solely to the RFP process, including the 30 to 45 days required from date of advertisement to receipt of proposals. However, the time required for drafting the RFP can be controlled, to some extent, by the program manager. The various steps are described in the following flowchart (Figure 2).

**RULES**

Rules related to the development of RFPs for competitive sealed proposals are presented in Section 1.4.1.31 of the New Mexico Administrative Code (NMAC) 09-30-05. In addition, rules related to the amendments to the RFPs prior to submission of proposals are presented on Section 1.4.1.34. RFPs are not necessary for small purchases of $50,000 or less, sole source procurement, or emergency procurement. Rules for these alternative contract types are covered in Sections 1.4.1.50, 1.4.1.53, and 1.4.1.58 of the NMAC 09-30-05, respectively.
FIGURE 2 Administrative Procedures and Documentation Required in the Development of the Scope-of-Work and the RFP
PROPOSAL EVALUATION AND SELECTION

The evaluation and selection of the highest ranked proposal or most qualified firm is conducted by an appointed Evaluation Committee. As described in the previous section, these individuals prepare the scope of work and RFP giving them superior understanding of the professional service needs of the agency. The criteria used in evaluating proposals must be specified in the RFP with the intent of selecting the most qualified firm to perform the desired services.

Competitive sealed proposals are first evaluated by the appointed Evaluation Committee using criteria and weights specified in the RFP. Proposals should be evaluated only if they are submitted on time, are complete, and conform to the criteria stated in the RFP. Following an initial screening, the Evaluation Committee may conduct oral presentations with finalists. Negotiations are then undertaken with the highest ranked firm once the evaluation process is completed. At this time the Evaluation Committee may provide further information of its needs and clarify contractual terms; for example, the budget, the timeline and the expected deliverables.

Sole-source professional service contracts are used if there is only one source for a particular type of service. The evaluation/selection of sole-source contractors must be justified in accordance with State Procurement Code requirements, and involves developing/specifying criteria in reviewing and justifying the sole-source contractor. Small purchase professional service contracts are used when the cost of required services is less than $50,000. The small purchase method must also follow the State Procurement Code by soliciting quotations to perform the required work from at least three qualified contractors. The aim is to select the most advantageous offer.

GUIDING PRINCIPLES AND RECOMMENDATIONS

- Evaluation of professional service contractors should be performed in accordance with criteria set forth in the RFP.

- A pre-proposal conference can be held prior to the submission of proposals to ensure competing contractors have a sound understanding of key tasks and agency goals.

- A competitive procurement process should be applied in order to obtain unbiased estimates of the true costs of performing desired tasks.

- All proposals for professional service contracts should be scrutinized to avoid potential conflicts of interest.

- Hasty, incomplete or biased evaluations should be avoided; any of which can result in a failed selection process and costly litigation with non-selected offerors.
Role of Project Managers

The main role of the project manager during this stage of the project is to assure that the evaluation and selection processes are conducted appropriately. Responsibilities of the project manager during this phase include:

- Responding to questions prospective offerors’ may have related to the scope of work and RFP, which should be facilitated through the Procurement Services Bureau.
- Obtainment of evaluation packets from the Procurement Services Bureau which includes proposals, evaluation sheets and instructions.
- Distribution of proposals to members of the evaluation committee for review.
- Evaluation of proposals.
- Recommendation of selected proposal to Bureau Chief and Procurement Services Bureau.
- Scheduling and moderation of meeting(s) for selection of winning proposal.

Role of Contract Administrator

During this stage of the project, the contract administrator’s main responsibilities are to:

- Assist the project manager in responding to prospective offeror’s questions, which should be facilitated through the Procurement Services Bureau.

ETHICAL ISSUES

- The proposal evaluation committee should maintain a public record of decisions justifying contract awards.
- The proposal evaluation committee should ensure rules and regulations are followed to promote integrity in public procurements.
- The proposal evaluation committee should avoid favoring particular contractor(s) due to previous relationships and/or conflicts of interest.
- The proposal evaluation and selection process should result in the choice of a ‘most qualified’ contractor upon assessing the strengths and weaknesses of the proposals.
- Confidentiality of sealed proposals should be respected.
- Procedures set forth for sealed competitive proposals should be closely followed.
• Assist in organizing documentation as evaluations are completed by the Evaluation Committee. The Contract Administrator may also participate in the evaluation and selection of the winning proposal if he or she is assigned to the Evaluation Committee.

