

Dos and Don'ts of I/M Contracting

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OVERVIEW OF DOS AND DON'TS OF I/M CONTRACTING

- Ten Things Not to Do When Hiring an I/M Contractor
- Ten Things to Do When Hiring an I/M Contractor
- Ten Things Not to Do After Signing an I/M Contract
- Ten Things to Do After Signing an I/M Contract
- Top Ten Ways to Successfully Implement an I/M Program
- Five Important Cautions
- Final Thoughts

TEN THINGS NOT TO DO WHEN HIRING AN I/M CONTRACTOR

1. Try to implement a program in less than 18 months and set a January 1 start-up date.
2. Write an RFP by yourself without hiring expert help, unless you have a lot of experience.
3. Issue an RFP that contains few details on what the contractor must do and/or simply requires them to meet applicable EPA guidance.
4. Issue an RFP that indicates all of the contractor's investment will be lost if the government arbitrarily decides to cancel the program (thereby ensuring that only contractors willing to risk bankruptcy will respond).
5. Select a bidder whose proposal simply says (usually over and over again) that they will meet the RFP requirements, with no detail on how they will do so.

**TEN THINGS NOT TO DO WHEN
HIRING AN I/M CONTRACTOR
(continued)**

6. Select a contractor based mainly on cost.
7. Believe everything in a bidder's proposal.
8. Call and simply ask a bidder's references whether they like the contractor and think the firm does good work.
9. Let your information technology or construction folks talk you into believing that this is simply an IT or construction project.
10. Draw up, negotiate, agree to, allow yourself to be talked into, or otherwise end up signing a "performance-based" contract in any way, shape or form.
- 11. Hire a bad contractor!**

TEN THINGS TO DO WHEN HIRING AN I/M CONTRACTOR

1. Give yourself plenty of time to:
 - a. Write an RFP;
 - b. Send a draft RFP out for review by potential bidders;
 - c. Rewrite the final RFP;
 - d. Allow bidders time to prepare a thorough bid;
 - e. Evaluate the resulting bids;
 - f. Award the contract and possibly respond to bid protests;
 - g. Negotiate a contract; and
 - h. Still have 18 months to implement the program.

**TEN THINGS TO DO WHEN
HIRING AN I/M CONTRACTOR
(continued)**

2. Hire expert help to assist in writing the RFP, evaluating bids and negotiating the I/M contract.

3. Listen to the expert you hired and take their advice when they offer it.

4. Write an RFP that contains very specific requirements and deadlines, and requires bidders to:
 - a. Fully document (in detail) how they are proposing to meet the requirements, and

 - b. Explain (in detail) how their proposed solution will achieve the requirements.

5. Select a contractor whose proposal really explains what they are proposing to do and how they propose to do it.

**TEN THINGS TO DO WHEN
HIRING AN I/M CONTRACTOR
(continued)**

6. Select a contractor based mainly on technical merits and documented performance on other similar projects.
7. Trust almost nothing in a bidder's proposal. Thoroughly research and verify any claims or important, unsupported statements.
8. Require bidders to have their references fill out a quantitative rating form. Include specific questions regarding past performance such as:
 - a. Has the contractor ever been assessed any contract penalties and, if so, how much?
 - b. Has the contractor delivered all required reports on time?

TEN THINGS TO DO WHEN HIRING AN I/M CONTRACTOR (continued)

9. Do not let yourself be talked into contract provisions without fully considering their consequences, or be otherwise rushed by the awardee or your management to sign a contract.

10. Negotiate a contract that includes:
 - a. Highly specific contractual requirements and list of deliverables;

 - b. Highly specific schedule with specified milestone dates; and

 - c. Detailed liquidated damages that can be easily assessed (e.g., by withholding payments) in the event of non-compliance in a broad range of specific areas.

 - d. Detailed incentive payment system designed to reward contractor for good work.

- 11. Hire a good contractor!**

TEN THINGS NOT TO DO AFTER SIGNING AN I/M CONTRACT

1. Tell yourself and your management that you have to meet that looming EPA/SIP deadline come hell or high water.
2. Try to manage the contract by yourself without hiring expert help, unless you have:
 - a. A lot of experience; and
 - b. Successfully implemented at least one I/M program of similar complexity previously.
3. Trust the contractor to do the right thing or believe that they know more than you because they are the “experts.”
4. Allow the contractor/equipment manufacturers to install or sell test equipment:
 - a. Just because some other state supposedly certified it; and/or
 - b. Before you fully test and approve it.

