



Working with Consultants: A Guide for Local Governments

The Environmental Quality Board (EQB) draws together the Governor's Office, five citizens and the heads of 9 state agencies in order to develop policy, create long-range plans and review proposed projects that would significantly influence Minnesota's environment. The Board staff is housed in the State and Community Services Division of the Department of Administration.

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This document is not intended as a substitute for Environmental Quality Board rules and should be used in conjunction with the rule provision parts 4410.1000 to 4410.1700. Copies of the rules are available from Minnesota's Bookstore, www.minnesotasbookstore.com, 651-297-3000 or 800-657-3757, or at the Revisor of Statutes homepage at www.revisor.leg.state.mn.us. Further information about the environmental review process is available in the Guide to Minnesota Environmental Review Rules, also located on the EQB website. Upon request, this document will be made available in an alternate format, such as Braille, large print or audiotape. For TTY, contact Minnesota Relay Service at 800-282-5077 and ask for the Minnesota Environmental Quality Board.

Updates and corrections to this document and all its accompanying links, forms, or examples will be posted on the EQB homepage at <http://www.eqb.state.mn.us/review.html>.

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Objectives

By the end of this document, you will learn:

- The rationale for and benefits of hiring a consultant for environmental review.
- Strategies for recouping consultant costs from project proposers.
- The major components of an environmental review Request For Proposal (RFP).
- The common mistakes local governments make when working with consultants.
- The typical timeline for preparing an EAW.

Should You Hire a Consultant?

Two ways to utilize consultants during environmental review

Environmental review has been an important part of the planning process in Minnesota communities for over 30 years. When communities face the uncertainties of a large project, the process has provided a framework for investigation and has helped stakeholders examine the project's impacts before construction begins. Environmental review is also an important tool in helping communities identify and protect their valuable natural resources.

The process can be confusing at times, however, and many project proposers and local governments have realized that writing and coordinating review documents themselves can

lead to unexpected problems or delays. In order to avoid these issues, local governments are turning to consultants to provide assistance during the environmental review process. Some local governments, when they are both the RGU and the project proposer, have found that consultants can provide valuable expertise when writing the review document (EAW, EIS, AUAR). In other instances, when a local government is the RGU but the project proposer is a private company, the local government may hire a consultant to analyze the data submitted by the proposer, coordinate the public comment period and write the Findings of Fact.

Since the consultants hired by local governments are acting as extensions of government staff and are representing the local government's interests in these circumstances, retaining the right consultant is critical. The selection process should be treated with care. It is important to hire a consultant experienced with similar project types, review documents (EAW, EIS, AUAR) and methods of environmental analysis. It is equally important to work out key issues such as working hours, services and consultant responsibilities before signing a contract. In the pages that follow, you will learn some key steps in securing the right consultant for your environmental review project.

Ways Environmental Consultants Can Positively Influence the Outcome of the Project

A consultant can:

- Identify the legal requirements the project is subject to, which will help avoid fines or lawsuits.
- Facilitate communications with the project proposer, state agencies and other interested parties.
- Identify unique site features that your community might want preserved or avoided.
- Provide a professional/technical opinion on the project's potential environmental effects.
- Provide expert knowledge for city council and planning commission meetings.
- Identify concerns/impacts early in the process and recommend project changes.
- Verify the project is in compliance with state and local permits.

First things first: Determining whether a consultant is needed

Some local governments have made it standard practice to hire consultants for assistance with the environmental review process, while others do not feel it is necessary – they may have enough qualified staff people to prepare and review the environmental review documents internally. When you are deciding how and why you might need to hire a consultant, here are a few issues to consider:

- If your local government is the RGU for a project, is your staff qualified to evaluate the project proposer's data submittal for wetland, ecological, traffic, storm water run-off and other impacts related to the project? If your local



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government is both the proposer and the RGU, is your staff qualified to analyze the project and prepare the data portions of the environmental review document?

- Are you familiar with the review process - have you conducted environmental review before?
- Are the members of your planning commission or council/board familiar with the environmental review process and their role in making environmental review decisions? Would there be a need for a consultant to explain the environmental review rules and procedures to board members?
- Is there significant community opposition to the project? Could the environmental review process become the focus of this community opposition?

Hiring a consultant is not a black and white issue. Some local governments, for example, may only need assistance with certain parts of the process. If any of the questions above raise concerns about a project, it may be a good strategy to hire a consultant to assist you in the environmental review process.

Helpful Tip

There are many ways in which consultants can be involved during environmental review. Some local governments have also learned that using consultants can add credibility to their environmental review decision-making process. While a project proposer will prepare the environmental review document, local government RGUs will hire their own consultant and have them review the document, suggest changes, prepare a notice for the EQB Monitor, respond to public comments and write the Findings of Fact.