ADMINISTRATIVE PROCEDURES AND DOCUMENTATION REQUIRED

To expedite the selection process, the Procurement Services Bureau compiles all proposals received, reviews them for conformance to RFP requirements, and provides evaluation packets to the project manager. Evaluation sheets provided should be returned to the Procurement Services Bureau within 2 weeks. Figure 3 illustrates the administrative procedure to be followed.

RULES

The rules for evaluating/selecting professional service vendors aim to ensure fair evaluations and efficient use of public funds. Corrupt and/or incompetent practices tend to result in the misappropriation of public funds, costly litigation or even severe penalties. Procedures for evaluating/selecting competitive sealed proposals are described in sections 1.4.1.38 and 1.4.1.43, NMAC. Sole-source contracts also follow the NMAC rules. Furthermore, if federal-aid funds are involved, approval must be obtained from the Federal Highway Administration (FHWA), as described in the Federal Regulation 23 CFR 172 Appendix A. Small purchase professional service contracts also follow the NMAC rules in choosing the “most advantageous offer” to NMDOT. The selection of the most advantageous offer must also conform with provisions set forth in the Governmental Conduct Act; for example, prohibitions from contracting with lawmakers, their families and businesses.
FIGURE 3 Administrative Procedures and Documentation Required in the Evaluation and Selection of Winning Proposal
CONTRACT NEGOTIATION AND PROCESSING

Negotiating and settling the terms of any contract involve a healthy amount of give-and-take, and should lead to a well-written contract. The negotiation process begins following the selection of the most qualified Professional Services contractor. The Department enters into negotiations with the top-ranked contractor to establish a fair and equitable price for the services to be provided. In preparing for negotiations the Department reviews the proposed cost estimate and either establishes the contract if it is acceptable or enters into negotiations if the pricing or budget is deemed unacceptable. A successful negotiation process gives the Department a better chance of achieving an efficient use of public funds by sharing information and setting enforceable contractual terms – that is to say, terms governing the payment of public funds and accounting for contractor performance.

The Project Manager assumes responsibilities for the contract negotiation process. The negotiation process gives the contract parties an opportunity to share information over the complexity of the project, timelines, and cost estimates on a task or sub-task basis. To establish an independent cost estimate the Project Manager is responsible for preparing an assessment of resource requirements, with input from appropriate sections in the Department. Consequently, the Project Manager considers various cost elements in preparing an independent cost assessment. First, the terms governing the fee structure in fixed-price agreements are specified on a lump-sum (preferred) or unit rate (indefinite quantity) basis, taking account of the following cost items:

1. labor-hours by activity and labor category, as determined by negotiations,
2. other direct costs as determined by negotiation,
3. indirect costs as determined by negotiation,
4. approved overhead rate,
5. profit margin as determined by negotiation, and
6. gross receipts tax and other applicable taxes.
7. the use of incentive/disincentive clauses are project-specific and noted in the RFP.

The contract can be processed once an agreement with the top-ranked offeror is reached. If no agreement is reached then the Department may begin negotiations with the second-ranked offeror, and the negotiation process continues until an agreement is reached with a qualified offeror. If the supply of qualified offerors is exhausted then the Department consider readvertising the RFP or performing the work in-house.

Once agreement is reached the Department’s “Standard State Department of Transportation Contract for Professional Services” is prepared with the “boiler plate” and scope of work, schedule and fee included. The Contract Administrator is responsible for processing the contract according to several major steps:
A. Assembly – The contract will include the fixed-price agreement along with a description of services or information to be provided by the Department, and a description of the work to be performed by the contractor.