**TEN THINGS NOT TO DO AFTER
SIGNING AN I/M CONTRACT
(continued)**

5. Allow the VID/test equipment to be rolled out without being thoroughly tested and debugged in advance of program start-up.
6. Allow the contractor to miss deadlines early in the project since there is “lots of time” before the start-up date.
7. Let the contractor tell you they do not have to justify what they are doing or otherwise meet specific requirements because their contract is performance-based.
8. Manage the contract like it is a construction or IT project.
9. Overreact to minor problems if the contractor is otherwise doing a good job. Exercise judgement in how you manage the contract.
10. Allow yourself to be swayed by contractor staff just because they talk a good story.

TEN THINGS TO DO AFTER SIGNING AN I/M CONTRACT

1. Get upper management to agree early to seek an extension from EPA rather than attempting an on-time start-up “no matter what.”
2. Hire expert help to assist in overseeing the contractor, reviewing deliverables, performing acceptance testing on test equipment/VID, etc.
3. Listen to the expert you hired and take their advice when they offer it.
4. Hire/keep good staff and work at making sure they are well-trained and grow with the program.
5. Work closely with the contractor to plan way ahead, and set and keep to a detailed schedule. Allow time for unexpected difficulties. Assess liquidated damages early if necessary.
6. Work closely with the contractor to address the myriad of technical and logistical issues that are always part of an I/M program implementation.

**TEN THINGS TO DO AFTER
SIGNING AN I/M CONTRACT
(continued)**

7. Work closely with the contractor to develop an agreed-upon contingency plan containing:
 - a. Measures to be taken if specified milestone dates are not achieved prior to start-up; and
 - b. Measures to be activated if problems develop upon start-up (e.g., a “short test” procedure to address long vehicle queues).

8. Thoroughly test all test equipment before it is installed or rolled out (e.g., into private shops). Do not just accept supposed certification by another state as sufficient proof of performance.

**TEN THINGS TO DO AFTER
SIGNING AN I/M CONTRACT
(continued)**

9. Closely manage the four distinct elements that occur in most I/M implementations:
 - a. Construction: Can range from building brand-new centralized I/M stations to helping fit loaded mode test systems into repair shops.
 - b. Information technology: Includes VID, VID/test system communications, connection to State vehicle data system, etc.
 - c. Test systems: Most programs assume the contractor can handle this with little oversight needed - this is a big mistake.
 - d. People: Can include contractor staff (e.g., lane inspectors), shop owners and technicians, and the public.
10. Do not let politics (e.g., an upcoming election) force bad choices or shortcuts in setting up a full and properly working test network prior to start-up.

TOP TEN WAYS TO SUCCESSFULLY IMPLEMENT AN I/M PROGRAM

10. Hire good expert help.
9. Write a good RFP and contract.
8. Base the contract award mostly on technical merit (~40%) and past performance (~40%), and much less so on cost (~20%).
7. Do not simply assume the contractor understands and is capable of properly addressing all technical issues involved in the implementation.
6. Make sure the contractor meets the deadlines.
5. Be very involved in understanding and working with the contractor on the technical details of the solution that they are implementing.
4. Give yourself plenty of time to implement the program.

**TOP TEN WAYS TO SUCCESSFULLY
IMPLEMENT AN I/M PROGRAM
(continued)**

3. Have a contingency plan in place with specific features to be implemented if triggered by specified criteria.
2. Do not be afraid to go to EPA for more time if you really and truly need it.
1. **Hire a good contractor!**

FIVE IMPORTANT CAUTIONS

1. Lack of specificity in an RFP and/or a contract virtually dooms a project:
 - a. It is nearly impossible to recover from a bad RFP and/or contract.
 - b. Almost all problems can be traced back to shortcomings in the RFP and/or contract.
2. Fail to plan = plan to fail. You must plan ahead and ensure the contractor is doing the same.
3. Do not assume that an on-time start-up guarantees success. The day testing starts is the most dangerous day of the project.
4. Do not let the contractor use an impending SIP deadline as a lever to force concessions from you on their required performance.
5. Have sufficient in-house expertise or hire expert help to oversee the contractor's technical performance. Do not simply trust the contractor to know what they are doing.

FINAL THOUGHTS

- Unfortunately, the I/M industry is not a quality-driven industry. Most programs have focused on the lowest possible cost solution.
- This has led most contractors and equipment manufacturers to compete for market share by cutting costs to the maximum extent.
- The result has been several disasters or near disasters. Many other programs have major problems but have managed to keep them out of the public eye.
- It is the responsibility of each and every person in the industry to turn this situation around by:
 - Focusing on quality rather than cost.
 - Working to ensure the public's money is well-spent rather than just trying to minimize costs.