

**DEPARTMENT OF ADMINISTRATION
REAL ESTATE AND CONSTRUCTION SERVICES**

**CONTRACTING POLICY
RECS – CT - 01**

2/25/2008 revision(1) 09/16/2008 rev(2)

Purpose

To maintain compliance with State Statutes and Department policy on contracting for and procuring work.

References

1. Minn. Stat. §16A.15, §16C.05, §16C.08, §16B.31
2. Legislative appropriation and bonding Laws
3. Master Roster of Firms Program
4. State’s *Professional/Technical Services Contract Manual*
<http://www.mmd.admin.state.mn.us/mn05001.htm>
5. RECS-CT-02 Vendor Performance Reporting Policy rev(1)
6. RECS-CT-03 Consultant Performance Evaluation Policy rev(1)
7. RECS-CT-04 Exercising Owner’s Rights Policy rev(1)
8. RECS-CT-05 Statute Requirements for Bonded Projects Policy rev(1)
9. RECS Standards of Work (SWs) for all contract types rev(2)

Definitions

For purposes of this policy, the following definitions apply:

1. **Staff**: An employee of the State of Minnesota.
2. **Contract**: An agreement, a Professional/Technical Services Contract (P/TS), a Basic Services Agreement (BSA), a Joint Powers Agreement, purchase order, construction contract, or any document that obligates or is intended to obligate the State to a financial commitment or other commitment related to expenditure of State resources.
3. **“Execute”** or **“fully execute”**: Obtaining agreement and signatures from a vendor and authorized state officials where indicated on the signature page of the contract; or obtaining authorized signatures on a developing encumbrance.
4. **RFP**: Request for Proposal.
5. **CCD**: Construction Change Directive
6. **IS**: Informal Solicitation. The IS is similar to the RFP except that it is intended for projects under \$50,000 and advertising in the State Register is optional.
7. **A/E**: Architect/Engineer
8. **Project Manager (PM)**: State employee classified as an Architect of any classification level; Engineer of any classification level, Engineering Technician of any classification level, Contract Specialist of any classification level, or other staff who are assigned to manage a project(s) and/or contracts related to the project(s).

Policy and Action:

Responsible Person:

1.	Staff is to comply with State Statutes, State Laws, and departmental policies when carrying out their duties. See “References” above.	All Staff
2.	To comply with Minn. Stat. §16C.08, subd. 2 and 3, a P/TS Contract Certification Form must be completed and approved prior to fully executing a Professional/Technical Contract or Basic Services Agreement.	Project Managers

<p>3.</p>	<p>In accordance with Minn. Stat. §16A.15, a contract shall be fully executed prior to giving approval to vendors to proceed with work. This includes contract work for Design, Studies, Predesign, Testing, other Professional/Technical Services, construction, purchase orders or any activity that commits the State to a financial obligation or expenditure of State resources.</p> <p>Minn. Stat. §16A.15, subd. 3, reads (emphasis added):</p> <p><i>(a) A payment may not be made without prior obligation. An obligation may not be incurred against any fund, allotment, or appropriation unless the commissioner [of finance] has certified a sufficient unencumbered balance or the accounting system shows sufficient allotment or encumbrance balance in the fund, allotment, or appropriation to meet it An expenditure or obligation authorized or incurred in violation of this chapter is invalid and ineligible for payment until made valid. <u>A payment made in violation of this chapter is illegal. An employee authorizing or making the payment, or taking part in it, and a person receiving any part of the payment, are jointly and severally liable to the state for the amount paid or received. If an employee knowingly incurs an obligation or authorizes or makes an expenditure in violation of this chapter or takes part in the violation, the violation is just cause for the employee’s removal by the appointing authority or by the governor if an appointing authority other than the governor fails to do so.</u> A claim presented against an appropriation without prior allotment or encumbrance may be made valid on investment, review, and approval by the commissioner [of finance], if the services, materials, or supplies to be paid for were actually furnished in good faith without collusion and without intent to defraud.</i></p>	<p>Project Managers</p>
<p>4.</p>	<p>In accordance with Minn. Stat. §16A.15, staff shall fully execute an amendment to a design contract (P/TS or BSA) prior to giving approval or allowing work to proceed.</p> <p><u>Exception:</u></p> <p>In accordance with Minn. Stat. §16A.15, subd. 3(c), if a design change is required during the construction phase of a project, where delay of construction may result, approval to proceed with additional work may be given upon encumbrance of funds into the contract(s). Encumbrance of funds is accomplished by executing a Developing Encumbrance Form and obtaining signature approvals on the form(s). See Statute reference in Paragraph 5(f) below.</p>	<p>Project Managers</p>
<p>5.</p> <p>a.</p> <p>b.</p> <p>c.</p>	<p>In accordance with Minn. Stat. §16A.15, subd. 3(c), and following the competitive bidding process, approval to proceed with construction work can be given when the following conditions are met:</p> <p>After receipt of a copy of a letter from Materials Management Division which states that the contractor is given the “Notice To Proceed” with work.</p> <p>After receipt of an email from Materials Management Division, or the RECS Contracts Coordinator, indicating that a contract has been executed and a “Notice To Proceed” letter has or will be sent to the contractor.</p> <p>After a Supplemental Agreement to the contract has been fully executed. Changes to contracts must be in accordance with Minn. Stat. §16A.15, subd. 3(c) referenced in Paragraph 5 below.</p>	<p>Project Managers</p>