B. Execution – Several reviews and approvals are required to execute the contract.

- The contract is sent to the Office of the General Counsel for review and approval of form and legality.
- Upon internal approval, the contract is sent to the contractor for review and concurrence on the fee, scope of work, and schedule.
- Upon return to the Department the contract is sent to the Secretary for signature.
- Once the signed copies are received from the Secretary they are sent to New Mexico Taxation and Revenue Department for verification of the contractor’s Tax I.D. number.
- The Project Manager prepares the service contract (final fund encumbrance).
- All but one of the signed copies are retained by the Department. One copy of the signed contract will be sent to the contractor along with the Notice to Proceed.

C. Notice to Proceed – Prior to issuing a notice to proceed, the contractor will be contacted to determine a mutually agreeable starting date. Then, an official notice to proceed is prepared and mailed to the contractor, with a copy of the executed contract attached.

GUIDING PRINCIPLES AND RECOMMENDATIONS

Applying the contract negotiation process and administrative procedures described above is essential in managing a successful contract between the parties and an efficient use of public funds. Several principles and recommendations may be followed to help ensure the negotiation process and procedures are followed.

- The Project Manager, Contract Administrator and members of the Evaluation Committee should verify the consistency between the scope-of-work in the RFP and the contract language outlining the descriptions of the project and work being performed by the contractor.
- The negotiation process should be conducted with the aim of sharing any information which could impact the work being performed, milestones, deliverables and due dates.
- The fees and schedule of deliverables should be documented on a task-by-task basis and examined by the contract parties for mutual agreement.
The contract should describe how invoices are to be submitted, how they match with deliverables, and how the Department will use this information to measure progress throughout the project lifetime.

To avoid costly amendments to the contract the various parties should carefully review the contract to ensure all of the negotiated settlements concerning fees, scheduling and invoicing are correctly specified and conform with State/Federal procedures.

ROLES OF PROJECT MANAGERS AND CONTRACT ADMINISTRATORS

Role of Project Managers

The main role of the project manager during the contract negotiation/processing stage of the project is to develop an independent cost estimate of the work being performed by the top-ranked contractor and work with the Procurement Services Bureau in drafting and processing the contract. Accordingly, the responsibilities of the project manager during this phase include:

- Preparing an independent cost estimate based on a consideration of a variety of cost elements described above.
- Scheduling and moderating contract negotiation meeting(s) between the top-ranked offeror and NMDOT personnel, including contract administrator and Procurement Services Bureau staff.
- Assisting Procurement Services Bureau personnel in the drafting of the contract.
- Distributing draft of contract to contract administrator and selected contractor for review.
- Submitting final draft of the contract to Bureau Chief for approval.
- Submitting approved contract to the Procurement Services Bureau for signatures.

Role of Contract Administrator

During this stage of the project, the contract administrator’s main role is to work with the Procurement Services Bureau in assuring that the contract is drafted according to all applicable rules and regulations. Responsibilities of the contract administrator during this phase include:

- Reviewing draft of the contract.
- Reviewing budget items for compliance with rules and regulations.
- Reviewing invoicing and payment schedules for compliance with rules and regulations.
The Procurement Services Bureau recommends project managers to anticipate a total of at least 3 to 6 weeks for the negotiation and finalization of the contracting process. However, the time required for obtaining contractor’s signatures may vary extensively.

**FIGURE 4 Administrative Procedures and Documentation Required in the Negotiation Phase of the Contracting Process**
MONITORING THE CONTRACT

This chapter of the Handbook discusses monitoring activities in managing professional services contracts. Effective monitoring rests on a mutual understanding of the detailed work plan and scheduling as specified in the contract negotiations between the Department and the contractor. Subsequent monitoring actions cover various technical and administrative issues including, reviewing the progress of the technical work and accounting for the contractor’s budget invoicing and timeline commitments. The Department follows the NMSA and Procurement Code Rules in performing its monitoring activities.

GUIDING PRINCIPLES AND RECOMMENDATIONS

- The Department monitors Professional Services contracts through technical reviews, progress reporting and invoice accounting. These monitoring activities should ensure projects are completed on time and within budget by controlling for scope-creep, schedule slippage and cost overruns.

- Documenting receipt and acceptance or rejection of all deliverables is essential. Not only will it assist project managers in future projects, but it will also be essential in the case of audits or future litigation.

- Documenting actions taken in the case of rejected deliverables is also critical.