Recouping consulting fees from project proposers

When the project proposer is a private concern, there are several types of costs that are of an RGU's concern when coordinating environmental review. According to the environmental review rules, project proposers are required to prepare any reasonably accessible and applicable information and then submit this information to the RGU. After reviewing the submitted information, the RGU is then responsible for preparing the official environmental review document. The RGU's costs can include items such as reviewing the project proposer's data, drafting and making modifications to the environmental review document and preparing the

document for distribution. The RGU may also incur costs when reviewing public comments, responding to comments and writing the Findings of Fact. In practice, some local government RGU's have staff personnel perform these functions, while others hire a consultant.

While the environmental review statutes do not address in detail the issue of charging for environmental review costs, local units of government can enact ordinances that allow them to recoup at least part of the expenses for preparing/reviewing the document. Some local governments require that the project proposer to establish an escrow account at the start of the project. Any RGU staff time or consultant time spent on the project is then charged against the escrow at a predetermined hourly rate. The escrow account approach allows local governments to receive payment for fees and services as they are incurred. Some local governments keep track of all environmental review consulting fees and costs and submit a bill to the project proposer at the end of the environmental review process. The approach selected by a local government RGU, it should be supported by procedures and policies established in the local ordinance.

Hiring a Consultant - Five Steps

There are several steps in hiring a consultant for environmental review work:

Overview

- Step 1:** Identify potential candidates
- Step 2:** Prepare a Request for Proposal (RFP) and send it to the identified candidates
- Step 3:** Review submitted proposals and select the top candidate
- Step 4:** Check references
- Step 5:** Sign a contract

Step 1: Identify potential candidates

There are many ways to find the right environmental consultant to fit your needs. Look in phone books under "Consultants – Environmental," or contact local engineering or trade associations. You can also ask colleagues and local government planning associations for referrals, or you can search the Internet. Since many assessments require site visits, it is important to find a consultant located in your area. A directory of engineering consultants, some specializing in environmental services, is available from:

American Council of Engineering Companies (ACEC/MN)
<http://www.acecmn.org>



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Step 2: Prepare a RFP and send it to potential candidates

If you are working for a local government, you are likely familiar with a request for proposal (RFP). An RFP for consulting services includes all elements your legal counsel deems necessary. Suggested elements for environmental review RFPs include:

- Introduction
- Background information on the project
- Project scope
- Contract structure
- Insurance requirements
- Specific proposal requirements/content
- Proposal submission information
- Proposal selection process and criteria

More detailed information on RFP elements is available in the table on the next page.

Step 3: Review submitted proposals and select the top candidate

Once you have received the proposals, evaluate each one of them using these criteria:

- Did the consultant follow your instructions?
- Is everything calculated under the EAW/AUAR/EIS preparation costs or are other charges, such as wetlands delineation, listed separately?
- Did the consultant factor in contingencies such as public controversy over the project?
- Will any of the work be completed by sub-consultants?
- Are there optional items or costs?
- How will changes in the scope of services affect the project cost?

Choosing the best consultant for your project will depend on many factors and should be guided by project constraints and your organization's values. Do you want the best consultant for the job, even if it might cost a little bit more? Is it important that the environmental review document be completed as quickly as possible? Is cost a major factor in your selection process? If you've followed the steps above, you will likely have all the necessary information to make an informed and appropriate decision.

Step 4: Check references

Environmental review documents and services can cost thousands of dollars, so it's good to know ahead of time whether the consultant can do a good job. Once you have identified a few consultants with sufficient qualifications to meet your needs, it's important to evaluate their project management skills. The best way to do so is by requesting and checking references. This can yield valuable information about whether they can keep projects on schedule and within budget. By checking references, you are taking some concrete steps to protecting your organization and its stakeholders. Here are some questions you might want to ask references:

- What type of review document did they prepare for you and what was the size and scope about your project?
- Was your project controversial in any way? If so, how did the consultant deal with this?
- Did the consultant keep you informed of the project's status?
- Were you satisfied with the consultant's performance? If no, what could they have done better?
- Did the consultant stay on schedule and within budget?
- Was the consultant able to provide all of the services you needed or did they use subcontractors? If subcontractors were used, were you satisfied with their performance?
- Do you know if the consultant has been involved in any lawsuits?

In addition to checking references you may wish to contact a local Better Business Bureau to see if any complaints have been filed against the consultant.

Step 5: Sign a contract

When you hire a consultant, most will already have a standard legal agreement for you to sign for environmental review services. Read the contract and review any conditions or assumptions. Consultants include items in contracts to protect themselves from ill-fated projects or from RGUs that refuse to follow their advice. Most contracts will also include procedures for dealing with additional costs. If possible, discuss any concerns you have with your attorney before signing the contract.