<p>d.</p> <p>e</p> <p>f.</p>	<p>After a Developing Encumbrance Form has been fully executed in accordance with paragraph 6(a) of this policy.</p> <p>By verbal approval or Construction Change Directive (CCD) when the additional work is needed immediately in order to avoid a potential construction delay claim. Following verbal approval, staff shall execute a Developing Encumbrance Form as soon as possible, followed by a Supplemental Agreement in accordance with paragraph 6(a) of this policy.</p> <p>Minn. Stat. §16A.15, subd. 3(c), reads: <i>“to minimize potential construction delay claims...a project funded by a building appropriation may allow a contractor to proceed with supplemental work within the limits of the appropriation before money is encumbered. Under this circumstance...may requisition funds and allow contractors to expeditiously proceed with a construction sequence. While the contractor is proceeding, the agency shall immediately act to encumber the required funds.”</i></p> <p>After the Contractor receives a Notice to Proceed with work, the RECS PM may submit a D/E (developing pre-encumbrance) form to pre-encumber a 5% construction contingency amount to cover future changes. The 5% contingency amount may ONLY be used for changes/additional work needed in order to accomplish the intent of the construction documents; wherein the State is receiving an added value. NO PROGRAM or SCOPE CHANGES will be allowed.</p> <p>a. The PM is responsible for monitoring the changes (debits) to the 5% contingency so that approval to do work above this amount is not exceeded. When the 5% contingency is near depletion, the PM shall discuss future changes with their supervisor to determine if individual D/Es are to be executed for each change or whether another “lump sum” D/E is to be executed.</p> <p>b. If the work is not covered under the “lump sum” 5% contingency amount that was pre-encumbered, the RECS PM must, within 48 hours of the approval, initiate action to encumber the funds via a D/E (developing pre-encumbrance).</p>	
<p>6.</p>	<p>The decision to amend a contract which increases the scope of work and contract amounts shall be made in accordance with Minn. Stat. §16C.05. When a change (amendment or supplemental agreement) to the contract surfaces, staff shall review the change for compliance with Minn. Stat. §16C.05, subd. 2(d). If the change is determined to be in compliance, the PM shall complete the Developing Encumbrance Form and submit for final approval prior to giving the vendor approval to proceed with additional work.</p> <p>Minn. Stat. §16C.05, subd. 2(d) reads: <i>Amendments to contracts must entail tasks that are substantially similar to those in the original contract or involve tasks that are so closely related to the original contract that it would be impracticable for a different contractor to perform the work. The commissioner or an agency official to whom the commissioner has delegated contracting authority under section 16C.03, subdivision 16, must determine that an amendment would serve the interest of the state better than a new contract and would cost no more.</i></p>	<p>Project Managers</p>