- Projects vary in terms of complexity, duration and funding commitments. Consequently some projects should be monitored more frequently than others.

- Contract invoicing/payments should be checked for consistency with the work being performed. It should also be verified that the budget items comply with NMSA and Procurement Code Rules and that all necessary receipts are provided.

- The Department prefers to resolve disputes at the lowest possible level and bring unresolved disputes to the attention of successively higher levels of authority until a settlement is reached.

ETHICAL ISSUES

- Requests for changes in the scope of work, timeline extensions, or fee amendments should be carefully scrutinized to avoid opportunistic behavior by contractors.
- Negotiating monetary rewards or penalties can help ensure that contracts are completed on time and within budget.
- Poor monitoring can lead to unsatisfactory work performance and poor use of public funds.
ROLES OF PROJECT MANAGERS AND CONTRACT ADMINISTRATORS

Role of Project Managers

During the life of the contract, the main role of the project manager is to assure that the project is progressing according to schedule and budget. Responsibilities of the project manager during this phase include:

- Maintaining communication with contractor throughout the project.
- Assuring that deliverables are received on time and that milestones are met on schedule.
- Assuring that deliverables submitted closely follow contract specifications.
- Assuring that items included in the invoices match the progress achieved.
- Documenting receipt of acceptable deliverables and/or completion of milestones.
- If deliverables submitted do not meet the agency’s standards and/or if milestones are not completely in a satisfactory manner:
  - Discussing with contract administrator partial payment or non-payment of invoice until progress is achieved and/or requirements are met.
  - Formally informing contractor that progress is not satisfactory and/or that deliverables do not meet contract requirements.
  - Documenting the events, the conversations, and the measures taken.
  - Terminating contract if continuous lack of performance is observed.
- When necessary, drafting requests for amendments to the contract.

Role of Contract Administrator

The contract administrator’s main role during this stage of the contract is to assure that invoices received are in accordance with NMSA and Procurement Code Rules, and that the contractor is paid on time. Responsibilities of the contract administrator during this project stage include:

- Checking whether items included in the invoices follow the budget in the contract.
- Confirming that all items in the invoices can be covered according to rules and regulations.
- Confirming with project manager that all deliverables were received, all milestones were met, and that performance was satisfactory before authorizing payment of the invoice.
• Assuring that all required receipts have been received.

• Checking invoice for mathematical errors.

ADMINISTRATIVE PROCEDURES AND DOCUMENTATION REQUIRED

Figure 5 describes the recommended procedure to be followed in the monitoring of contracts. Although the responsibilities of the project manager and the contract administrator do not change, the order in which the invoices are reviewed can vary from Bureau to Bureau, according to personal preference; that is, the contract administrator may prefer to review the invoice for mathematical errors and conformance to rules and regulations before or after the project manager ensures that milestones have been met, deliverables submitted and work performed satisfactorily.

Amendments to the contract may be necessary due to unforeseen circumstances. Amendments may be needed to provide contractors with a time extension, a budget reallocation, a budget increase or under very special circumstances, a change in scope-of-work.

Figure 6 describes the amendment process. It is important to note that regardless of the type of amendment requested, full justification should be provided by the contractor and approved by the project manager, the contract administrator, the Bureau Chief, and the Procurement Services Bureau.
FIGURE 5 Administrative Procedures and Documentation Required in Monitoring Contracts

- Project manager receives invoice:
  - Were deliverables received?
  - Were milestones met?
  - Do the deliverables meet contract specifications?
  - Do the invoices match the progress achieved?

- Project manager:
  - Discusses with contract administrator the following alternatives:
    - partial payment of invoice until satisfactory progress is achieved and/or requirements are met
    - non-payment of invoice until satisfactory progress is achieved and/or requirements are met
    - termination of contract for lack of performance
  - Formally informs contractor that progress is not satisfactory and/or that deliverables do not meet contract requirements
  - Documents the events, the conversations, and the measures taken

- After notification, did the contractor perform the work specified on the contract and/or re-submit missing or unsatisfactory deliverable?
  - YES
  - Project manager terminates contract for lack of performance
  - NO
  - Project manager:
    - obtains Bureau Chief’s approval
    - authorizes payment of invoice
    - documents acceptance of deliverables
FIGURE 6 Administrative Procedures and Documentation Required in the Amendment Process

RULES

Project documentation

Formal procedures are followed in maintaining Professional Services Contract records and progress reports. Project files are kept at the End User/Program office. At a minimum, the project file should contain the following items:

- copy of the contract and all corresponding amendments (originals maintained by the Project Manager);
- documentation of the negotiation history;
- copies of progress reports and schedule updates;
- copies of all meeting minutes;
- copies of all correspondence generated by the project;
copies of all submittals;

copies of all review comments and their resolution; and

any other pertinent documents or items.

