

MnDOT Professional/Technical (P/T) Contract Training Guide

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1. Introduction

The Minnesota Department of Transportation (MnDOT) relies on the expertise and resources of a diverse array of consultants and contractors to plan, build, operate, and maintain a safe, accessible, efficient, and reliable multimodal transportation system that connects people to destinations and markets throughout the state, region, and world.

In short, consultant contracts help MnDOT deliver on its mission. Although the process required to work with consultants may at times seem complicated, it is worth the investment of time to learn about developing, administering, and managing MnDOT Professional/Technical (P/T) contracts.

Contracts 101

In their most basic form, contracts detail the terms of agreement between two or more parties and legally bind all parties to those terms. As a formal written agreement, a contract states the duties the consultant will perform and the compensation the consultant will receive in exchange for performing those duties.

P/T contracts are designed for projects that require “intellectual” services, such as:

- Analysis
- Training
- Evaluation
- Prediction
- Planning
- Programming

All MnDOT contracts, including P/T contracts, must be in writing. MnDOT **cannot** enter into binding oral agreements. Contracts between MnDOT and consultants detail project expectations, such as scope of work and schedules, and the appropriate policies and legal provisions, including those required by state and federal laws and regulations.

P/T contracting procedures are regulated by Minnesota statute, MnDOT policies and procedures, and the Department of Administration. To enter into a P/T contract, you must first certify that no state agency employees are able and available to complete this work. While the guide does not detail all the required steps and forms for each contracting process, including the Certification Form, it is important to remember this point: If state agency employees are able and available to perform the requested work, those employees should perform the work, whether MnDOT employees or employees from another state agency. You may contract with another state agency through an Interagency Agreement (see Section 3). For the detailed steps for each contracting process and access to forms, visit <http://www.dot.state.mn.us/consult/internalresources.html>.

Points to Remember

- P/T contracts must be fully executed before the consultant can begin work.
- P/T contracts may be written for any dollar amount.
- P/T contracts result in the production of a report and/or the completion of a task.

- Contact Consultant Services for guidance.

Roles and Responsibilities

Many MnDOT staff members contribute to developing, executing, and managing a contract – P/T contract Project Managers, Consultant Coordinators, and Contract Administrators, to name a few. At a glance, responsibilities by role include those listed in the following table.

ROLE	RESPONSIBILITIES
CONSULTANT COORDINATOR	Establish and maintain consultant spending plan; approve the use of funding by signing off on the contract Requisition/Contract Process Start forms
CONTRACT ADMINISTRATOR	Act as a liaison between Project Managers and Consultant Services; develop and administer contracts; handle day-to-day details of the contracting process; monitor consultant performance; accept or reject services in the contract; certify each invoice for payment
PROJECT MANAGER	Identify funding; develop scope; monitor consultant’s performance and progress; sign progress reports; review billing statements; recommend acceptance or rejection of services; certify each invoice for payment
AUDIT	Conduct pre-award audits and final audits on P/T contracts
CONSULTANT SERVICES [Office of Project Management and Technical Support]	Develop and manage activities to improve contracting policies and procedures; provide contract administration services for specialty services; manage the signature processes and contract file for P/T contracts statewide; perform contract encumbering; pay consultant invoices; manage P/T Programs; manage the TTAA process; assist in conflict resolution; provide assistance to districts and offices on contract programs, contract review, selection methods, and the contracting process; complete contract closeouts
CONTRACT MANAGEMENT [Office of Chief Counsel]	Ensure that contract and contract administration processes comply with all policies and laws; review and approve all contracts; facilitate contract execution; offer assistance to Contract Administrators and Project Managers on legal issues; serve as a liaison between MnDOT, the Department of Administration, and the Attorney General’s Office
DEPARTMENT OF ADMINISTRATION	Set policies, procedures, standards, and guidelines for state agencies; review and approve contracts, as appropriate; ensure that state agencies comply with state statutes

ROLE	RESPONSIBILITIES
CONSULTANTS	Perform the services identified in the executed contract; manage subcontractors
SUBCONTRACTORS	Work with the prime consultant to perform the services for which they are contracted

All parties involved in the contracting process play a key role and often collaborate to make developing and executing a contract move as smoothly and quickly as possible. For example, Project Managers start the process by identifying consultant needs and budgeting for the project. They work with Contract Administrators in their district or office to discuss their contracting options and determine which contracting process best fits their needs. In turn, Contract Administrators rely on Project Managers to accurately describe project scope, evaluate consultant response, and manage consultant activities.

Funding

The Project Manager is responsible for identifying funding for the project early in the process. Funding may play a role in the selection method used (see Section 3), in steps that must be taken to execute a contract, such as diversity goals (see Section 5), and/or in language that must be included in the contract. Project Managers also should revisit funding throughout the contract’s life, but, particularly as a fiscal year nears the end. Some funding sources must meet defined criteria, such as expending funds by a certain date. The Project Manager is responsible for understanding all aspects of the funding for the project.

Points to Remember

- Collaboration plays an important role in successful contract development and execution.
- Consultant Services provides assistance to districts and offices on contract programs, selection methods, and contract development and execution.
- Contact Consultant Services for guidance.

CAATS

The Contracts Agreements Auditing Tracking System (CAATS) allows users to track all P/T contracts throughout their life cycles – from requesting a MnDOT contract number to completing contract closeout. CAATS interacts with a workflow system, which automates a number of signatures and approval processes, such as Certification Forms, contracts, and invoices. CAATS also includes the ability to track real-time approval dates using electronic signatures.

Points to Remember

- Consultant Services enters data into CAATS throughout the contracting process.
- CAATS allows users to view real-time status of P/T contract documents.
- Contact Consultant Services for guidance.

Timing

Identifying consultant needs early helps ensure that consultants are authorized to begin work on schedule. A well-defined scope helps Project Managers and Contract Administrators determine the most appropriate contracting method to use.

How long does it take to execute a contract? Plan for time spent upfront—defining needs; identifying funding; describing and documenting scope, deliverables, and schedule; and developing cost estimates. Depending on the project, it may take up to six months to determine needs and scope.

After you complete your project scope, the time required for the contracting process varies. The dollar amount of the contract impacts the timing: larger projects often require more steps and more time. In general, the time it takes for the contracting process after scope development ranges from two weeks to four months.

Points to Remember

- Start early to identify needs and determine scope.
- The time it takes for contract execution varies, depending on the contract amount and process.
- Contact Consultant Services for guidance.

Technical Terms

Throughout this guide, the terms “solicitation” and “consultant responses” are used in relation to various competitive selection methods. The following table shows the terms these words represent.

SOLICITATIONS/For the purposes of this guide, the following processes will be referred to as “solicitations”	CONSULTANT RESPONSE/For the purposes of this guide, the coinciding documents listed below will be referred to as “consultant response”
Informal Solicitation	Response
Formal RFP	Proposal
Qualification-Based Selection RFP	Proposal
Quick Call for Proposals	Proposal
Pre-Qualification Announcement	Letter of Interest

2. Professional/Technical (P/T) Programs

Consultant Services establishes and manages a number of P/T Programs to help facilitate the contracting process. Different types of programs allow for a non-competitive selection or a more streamlined, competitive selection.

Pre-Qualification Program

MnDOT's Pre-Qualification Program establishes lists of pre-qualified consultants by work type. Consultant Services manages and maintains the Pre-Qualification Program.

The Pre-Qualification Program is currently made up of 20 different work types. Examples include highway design, bridge inspection, traffic engineering, and subsurface utility engineering.

The Pre-Qualification Program is open on a continuous basis. Consultants may apply at any time by following work type submittal instructions within each work type. Consultant Services manages the approval process of the firms on the Pre-Qualification Program.

The Pre-Qualification Program offers three different selection methods based on the estimated contract amount. Consultants who are approved in the work types are eligible to enter into contracts for all three methods, if selected.

Quick Reference

The following table provides an at-a-glance description of the selection methods for the Pre-Qualification Program.

Direct Select Method	What projects qualify and when do I use it?	How much time does it take?
Pre-Qualification Program Direct Select	<ul style="list-style-type: none">• Direct select process• Based on the applicable work types and considerations such as workload, geographic location, project familiarity, special expertise, and approval for multiple work types• Negotiate cost with selected consultant• Use for projects ≤ \$175,000	4 – 6 weeks after scope development

Competitive Selection Method	What projects qualify and when do I use it?	How much time does it take?
Pre-Qualification Announcement	<ul style="list-style-type: none"> • Competitive selection process • Advertised to pre-qualified firms in the applicable work types • Evaluated on qualifications only • Negotiate cost with the successful responder • Use for projects \$175,001 - \$800,000 	3 months after scope development
Pre-Qualification RFP Two-Part Selection	<ul style="list-style-type: none"> • Competitive selection process • Advertised to pre-qualified firms in the applicable work types • Step 1: Pre-Qualification Announcement • Step 2: Pre-Qualification RFP • Evaluated on technical qualifications and cost • Use for projects > \$800,000 	3 – 4 months after scope development

Points to Remember

- The Pre-Qualification Program includes three different selection methods.
- Consultants on the list are considered minimally qualified.
- Consultants may apply for pre-qualification work types at any time but must meet all requirements before being awarded a contract.
- Contact Consultant Services for guidance.

Master Contract Programs

A Master Contract Program involves competitively selecting multiple consultants to provide services for an identified scope of work. Each selected consultant is issued a Master Contract. MnDOT generally establishes Master Contract Programs for high-demand areas with large volumes of work or for services that require fast turnaround. These programs help MnDOT react more quickly when faced with significant time, resource, or planning constraints. Current Master Contract Programs include, but are not limited to, services in the areas of Pre-Letting, Post-Letting, and Research.

MnDOT selects consultants for Master Contract Programs through solicitations. A Master Contract cannot exceed five years.

General Master Contract Process



After Master Contract execution, Work Order Contracts are issued, following the terms of the Master Contract.

General Work Order Contract Process



Consultant Services administers and manages Work Order Contracts in close coordination with other MnDOT districts and offices. Work Order Contracts need to follow the steps for certification, goal setting, clearance, the Taxpayers’ Transportation Accountability Act (TTAA)—discussed in Section 4 of this guide—and other specified requirements as applicable.

Quick Reference

The following table provides an at-a-glance description of the selection methods for the Master Contract Programs.

Direct Select Method	What projects qualify and when do I use it?	How much time does it take?
Work Order Contract	<ul style="list-style-type: none"> • Projects must be for the scope of work identified in the Master Contract. • Restrictions may vary based on individual Master Contract Program criteria. 	4 – 6 weeks after scope development

Points to Remember

- MnDOT competitively selects consultants for Master Contract Programs through a solicitation process.
- Each selected firm holds a Master Contract.
- Work Order Contracts are issued under the terms of the Master Contract.
- Contact Consultant Services for guidance.

Certified List Programs

Certified List Programs are used for more specialized work. The consultants selected are considered well qualified for the identified work, rather than minimally qualified, as under the Pre-Qualification Program. Current Certified List Programs include the following type of services: Construction Contract Dispute Resolution, Data Practices, Maintenance, and Transportation Research Assistance.

As with Master Contract Programs, Consultant Services issues a solicitation to establish Certified List Programs.

General Certified List Program Process



Once the Certified List is established, consultants may be directly selected for work that does not exceed \$100,000 per project.

General Certified List Contract Process



Quick Reference

The following table provides an at-a-glance description of the selection methods for the Certified List Programs.