<p>a.</p>	<p>The Developing Encumbrance (D/E) shall identify the following information related to the contract change (see current D/E form):</p> <ol style="list-style-type: none"> 1. Written description of what was called for in the original contract. 2. Written description of the reason the change is required. 3. Cost Information: <ul style="list-style-type: none"> <input type="checkbox"/> Cost Estimate - “Not To Exceed” (Final cost in subsequent SA will be based on actual costs or ‘not to exceed’ amount, whichever is less.). Staff shall ensure execution of the SA within 15 days of receipt of final cost from contractor. If verbal approval was given when additional work is needed immediately in order to avoid a potential construction delay claim, execute a DE form as soon as possible (within 48 hours). Submit an additional D/E if the cost estimate increases. <li style="text-align: center;">OR <input type="checkbox"/> Proposal Request “Fixed Amount” (Final cost in SA will be the same amount). Staff shall ensure execution of SA within 60 days following D/E. <p>For changes to construction contracts, the A201 contract also requires the A/E of record to issue a Construction Change Directive (CCD).</p> <ol style="list-style-type: none"> 4. Category of the Change. The change shall be identified in one of the following categories: <ul style="list-style-type: none"> <input type="checkbox"/> Code Change <input type="checkbox"/> Hidden/Unforeseen condition <input type="checkbox"/> Program Change <input type="checkbox"/> Errors & Omissions 	
<p>7.</p>	<p>For a project(s) contained in bonding bill appropriations (Laws), staff assigned to the project(s) shall solicit and contract only for work that is specified within the language of the appropriation/Law and within the specified dollar amount of the appropriation/Law.</p> <p><u>Example:</u> The appropriation states that \$20 million is appropriated to design and construct a 150 bed housing unit for inmates. Staff shall ensure that the scope of work shall not exceed 150 beds and that the contracts and delivery of the project will not exceed \$20 million.</p> <p>When Furniture, Fixtures and Equipment are funded in an appropriation, or included in the project, an Interagency Agreement will be received by the Project Manager with the PIF (Project Initiation Form) when the project is assigned. The Project Manager obtains the customer agency’s signature and RECS Delegated signature.</p> <ol style="list-style-type: none"> a. RECS Contracting distributes copies of the agreement to all parties, makes an electronic file copy and places the original in the Consultant vendor’s contract file. 	<p>Project Managers</p> <p>Project Managers</p> <p>Contracting</p>

8.	<p>Staff shall comply with Minn. Stat. §16B.31 when carrying out their duties and in their contracting activities:</p> <p>Minn. Stat. §16B.31, subd. 2, reads (emphasis added):</p> <p><i>Appropriations. Plans must be paid for out of money appropriated for the purpose of improving or constructing the building. No part of the balance may be expended until the commissioner has secured suitable plans and specifications, prepared by a competent architect or engineer, and accompanied by a detailed statement of the cost, quality, and description of all material and labor required for the completion of the work. <u>No plan may be adopted, and no improvement made or building constructed by the commissioner or any other agency to whom an appropriation is made for a capital improvement, that contemplates the expenditure for its completion of more money than the appropriation for it, unless otherwise provided in this section or the act making the appropriation. The commissioner or other agency may not direct or permit any expenditure beyond that appropriated, and any agent of the commissioner violating this provision is guilty of a gross misdemeanor.</u></i></p>	Project Managers
9.	<p>When staff utilize Work Orders from a Master Contract/Annual Plan, staff shall obtain quotes from 3 to 4 of the vendors who have master contracts (typical master contracts exist for design, testing, land surveying and hazardous materials work).</p>	Project Managers
10.	<p>For commodity purchases, staff shall obtain competitive quotes and a purchase order prior to entering into an obligation to purchase commodity goods.</p>	Project Managers
11.	<p>In accordance with Statute 16B.335, verify the following:</p> <ol style="list-style-type: none"> 1. Prior to entering into a design contract, verify that a Predesign has been submitted and approved. 2. Prior to preparing final construction documents, verify that notification has been sent to the appropriate committee chairs in the legislature. 	Project Managers
12.	<p>All bidding and contracting for construction shall be coordinated with Materials Management Division (MMD). To begin the process of obtaining construction bids and contracting for construction work, Project Managers shall:</p> <ol style="list-style-type: none"> a. Work with the architect/engineer of record to complete and submit a “Bid Request Form” to MMD. b. MMD will respond to the bid request by providing a bid date(s) and a contract “front-end” consisting of the State’s bidding and contracting requirements. This front-end shall be edited as indicated and placed at the front of the specifications in the Project Manual. c. The Project Manager shall provide the architect/engineer with the State’s amended “A201 General Conditions of the Contract for Construction”. This shall be placed in the Project Manual. 	Project Managers

