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## Chapter 3

# CONSULTANT CONTRACTS

The Geotechnical Section uses consultants for geotechnical work on as-needed basis. Chapter 3 discusses consultant usage, and specifically discusses the initiation and administration of term contracts. In general, the Geotechnical Section is the focal point for term contracts for contract negotiations and contract administration for all non-contract project issues. The Consultant Design Bureau manages all contract issues (e.g., invoices, overhead rates, time extensions).

See the *MDT Consultant Services Manual* for an in-depth discussion on MDT's use of consultants.

### 3.1 USAGE

#### 3.1.1 Term Contracts

Term contracts are used by the Geotechnical Section for in-house designed projects when the Section does not have adequate staff to complete its work by the scheduled date. For term contracts, the Geotechnical Section coordinates with the Consultant Design Bureau in:

- selecting which firms qualify for the on-call lists;
- determining and justifying the need for consultant services;
- developing the scope of work for term contracts;
- evaluating consultant cost estimates;
- administering the contract (e.g., reviewing invoices); and
- monitoring and evaluating the consultant.

See [Section 3.2](#) for more information on term contracts.

#### 3.1.2 Consultant Design Projects

The applicable MDT engineering unit is responsible for coordinating with the Consultant Design Bureau on technical aspects of consultant design projects. The Geotechnical Section is responsible for reviewing any geotechnical issues as part of an overall road or bridge design project. The following summarizes the Geotechnical Section's coordination with the Consultant Design Bureau on consultant design projects:

- determining the scope of work for geotechnical-related items;
- working with the consultant on an as-needed basis;
- attending field meetings as required to provide input to the consultant for the preparation of the Preliminary Field Review, Scope of Work, and Plan-in-Hand Reports;

- reviewing all work performed by the geotechnical consultant to ensure that it meets the applicable Department criteria;
- assisting the Consultant Design Bureau with the performance evaluation; and
- in general, providing any needed technical support to the Consultant Design Bureau in the implementation of its responsibilities.

### **3.1.3 Special Projects**

The Geotechnical Section may hire a consultant to conduct geotechnical research or special studies, prepare documents, etc. The Geotechnical Section coordinates with the Consultant Design Bureau in:

- determining the scope of services required,
- preparing Request for Qualifications,
- evaluating Statement of Qualifications from consultants,
- selecting the most qualified consultant,
- negotiating the scope of work and cost estimate with the selected consultant,
- administering the contract; and
- monitoring and evaluating the consultant.

## 3.2 TERM CONTRACT PROCESS

### 3.2.1 General

The MDT Preconstruction Program develops highway improvement projects throughout the State. In most cases, the project will be managed by one of the following functional units:

- Highways Bureau,
- Bridge Bureau, or
- Traffic and Safety Bureau.

Many MDT projects, especially those managed by the Highways Bureau or Bridge Bureau, require a geotechnical investigation and design as part of project development. For projects designed in-house, the Geotechnical Section will typically provide these services. However, where the in-house resources are unable to provide the geotechnical services within the project schedule, the Geotechnical Section may secure the services of a geotechnical consultant.

The Geotechnical Section uses the “Term Contract” procedures that have been developed by the Consultant Design Bureau to select, negotiate and administer geotechnical consultant projects. Section 3.2 describes the basic term contract process. The objective of this process is to establish a roster of prequalified geotechnical consultants that will be “on-call” to provide the services on an as-needed basis with a minimum of administrative details necessary to initiate work. See the *MDT Consultant Services Manual* for an in-depth discussion on the use of consultant services for term contracts.

### 3.2.2 Prequalification

Once every two years, the Consultant Design Bureau issues a Request for Qualifications (RFQ) requesting a Statement of Qualifications (SOQ) for several categories of consultant services. One of these is for geotechnical engineering services. Any consultant that desires to provide geotechnical services to MDT must be prequalified.

After all SOQs have been received, the following briefly discusses the MDT process for selecting prequalified consultants:

1. Rating Panel. The Rating Panel, which includes a representative from the MDT functional unit (e.g., Geotechnical Section), will evaluate each SOQ based on the following:
  - qualifications of firm,
  - qualifications of proposed personnel,
  - capacity and capability of each firm, and
  - record of past performance/reference checks.
2. Consultant Selection Board. The Rating Panel submits its ratings to the Consultant Selection Board, which will then formally approve a roster in ranked order for each of the professional categories. This roster can then be used to select consultants on a project-by-project basis as the need arises.

3. Execute Term Contract. MDT enters into a Term Contract with each of the top three consultants (at a minimum) in each of the professional categories for consultant services. MDT has developed a Standard Agreement that is used for all contracts with MDT consultants. The Standard Agreement addresses the basic contractual requirements (e.g., errors and omission insurance, EEO requirements, licenses, certificates, termination). For the Term Contract with each consultant, the following must also be negotiated with the consultant:

- indirect cost rate (i.e., overhead rate);
- rates for all direct labor; and
- fee or profit.

If MDT and the consultant agree to these terms, the Consultant Design Bureau will process and execute the Term Contract through its standard administrative process. The MDT cap for each Term Contract is \$300,000, and the cap for each Term assignment is \$100,000.