Direct Select Method	What projects qualify and when do I use it?	How much time does it take?
Certified List Direct Select	<ul style="list-style-type: none"> • Projects must be for the scope of work identified in the Certified List Program. • Restrictions may vary based on individual Certified List Program criteria. • Use for projects ≤ \$100,000. 	4 – 6 weeks after scope development

Points to Remember

- MnDOT competitively selects firms for Certified List Programs through a solicitation process.
- Contracts for projects may not exceed \$100,000 per project.
- Certified List Programs are generally used for more specialized work.
- Certified lists are established for a defined time period not to exceed five years.
- Contact Consultant Services for guidance.

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3. Contract Selection Methods

In this section, you will learn about the different options available to select a consultant for your project. The previous section looked at MnDOT P/T Programs, but not all projects fit within a P/T Program. Even if they do fit within a program, another selection method may be faster or better suited to the project needs.

The Basics

Some P/T contract methods allow you to contract directly with a consultant. These are known as direct select methods. Other contracting methods, known as competitive selection methods, require a process that involves requesting and evaluating responses from consultants. It helps to understand the basics of each method as you determine the best option for your project. A consultant may be directly selected in the following circumstances:

- As part of a P/T Program, such as a Master Contract Program, the Pre-Qualification Program, or a Certified List Program (see Section 2)
- For contracts that do not exceed a certain dollar amount
- For contracts with state agencies
- In rare cases, where there is only one reasonable source of services

Direct Select

The following is a list of direct select contracting methods, excluding those that are part of P/T Programs.

- Annual Plan Agreement, \$5,000 or less
- Direct Select Contract, \$5,000 or less
- Equity Select Contract, \$100,000 or less
- Interagency Agreement
- Joint Powers Agreement
- Single Source Contract

Competitive Selection

The following are competitive selection methods, excluding those that are part of P/T Programs:

- Informal Solicitation
- Request for Proposal – Formal
- Quick Call for Proposals

Quick Reference

The following table provides an at-a-glance description of the direct select methods that are outside of MnDOT P/T Programs.

Direct Select Method	What projects qualify and when do I use it?	How much time does it take?
Annual Plan Agreement	<ul style="list-style-type: none"> • Projects must fall into one of five categories: trainers and speakers, expert witnesses, technical assistance (computer training, audio/visual assistance, panels of technical experts), title searches, and translators/interpreters • Cap of \$5,000 per year, per consultant 	2–4 weeks after scope development
Direct Select Contract	<ul style="list-style-type: none"> • Use for any type of services • Value must never exceed \$5,000 per consultant, per contract 	2–4 weeks after scope development
Equity Select Contract	<ul style="list-style-type: none"> • Use ONLY for consultants who are certified as a Targeted Group Business (TGB), Economically Disadvantaged (ED), or who are Veteran Owners • Contracts must be state-funded contracts • Value must never exceed \$100,000 per consultant, per contract 	2–4 weeks after scope development
Interagency Agreement	<ul style="list-style-type: none"> • Use ONLY between state agencies, including Minnesota State Colleges and Universities • Any dollar amount 	2–4 weeks after scope development
Joint Powers Agreement	<ul style="list-style-type: none"> • Use with other public agencies, including cities, counties, educational institutions (excluding Minnesota State Colleges and Universities), or another state • Usually used when one party is selected to exercise the power that all parties share or when one party is selected to exercise its powers on behalf of the other party or parties • Any dollar amount 	4–6 weeks after scope development
Single Source Contract	<ul style="list-style-type: none"> • Very limited use in certain limited circumstances • Any dollar amount • Requires written justification • Contract Management and Department of Administration must agree that single source exception meets statutory requirements 	4–6 weeks after scope development

Quick Reference

The following table provides an at-a-glance description of the competitive selection methods that are outside of MnDOT P/T Programs.

Competitive Selection Method	What projects qualify and when do I use it?	How much time does it take?
Informal Solicitation	<ul style="list-style-type: none"> • Informal Solicitations are posted on the Consultant Services website to request responses from consultants • Use for projects with estimated costs of less than \$100,000, that do not qualify for a direct select method or fit under a P/T Program 	3 months after scope development
RFP Formal	<ul style="list-style-type: none"> • Formal solicitations are posted on the Consultant Services website to request responses from consultants • Use for projects with estimated costs of more than \$100,000, that do not qualify for a direct select method or fit under a P/T Program 	3-4 months after scope development
RFP Qualification-Based Selection (QBS)	<ul style="list-style-type: none"> • Qualification-Based Selection is used for federal-aid architecture/engineering contracts related to a construction project • Formal solicitations are posted on the Consultant Services website to request responses from consultants • Use for projects of any amount (usually only when federal funds are used) that do not qualify for a direct select method or fit under a P/T Program 	3-4 months after scope development
Quick Call for Proposals	<ul style="list-style-type: none"> • Quick Call for Proposals offers a streamlined process to request responses from a minimum of three firms and a streamlined selection process • Use for projects with estimated costs between \$5,001 and \$100,000 that do not qualify for a direct selection method or fit as part of a P/T Program • Two processes based on dollar value: <ul style="list-style-type: none"> \$5,001–\$25,000 \$25,000–\$100,000 	4-8 weeks after scope development

Points to Remember

- There are two types of contract selection methods: Direct select and competitive selection.
- Each method has its own limitations and requirements that must be met.
- Contact Consultant Services for guidance.

Process Overview

Whether using a direct select or competitive selection method, defining the project scope and estimating costs are important first steps. If your project won't work as part of a P/T Program, your scope and estimated cost will help you determine which of the direct select or competitive selection methods in this section might work.

Some of the same steps apply to both direct select and competitive selection methods, but the methods also differ in a number of ways. Competitive selection methods include tasks related to requesting responses from consultants and holding a selection committee to evaluate those responses.

Direct Select Process: Steps and Limitations

In general, the direct select method involves the following key steps.

Direct Select Process



Depending on the direct select process, other important limitations apply:

- For Annual Plan Agreements, no consultant can receive more than \$5,000 in Annual Plan Agreements per state fiscal year (July–June).
- For Direct Select Contracts, the contract amount may never exceed \$5,000.
- For Equity Select Contracts, the consultant must be a certified Targeted Group, Economically Disadvantaged, or a Veteran-Owned Business, and the contract amount may never exceed \$100,000.
- Interagency Agreements may not be used for the University of Minnesota or the Metropolitan Council.
- Joint Powers Agreements are used for agencies outside of the state system, including local governments, the University of Minnesota, and the Metropolitan Council.
- For Single Source Contracts, you must provide written justification and receive approval.

Limitations for P/T Program direct select include the following:

- For Certified List Contracts, the consultant must be approved on the Certified List, and the contract amount may never exceed \$100,000.
- For Pre-Qualification Direct Select Contracts, the consultant must be approved on the Pre-Qualification Program and the contract amount may never exceed \$175,000.
- For Work Order Contracts, the consultant must have an executed Master Contract in place before executing a Work Order Contract.

Competitive Selection Processes: Solicitation and Evaluation

Although the competitive selection process varies depending on both the method and the estimated contract amount, the same general process applies:

Competitive Selection Process



Highlights of each process include:

Quick Call for Proposals

- Directly notify a minimum of three firms
- Advertising time: minimum of 5 business days
- Streamlined selection process

Informal Solicitation

- Advertise on the Consultant Services website
- Advertising time: minimum of 10 business days

RFP – Formal

- Advertise on the Consultant Services website
- Advertising time: minimum of 15 business days

RFP – QBS

- Advertise on the Consultant Services website
- Advertising time: minimum of 15 business days

While price must be one of the evaluation criteria for a best value selection, the QBS process focuses solely on technical qualifications and experience; price is not taken into consideration in making the consultant selection. Section 6 of this guide (Consultant Selection) includes more information about best value and QBS selection processes.

Points to Remember

- Developing the scope of work and estimating project costs are important first steps for all competitive selection methods.
- Competitive selection methods include steps to request and evaluate responses from consultants.
- Selection committees are an important part of all competitive selection methods.
- Contact Consultant Services for guidance.

Choices: Factors to Consider

P/T Programs. Direct select methods. Competitive selection methods. Direct select methods and competitive selection methods within P/T Programs.

What to choose?

P/T Contract Programs and contracting methods offer many options. Sometimes, the decision may be easy. Other times, you may find that you have multiple ways to contract with a consultant and you'll need to decide which program or method works the best for your situation. Consultant Services plays an important role in supporting Contract Administrators and Project Managers in making these decisions.

Helpful tips:

1. Understand all the options – from P/T Programs to the direct select and competitive selection methods. It helps to know that direct select methods are more limited for projects that cost more than \$5,000:
 - If your project qualifies for one or more of MnDOT's P/T Programs and costs \$175,000 or less, you may choose a direct select method through that program.
 - If your project costs \$100,000 or less and you hire a certified Targeted Group, Economically Disadvantaged, or Veteran-Owned Business, you may choose the equity select method.
 - If you are hiring a state agency as your consultant, you may choose an Interagency Agreement, no matter the estimated cost.
 - If you are hiring a public agency such as the University of Minnesota, Metropolitan Council, or a city as your consultant, you may choose a Joint Powers Agreement, no matter the estimated cost.
 - If you can justify that there is only one reasonably available source of services, you may choose a Single Source Contract.
2. With that understanding, list all the possibilities for your project. Be sure to see if it qualifies for any P/T Program.
3. As you are considering your options, don't forget to look at the amount of time it takes for each method. Even in a simple case, it might make a difference: You may follow the Direct Select Contract method to hire a consultant for training with an estimated cost of \$3,500. However, you also may be able to follow the Annual Plan Agreement process, which often takes less time and does not carry as many requirements of the consultant (for example, insurance coverage or intellectual property requirements, etc.).

Examples in Action

The following examples help illustrate what to consider when determining which P/T Programs and contract selection methods apply to your project and in evaluating which of those options to choose.

- You need to hire a consultant for environmental documentation, which you estimate will cost \$80,000. Your options include a Pre-Qualification Program direct select, an Informal Solicitation, or a Quick Call for Proposals. In this case, you will save the most time by using the Pre-Qualification Program direct select option.

- You have a project with an estimated cost of \$20,000 for training services. There is no P/T Program in place for this type of work, so your options include an Interagency Agreement, an Equity Select Contract, a Quick Call for Proposals, or an Informal Solicitation. Think first about using an Interagency Agreement if another state agency or a Minnesota State College and Universities institution can provide the training. This offers the fastest option and keeps state money within the state system. If an Interagency Agreement doesn't work, check the certified Targeted Group, Economically Disadvantaged, or Veteran-Owned Business lists for a firm. If you find a firm with qualifications for your training project, you can direct select them and process an Equity Select contract. Next, consider a Quick Call for Proposals, which allows you to solicit responses from at least three consultants. With a shorter solicitation period, a limited number of responses, and no face-to-face committee meeting, the Quick Call for Proposals offers significant time savings compared to an Informal Solicitation. If you want the widest range of consultant response possible, and time allows, the Informal Solicitation provides the best choice because it advertises the solicitation for any potential consultant who chooses to respond.
- Your project involves significant highway design work that is estimated to cost just under \$1 million. Your available options include selection from the Pre-Qualification Program, a Formal RFP, or a GEC Work Order Contract. If you can guarantee the contract amount will be at, or under, \$1 million, a GEC Work Order Contract will save the most time. If the GEC Program will not work because project costs may rise or there are no available consultants for the project, a Formal RFP will be your next option. With projects that are estimated to cost more than \$800,000, the Pre-Qualification Program takes longer than a Formal RFP, so the Formal RFP offers overall time savings.