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Elements to include in an environmental review RFP:

ELEMENT	DESCRIPTION
Overview	You should describe the purpose for preparing the RFP.
Background Information	You should provide any information about the expected level of project controversy or other possible project issues.
Project Scope	You should explain the type of environmental review document you need, any anticipated analysis that will be required, the number of board/council meetings you expect the consultant to attend, etc.
Contract Structure	You should state any parameters your local government has established for entering into contracts with consultants.
Insurance Requirements	You should list the type and amount of insurance the consultant will be required to have during the life of the project.
Content of the Proposals	<p>You will need to provide a list of the information you expect to see in all submitted proposals. Examples of important items include:</p> <ul style="list-style-type: none"> ■ A list of all subcontractors that will be used ■ The consultant's approach and rationale for subcontractors ■ The project manager and their qualifications ■ A breakdown of project into tasks ■ The number of hours allocated to each task ■ Project time line ■ Deliverables ■ A listing of the RGU's responsibilities during the project ■ Costs and the assumptions involved in determining costs ■ Work samples or corporate qualifications
Proposal Submission Information	You should list the number of copies required, the proposal submission address and the submission deadline. Also include how and when the consultants can contact you if they need more information about the project.
Proposal selection process and criteria	<p>This is an optional section. You may wish to list the deadline for making a decision and how you will be evaluating the proposals. Some common factors include the consultant's:</p> <ul style="list-style-type: none"> ■ Approach to the project ■ Past experience with similar projects ■ Cost ■ Proposed time line



Strategies for Using Consultants Effectively

Each time you work on a project in environmental review, you'll get better at hiring good consultants and keeping the project on track - whether your local government is the project proposer and RGU or just the RGU. This section is designed to speed up the learning process and provide you with strategies to avoid some of the pitfalls other local governments have had to deal with during environmental review. This information was gathered from interviews with environmental consultants, local governments and project proposers.

When your local government is the project proposer and the RGU . . . Solidify project designs before writing the environmental review document

While maintaining some flexibility in the project design to accommodate discoveries made during the environmental review process is important, it is not a good idea to postpone major portions of the project design or site analysis until after environmental review has been completed. Most local governments in this situation are concerned that the project will not get through review due to land characteristics, political issues or other reasons. There are several reasons why this IS NOT a good strategy:

- There are components of the EAW, AUAR, and EIS (such as stormwater analysis), that will require specific information about the site. If you are not able or willing to complete these questions in a detailed and clear way, agencies like the Minnesota Pollution Control Agency, Department of Natural Resources or Board of Water and Soil Resources will request for this information during the public comment period.
- If you do not have the design plans solidified and need to make major changes after the consultant has begun the environmental review document, you will spend extra time and money on the environmental assessment. The consultant may need to rewrite portions of the document and/or conduct other site assessments and surveys.

When your local government is the RGU, but not the project proposer . . . Communicate to project proposers that environmental review takes time

Project proposers often want everything done yesterday, so it is important to inform them from the beginning that environmental review frequently takes more than two months to complete.

Involve consultants and local government engineers early in the project

When a private developer is preparing the data portions of the environmental review document, they sometimes overlook the fact that local government engineers and planners have the final say on whether the project's design is appropriate for the site. There have been occasions in which significant problems with a project design have only been discovered in the final stages of the environmental review process. In these situations, the solutions have triggered significant changes in the data. If possible, schedule a meeting with the project proposer, any consultants and all relevant local government planning staff early on so you can review the project plans together. This technique can help improve your organization's credibility and image when working with project proposers during environmental review.

Plan ahead - you should not be making document changes at the last minute

The Environmental Quality Board has strict deadlines for publishing the availability of environmental review documents in the EQB Monitor. Remember, the public comment period can only begin after the project has gone on notice. If you submit changes at the last minute there may be no way to meet the deadline and the project will be delayed another two weeks. While this may be of no concern to your organization, the project proposer will likely be upset that their project has been further delayed.

Review

The information provided in this document originated through interviews with EQB staff, environmental consultants, local government officials and project proposers who have previously participated in the environmental review process. This information is built upon the common mistakes that these individuals have observed in local government proceedings,



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which can derail a project or deflate an organization's credibility.

"It's a pay now or pay later process" is a common phrase used by environmental review stakeholders. If your local government does not follow the environmental review rules, or is not prepared for the constraints of the process, projects may be significantly delayed or have additional costs added to them. By following some of the tips and strategies in this document, your organization will successfully and efficiently navigate the environmental review process.

Five Steps: Hiring a Consultant for Environmental Review

1. Identify potential candidates
2. Prepare a Request for Proposals (RFP) and send it to the identified consultants
3. Review submitted proposals and select a top candidate
4. Check references
5. Sign a contract

Strategies for Using Consultants Effectively

- Solidify project designs before writing the environmental review document
- Communicate to project proposers that environmental review takes time
- Involve consultants and local government engineers early in the project