### **3.2.3 Consultant Service Initiation**

For most MDT projects, the lead functional unit conducts a Preliminary Field Review (PFR) and prepares a PFR Report. When the project is likely to involve a significant geotechnical element, a representative from the Geotechnical Section will attend the PFR. If the Geotechnical Section intends to use a geotechnical consultant for the in-house project, this should be stated in the PFR Report. However, the Geotechnical Section may make this determination some time after the issuance of the PFR Report. Regardless, to initiate the consultant selection process, the Geotechnical Section must present the following information to the Consultant Design Bureau:

- justification for the use of a consultant,
- brief scope of services;
- desired number of contracts/consultants;
- desired contract dollar ceiling(s);
- term of the contract (two years is standard); and
- expiration date of existing term contracts, if applicable.

If agreeable, the Consultant Design Bureau will approve the use of a geotechnical consultant for the project.

### **3.2.4 Consultant Selection for Individual Term Assignments**

At this stage, the Geotechnical Section and Consultant Design Bureau has executed Term Contracts with a minimum of three geotechnical consultants, and the Geotechnical Section has received approval to use a geotechnical consultant for a specific in-house project. The basic objective is to select the most qualified geotechnical consultant to perform the work under a Term assignment. The Geotechnical Section initiates the consultant selection process by reviewing the roster of term consultants and evaluating the geotechnical consultants based on the following additional evaluation criteria:

- location of project,
- experience of each geotechnical consultant in that locale,
- type of geotechnical services needed and the strengths and weaknesses for each consultant with respect to the services needed, and
- consultant workload.

For engineering work, only one consultant will be requested to provide a cost estimate.

### 3.2.5 **Negotiations**

The Consultant Design Bureau assigns a Consultant Project Engineer (CPE) to each MDT consultant Term Contract. The Geotechnical Section and the CPE will work together to negotiate the specific terms for each Term assignment issued under the Term Contract. The following briefly describes the contract negotiation process:

1. **Consultant Proposal.** Based upon the scope of work for the project provided, the geotechnical consultant will submit a written proposal to provide the required services. The proposal will:
  - document the scope of services,
  - identify the project deliverables,
  - note the proposed use of any subconsultants,
  - state the anticipated start and end date, and
  - provide a cost proposal that includes:
    - + estimated manhours;
    - + the application of the direct labor rates, indirect cost rate and fee as documented in the Term Contract;
    - + direct project expenses; and
    - + the itemized cost for any subconsultants.

In almost all cases, MDT uses a cost-plus-fixed-fee type of contract with its consultants. The geotechnical consultant will submit the proposal to the Geotechnical Section with a copy to the CPE. In addition, the consultant will submit a letter indicating whether or not they can commit the resources to provide the requested services.

2. **Independent MDT Cost Estimate.** With assistance as needed from the CPE, the Geotechnical Section will develop an independent MDT cost estimate for use in evaluating the cost proposal from the geotechnical consultant.
3. **Negotiations.** The Geotechnical Section takes the lead in negotiating with the geotechnical consultant, with assistance as needed from the CPE.

4. **Contract Process.** Once the Geotechnical Section and the geotechnical consultant have negotiated the terms of the proposal (i.e., schedule, scope, cost), the CPE will process and execute the Term assignment. After receiving approval from the Consultant Design Bureau Chief, the CPE issues a Notice to Proceed to the geotechnical consultant.

### **3.2.6 Project Implementation**

During project implementation, the Geotechnical Section is the primary point of contact with the geotechnical consultant for all non-contract project issues. This primarily involves overseeing the geotechnical work of the consultant. The Geotechnical Section will review and approve all project deliverables (e.g., subsurface investigation reports, lab test reports, geotechnical designs for earth retaining systems, bridge foundations). [Chapter 5](#) discusses the content and format of Geotechnical Reports. The Geotechnical Section may also occasionally participate in field investigations to ensure that the geotechnical consultant is conducting its work according to MDT standards.

Invoices will be sent directly to the Geotechnical Section. The Geotechnical Section will review the consultant's invoice for services received, reasonableness, accuracy and budget. Once the invoice has been reviewed, it is forwarded to CPE. Progress reports should accompany the invoice with a copy submitted to the Consultant Design Engineer.

The CPE will manage all contract issues, including:

- processing invoices and progress reports,
- processing Contract modifications,
- processing time extensions, and
- ensuring compliance with contract terms.

### **3.2.7 Evaluations**

At least once a year, the Geotechnical Section will conduct a consultant performance evaluation for every term contract that they have had significant interaction with the consultant or reviewed the consultant's work. The evaluation is forwarded to the Consultant Design Bureau. The Consultant Design Bureau administers the post-evaluation process for geotechnical consultants with input from the Geotechnical Section. These evaluations then become information used to evaluate consultants in upcoming Prequalification rankings.

### **3.2.8 Contract Extension**

The Geotechnical Section will notify the CPE if a contract modification is anticipated for time or budget. Term contracts should not be extended for more than one year, unless extenuating circumstances exist and can be documented.

**3.2.9 Contract Closeout**

The Geotechnical Section will notify the CPE when the final invoice for each term assignment has been received and when the contract can be closed. The CPE is responsible for closing the contract.