Your Resource

In addition to the three steps mentioned above, when in doubt, check with Consultant Services. Consultant Services is responsible for developing and maintaining P/T Programs, managing direct select processes, and ensuring appropriate execution of competitive selection processes. Consultant Services is always available to help determine the P/T contract method that best fits your project and to guide Contract Administrators through the contracting process.

Points to Remember

- A wide variety of P/T Programs, direct select methods, and competitive selection methods offer you many contracting options.
- Understanding each of these options can help you make the best choice for your project.
- Make a list of all the options that apply to your project, including any P/T Programs.
- Contact Consultant Services for guidance.

4. Scope of Work

This section takes a closer look at project scoping and offers guidance on writing a scope of work to include as part of a solicitation and in contracts. Scoping is one of the most important steps in clearly defining the project and developing accurate cost estimates, which will allow you to identify your options for P/T contract selection methods.

In addition, scoping and cost estimates play a major role in determining compliance with the Taxpayers Transportation Accountability Act (TTAA). This section provides information about how the TTAA may impact your project and the steps you need to take.

Scope Development

Scoping a project starts with identifying your needs. A good scope of work documents the following key elements:

- Project description/overview
- Project goals and objectives
- Project tasks
- MnDOT and consultant responsibilities
- Key milestones
- Interim and final deliverables
- Project schedule with deadlines and deliverable due dates

Project Managers are responsible for developing a project scope. MnDOT has established a scoping process and scoping tools, which are available at www.dot.state.mn.us/pm/scope.html. The MnDOT scoping process emphasizes early, comprehensive, and well-documented scoping of a project.

The scope of work may change during the project planning process. The Project Manager is responsible for sharing the scope of work with the Contract Administrator with enough time to complete the contracting process before the project's intended start date. Remember: Work may never begin without a fully executed contract.

When should conversations begin? Because the cost estimate often drives the available contracting options, early and frequent conversations between Project Managers and Contract Administrators can help ensure timely execution.

While smaller projects may not require all steps in the MnDOT scoping process, the same principles always apply: A well-documented scope helps in determining costs and in evaluating consultants.

The scope of work in a contract includes the most comprehensive description of the project as possible with detailed answers to the “who, what, where, when, why, and how” of the project. The scope of work documents the deliverables, tasks, responsibilities, and deadlines associated with the project. While it may be included directly in the body of the contract, it is most often attached to the contract as an exhibit.

Points to Remember

- As part of the project planning process, scoping starts early with identifying needs.
- Project Managers are responsible for scoping, following the MnDOT scoping process as applicable, and for delivering a comprehensive scope of work to include in the contract.
- The contract’s scope of work includes a complete project description and documents deliverables, tasks, responsibilities, and deadlines associated with the project.
- Contact Consultant Services for guidance.

Scope Writing

The scope of work plays a critical role in contract development, which makes writing a good scope of work a vital part of the contract process. Keep in mind the following tips when writing the scope of work for your solicitations and your contracts.

Language and Format Tips	Why is it important?	What does an example look like?
Use “will” or “must” instead of “shall” or “may.”	Shall is often misused and can create ambiguity; will or must expresses an obligation.	Use “Consultant will prepare a final report based on test results” rather than “Consultant shall/may prepare a final report based on test results.”
Use declarative sentences.	Declarative sentences offer greater clarity of action.	Use “The test includes at least five soil samples” rather than “You may provide soil samples.”
Avoid passive voice.	Passive voice makes it less clear who will take the action.	Use “Consultant will develop a workshop and webinar to share study results” rather than “A workshop and webinar is to be developed to share study results.”
Use outlined lists.	Bulleted or non-outlined sections within a scope of work make it harder to follow, and harder to refer back to, when discussing and/or amending a scope of work.	Use standard outlining format, such as: “Primary study objectives are as follows: <ol style="list-style-type: none"> 1. Provide current tracking information for transportation performance measures. 2. Determine current opinions on multiple areas of interest to State. Examples will include: <ol style="list-style-type: none"> a. Perception of trust in State’s <i>ability</i> to provide selected services b. Awareness and behavior regarding 511mn.org as a reliable source of road and travel condition information.”

Language and Format Tips (CONT.)	Why is it important?	What does an example look like?
Avoid legalese or technical jargon.	Clear language increases understanding by all parties.	Use “Consultants must follow the requirements listed above” rather than “The aforementioned stipulations should be followed.”
Avoid ambiguity.	Be as precise as possible in describing your expectations.	Use “Work must be completed by a certified planning engineer,” rather than “The project requires qualified engineering expertise.”
Use short sentences and when appropriate, lists.	Short sentences help improve readability and understanding, and for contract drafting, sentences shorter than 30 words work best; you also may want to consider listing items.	<p>“For this task, the University will</p> <ol style="list-style-type: none"> 1. Participate in planning meetings 2. Finalize contracts and any required deposits with the facilities 3. Coordinate logistics 4. Prepare budget documents 5. Develop registration forms 6. Manage the registration system” <p>is clearer and reads easier than “For this task, the University will participate in planning meetings, finalize contracts and any required deposits with the facilities, coordinate logistics, prepare budget documents, develop registration forms, and manage the registration system.”</p>
Spell out acronyms the first time they appear.	By spelling out acronyms you can reduce any confusion about what the acronym means.	“Consultant must follow Federal Highway Administration (FHWA) guidelines.”
Eliminate “gray” areas.	Well-defined scopes help in avoiding increased project costs.	Use “Consultant will prepare the curriculum and deliver four one-hour workshops on roundabout construction” rather than “Prepare workshops.”
Say it once.	Repeating statements can lead to different interpretations and leave significant room for error.	When saying “Consultant must complete all work by April 5, 2018” there is no need to add “April 5, 2018, is the project deadline.”
State the obvious.	Be sure to include all information, even if it seems obvious.	“Consultant must notify MnDOT Project Manager of any project delays.”

When documenting deliverables, keep in mind the following points:

- Define and clearly state any standards that apply. For example:
“Contractor must prepare Final Bridge Plan sheets in accordance with the following State and American Association of State Highway and Transportation Officials (AASHTO) manuals, standards, and documents:
 - a. *MnDOT Load and Resistance Factor Design (LRFD) Bridge Design Manual*
 - b. *AASHTO LRFD Bridge Design Specifications, 7th Edition*
 - c. *MnDOT Bridge Details Manual (Parts I and II)*
 - d. *MnDOT Standard Specifications for Highway Construction, 2016 Edition*”
- When documenting delivery of interim or final deliverables, clearly state quantity requirements and submittal format requirements. For example: “Contractor must provide five copies of the final report, one electronic version on CD, along with four printed and bound copies.”
- Include deliverable due dates; they are key in keeping your project on schedule.

Points to Remember

- Writing a good scope of work is a vital part of a solicitation and contract.
- Good scopes use clear, easily understandable language and clearly spell out deliverables, including format, quantity requirements, and due dates.
- Contact Consultant Services for guidance.

Taxpayers’ Transportation Accountability Act (TTAA)

Effective Aug. 1, 2008, Minnesota State Statutes §161.3203, the Taxpayers’ Transportation Accountability Act (TTAA), requires that MnDOT perform an estimate of costs to complete a project in-house when considering a consultant contract greater than \$100,000 for certain work types.

MnDOT submits an annual report on TTAA to the Minnesota Legislature, which includes a spreadsheet with contract and estimate information.

Overview

Projects in certain work types, with estimated costs greater than \$100,000, must comply with TTAA, which requires completion of two estimates:

- Estimate A: Estimated costs to perform the work in-house
- Estimate B: Estimated cost for the consultant to perform the work, plus the cost for MnDOT to monitor the consultant’s work

The statute does not require Estimate A and Estimate B for all work types. The MnDOT TTAA Privatization Contract Form lists most – but not all – work types that require an in-house estimate for contracts greater than \$100,000.

If the statute does not mention a specific work type as exempt, it is considered covered by the law and requires A and B Estimates, whether or not it appears on the TTAA Privatization Contract Form. Wondering if your project work type is exempt? Contact Consultant Services with questions about whether you must use the TTAA process.

Estimate A Preparation

Before requesting a consultant contract through the Requisition or Contract Process Start forms, the Project Manager uses the TTAA Privatization Contract Form (an Excel spreadsheet) to complete an Estimate A for any contract close to or greater than \$100,000.

The form details the required activities by employee classification, and the number of anticipated hours to complete those activities. Visit the Consultant Services website at <http://www.dot.state.mn.us/consult/index.html> and select the “Contract Documents” tab to download the TTAA Privatization Contract Form.

After completing and submitting the TTAA Privatization Contract Form, the Contract Administrator and Project Manager can move forward with the contracting process, including consultant selection, negotiations, and final consultant cost determination.

Estimate B Preparation

The Consultant Services Section reviews the calculations in the final consultant cost estimate, adds the MnDOT consultant monitoring costs to generate Estimate B, and compares Estimate A with Estimate B. You will receive notification about the conclusions of the comparison.

TTAA Determination

For contracts with estimated costs between \$100,000 and \$250,000, MnDOT may contract for services regardless of which estimate is lower.

For contracts with estimated costs of more than \$250,000, Estimate A must be greater than Estimate B to enter into a contract.

If the final contract value is greater than \$250,000, the law requires the Commissioner of Transportation to make certain determinations before entering into a contract. The Commissioner’s Determination document details those determinations. The Commissioner or Commissioner’s designee must sign the Commissioner’s Determination document before contract execution can take place.

Points to Remember

- For projects that qualify, a TTAA analysis must take place.
- TTAA projects require two estimates: An estimate of costs to complete the work internally (Estimate A) and the final consultant cost plus the MnDOT cost to monitor the consultant’s work (Estimate B).
- The Consultant Services Section compares the two estimated costs and notifies you if you can proceed with the contracting process.
- Contact Consultant Services for guidance.

5. Diversity Goals

MnDOT is committed to ensuring equal opportunity for all businesses and personnel on projects, including when contracting with consultants. MnDOT encourages Project Managers and Contract Administrators to take equity and diversity options into account for every consultant project, no matter the size or scope.

To support its commitment, MnDOT has a number of programs that impact consultant contracting. Your project may require that you follow one of these programs. This section describes those programs and offers an overview of steps and responsibilities.

Disadvantaged Business Enterprise Program

The federal government established the Disadvantaged Business Enterprise (DBE) Program to generate opportunities for women- and minority-owned businesses to participate in contracts financed, in whole or in part, with federal funding from the U.S. Department of Transportation.

As a condition of receiving federal funding, the Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) require MnDOT to establish an annual statewide goal for DBE participation on federally funded contracts over a three-year period. The Federal Aviation Administration does not include this requirement. As a result, and based on the availability of ready, willing, and able firms, MnDOT targets a percentage of federal contracting dollars for DBEs. For example, MnDOT's annual goal for 2016–2018 calls for DBEs to perform 11.7 percent of the sum of all FHWA-funded contracts and 7.13 percent of the sum of all FTA-funded contracts.

MnDOT requires consultants with contracts that include a DBE participation goal do one of the following:

- Propose participation of certified DBE firms on the contract to meet the contract goal, or
- Demonstrate that a good faith effort was made to obtain DBE participation

Impact on Contract

The MnDOT Office of Civil Rights administers the DBE Program and sets goals for DBE participation on applicable MnDOT contracts. The DBE Program impacts all projects that use federal funds, but MnDOT does not require that *all* federally funded projects include a DBE percentage goal.

