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MISSISSIPPI WATERSHED MANAGEMENT ORGANIZATION

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Grant Programs

Tips for Hiring and Working with Consultants and Contractors

This document provides tips on hiring and working with consultants and contractors. Each project is unique, so this resource is a starting point, not necessarily exhaustive, and project management processes should be customized based on your organization's needs and policies, as well as the scope of your project. You may also want to work with your legal team on this process to ensure all requirements are met. If you have questions about working with contractors and consultants, please feel free to reach out to MWMO staff.

Hiring a Consultant or Contractor

- **Define your project and needs**, including identifying whether professional services are needed for site assessment and planning, development of site easements and partner cooperative agreements (or other legal assistance), engineering (design), communication, or other services such as graphics development, writing, or photography. For construction projects, you may consider hiring both a consultant to provide construction oversight and review and a contractor, who may work with one or more subcontractors.

- **Review relevant federal, state, and local contracting laws**. This may include uniform municipal contracting laws and federal prevailing wage regulations (minimum wage for certain workers on publicly funded construction projects).

    - Uniform Municipal Contracting Law (applicable to municipalities as defined by Minnesota Statute): https://www.revisor.mn.gov/statutes/cite/471.345

    - Federal (Davis-Bacon) prevailing wage (if federal dollars involved with project): https://www.dol.gov/agencies/whd/government-contracts/construction

- **Review your organization/agency policies** regarding hiring a consultant or contractor. This may involve coordination with your board and review of whether the policies conflict with other rules/laws as stipulated by funders and partners.

- **Determine your budget and price range** and make that clear to potential consultants or contractors when soliciting quotes.

- **Determine the procurement process** based on your organization's policy, needs, and goals. Types of procurement include sole source, Request for Proposals (RFP), and Request for Qualification (RFQ). RFPs and RFQs are considered competitive procurement whereas sole source is a noncompetitive process. For most projects, aim to solicit proposals from at least three potential consultants or contractors.

    - Sole Source: A contract is entered into without a competitive process when only one known source exists or that only one single consultant/contractor or supplier can meet the project's needs. Client selects the consultant/contractor and negotiates the scope, schedule, budget, and deliverables. There may be a dollar value threshold beyond which this is not allowed. The MWMO does endorse any particular consultant or contractor. However, some lists are available online for particular project needs such as native plant suppliers, landscapers, and restoration consultants for Minnesota and the Minnesota Society of Professional Surveyors' "Find a Surveyor" tool.

    - RFP: Project should be moderately well defined with a solid understanding of the work required, budget, and timeline. Multiple criteria can be used in selecting a proposal. Your organization may have a policy in place to send to a pool of pre-qualified firms or use an open bid process.

    - RFQ: Based on the qualifications and experience of personnel and the firm/team as a whole. The price and scope are negotiated together. Compared to an RFP, this process is more relational and less transactional. This process is often used when it is a new project type for the organization and the scope may be less well defined. It may also be a unique type of project requiring a lot of skillsets or have multiple project phases. The evaluation criteria for an RFQ is similar to an RFP, without price.

- In an RFP, it is recommended to include the following information:

    1) **Introduction**, including summary information on your organization, project background (including site locality information), funding for the project, the proposal deadline (both date and time), and the cost/price for performance.

    2) **Scope of services**, including the problem or issue to be addressed and the type(s) of services you are seeking: for example, development of a stormwater management plan with input from the community, creation of technical designs (indicate preliminary or construction-ready) for a specific stormwater best management practice (BMP), site and BMP maintenance plans, excavation work for a raingarden, site grading, construction and installation of a stormwater BMP, or implementation of a BMP and site maintenance plan. Specify whether you would like the contractor to be responsible for securing all necessary

permits for the project (all necessary local, state, and federal permits, certifications, and authorization for the project) and ensuring regulatory compliance.

Depending on the scale of the project and your budget, you may also wish the consultant to prepare a formal Project Management Plan as part of their work, which may include items such as roles and responsibilities, points of contact, scope, a schedule (e.g. a Gantt Chart), budget, deliverables, communication protocols, and meetings. If in the planning stage of your project, several review meetings may be necessary at various design stages such as 0%, 30%, 60%, 90%, and final (100%) design. This may include determining who will be part of the review team and how comments will be recorded and incorporated. The Plan can also establish the frequency of communication and determine the best modes for communication (e.g. email, phone calls, virtual meetings). Written documentation of phone calls and meetings is important for future reference. Typically, the client communicates directly with the consultant and communication to the construction contractor is through the consultant.