**Progress Reports**

Progress reports of the contractor’s work should contain the following information:

- **Project Identification** – Include Project Name, Project Number, Project Control Number, Contract Number, Vendor Number, Contractor Name, Contractor Project Manager, and NMDOT Project Manager.

- **Reporting Period** – The month or period covered by the report.

- **Narrative Discussion of Project Status** – Include the following: (1) discussion of work accomplished since the last progress report, (2) discussion of work planned to be accomplished before the next progress report, (3) description of any outstanding issues or concerns, and (4) statement of overall percentage of project completion;

- **Activity Progress Spreadsheet** – Shows percent complete by activity, in terms of labor expended and/or dollar value earned by activity. If a resource loaded schedule is being used, resource reports from the scheduling system may be used to meet this requirement.

- **Gantt Chart or Other Approved Schedule Chart** – A graphic portrayal of the current schedule in comparison with the approved baseline schedule. Schedule updates shall show at a minimum the target and actual/projected start and finish dates, and a percentage complete to date.

**Request for Time Extensions**

Justifications for time extensions should specify the additional work being performed by the contractor, or the changed conditions affecting the time needed to complete the contract. Time extensions may be requested by either the Project Manager or the contractor. If the completion date is delayed into a new quarter or fiscal year the Project Manager should notify the Regional Design Manager and other Department units concerned with fund management.

**Invoicing and Payments**

The Department accepts monthly invoices for work performed under contract and should verify the invoices are consistent with activities described in the monthly progress report. If the invoice is consistent with progress, then the invoice is approved for payment. If the contractor submits
invoices believed to be inaccurate or inappropriate they must be corrected and re-submitted, with a cover letter explaining the problem. The Department is not responsible for any additional work performed by the contractor prior to receipt of a duly executed agreement and notice to proceed. Any extra work performed by the contractor without a written agreement is done at the contractor’s risk.

Changes in Personnel

Any changes to the key personnel identified in the contractor’s proposal must be approved by the Department prior to the change being implemented by the contractor.

Amended Agreements/Invoices

When a contract is amended for a fee amount and associated work, then the contractor will submit amended invoices which reflect the amended fees and associated work. The amended portion of the payment should not be added or rolled-up into the existing invoice format.

Monetary incentives

The Department may impose a pre-set monetary penalty for failure to meet key milestone dates or the completion date (liquidated damages). Or the Department may offer a pre-set monetary reward for early completion of the project or meeting key milestone dates (incentive fees). Liquidated damages or incentive fees are negotiated and described in the contract.

Monitoring Caveats

The contractor is responsible for correctness/completeness of project documents submitted to the Department, and remains responsible for any damages or delays resulting from the errors and omissions. The Department will not provide an extensive check of any plans submitted by the contractor. Materials are only reviewed for conformity with NMDOT procedures and terms of the contract. Acceptance of contract deliverables does not mean that the Professional Services Contractor is relieved of responsibility for errors and omissions. Any errors or omissions remain the full responsibility of the contractor. Corrections will be made by the contractor at no additional cost to the Department.
CLOSURE OF CONTRACT AND FINAL DELIVERABLES

In the last phase of the contracting process, verification is made that all the work specified in the contract has been satisfactorily completed and all deliverables have been received and formally accepted by the NMDOT. Also in this phase, final payments are made to the contractor, including retainage where applicable. Assuming the contract has been carefully drafted and monitored; this last phase is straightforward, simply consisting in an extension of the monitoring principles described previously. As with all phases of the contract, thorough documentation of all aspects of the project is essential. Filing of these documents in a clear and organized manner assures that they will be available as references for future projects and should litigation be necessary, that they will assist NMDOT lawyers get a full understanding of the contract, the issues that developed and how they were addressed.