MnDOT often assigns race/gender-neutral goals to smaller or more specialized federally funded projects, which means that, while MnDOT encourages DBE participation, it does not *require* it. MnDOT does still monitor race/gender-neutral contracts for DBE participation.

When you request consultant responses for a project that includes a DBE goal, whether a percentage or race/gender neutral, your solicitation must document the goal to be met by using a certified DBE firm on the project. In addition, a DBE Special Provisions Packet, including a "Bidder's List," must be posted with the solicitation. The selected consultant will be required to complete the packet and detail:

- All subcontractors that were contacted to participate on the project

- The quotes that subcontractors submitted
- The firms that are certified DBE companies and the firms that are not certified DBE companies to demonstrate the efforts that the selected consultant made to meet the DBE goal

While only the selected consultant will complete the DBE Special Provisions Packet, all consultants receive it in advance to help them understand their DBE obligations.

For projects with a DBE goal, whether a percentage or race/gender-neutral, the contract will include a Contractor Payment Form as an exhibit. Throughout the course of the contract, the consultant must use the Contractor Payment Form to track payments to all subcontractors, including any certified DBE firms participating on the project.

DBE Process

The DBE process starts early: The Office of Civil Rights must review all contracts that are funded in whole or in part with federal funds. Please note that while you do not need to follow the DBE process if your contract is not federally funded, MnDOT highly encourages the use of DBE firms on projects whenever possible.

For contracts that require MnDOT to solicit consultant responses, Contract Administrators must work through Consultant Services to obtain a DBE participation goal BEFORE advertising the solicitation. The Office of Civil Rights will review the project and assign either a DBE percentage or DBE race/gender-neutral participation goal. Contract Administrators must notify Consultant Services of the assigned DBE goal when they submit their solicitation to advertise because Consultant Services must post the DBE Special Provisions Packet online with the solicitation. In the case of a Quick Call for Proposals, the Contract Administrator must distribute the packet to the potential responders.

For direct select contracts, the Contract Administrator must work through Consultant Services to obtain a DBE participation goal from the Office of Civil Rights after selecting a consultant and requesting a cost estimate but BEFORE processing the contract for signatures.

As a reminder, the DBE process applies to all federally funded projects, no matter their size, scope, or selection method. The Office of Civil Rights assigns either a DBE goal or a race/gender-neutral goal. Here’s an overview of the process:

DBE Goal-Setting Process for Contracts Funded in Whole or in Part with Federal Funds



If a DBE percentage goal has been assigned to your project, you must receive clearance from the Office of Civil Rights after selecting a consultant to proceed with the contract. Here’s an overview of the process on contracts for which the Office of Civil Rights assigns a percentage DBE goal:

DBE Clearance Process for Contracts with a Percentage Goal Assigned



Contracts with race/gender-neutral goals also require the Contract Administrator to take certain steps. Here's an overview of the process on contracts for which the Office of Civil Rights assigns a race/gender-neutral goal.

DBE Clearance Process for Contracts with a Race/Gender-Neutral Goal Assigned



Points to Remember

- The DBE Program generates opportunities for women- and minority-owned businesses to participate in contracts financed, in whole or in part, with federal funding.
- The Office of Civil Rights must review all contracts that are funded with federal funds and sets DBE percentage or race/gender-neutral goals for those contracts.
- Contact Consultant Services for guidance.

Targeted Group Business and Veteran-Owned Small Business Programs

MnDOT's Targeted Group Business (TGB) Program and Veteran-Owned Small Business (VET) Program also support diversity in consultant hiring. TGB and VET programs apply only to competitive selection processes, and only when a contract is solely funded with state funding. MnDOT's Office of Civil Rights establishes TGB and VET participation goals for applicable projects.

The TGB Program provides certified Minnesota-based women- and minority-owned small businesses increased access in competing for state contracting opportunities. The VET Program does the same for veteran-owned small businesses, or Minnesota-based small business with at least 51 percent ownership by veterans. The Department of Administration maintains a directory of certified TGB and VET firms. In addition, the U.S. Department of Veteran's Affairs lists certified VET firms. VET firms may be listed in one or both directories.

MnDOT requires consultants with contracts that include TGB and/or VET participation goals to do one of the following:

- Propose participation of certified TGB and/or VET firms on the contract to meet the contract goal or
- Demonstrate that a good faith effort was made to obtain TGB and/or VET participation

Certified TGB and/or VET firms that submit a response to a solicitation receive a preference of up to **12** percent during evaluation of their response. To request this preference, consultants must complete and submit the TGB/VET preference form as part of their response no later than the specified deadline for consultant responses. This preference applies only to the prime consultant.

TGB/VET Process

The TGB/VET Program applies to contracts that are state funded. Please note that if a contract includes both federal AND state funds, the federal process always supersedes the state process, and, in those cases, the DBE process would apply.

MnDOT highly encourages the use of TGB and/or VET firms whenever possible.

The TGB/VET process starts early. For state-funded contracts that require MnDOT to solicit responses, Contract Administrators must work through Consultant Services to obtain TGB and VET participation goals BEFORE advertising the solicitation. The Office of Civil Rights will review the project and assign TGB and VET participation goals. Contract Administrators must notify Consultant Services of the assigned TGB and/or VET goals when they submit their solicitation to advertise because Consultant Services must post a TGB/VET Special Provisions packet online with the solicitation. In the case of a Quick Call for Proposals, the Contract Administrator must distribute the packet to the potential responders.

When you request consultant responses for a project that includes a TGB and/or VET goal, your solicitation must document the goal to be met by using a certified TGB and/or VET firm on the project. In addition, a TGB/VET Special Provisions Packet, including a "Bidder's List," must be posted with the solicitation. The selected consultant will be required to complete the packet and detail:

- All subcontractors that were contacted to participate on the project
- The quotes that the subcontractors submitted
- The firms that are certified TGB or VET companies and the firms that are not certified TGB or VET to demonstrate the efforts that the selected consultant made to meet the TGB and/or VET goal

While only the selected consultant will complete the TGB/VET Special Provisions Packet, all consultants receive it in advance to help them understand their TGB and/or VET obligations.

As a reminder, the TGB/VET process applies to all state-funded competitive selection projects, no matter their size or scope. The Office of Civil Rights assigns a TGB and a VET goal. Here's an overview of the process:

TGB/VET Goal-Setting Process for State-Funded Solicitations



If a TGB and/or VET goal has been assigned to your project, you must receive clearance from the Office of Civil Rights after selecting a consultant to proceed with the contract. Here's an overview of the process for contracts where the Office of Civil Rights assigns a TGB and/or VET goal:

TGB/VET Clearance Process for Contracts with a TGB and/or VET Goal Assigned



Points to Remember

- Unlike the DBE Program, TGB and VET Programs apply only to competitive selection processes when a contract is solely funded with state funding.
- The TGB Program provides certified Minnesota-based women- and minority-owned small businesses increased access in competing for state contracting opportunities. The VET Program does the same for veteran-owned small businesses.
- While you do not need to follow the TGB/VET process if your contract is a direct select or is federally funded, MnDOT highly encourages the use of TGB and VET firms whenever possible.
- Contact Consultant Services for guidance.

6. Consultant Selection (Competitive Selection Process)

This section looks at the selection process for contracts that must use competitive selection methods. These include:

- Formal Requests for Proposals (RFP)
- Informal Solicitations
- Quick Call for Proposals
- Pre-Qualification Program Contracts that are more than \$100,000
- Qualification-Based Selection (QBS) Solicitations

Overview

Competitive selection processes offer consultants the opportunity to share their qualifications and individual approach to a specific project. At the same time, these processes offer MnDOT the opportunity to compare consultant qualifications, approach, and, in some cases, value with the goal of selecting a consultant that best meets the project needs.

The MnDOT consultant selection process serves several important purposes: It helps ensure fairness in selection of consultants, supports greater transparency and accountability, promotes quality, and improves consistency in evaluation and decision making.

For P/T contracts, MnDOT uses three different ways for selection committees to evaluate consultant responses:

Best Value Selection

The state of Minnesota's **primary** method for selecting P/T consultants is the best value selection process. Executive Order 05-07 requires state agencies to make price "of significant importance" when conducting a best value selection. The best value process takes into consideration both technical qualifications and cost as factors in selection.

Qualification-Based Selection

On a limited basis, MnDOT may use the Qualification-Based Selection (QBS) process. For P/T contracts, the use of a QBS process does not happen often. To be eligible for a QBS process, a contract must meet the following criteria:

- The contract is funded in whole, or in part, with Federal Highway Administration (FHWA) funds. At its discretion, MnDOT may request approval to use the QBS process for state-funded projects.
- The contract must be for work that is design- and engineering-related services of an architectural or engineering nature.
- The contract must be for work tied to a construction project.

QBS focuses on technical qualifications and experience only; price is not taken into consideration in making the consultant selection. After scoring and ranking responses, MnDOT begins negotiations with the top-ranked consultant. MnDOT must determine that the final negotiated price is fair and reasonable. If MnDOT and the consultant cannot agree on price or terms in a reasonable time period, MnDOT may move to the next-highest-ranked consultant and begin negotiations or cancel the solicitation.

Pre-Qualification Program (Projects More Than \$100,000)

For Pre-Qualification Program projects with estimated costs of more than \$100,000, the selection process is very similar to the QBS process. Selection at this level focuses solely on technical qualifications and experience. No matter the dollar amount or work type, price is not taken into consideration in making the consultant selection. After scoring and ranking responses, MnDOT begins negotiations with the top-ranked consultant. MnDOT must determine that the final negotiated price is fair and reasonable. If MnDOT and the consultant cannot agree on price or terms in a reasonable time period, MnDOT may move to the next-highest-ranked consultant and begin negotiations or cancel the solicitation.

Points to Remember

- The MnDOT consultant selection process helps ensure fairness in selection of consultants, supports greater transparency and accountability, promotes quality, and improves consistency in evaluation and decision-making.
- Best value emphasizes cost as an evaluation criteria, while QBS and the Pre-Qualification Program (for projects estimated to cost more than \$100,000) focus on only technical qualifications and experience.

- The FHWA requires use of QBS for contracts that are design- and engineering-related services of an architectural or engineering nature, are tied to a construction project, and are receiving federal funds.
- Contact Consultant Services for guidance.

Competitive Selection Process

The competitive selection process starts with development of a solicitation document and continues through consultant debriefing. Incorporating the following best practices can help make the process of selecting a consultant for your project go more smoothly. In most cases, Contract Administrators are responsible for managing the solicitation development and selection committee processes.

Solicitation Document Development

When you prepare your solicitation document, keep in mind the following key points:

- After posting the solicitation, there should be only one point of contact for questions and communication. In most if not all cases, the Contract Administrator serves as the point of contact.
- Typically, the Project Manager develops the solicitation content, scope of work, and scoring criteria.
- For contracts with estimated costs of more than \$800,000, the Contract Administrator must facilitate a meeting with the approved selection committee members to review the solicitation document before it gets posted for responses. Selection committee members must agree on solicitation content, scope, and the scoring criteria. In addition, Consultant Services must review and approve the solicitation document before certification.
- For engineering-related contracts, include a Quality Management Plan (QMP) component in the solicitation content and selection criteria areas. The consultant develops the QMP, its proposed plan for managing the quality of its work including checks and balances, review of internal deliverables, and other quality-related responsibilities.
- Limit the Pre-Qualification responses to 5–20 pages.