d.	See your supervisor when considering design/build, best value or construction manager at risk delivery methods.											
13.	When preparing RFPs for design or other P/T Services which will result in a contract, staff shall adhere to, and carry out their duties, in accordance with the requirements of the Master Roster Program to ensure competition and opportunity among private sector vendors.	Project Managers										
14.	Staff shall solicit RFP responses from firms/vendors who are in the Master Roster Program, in accordance with the following: <table border="1" data-bbox="297 485 1216 716"> <thead> <tr> <th>Anticipated Dollar Amount of Contract (Dollar amount threshold)</th> <th>Number of Master Roster Firms to receive the RFP</th> </tr> </thead> <tbody> <tr> <td>\$ 0.00 to \$24,999</td> <td>1</td> </tr> <tr> <td>\$ 25,000 to \$49,999</td> <td>2</td> </tr> <tr> <td>\$ 50,000 to \$99,999</td> <td>3</td> </tr> <tr> <td>\$ 100,000 and above</td> <td>10</td> </tr> </tbody> </table> <p>a. It is understood that when some projects are initiated, the full scope of work and cost are unknown and will be determined during a preliminary study phase or during design. Under this scenario, staff shall anticipate the unknowns in the RFP and solicit additional responses if it is thought that the cost may exceed the dollar amount threshold.</p> <p><u>Example:</u> After scoping the project and it is determined that the anticipated fee is between \$25,000 and \$49,999 but there are many unknowns, staff shall consider that there is a high potential for an increase in the work and contract and thus, solicit responses from 3 (three) firms in lieu of 2 (two).</p> <p>b. Should a contract change occur where the amount exceeds the original threshold, the Project Manager shall complete the attached Exhibit B “<i>Report on Exceeding Dollar Threshold for Solicitations</i>”.</p>	Anticipated Dollar Amount of Contract (Dollar amount threshold)	Number of Master Roster Firms to receive the RFP	\$ 0.00 to \$24,999	1	\$ 25,000 to \$49,999	2	\$ 50,000 to \$99,999	3	\$ 100,000 and above	10	Project Managers
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\$ 100,000 and above	10											
15.	Staff has the discretion to publish RFPs in the State Register when they deem that there are no qualified firms available in the Master Roster Program or, if a broader dissemination of the RFP is desired.	Project Managers										
16. <i>rev</i> <i>(1)</i>	For Construction Projects Staff shall use the following process based upon dollar amount thresholds: <p>a. Projects that are estimated to be less than \$50,000 are to be bid following: established purchasing policy and procedures (Appendix Q of the ALP manual) for purchase order purchases.</p> <p>For Projects estimated to be less than \$2,500, an order can be issued based on one b. quote (telephone quote can be used).</p> <p>b. Projects estimated to be \$2,500 up to \$10,000 require a minimum of two companies to be contacted (telephone quotes can be used).</p> <p>c. Projects estimated to be \$10,000 up to \$50,000 require an OMR (Open Market Requisition) to be entered into MAPS, a MAPS solicitation done, solicitation</p>	Project Managers/All Staff										