3) **The desired outcomes of the service(s) provided**, such as concept plans and a work plan for long-term stormwater management, construction-ready designs accompanied by a detailed project budget, work plan, and maintenance plans, or long-term successful function of an installed BMP.

4) **Site restoration expectations.** Indicate whether the contractor shall be responsible to repair, replace, or restore any part of project sites that are damaged or changed by the contractor or any subcontractors doing work on the project.

5) **The budget available for the project (optional)**. In some cases, particularly for small projects, it may be beneficial to indicate the budget available for the project if there is not much leeway. Otherwise, leaving the available budget out could be a way to see if a respondent comes up with a method that costs less. If including the budget, indicate whether it is a not to exceed amount, e.g. whether the amount "shall not be exceeded under any circumstances." Also note whether, "Candidates are strongly encouraged to provide discussion and comment on any tasks which may not be needed to complete the project more economically while still achieving project goals."

6) **The payment terms**. The timing of payments to contractors may depend on your organization's cash flow, policies, and funding sources. You may choose to make partial payments based upon a pre-arranged schedule where payments are made when specific milestones are reached or at pre-specified intervals after work has been verified.

7) **The timeline for your project**. Be clear about any deadlines for completing work based on your organization's needs as well as requirements in grant agreements, loans, or other funding sources.

8) **How to submit a proposal**. Reiterate the date due, time, and instructions on how to submit (digital and/or hard copy). For some projects, you may wish to hold a mandatory virtual or in-person pre-bid meeting at a specified date/time. Specify a page limit if desired.

9) **Sections you would like included in proposals**, such as:

    a. Cover letter (1 page)

    b. Project overview

    c. Consultant understanding of the project

    d. Assumptions and expectations

    e. Consultant approach (scope of work/tasks and timeline)

    f. Firm profiles, firm resumes, firm projects illustrating similar work, client references or testimonials

    g. Budget (RFP) or staff billing rates (RFQ)

    h. Budget table (value adds separated)

    i. Proposed project schedule identifying milestones and schedule of proposed project in consideration of that workload

10) **Selection and award process.** Indicate how proposals will be screened and selected, including evaluation criteria and how to submit questions about the project and whether there is a deadline. Indicate the date when your organization anticipates awarding the contract.

11) **Exhibits.** These may vary based on the project, but could include items such as grant agreements with funders (including associated exhibits to the grant agreement such as the scope of work and budget), preliminary concept plans, site photos, recommended plant species, or other items.

12) **Draft agreement (optional).** Consider including a draft template agreement with an RFP/RFQ so they are aware of the language ahead of time and can decide whether to move forward with preparing a proposal. Ensure that there is contractual language that will protect your organization's interests if there is a breach of duty by the consultant or contractor, or where the consultant or contractor cannot perform.

    Sections in the agreement that may be applicable to your project include terms and conditions, how payment will be made (payment terms), data practices, term of performance, insurance, records ownership / transfer or records, monitoring requirements, applicable state and federal requirements, bonding requirements, warranty requirements, drug-free workplace, nondiscrimination, equal employment opportunity, non-compliance, prevailing wage requirement, independent capacity of subgrantee, conflicts of interest and ethics compliance, liability, campaign contributions, subgrantee's liability, elections law, arbitration, errors and omissions, and indemnification.

Other agreement items may include insurance, the Data Universal Numbering System (DUNS) – Dunn & Bradstreet, Good Standing, signatory authority, a contract intake form, and a W-9. Create a project timeline in the agreement with clearly identified and logical milestones. Clearly define project tasks and deliverables. Make sure these deliverables align with those outlined in grant agreements. Any approvals or denials to agreement changes should be in writing (e.g. through an agreement amendment) prior to changes being made.

- **Choosing the proposal**. Some organizations use the method of choosing the lowest responsible proposal. The lowest responsible proposal does not always have the lowest price, but is the proposal that both has the lowest price and illustrates the consultant or contractor's capability to satisfactorily complete the project. Evaluation criteria may include the price and whether it is reasonable (particularly compared to other firms' submittals), qualifications of personnel, the scope of work (including whether there is added value), and their experience with similar types of projects.