Selection Committee Member Selection and Meeting Preparation

For most projects, you will form your selection committee during the solicitation posting period. However, for projects with estimated costs of more than \$800,000, you need to form your selection committee earlier, because committee members must review and approve the solicitation before it can be posted.

In selecting your committee, keep in mind the following guidelines:

- One committee member must be on the MnDOT Manager’s Plan. Please note that not ALL managers and supervisors are on the Manager’s Plan; contact Consultant Services with questions.
- No direct reports may serve on the committee.
- No more than 50 percent of committee members may come from one office.
- Limit the number of members to three to five.
- Send the Selection Committee Approval of Committee Memo to Consultant Services.

Once you receive notification that your selection committee has been approved and your solicitation has been posted, schedule the Selection Committee Meeting. Allow at least one to two weeks for response review. Scheduling your meeting as early as possible will help avoid scheduling conflicts and a lengthy gap between receipt of the consultant responses and the meeting.

After the solicitation due date, you will first need to review the conflict of interest form from each responder and, before proceeding, contact Contract Management if a responder indicates a conflict may exist.

Next, you will need to prepare and/or distribute the following materials to the selection committee in advance of the meeting:

- Selection Committee Evaluation Team Member Agreement
- Solicitation Rating Form (one for each firm that responded)
- Each consultant response
- All related solicitation documents, including the original solicitation document, any questions and answers associated with the posting, and solicitation addendums, as applicable
- Meeting agenda

Contract Administrators **do not** distribute or reveal cost information to selection committee members before the meeting.

Remind selection committee members that they need to independently review the responses and complete their rating forms before the selection committee meeting. Selection committee members cannot participate in the meeting if they do not complete their initial review and evaluation before the meeting. They also cannot discuss the consultant responses, their scores, or their rankings with anyone before the meeting. They must make their evaluations based on the consultant responses and avoid bias and personal opinions.

Selection committee members review each consultant response; score each response based on the solicitation rating criteria, including clear and detailed comments for each scoring criteria area; and rank consultants according to total scores. The highest score receives the top ranking.

Selection Committee Meeting

The Contract Administrator facilitates the selection committee meeting and reminds committee members not to share their scores or rankings during the meeting. Selection committee members discuss each consultant response, specifically to point out any strengths and weaknesses that they documented during their independent review. During this discussion, the Contract Administrator makes note of any differences or points of discussion and encourages members to talk about those differences or issues.

Based on the discussion, committee members may adjust and change their scores and comments. Once the discussion ends, committee members must finalize their scores and comments. Once finalized, the Contract Administrator will collect and record the final technical scores, using the Solicitation Ranking Form to determine the final averaged technical score. At this point, the scores can no longer be adjusted – they are final.

For best value selections, the Contract Administrator will then reveal the cost proposal and add the cost points to the final averaged technical scores. The lowest cost receives the full allowance of cost points, while the other responses receive cost points based on a standard formula.

For the QBS and announcement process, the final averaged technical score is the final score. With QBS and announcement, there are no cost proposals to review or cost points to assign.

Finally, when applicable, the Contract Administrator adds small business preference points to the final score.

Before ending the selection committee meeting, the Contract Administrator must collect a signed Selection Committee Evaluation Team Member Agreement, as well as the signed, completed Solicitation Rating Form for each responder from each committee member.

Quick Call for Proposals – How it Differs

The same documentation and overall process applies to the selection when using the Quick Call for Proposals selection method with one big difference: No face-to-face selection committee meeting occurs. Selection committee members still review the responses and fill out the documentation independently; however, instead of holding a meeting, selection committee members email their completed documentation to the Contract Administrator. This process can save time, sometimes a significant amount.

After receiving the completed documentation, the Contract Administrator tabulates the technical scores, averages the scores, adds the cost points and, if applicable, the small business preference points, and completes the selection process as described above.

Notification

Before notifying any responders of the selection results, the Contract Administrator must prepare the Selection Committee Approval of Selection Memo and send it to Consultant Services for processing. This memo gathers information such as selection committee member names and titles, the detailed scoring criteria and percentages, and a summary of the final scoring to obtain approval of the selected consultant.

You *must* receive notification from Consultant Services that the Approval of Selection Memo has been signed before contacting responders or beginning any negotiations with the selected consultant.

After approval of the selection, the Contract Administrator provides a partial debriefing to the responders who were not selected. The partial debriefing involves emailing the responders the following:

- Solicitation Unsuccessful Respondent Letter (pasted into the body of the email)
- Scanned copies of the ratings sheets for ONLY that responder, as an attachment; note that the attachment must omit the selection committee members' names

Responders may request a full debriefing, which can include access to the other consultant responses, a meeting with the MnDOT Project Manager, or both, to discuss their response and the selection. This debriefing cannot take place until after the contract is fully executed, when the information becomes public.

The Contract Administrator must also notify the selected consultant by emailing the following:

- Solicitation Successful Respondent Letter (pasted into the body of the email)
- The DBE or TGB/VET Special Provisions Packet, as an attachment, when applicable

Points to Remember

- Form your selection committee early and include staff with the necessary expertise to evaluate the responses.
- Selection committee members must review and evaluate all responses independently in advance of the meeting.
- As its main purpose, the selection committee meeting allows each selection committee member to share feedback on each consultant response.
- Internal approval must be received before notifying responders.
- Contact Consultant Services for guidance.

7: Audit and Negotiations

This section includes information about Audit requirements and contract budget negotiations.

Annual Overhead Analysis and Pre-Award Review for Consultants

Effective July 1, 2024, MnDOT Office of Audit will conduct annual audits by consultant instead of program and contract-based audits. When an audit is conducted, the following will be reviewed:

- The fiscal health of a consulting firm.
- The overhead rate of a consulting firm and compliance with Federal Acquisition Regulations (FAR) Part 31 requirements for allowable costs.

Annual Overhead Analysis

If a consultant can calculate an overhead rate and does have recent audit history with MnDOT, the consultant will be placed on MnDOT's Annual Overhead Analysis schedule.

- The consultant is required to submit overhead rate paperwork annually for review by MnDOT Audit.
- MnDOT requests that this type of audit be initiated by the consultant not later than six months after the close of the company's fiscal year end and after the company's business tax returns are filed.
- MnDOT will regularly monitor the Annual Overhead Analysis schedule to ensure submittal compliance.
- Non-compliance may result in contracts not being awarded until the consultant is back in compliance.

Annual Pre-Award Review

If a consultant cannot calculate an overhead rate and does have recent audit history with MnDOT, the consultant will be placed on MnDOT's Pre-Award Review schedule.

- The consultant is required to submit pre-award paperwork annually for review by MnDOT Audit.

- MnDOT requests that this type of audit be initiated by the consultant not later than six months after the close of the company's fiscal year end and after the company's business tax returns are filed.
- MnDOT will regularly monitor the Annual Pre-Award Review schedule to ensure submittal compliance.
- Non-compliance may result in contracts not being awarded until the consultant is back in compliance.

New to Doing Business with MnDOT

If a consultant does not have a history of completed audits on file at MnDOT, and does not fit the exemption below, then an initial audit will be conducted.

- At this time, the consultant will have the opportunity to apply for the Safe Harbor Program or submit the appropriate audit paperwork.
- Once the initial audit is complete, if the consultant can calculate an overhead rate, the consultant will be placed on MnDOT's Annual Overhead Audit schedule. If the consultant cannot calculate an overhead rate the consultant will be placed on MnDOT's Annual Pre-Award Review schedule.

Exemption

A consultant, in a prime or subcontractor role, will be exempt from the audit process, if the consultant has a contract budget estimate of \$50,000 or less.

Pre-Contract Audit Review Form

As part of the PT contracting process, the Contract Administrator will need to complete the Pre-Contract Audit Review form for the contract file if any one contractor (prime or sub), has costs exceeding \$50,000. If yes, this form must be completed and submitted for the entire contract team and submitted to Consultant Services for review.

EXCEPTION: The Pre-Contract Audit Review form **does not** need to be completed for **appraisal and title service providers**. If you have a contract solely for appraisal and/or title services, you can skip this step. If you have a larger contract that includes some appraisal and title service providers just make a notation of 'appraisal' or 'title' after the consultant/subconsultant name on the form.

Negotiations

Negotiations on budget and other items occur during and after Pre-Award Audit completion. Some form of negotiation takes place for all contracts, whether using a direct select or competitive selection method.

The Project Manager organizes a negotiation meeting with the selected consultant. In the meeting, the Project Manager and consultant will review and discuss the consultant's response, including cost, scope, deliverables, and schedule, and address any concerns and outstanding issues. Here, the Project Manager should raise questions such as:

- Do we share a common understanding of the scope of services and the approach to the project?
- How does the cost response relate to the scope and deliverables?

- Are there budget concerns?
- Are we clear on MnDOT’s responsibilities?
- Do we need to make adjustments to the schedule?
- Do any other issues need clarification?

During the negotiations that take place before contract execution, the project team may make minor adjustments in the tasks and deliverables as necessary. Please note that you cannot expand the project beyond the response’s original scope of services. The Project Manager and the consultant must agree on any direct project costs and on any travel expenses. At the end of the meeting, the Project Manager must ensure that the scope of work—including the tasks, schedule, deliverables, team, and budget—is final and contract-ready.

Payment Methods

The Pre-Contract Audit Review Form will identify the payment structure that must be used in the contract. Payment structures include cost plus fixed fee, unit rate, fixed hourly rate, and lump sum.

- Cost plus fixed fee sets a defined limit on the profit that a consultant receives on a project, regardless of final contract costs. Contract Administrators calculate the fixed fee on a project-by-project basis and determine the percentage – between 9 and 15 percent – by completing the Fixed Fee Rate Worksheet. Cost plus fixed fee includes labor, overhead, fixed fee, and direct expenses.
- A unit rate identifies a unit, along with the rate being charged for that unit. At the contract level, it is broken down into totals by labor and expenses.
- Fixed hourly rates are loaded hourly rates that include labor, overhead, and fixed fee. You also may have expenses on a fixed hourly rate contract, listed separately from the labor.
- A lump sum payment is a set amount to be paid for established deliverables. There is no fluctuation up or down; a lump sum is a guaranteed amount. This method is used sparingly.

Consultants also identify an overhead rate, or indirect cost rate, in determining their hourly costs. They use the overhead rate to recover costs that are not specifically attached to the project but are necessary for running a business, such as building space, computers, equipment, and other expenses. In MnDOT’s case, consultants also should include computer/CADD, in-house reproduction, and other company-owned equipment costs that they may use on a project into their overhead rate. MnDOT has an overhead cap rate of **170** percent. You can find a consultant’s current overhead rate in the CAATS database at any time.

Points to Remember

- During negotiations, the project team must finalize the scope of work, including the tasks, schedule, deliverables, team, and budget.
- There are four payment structures: Cost plus fixed fee, unit rate, fixed hourly rate, and lump sum.
- Contact Consultant Services for guidance.

8: Contract Preparation and Execution

With contract selection, the appropriate audit (if applicable), and negotiations completed, you can now develop and execute the contract. Remember: Contracts must be fully executed before any work can begin.

Overview: Contract Components

Contracts include both project-specific information and the general terms and conditions that apply to all projects. Contracts between MnDOT and consultants detail project expectations, such as scope of work and schedules, as well as the appropriate policies and legal provisions, including those required by state and federal laws and regulations.

