SECTION 8:  
CONTRACT AMENDMENTS

When May a Contract Be Amended: Legislation passed in 2003 provides as follows: 
“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 Minn. Stat. § 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.” (Minn. Stat. § 16C.05, subdiv. 2(d.).)

To assist agencies with compliance with this statutory provision, a form was developed that details 
the legal requirements. The Amendment Cover Sheet must be submitted to MMD to verify the 
statutory requirements have been met.

Amendment Cover Sheet

The Amendment Cover Sheet is available on the MMD website at:

http://www.mmd.admin.state.mn.us/pdf/amendmentpreapproval.pdf
http://www.mmd.admin.state.mn.us/doc/amendmentpreapproval.doc

Timing: It is very important that an amendment be in place before the contract expires. This will 
avoid any liability that may occur for not having a contract in force when the contractor is working.

Scope of the Amendment: Consistent with statutory requirements, contracts may only be amended 
within the scope of the original certification and RFP. For instance, if the original certification and 
RFP asked for "analysis of soil samples" and nothing more, you could not amend the contract to seek 
"soil stabilization planning and implementation." However, if your original certification and RFP 
had asked for "analysis of soil samples and potential additional requirements to stabilize the soil," 
and your contract was only for analysis, you could amend the contract for "soil stabilization planning 
and implementation." The original certification and RFP identified that these services might be 
required.

Examples of Amendments:

Unexpected developments
Unexpected developments do happen. The agency needs soil samples for groundwater 
contamination. The drilling identifies an unexpected leaking pipe. The contractor has the capability 
(and licenses, if necessary) on-site to deal with the issue. An amendment is obviously in order 
because you must stop the leak.
Unexpected developments are neither routine nor are they extensions of work into different areas. In the example above, if the contractor is taking soil samples but two counties away you become aware of a leaking pipe, you cannot amend the contract to "pick up your rig and go over there and stop the leak." Leaks are always unexpected developments. The contract in question, however, is not connected with the unexpected development.

**Time Extensions**

A contract amendment may be required because the time of performance has to be extended within the scope of the original certification and RFP. If the original RFP indicated that completion of the work within a specific time period was critical, and that factor weighed heavily in your evaluation, you should not amend a contract to extend the deadline simply because the contractor cannot meet the deadline. Obviously, you chose the contractor based on its representation in its response to the RFP that it could perform the job in the time required. If the contractor now cannot meet that commitment, and you have not caused the slowdown, the contractor should be giving up something for failing to perform within the specifications. Of course, if you changed something that added significant time to the process, then that change, and the results you receive from it, is consideration on the contractor's part, so the extension of time would be a consideration on your part. There might be circumstances where something happens that is totally beyond the control of the contractor (an earthquake in California, for instance); you might consider that, but you should be very careful and completely document the circumstances. The theory is very simple. You should get what you paid for in the time that was agreed to. The contractor's obligation is to do that.

**Writing and Processing the Amendment**

An amendment must be clearly identified and written, and properly executed any time the contractor and agency agree to a change in any provision of the contract. All amendments must be clearly numbered and must be approved in the same manner as the original contract.

The amendment should indicate WHY the contract was changed. You need to detail in the amendment WHY the amendment is necessary. If, for example, you and the contractor have determined that additional work needs to be done WITHIN THE SCOPE OF THE ORIGINAL CERTIFICATION AND RFP, you should make additions to the Contractor’s Duties specifying what is being added and detailing the additional costs. These additional costs must fall within the scope of the contractor’s original response to the RFP.

All contract amendments should be drafted using the format of the sample amendment that is available on MMD’s web page.

The Contract Amendment Form is available on the MMD website at:

http://www.mmd.admin.state.mn.us/pdf/amendform.pdf

http://www.mmd.admin.state.mn.us/Doc/amendform.doc

When processing an amendment, you should include copies of the original contract and any/all
previous amendments; this will assist MMD in processing the amendment.

**Expired Contracts**
If the contract has expired and you need to extend it, *immediately* seek the advice of your agency’s contract coordinator or MMD’s P/T staff. If the contract expires, work should stop until the extension issue is cleared up. A “16A.15-16C Violation Memo” must be attached to the amendment, if required. The memo must clearly explain and defend the reason for the extension being late or it will be rejected.

**Note to Agency Contract Coordinators:**
1) Please let your agency contact know that this is a serious situation that must be corrected immediately.
2) When the amendment is circulated to the Department of Administration, you must include information explaining why the contract was allowed to expire before it was amended.
3) ****Important: Amendments to expired agreements must incorporate the original contract and any previous amendments into the amendment or it will not be approved. Sample language is as follows, “The Original Contract and any previous amendments are incorporated into this amendment by reference.”