GUIDING PRINCIPLES AND RECOMMENDATIONS

As the end of the contract approaches, it is useful for the project manager to revisit the contract terms. Particular attention should be paid to the description of all deliverables and their due dates. At this time, the project manager should also ensure that every aspect of the project has been carefully documented and that these documents have been properly filed in a separate, organized, and clearly labeled folder. A typical contract folder should include at least the following:

- a copy of the contract including all amendments made;
- a copy of all amendments made to the contract;
- a copy of all reports received along with records of the date and time they were submitted;
- records of receipt and acceptance of reports and deliverables;
- a copy of all invoices submitted by the contractor;
- financial records including records of all payments made to the contractor;
- records of all communication between the contractor and NMDOT personnel, especially the project manager and the contract administrator (including emails and notes recording relevant phone conversations);
- records of any problem encountered throughout the contract and actions taken to resolve them (including late submission of deliverables or deliverables that did not meet the expectations of NMDOT personnel).

Careful documentation and filing of these documents will not only assist project managers in future projects, but it will also be particularly useful in the case of audits or any future litigation.
Since personnel involved in a particular project may retire, leave the agency, or simply forget details of the project after some time has elapsed, it is essential that these contract folders be complete and well organized so that individuals that were not involved in the project can clearly understand what occurred and how successful (or unsuccessful) each contract was.

Before finalizing the contract, it is beneficial for the project manager, the contract administrator and other NMDOT personnel involved in the contract to hold a closure meeting. During said meeting the project manager should revisit the goals of the contract, discuss how successful the contractor was in achieving these goals, the quality and timeliness of the deliverables received, and the final steps or measures needed to conclude the project. Since contractors are usually expected to submit final deliverables 30 days before contract termination, the closure meeting should be held after the project manager and the contract administrator have received and reviewed the final deliverables, but before final payment is made to the contractor and the contract is officially terminated. Other items on the agenda could be: (1) strengths and weaknesses of the project; (2) possible causes for the problems encountered and what could be done to avoid them in the future; and (3) lessons-learned. Finally, the project manager collects all project files as well as all documents related to the project including emails and other records of communication between NMDOT personnel and the contractor.

**ROLES OF PROJECT MANAGERS AND CONTRACT ADMINISTRATORS**

**Role of Project Managers**

The role of the project manager during the last stage of the project is to ensure that the contract has been completed in a satisfactory manner; that all deliverables have been received and that the needs of the NMDOT have been met. Responsibilities of the project manager during this phase include:

- Assuring that all deliverables have been received.
- Assuring that all deliverables closely follow contract specifications and meet the needs of the NMDOT.
- Documenting receipt and acceptance of deliverables.
- If deliverables submitted do not meet the agency’s standards:
  - Discussing with contract administrator partial payment or non-payment of invoice until all requirements are met.
  - Formally informing contractor that deliverables do not meet contract requirements.
  - Documenting the events, the conversations, and the measures taken.
- Filing in a clear and organized manner all documents related to the contract.
Role of Contract Administrator

During the closure phase of the contract, the contract administrator’s main role is to assure that the final invoices received are in accordance with the appropriate rules and regulations, that the contractor is paid on time, and if retainage was used, that it is included in the final payment. Responsibilities of the contract administrator during this project stage include:

- Checking whether items included in the final invoice follow the budget in the contract.
- Confirming that all items in the final invoice can be reimbursed according to rules and regulations.
- Confirming with project manager that all deliverables were received and that performance was satisfactory before authorizing payment of the final invoice.
- Assuring that all required receipts have been received.
- Checking final invoice for mathematical errors.

ADMINISTRATIVE PROCEDURES AND DOCUMENTATION REQUIRED

The recommended procedure to be followed in closing a contract is very similar to that of monitoring a contract, as shown in Figure 7. Here again, the order in which the invoices are reviewed can vary from Bureau to Bureau, according to personal preference.
FIGURE 7 Administrative Procedures and Documentation Required in Closure of Contracts