A contract includes the following basic components:

Project-Specific Details, including, but not limited to:

- Consultant name, address, and type of business (sole proprietorship, limited liability corporation, partnership, corporation)
- Project completion date
- Contract expiration date
- Description of services, including tasks, deliverables, and due dates
- Payment type and applicable budget breakdown
- The consultant's authorized agent and project team
- MnDOT's authorized representative and Project Manager

General terms and conditions

All contracts must contain language considered to be "general terms."

General terms and conditions detail items such as compliance with licenses, permits, and other regulations; audits and inspections; government data practices and intellectual property; liability; insurance requirements, including worker's compensation; termination; and other concerns.

Contact Consultant Services with questions about any of the general terms or conditions.

Exhibits

All contracts include exhibits, which provide more detail about specific aspects of the contract such as the scope of work, budget, and invoicing requirements.

Contract Templates: The Starting Point

Consultant Services works in conjunction with Contract Management to ensure that contract templates are up to date. You must use these templates, available online, when developing a contract. Visit www.dot.state.mn.us/consult/ and click on the "Contract Documents" tab to access the downloadable contract templates.

The following offers an overview of the available templates as a guide to help you determine which template to use for your project.

CONTRACT TEMPLATE	When do I use this template?
Contract Annual Plan	For the annual plan direct select method
Contract High Risk*	For contracts with costs that exceed \$100,000, as well as contracts with costs less than \$100,000 that are considered high risk
Contract Interagency	For the Interagency direct select method (services between MnDOT and other state agencies, excluding the University of Minnesota and Metropolitan Council)
Contract Interagency with Minnesota State Colleges and Universities	For Interagency direct select method (services only between MnDOT and Minnesota State Colleges and Universities providing training services)
Contract Joint Powers	For Joint Powers direct select method (services between MnDOT and other public, non-state agencies, including the University of Minnesota and Metropolitan Council)
Contract Low-Risk Engineering and Related*	For engineering contracts with costs up to \$100,000 that are considered low risk
Contract Low-Risk Non-Engineering*	For non-engineering contracts with costs up to \$100,000 that are considered low risk
Contract Work Order	For Work Order Contracts under an established Master Contract
Contract Work Order – Master Partnership	For project-specific Work Order Contract with an established Master Contract partnership (for P/T services only)

**Note: A project cost of more than \$100,000 is a good rule of thumb to start questioning which template to use, but the real emphasis should be placed on the nature of the work being performed.*

If you have questions about which contract template to use, contact Consultant Services.

Once you identify the appropriate contract template, you can start developing your project’s contract, inserting your project-related information in the appropriate areas. You will need your final negotiated scope of work and cost estimate.

When writing the contract, keep in mind the following guidelines:

- Include the “who, what, where, when, why, and how” of your project.
- Keep the “actor” and “action” (in other words the noun and verb) together at the beginning of the sentence. For example “The Contractor must deliver the draft report to the State” versus “The draft report must be delivered to the State by the Contractor.”
- Avoid using the word “shall;” instead use “must” to create a mandatory obligation; use “will” to create a mandatory obligation that depends on fulfillment of some other condition; and use “may” to denote a discretionary act.
- Avoid non-outlined lists; always use an outline format.
- Use declarative sentences; avoid passive voice (e.g., use “Contractor will...”).
- Spell out ALL acronyms the first time they appear, such as Federal Highway Administration (FHWA)
- Pay attention to formatting: Line articles up, be consistent with font type and size, and keep the pagination consistent throughout the entire document (using page “1” vs. “1 of 5”).
- State the obvious and eliminate any gray areas or ambiguity.
- Omit legalese or technical jargon in your scope of work.
- Keep your sentences short, within the 15–25-word range.
- Avoid the use of “and/or;” it is generally unnecessary at best and can lead to litigation at worst
- Use “including, but not limited to” when creating a list that is not intended to be exclusive; courts have held that the word “including” followed by a list indicates that the list is exclusive – in other words, if an item is not on the list, it doesn’t count.
- Use the term “State” instead of “MnDOT” in all contracts (except in Interagency Agreements) and “Contractor” instead of the company name (except in Interagency and Joint Powers contracts).

Contract Exhibits

Contract exhibits offer greater detail on specific contract-related issues, such as scope of work and budget. They also offer a way to communicate regulations and other requirements to consultants, such as travel regulations and the required progress report or invoice format, or both. As part of the contract, exhibits are considered legally binding, which means consultants must adhere to the exhibit content.

All contracts include exhibits. You can find some standard exhibit documents – such as the Progress Report Form, Invoice Form, and Travel Regulations – online under the “Contract Documents” tab at www.dot.state.mn.us/consult/.

The template language includes a place to list exhibits. Make sure to incorporate all exhibits into the contract and to properly label your exhibits. A properly labeled exhibit looks like this:

MnDOT Contract No. 1029210 Exhibit C Travel Regulations

A properly labeled exhibit includes the MnDOT Contract Number, the exhibit’s letter, and the exhibit’s title, right aligned in the header. This format helps save time for those who review and approve contract documents by providing a consistent place to find the information.

Other exhibits unique to your project may need to be generated. For example, the budget exhibit accompanies virtually all contracts except for lump sum contracts and very simple budgets with few details. The consultant response and payment worksheets will help you complete the budget exhibit. These tips may help as well:

- Avoid a large budget exhibit, include high-level budget information, and use larger, more detailed budgets for project management.
- Make sure that budget tasks align with scope of work tasks.
- Use exact numbers, do not round, and check your math.
- Make it easy to read and understand.
- Do not include any scope of work details in your budget.

Keep in the mind that Consultant Services can help you with questions about which exhibits to include and how to prepare them.

The following list summarizes the most commonly used exhibits.

COMMONLY USED EXHIBITS	What are they?
Scope of Work	The scope of work includes the “who, what, where, when, why, and how” of the project in as much description and depth as possible.
Budget Exhibit	The budget exhibit provides a complete breakdown of the hours and costs of the project, the labor (including the overhead and fixed fee rates, as applicable), and expenses; budget exhibits should always be done, except for lump sum contracts and very simple budgets with few details.
Travel Regulations	The travel regulations exhibit provides an up-to-date listing of the approved MnDOT reimbursement rates for travel expenses; it must be included any time the contract budget includes travel expenses.
Invoice	The invoice exhibit provides the required format for consultants to use when billing MnDOT for payments; this exhibit is ALWAYS included in a P/T contract.
Progress Reports	The progress report exhibit provides the required format for consultants to keep the Project Manager up-to-date on progress regarding the budget and project; this exhibit is required for just about every P/T contract other than those paid on a lump sum basis.
Contractor Payment Form	The contractor payment form is required for any contract that includes a DBE, TGB, or VET goal, so the consultant can report on any subcontractor payments made on the contract.

Review and Execution

After preparing the contract documents, review and check your entire contract using the Contract Checklist, which you can find online under the “Contract Documents” tab at www.dot.state.mn.us/consult/. Review each item on the checklist to see if it applies to your contract and is included in your contract documents. As a best practice, send your draft contract to Consultant Services for review and incorporate any changes into the contract. This step can save you time making corrections later.

Part of this review process should include any discussions related to contract language changes. Language changes must be discussed before sending contracts out for signature. Keep in mind, any changes related to intellectual property rights do take longer because the Attorney General’s Office needs to review and approve them.

Signatures and Delegation of Authority

Execution of a contract requires several signatures to bind MnDOT and the consultant into a legal agreement. Before sending your contract package to Consultant Services for processing, you first need to request the consultant’s signature.

Delegation of authority allows only certain parties to sign on behalf of the consultant and for MnDOT. The following lists the titles of those qualified to sign contracts on behalf of the consultant, based on the company structure:

- Sole Proprietors: Owner or Sole Proprietor
- Limited Liability Corporations (LLC): Chief Manager
- General Partnership: Partner
- Limited Partnership: General Partner
- Corporation: President, Vice President, CEO, CFO, Secretary, or Treasurer
- Colleges and Universities: President, Vice President, Chancellor, or Dean
- Governmental Agency: Commissioner or Deputy Commissioner

When you send the signed contract to Consultant Services for processing, you also must complete the Encumbrance Form. This form identifies the funding that MnDOT has committed to use for the project. Consultant Services uses this form to encumber the funds for the contract.

Consultant Services will perform a cursory review of the final submitted contract and will notify you if you need to make changes or corrections.

Finally, Consultant Services will process the contract for all of the required internal signatures. Each contract and amendment requires three internal signatures:

- The accounting section of Consultant Services signs the encumbrance verification, which states that funds have been encumbered for the contract.
- The Commissioner, Deputy Commissioner, Division Directors, or others with designated delegation authority will sign on behalf of MnDOT.

- The Department of Administration or Contract Management, depending on the delegation that exists, provides the final signature, which officially “executes” the contract.

Notice to Proceed

Consultant Services will send the Contract Administrator the executed contract. The Contract Administrator must email the consultant, copying MnDOT’s Project Manager, the Notice to Proceed along with a PDF of the fully executed contract and Microsoft Word versions of the Progress Report and/or Invoice Form, as applicable.

Documentation

Consultant Services houses and maintains the official contract file for all P/T contracts. Throughout the contracting process, Consultant Services scans and/or saves a number of key documents for permanent reference, including, but not limited to, the CPS Form, the executed Certification Form, DBE/TGB/VET Goal Memos, the TTAA Estimates and Commissioner’s Determination Memo, solicitation documents, Selection Committee Approval of Committee/Approval of Selection Memos, DBE/TGB/VET Goal Clearance Memos, the fully executed contract, and the signed 16A/16C Violation Form, as applicable.

In addition, the Contract Administrator must ensure that all of the following documentation (as applicable) has been submitted to the P/T email address PTinbox.dot@state.mn.us for the contract file:

- Quick Call for Proposals A & B
- Signed Selection Committee Team Member Agreements and Forms
- Completed and signed Solicitation Rating Forms
- Completed Solicitation Ranking Form
- All technical responses and cost proposals
- Completed Fixed Fee Rate Worksheet
- Pre-Contract Audit Review Form
- Contractor Signature Request
- Signed Consultant Conflict of Interest Form
- Notice to Proceed email
- Insurance certificate(s)
- Subcontractor agreement(s)
- Approval of rate changes (e.g., annual rate increases)
- Approval of out-of-state travel expenses
- Approval of direct expenses not listed in contract
- Approval of change in key personnel

Violation

The 16A/16C Violation Form will be necessary if a consultant is given authorization to begin work before the contract is executed and/or before funds have been encumbered. The form requires you to explain the reasons for starting work under these circumstances and to document the actions that you will take to prevent that from happening in the future. The form must be signed by the following:

- The “Person Responsible,” typically the Project Manager
 - Their supervisor
 - Their Office Director/District Engineer
- The Assistant Commissioner/Chief of Staff/Chief Counsel
- The Deputy Commissioner

While this mechanism is in place to address violations, this process is strongly discouraged. Contract Administrators need to work closely with the Project Manager and consultant to make sure that violations are avoided by having a contract in place before work begins.

Points to Remember

- Every contract includes project-specific details, general terms and conditions, and exhibits.
- Consultant Services works in conjunction with Contract Management to ensure that contract templates are up-to-date.
- Use the Contract Checklist to review and check your draft contract.
- Submit all required contract documentation to Consultant Services for the official contract file.
- Violations are strongly discouraged.
- Contact Consultant Services for guidance.

9: Post-Contract Execution

After successful contract execution, work on the project may officially begin. Throughout the course of the project, several contract-related activities take place, including reviewing progress reports and invoices, and, when necessary, processing an amendment to the contract.