  Organizations may choose to use a review committee, made up of at least three evaluators that include internal staff and partners. Scoring of proposals should be made independently, with a group meeting/resolution of discrepancies afterwards. Your organization may have policies in place with regards to how to complete soring. Criteria may be adjectival (e.g. ranging from unacceptable to outstanding) or based on points, with numerical ranking of responses by section.

  Interviews for the top proposals may be helpful to arrive at a final decision. Interview are particularly helpful for large or complex projects where you may wish to reaffirm their approach and understanding. It's also a chance to meet the candidates that would be completing the work and allow for Q&A and discussions.

- **Examples of reasons to exclude a proposal (excerpted from State of the Auditor of MN 2005):**

  1) Lack of equipment to properly complete the project
  2) Failure to produce a certificate of insurance or proper exemption
  3) Failure to address all required specifications in the solicitation document
  4) Materials/service proposed does not meet specifications

5) Lack of financial resources or organizational capacity to complete the project

6) Poor performance on a prior contract

- **After the proposals have been evaluated, move to notice of award.** The winner of the proposal should be called, followed by an official board action as applicable and official letter of intent. Organizations not winning the proposal should also be called, with feedback ready to help everyone submit better proposals next time.

- **Determine how signatures will be made** to execute the agreement and whether these must be wet ink or whether digital signatures are permissible. Remind your consultant/contractor not to start work until the agreement is signed by both parties.

Working with a Consultant or Contractor

- **Create a project folder** on your server to keep track of communications, contracts, deliverables, invoices/project accounting, pre-contract materials (such as board approvals and proposals), and any other supporting materials.

- **Schedule a kickoff meeting after awarding the contract**. This meeting should include a review of the project's scope of work (assumptions, schedule, deliverables, any add-ons etc.) and the final budget (not-to-exceed amount, time and materials, payment terms, and any flexibility). Review the agreement and create a mutual understanding of the expectations and responsibilities of all parties involved up front. The agreement is the single most controlling document for managing disputes/claims. Any budget overruns or needs for change orders should be discussed in advance of that work.

- **Establish a good relationship with the consultant or contractor early on to ensure accountability and invest time in getting to know the team**. Communicate frequently and provide feedback throughout the project period rather than waiting until the end. Regularly revisit the contract to see whether targets are being met and check in with your contractors on the status of upcoming tasks.

- **Establish monitoring procedures** such as periodic contractor reports submitted by the consultant or contractor or inspections of completed work. Celebrate accomplishments and let your contractor know that their work is valued.

- **In wrapping up the project, measure the success or failure of the final results against the initial objectives**. Review the project file to ensure that it contains sufficient documentation to answer any questions that may arise, or to provide guidance on any similar projects that may be completed in the future. The project file should contain the following:

- Copy of contractor or consultant's original proposal
- Copy of signed contracts with your consultants and contractors, funders, and other entities and any associated amendments
- Board resolutions / approvals of the project or extensions
- Project Management Plan
- Consultant or contractor information: insurance, W-9, and other info
- Project financials: accounting spreadsheet and invoices
- Email correspondence, meeting and phone call notes, press releases, and other communication
- Final deliverables (as outlined in agreements)
- Final assessment of the project as a whole, including an assessment of the consultant or contractor's performance.

- **Review final workmanship for quality**. This may occur through regular walk-throughs during construction and a "punch list" evaluation. Client review of the project is critical and expectations should be established early. Ask about the Quality Assurance/Quality Control (QA/QC) methods by the consultant team and ask that work be redone if necessary.
- **During project close-out, be sure to celebrate project success and document achievements.** This could entail a ribbon cutting event and/or photo opportunity with press invited. All deliverables should be provided to the client as well as funding entities as outlined in contracts. Make sure you have everything prior to paying the final invoice.
- **Document lessons learned**, i.e. what went well and why and what could be done better next time and discuss with your contractors/consultants.

References

Government Information Division, Office of the State Auditor, State of Minnesota (2005). Best Practices Review: Contracting and Procurement in the Public Sector.
https://www.osa.state.mn.us/media/z3wggecu/bestpractices_05_report.pdf