d.	advertised, and if possible at least three vendors should be sent the solicitation. See RECS’s website for the format for the “OMR Special Conditions”.	
e.	Projects that are estimated to be \$50,000 or more, are to be bid using the full construction contract process with Plans and Specifications and Payment Bond and Performance Bond, etc. as contained in the state’s “front-end” contract (Division 00).	
17. <i>rev</i> <i>(1)</i>	Staff shall manage projects and enforce contracts using the following referenced policies: a. RECS-CT-02 Vendor Performance Reporting Policy <i>rev(1)</i> b. RECS-CT-03 Consultant Performance Evaluation Policy <i>rev(1)</i> c. RECS-CT-04 Exercising Owner’s Rights Policy <i>rev(1)</i> d. RECS-CT-05 Statute Requirements for Bonded Projects Policy <i>rev(1)</i> e. SW Standards of Work for all contracting types	Project Managers/All Staff
18. <i>rev</i> <i>(1)</i>	For RECS contracts, the RECS Director and the RECS Construction Program Manager/Assistant Director are the officials who have delegated representative for the Commissioner of Administration and State to sign contracts and make decisions regarding claims or issues related to the contracts.	Project Managers/Construction Program Manager
19. <i>rev</i> <i>(1)</i>	Claims and/or Contract Dispute resolution on construction projects and associated contracts shall be rendered in accordance with the General Conditions of the Contract for Construction.	Project Managers
20. <i>rev</i> <i>(1)</i>	RECS is the designated representative for the Commissioner of Administration and the State (See Article 2.1.1 of the General Conditions-AIA 201 as amended by the State). Following the A/E of record’s interpretation of a contractor claim, should a contractor request a review by the Commissioner of Administration, RECS’s Construction Program Manager/Assistant Director, has the authority to render a final determination on the claim. Correspondence to vendors is to be reviewed by the RECS Construction Program Manager.	Project Managers
RESPONSIBILITIES		
21.	The Project Manager shall be the staff person responsible for managing and monitoring the contracts associated with the projects assigned to them and to adhere to the requirements of this policy. When violations of the above statute (16A & 16C) occur, the Project Manager shall complete and submit the attached Exhibit A “16A.15-16C.05 Form”.	Project Managers
22.	The Project Manager is the staff person responsible for verification of fully executed contracts, amendments, or encumbrances, prior to giving approval or allowing work to proceed on their assigned projects.	Project Managers
23.	RECS’s Administrative Support Staff shall assist Project Managers with clerical functions of preparing and issuing RFPs, Developing Encumbrance Forms, P/TS contracts, Amendments, Supplemental Agreements and Purchase Orders needed for	Support Staff

a.	<p>their assigned projects.</p> <p>The Project Manager is responsible for initiating the documents/forms and providing Support Staff with the necessary information needed to complete the RFPs and contract documents. (i.e., project scope, costs, contact information, meeting dates, due dates, etc). in a timely manner).</p>	Project Managers
24.	Staff shall carry out their activities and duties in a manner that seeks to achieve the Divisions Goals and Objectives related to contracting, project delivery and reporting of project status.	Project Managers Support Staff
25.	<p>Project Managers shall manage the language used when preparing developing encumbrances, supplemental agreements and supplements. For review and audit purposes, the language shall be clear and understandable to those who are not in the design and construction industry.</p> <p>When preparing a change for a contract (in a developing encumbrance, supplemental agreement or amendment), the language shall clearly describe what was in the original contract, what the change is, and why the change is required.</p> <p><u>Example:</u> <u>Whereas:</u> The original contract called for remodeling the first floor of the administration building which included demolition of walls. And, during demolition, unforeseen piping was discovered in several walls.</p> <p><u>Therefore:</u> Removal and rerouting of the piping is required in order to meet the original design intent.</p>	Project Managers
26. rev (1)	Refer to the State's <i>Professional/Technical Services Contract Manual</i> and <i>ALP Manual</i> for any procedures or requirements not covered in this policy.	All Staff
27 rev (2)	<p>When approving final payment on the contract, the Project Manager shall complete a Vendor Evaluation for contracts of any amount AND complete a Vendor Report for contracts in the amount of \$50,000 or more. See Standards of Work for Vendor Evaluations and Vendor Report.</p> <p>The Vendor Evaluation Form is attached to the P/T Contract templates. The Vendor Report Form is on Materials Management website.</p> <p>Provide the original of the form to the RECS Contracts Officer / Coordinator and file one copy in the contract file.</p>	
28 rev (2)	In accordance with 16C.08 Subdivision 6 if the final product of the contract is a written report, a copy must be filed with the Legislative Reference Library. The RECS PM is to forward any reports that were contract deliverables, to RECS Contracting who will file the report with the Legislative Reference Library.	PMs & RECS Contracting