Invoices and Progress Reports

As work progresses on your project, the consultant will use the invoice exhibit from the executed contract to bill MnDOT for payment per the contract terms. In most cases, it is preferable for consultants to submit invoices on a monthly basis. With the exception of lump sum contracts, MnDOT also requires the consultant to submit a completed progress report exhibit as part of its invoice package, along with any additional documentation that supports its costs, such as receipts for travel expenses.

Consultants electronically submit all P/T contract invoices to Consultant Services. Once received, Consultant Services will enter the invoice package into an electronic system, which will send the invoice package to both the MnDOT Project Manager and the Contract Administrator for review and approval.

When reviewing invoices, the Project Manager will focus mainly on project-related technical aspects of the invoice package. By approving the invoice, the Project Manager ensures that the consultant:

- Worked the hours billed
- Provided supporting documentation for costs
- Completed the tasks billed for, or made the reported progress on tasks

- Provided deliverables, as applicable
- Is on schedule, and that the percent of budget expended is in line with the costs billed to date
- Is not billing for any work outside of the contract scope

Once the Project Manager approves the invoice, the Contract Administrator will receive the package. The Contract Administrator will focus mainly on contract-related administrative aspects of the invoice package. By approving the invoice, the Contract Administrator verifies that:

- The invoice package is complete with the invoice, progress report, and backup documentation included, as applicable.
- Work did not begin before contract execution.
- The contract expiration date has not passed, and the consultant has not exceeded the total contract amount.
- All math adds up (amount billed this invoice, amount previously billed, and total billing to date).
- The invoice is, or is not, a final invoice.

Once reviewed and approved by both the Project Manager and the Contract Administrator, the electronic system will send the invoice back to Consultant Services for payment. Other than final invoices, all invoices must be approved and paid within 30 calendar days of receipt. As a general rule of thumb, review and approve invoices as soon as you receive them, but no longer than 10 calendar days.

If the Project Manager or Contract Administrator finds the invoice incorrect, defective, or otherwise improper, MnDOT must notify the consultant within 10 days of discovering the error. At this point, the 30-day “clock” stops. Once the consultant resubmits a corrected invoice, MnDOT again has 30 calendar days to review, approve, and pay the invoice.

Retainage

Most contract templates include a Retainage clause. Under Minnesota Statutes §16C.08, subdivision 2(10), no more than 90 percent of the amount due under a contract may be paid until MnDOT’s agency head has reviewed the final product of the contract. The balance due will be paid when MnDOT’s agency head determines that the consultant has satisfactorily fulfilled all the terms of the contract.

Certain services require a licensed professional and are exempt from this article. They are as follows: architecture, professional engineering, land surveying, landscape architecture, professional geoscience work, or certified interior design. MnDOT determines exemptions on a project-by-project basis, not by firm. To be exempt for an individual contract, the consultant must have one of the identified professionals billing time to that contract. Although an exemption for retainage is allowed, the exemption is not mandatory, and MnDOT still may want to include retainage.

Amendments

As work on your project progresses, MnDOT’s Project Manager may realize one of the following situations applies:

- The consultant needs more time to complete the project than originally anticipated.
- The consultant may need to complete additional tasks within the original scope of work that were not anticipated; this situation may result in not only a change to the scope of work, but the contract budget as well.
- The project may require more tasks, more compensation, and/or more time.

If any of these situations occur, you must execute a contract amendment to reflect the need for additional work, additional compensation, additional time, or a combination of all three. **Keep in mind: Amendments do not allow you to authorize new work or work that is outside the terms of the contract.** For example, you may not use an amendment to add subsurface utility engineering work to a contract for environmental studies. But you would use an amendment for related unexpected developments that were unknown at the time of the original contract. For example, to complete the work, the consultant must drill more soil-boring holes than the number included in the original contract.

If you're thinking about using an amendment to authorize a task that was not included as part of your original scope of work but that fits within the general description, contact Consultant Services for advice. Depending on the circumstances, an amendment may still be appropriate; otherwise, you may need to consider developing a new contract.

Amendment Writing and Execution

To develop an amendment, the Project Manager will discuss the additional needs with the consultant and request a written response that documents the additional tasks, schedule, deliverables, and budget, as applicable. Once the Project Manager and consultant agree on a response, the Project Manager must work with the Contract Administrator to develop and process the amendment.

Because an amendment is a legal change to the contract, the amendment is processed similarly to the original contract. **It takes about four weeks to process a contract amendment. An amendment should always be completed before the original contract expires and before the consultant performs the additional work, as applicable. As a result, it is important that you allow enough time to complete the amendment.** A summary of the steps in the amendment process follows.

Amendments: The Starting Point

Except for amendments to contracts with costs less than \$5,000 or more than \$1 million, Interagency Agreements, Work Order Contracts under \$250,000, and Single Source Contracts, you must first submit an Amendment Cover Sheet to Consultant Services. The Amendment Cover Sheet requests permission to move forward with the amendment. There are two types of Amendment Cover Sheets—one that requires Department of Administration permission, known as the Amendment Cover Sheet-Delegated—and one that doesn't get signed but is instead routed with the amendment, known as the Amendment Cover Sheet-Non-Delegated.

All amendments must have an Amendment Form, which is used to revise any part of the original contract that needs to be changed along with revised exhibits, as necessary. Contract Administrators will prepare an Amendment Form after submitting the Amendment Cover Sheet, if applicable, and after the Project Manager

completes negotiations with the consultant—finalizing a revised scope, budget, and contract expiration date or schedule, as applicable.

Amendment Templates

Consultant Services works in conjunction with Contract Management to ensure that amendment templates are up to date. Visit www.dot.state.mn.us/consult/ and click on the “Contract Documents” tab to access the downloadable amendment templates. The following table offers an overview of the available template(s) that you must use to process your amendment.

AMENDMENT TEMPLATE	When do I use this template?
Amendment Cover Sheet–Delegated	<p>The Amendment Cover Sheet (Delegated) requests permission from the Department of Administration to move forward with an amendment. MnDOT uses it for all amendments EXCEPT for amendments to the following contract types:</p> <ul style="list-style-type: none"> • Interagency Agreement (<i>a cover sheet is never required</i>) • Direct Select Contract under \$5,000 (<i>a cover sheet is never required</i>) • Annual Plan Agreement (<i>a cover sheet is never required</i>) • Single Source Contract • Contract that exceeds \$1 million • Work Order Contracts under \$250,000
Amendment Cover Sheet–Non-Delegated	<p>The Amendment Cover Sheet (Non-Delegated) summarizes the need and justification for an amendment. MnDOT uses this version of the cover sheet for amendments to Single Source Contracts, contracts that exceed \$1 million, and Work Order Contracts under \$250,000. In these cases, approval from the Department of Administration is not needed in advance of the amendment, as typically the Department of Administration will review and sign the actual amendment.</p>
Amendment Form	Used for ALL amendments, no matter the original contract type

Amendment Form

When you prepare your Amendment Form, you will need to provide the following basic components:

Project-Specific Details

Including, but not limited to

- Consultant name, address, and type of business (sole proprietorship, limited liability corporation, partnership, corporation)
- Project completion date (revised, as necessary)
- Contract expiration date (revised, as necessary)

- Description of services, including tasks, deliverables, and due dates (revised, as necessary)
- Budget breakdown (revised, as necessary)

Exhibits

If exhibits that were included in the original contract require changes, you will need to attach those revised exhibits to your amendment. Exhibits that are most often affected include a combination of the scope of work, budget, invoice, or progress report. Exhibits that do NOT change from the original contract should not be included in the amendment, as the original versions will remain in effect.

Review and Execution

After preparing the amendment documents, review and check your entire amendment using the Contract Checklist, which you can find online under the “Contract Documents” tab at www.dot.state.mn.us/consult/. Review each item on the checklist to see if it applies to your amendment and is included in your amendment documents. As a best practice, send your draft amendment to Consultant Services for review and incorporate any changes into the amendment. This step can save you time making corrections later.

Execution of an amendment requires several signatures to bind MnDOT and the consultant into a legal agreement. Before sending your amendment package to Consultant Services for processing, you first need to request the consultant’s signature (see page 37).

When you send the signed amendment to Consultant Services for processing, you also must complete the Encumbrance Form. This form identifies the funding that MnDOT has committed to use for the project. Consultant Services uses this form to encumber the funds for the contract. Even if you only amend your contract for a time extension, you must complete and submit the Encumbrance Form, which will trigger an update of the expiration date in the state’s financial system.

Consultant Services will perform a cursory review of the final submitted amendment and will notify you if you need to make changes or corrections. Consultant Services also will process the amendment for all of the required internal signatures and will send the Contract Administrator the executed amendment. The Contract Administrator must email the consultant, copying MnDOT’s Project Manager, the Notice to Proceed, along with a PDF of the fully executed amendment and Microsoft Word versions of the revised Progress Report Form and/or Invoice Form, as applicable.

Documentation

Consultant Services houses and maintains the official contract file for all P/T Contracts. Throughout the amendment process, Consultant Services will scan and/or save a number of key documents for permanent reference, including (but not limited to): the CPS Form, the executed Cover Sheet (Non-Delegated or the fully executed Delegated version), the fully executed amendment, and the signed 16A/16C Violation Form, as applicable.

In addition, if you have not already done so, the Contract Administrator must ensure that all of the following documentation (as applicable) has been submitted to the P/T email address PTinbox.dot@state.mn.us for the contract file:

- Contractor Signature Request
- Notice to Proceed email
- Amended Subcontractor Agreement(s)

Violation

Known as the 16A/16C Violation Form, a violation form is necessary if the consultant continued to work after the original contract expired. The form requires you to explain the reasons for starting work under these circumstances and to document the actions that you will take to prevent that from happening in the future. The form must be signed by the following:

- The “Person Responsible,” typically the Project Manager
 - Their Supervisor
 - Their Office Director/District Engineer
- The Assistant Commissioner/Chief of Staff/Chief Counsel
- The Deputy Commissioner

Alternatively, the 16A/16C Violation Form includes a “no violation” section. If your original contract expires before your amendment is executed but the consultant stopped working when the contract expired, you would fill out the form’s “no violation” section.

Points to Remember

- Consultants must use the required invoice exhibit, and when applicable, progress report exhibits, and bill according to the contract terms.
- The Project Manager and Contract Administrator review and approve the invoice package for payment.
- You must execute a contract amendment to reflect the need for additional work, additional compensation, additional time, or a combination of all three.
- Amendments do not allow you to authorize new work or work that is outside the terms of the contract.
- It takes about four weeks to process a contract amendment.
- An amendment should always be completed before the original contract expires.
- Contact Consultant Services for guidance.

10: Contract Closeout

The last step in the contracting process involves contract closeout tasks, such as making sure to send Consultant Services all contract documentation for the official contract file and approving the final invoice, along with completing the consultant performance evaluation and the final audit, when applicable.

One item of importance to note: If a product of a contract includes a report, then the Project Manager or Contract Administrator must submit the report to the Legislative Library. This is a statutory requirement.

Final Invoice Approval

When reviewing and approving the final invoice through the electronic invoicing system, the MnDOT Project Manager must clearly confirm project completion and receipt and acceptance of final deliverables. The MnDOT Project Manager or the MnDOT Contract Administrator can provide this confirmation by indicating that the invoice is the final invoice as a comment in the system. With this confirmation documented in the CAATS database, Consultant Services can begin the performance evaluation process.

Performance Evaluation

State statute requires MnDOT to complete and submit a performance evaluation on P/T contracts in excess of \$25,000, with the exception of Interagency Agreements. Performance evaluations both recognize consultant achievements on the project and identify areas for improvement. **The performance evaluation process must be completed before Consultant Services can initiate the final audit process, when required.**

After approving the final consultant invoice, the MnDOT Project Manager receives an email with a link to MnDOT's electronic Evaluation Application, along with the MnDOT contract number and a contract specific access code. Once the MnDOT Project Manager completes the performance evaluation, the Contract Administrator receives a similar email to review the completed evaluation for consistency and compliance with policies and works with the Project Manager on any changes, if necessary.

The consultant's Project Manager has three days to either accept or contest the completed evaluation. MnDOT considers the evaluation accepted if three days pass with no response from the consultant's Project Manager. If contesting an evaluation, consultants may request a meeting to challenge a rating. If the two Project Managers cannot agree, their respective supervisors must work toward a resolution.

For final consultant evaluation ratings of 10 or below, MnDOT will request that the consultant's Project Manager submit a performance improvement plan to the MnDOT Project Manager. MnDOT archives the improvement plan in the official contract file.

MnDOT's unique P/T performance evaluation process involves a complete 360-degree review. In addition to MnDOT's evaluation of the consultant's work, the process also offers consultants the opportunity to evaluate MnDOT's performance. This part of the evaluation is NOT required by the Department of Administration and is voluntary. At the same time that MnDOT's Project Manager prepares the consultant evaluation, consultant Project Managers will submit their evaluation of MnDOT. The same process applies: The MnDOT Project Manager has three days to accept or contest the completed evaluation. MnDOT considers the evaluation accepted if three days pass with no response from the MnDOT Project Manager.

For final MnDOT evaluation ratings of 2.5 or below, MnDOT Project Managers must submit a performance improvement plan to their supervisor. MnDOT archives the improvement plan in the official contract file.

Final Audit and Invoice Processing

The Contract Closeout Administrator in Consultant Services handles the closeout process for all P/T contracts. After final invoice approval and, when necessary, performance evaluation completion, the Contract Closeout Administrator determines if the contract meets the requirements to move forward with a final audit.

- MnDOT requires final audits for **ALL** Cost Plus Fixed Fee Contracts with costs of more than \$5,000, as well as for **ALL** Unit Rate/Fixed Hourly Rate Contracts for more than \$50,000.
- MnDOT does **NOT** require final audits for any Lump Sum Contract, any contract that is less than \$5,000, or Unit Rate/Fixed Hourly Rate Contracts less than \$50,000.

For contracts that do **NOT** need a final audit, MnDOT issues the final payment and closes out the contract after final invoice approval and, if required, performance evaluation completion.

If a final audit is required, the Contract Closeout Administrator submits the contract to the Office of Audit for review after final invoice approval and performance evaluation completion, if required. The final audit involves a review of costs to ensure consistency with audit regulations and contract terms. After final audit completion, the Contract Closeout Administrator will work with the MnDOT Project Manager or Contract Administrator to address any cited items. The Contract Closeout Administrator will:

- Prepare and process the necessary paperwork and obtain appropriate approvals
- Issue final payment or request that a receivable invoice be set up
- Notify the consultant of the audit findings
- Close out the contract in CAATS

Note that the 30-day prompt pay policy does NOT apply to final invoices.

Points to Remember

- MnDOT completes performance evaluations on all P/T consultant contracts in excess of \$25,000 with the exception of Interagency Agreements.
- The performance evaluation process must be completed before Consultant Services can initiate the final audit.
- Both MnDOT and consultants evaluate each other's performance.
- MnDOT has established steps to resolve disagreements over evaluation ratings.
- Contact Consultant Services for guidance.

Glossary

AMENDMENT: A legal change to a contract. Contract amendments are executed to reflect the need for additional work, additional compensation, additional time, or a combination of all three. Amendments do not authorize new work or work that is outside the terms of the contract.

ANNUAL PLAN AGREEMENT (DIRECT SELECT): An option for projects with estimated costs under \$5,000 and that fit into one of five categories: trainers and speakers, expert witnesses, technical assistance, title searches, and translators and interpreters.

BEST VALUE SELECTION PROCESS: The state of Minnesota’s primary method for selecting P/T consultants. The process takes into consideration both technical qualifications and cost as factors in selection.

CERTIFIED LIST PROGRAMS (P/T PROGRAMS): Programs generally used for more specialized work that doesn’t fit the intent of the Pre-Qualification Program. The firms selected are considered well qualified for the work rather than minimally qualified. Consultants are selected from the appropriate Certified List for projects under \$100,000.

COMPETITIVE SELECTION: A solicitation process that requests and evaluates responses from consultants. MnDOT competitive selection methods include Informal Solicitation, Formal RFP, Quick Call for Proposals, RFP – QBS, and Pre-Qualification Announcement (Pre-Qualification Program).

CONTRACT: An agreement detailing the terms between two or more parties and legally binding all parties to those terms. All MnDOT contracts must be in writing and must be fully executed before work can begin.

CONTRACT ADMINISTRATOR: Known as the “authorized representative” in most contracts, the MnDOT Contract Administrator develops and administers contracts, handles the day-to-day details of the contracting process, monitors consultant performance, accepts or rejects services in the contract, and certifies each invoice for payment.

CONSULTANT RESPONSE: A response to a solicitation from MnDOT. For most—but not all—competitive selection methods, the consultant response is often referred to as a proposal. This guide refers to all proposals and other forms of responses as consultant responses.

CONTRACT AGREEMENTS AUDITING TRACKING SYSTEM (CAATS): This online system allows users to track all P/T contracts throughout their entire life cycle. CAATS serves as the MnDOT system of record for contracts and all associated documents from contract start to finish.

COST PLUS FIXED FEE: A type of payment structure that sets a defined limit on the profit that a consultant receives on a project, regardless of final contract costs.

DIRECT SELECT: A P/T contract method that allows you to contract directly with a consultant. The following are direct select contracting methods, including those that are part of P/T Programs: Annual Plan Agreement, Certified List Contract (P/T Program), Direct Select Contract, Equity Select Contract, Interagency Agreement, Joint Powers Agreement, Pre-Qualification Direct Select Contract (\$175,000 or less, P/T Program), Single Source Contract, and Work Order Contract (P/T Program).

DIRECT SELECT CONTRACT: Applies to projects with estimated costs of \$5,000 or less.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE): A federal government program established to generate opportunities for women- and minority-owned businesses to participate in contracts financed, in whole or in part, with federal funding. MnDOT's Office of Civil Rights administers the DBE program and sets goals for DBE participation on applicable MnDOT contracts.

EQUITY SELECT CONTRACT (DIRECT SELECT): Applies to projects with estimated costs of \$100,000 or less and only with consultants who are certified as a Targeted Group, Economically Disadvantaged, or Veteran-Owned Business, and only for state-funded contracts.

EXHIBITS: Items that offer greater detail on specific contract-related issues. Commonly used exhibits include scope of work, budget, travel regulations, invoice, progress reports, and contractor payment form.

FINAL AUDIT: An audit required for all Cost Plus Fixed Fee contracts for amounts over \$5,000, as well as all Unit Rate/Fixed Hourly Rate contracts for amounts over \$50,000.

FIXED HOURLY RATE: A type of payment structure; loaded hourly rates that include labor, overhead, and fixed fee.

FORMAL RFP (COMPETITIVE SELECTION): A method used for projects that do not qualify for a direct select method or fit under a P/T Program and that have estimated costs of more than \$100,000.

INFORMAL SOLICITATION (COMPETITIVE SELECTION): A method that can be used for any type of project with costs of \$100,000 or less, but that does not qualify for a direct select method or fit under a P/T Program.

INTERAGENCY AGREEMENT (DIRECT SELECT): Agreements used for services that state agencies deliver for other state agencies.

JOINT POWERS AGREEMENT (DIRECT SELECT): Agreements used with other public agencies, including cities, counties, educational institutions (excluding Minnesota State Colleges and Universities), another state, and potentially other Minnesota state agencies that don't fit under an Interagency Agreement.

LUMP SUM: A type of payment structure that is a set amount to be paid for established deliverables.

MASTER CONTRACT PROGRAMS (P/T PROGRAM): A P/T Program that competitively selects multiple firms to provide services for identified scopes of work and develops a set of Master Contracts with those selected firms.

P/T CONTRACTS: Contracts designed for projects that require intellectual services, such as analysis, training, evaluation, prediction, planning, and programming.

P/T PROGRAMS: Programs for which MnDOT requires consultants to meet certain qualifications before they can be placed on a program list for contract consideration. There are three types of P/T Programs: Certified List Programs, Master Contract Programs, and the Pre-Qualification Program.

PERFORMANCE EVALUATION: An evaluation required by state statute that MnDOT must complete and submit for consultants on P/T contracts in excess of \$25,000 with the exception of Interagency Agreements.

PRE-QUALIFICATION ANNOUNCEMENT (PRE-QUALIFICATION PROGRAM): A method used as part of the Pre-Qualification Program for projects with estimated costs of \$175,001–\$800,000. It involves advertising to pre-qualified firms in the applicable work types and evaluating responders on qualifications only.

PRE-QUALIFICATION PROGRAM (P/T PROGRAM): A P/T Program that establishes a list of minimally pre-qualified consultants in a variety of work types.

PROJECT MANAGER: The team member responsible for the overall project, developing the scope of work, monitoring the consultant’s performance and progress, signing progress reports, reviewing billing statements, recommending acceptance or rejection of services, and certifying each invoice for payment.

QUALIFICATION-BASED SELECTION (QBS): A selection method focusing on technical qualifications and experience only in the consultant selection process. Price is not taken into consideration in making the consultant selection. MnDOT may use the QBS process only on a limited basis when contracts meet certain criteria.

QUICK CALL FOR PROPOSALS (COMPETITIVE SELECTION): A selection method offering a streamlined solicitation process that is used for projects with estimated costs between \$5,001 and \$100,000 that do not qualify for a direct select method or fit as part of a P/T Program.

RFP QUALIFICATION-BASED SELECTION (COMPETITIVE SELECTION): A selection method only available in certain limited circumstances, such as when using federal funds. Formal solicitations are posted on the Consultant Services website to request responses from consultants (see Qualification-Based Selection for additional details).

SCOPE OF WORK: The part of a contract that includes a project description, project goals and objectives, project tasks, MnDOT and consultant responsibilities, key milestones, interim and final deliverables, and the project schedule with deadlines and deliverable due dates.

SINGLE SOURCE CONTRACT (DIRECT SELECT): Contracts that may be executed in certain limited circumstances and require written justification.

SOLICITATION: A request by MnDOT that includes a scope of work for a project and requests consultants to prepare their response. For most—but not all—competitive selection methods, the solicitation is often referred to as the request for proposal (RFP). This guide refers to all RFPs and other forms of solicitations as “solicitations.”

TARGETED GROUP BUSINESS (TGB) AND VETERAN-OWNED (VET) SMALL BUSINESS PROGRAMS: Programs that apply only to competitive selection processes and only when a contract is solely funded with state funding. MnDOT’s Office of Civil Rights establishes TGB and VET participation goals for applicable projects.

TAXPAYERS TRANSPORTATION ACCOUNTABILITY ACT (TTAA): A Minnesota statute that requires MnDOT to perform an estimate of costs to complete a project in-house when considering a consultant contract greater than \$100,000 for certain types of work.

UNIT RATE: A type of payment structure that identifies a unit along with the rate being charged for that unit.

WORK ORDER CONTRACT: A contract that is executed after consultants are selected as part of a Master Contract Program (P/T Program).

