



## **Policy Statement**

This policy provides agencies with guidance on how to engage a service provider as an independent contractor or consultant. Contractors and consultants are not agency employees.

Contractors are generally engaged to perform a specific work required by an agency. Consultants are generally engaged for their technical expertise to provide expert advice and/or engaged to do specific work.

## **Scope**

This policy applies to all public sector agencies who intend on recruiting national or international Contractors or Consultants. A Consultant includes Technical Assistants (TA).

This policy should be read in conjunction with the Cook Islands Government Financial Policies and Procedures Manual (CIGFPPM) and the Purchase and Sale of Goods and Services (Procurement) Policy. If there are any conflicts within the policy the above mentioned documents should take precedence.

## **Principles**

Contractors and consultants are required to follow the public service code of conduct and values identified in the Public Service Act 2009 as:

---

Honesty	acting honestly, being truthful, and abiding by the laws of the Cook Islands
Impartiality	providing impartial advice, acting without fear or favour, and making decisions on their merits
Service	serving the people well through faithful service to the Government of the Cook Islands
Transparency	taking actions and making decisions in an open and transparent way
Accountability	being able to explain the reason for actions taken, and taking responsibility for those actions
Respect	treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect
Efficiency and Effectiveness	achieving good results for the Cook Islands in an economical way

---

Engaging contractors or consultants to provide services for government is another avenue for meeting the workforce needs of the public service. However building national workforce capacity over the short to medium term is critical to maintaining a sustainable workforce.

## **Legislation and Regulations**

---

The Public Service Act 2009, Employment Relations Act 2012 and other relevant legislation apply.

## Definitions

---

**Agency** means any public service department, instrument, or agent of the Government, and includes a body corporate or organisation that is wholly owned or controlled by the Crown.

**Arms-length transaction** means an agreement made by two parties freely and independently of each other, and without a special relationship.

**Conflict of interest** is where an individual's perceived or real objectivity is impaired and can lead to the individual making a decision or taking action in their official capacity to derive personal benefit or favour others

**Consultant** means an expert with specialist knowledge or skills who can provide expert advice or services to strengthen the capacity of agencies and public servants

**Contractor** means individuals or firms, both national and international contracted to provide services to meet the short or medium term business needs of an agency

**Due Diligence** refers to the care that a reasonable person exercises to avoid harm to other persons or their property

**Employee** means any person who is an employee of the Public Sector

**Employer** means the Public Service Commissioner or Head of Public Sector Agencies or their delegated authority

**Procurement** is the act or process of acquiring services or works from an external source in order to improve the quality of services

**Public Service Commissioner** means the Public Service Commissioner appointed under Article 73 of the Constitution and Section 5 of the Public Service Act

## Procedures

---

Employers are responsible for administering and ensuring adherence to this policy. The employer is responsible for ensuring all policies are easily accessible to employees. Employees must read, understand, and comply with this and other relevant government policies. Breaches of this policy may be considered misconduct and subject to disciplinary action.

## Employer obligations

---

### Employers must:

#### 1. Assess the agency workforce capacity to achieve its goals

- Identify work that would be best delivered by a contractor or consultant
- Secure resources (budget) to engage a contractor or consultant

#### 2. Promote use of national systems and build national capacity

- Use the approved national procurement systems
- Use national consultants with the appropriate qualifications and experience
- Where development partners use their procurement processes, agencies should be involved and have an input in the process to also meet national requirements
- Ensure contractors or consultants build the capacity of local employees (nationals)
- Ensure employees have the capacity to apply the learning
- Ensure development partners clarify and report the value of their expenditure

### **3. Clarify work arrangements and expectations of the Contractor or Consultant**

- Retain the decision-making role in all deliverables
- Confirm performance measures, reporting lines, access to government resources/assets and support, e.g. office space and equipment, printing, communications, internet, IT network, transport, accommodation etc.
- Ensure work produced is owned by the government
- Ensure government assets used are returned at the end of the contract
- Consider advice or changes proposed to improve the agency
- Monitor the work to ensure it is completed as agreed
- Work collaboratively with development partners (where required)

### **Contractors**

---

A contractor is a self-employed independent business person who agrees to do work for an agency on a contract basis usually for a fixed price, through an arms-length transaction. While the agency specifies the work to be done, the contractor generally retains control over the way the work is done, supplies the materials and labour, and may employ others to work for them.

Independent contractors can provide services to an agency on a short or long term basis.

#### **Contractors:**

- Are not public sector employees and do not receive employee benefits
- Are required to fulfil their contractual obligations which they are bound by
- Must comply with the Public Service code of conduct and values
- Must not be given any authority to make commitments on behalf of the agency or government
- Must not be delegated the responsibilities of an employer
- Must not be named as a contact person for the agency or Minister

#### **Contractors should only be used where:**

- They provide cost savings or higher quality services than that provided by existing employees
- The work needs to be undertaken quickly and it is not practical to set aside existing work

#### **Contractors should not be engaged:**

- To carry out work which can be undertaken by agency employees
- To do work that agency employees can provide more cost-effectively and appropriately
- Where there is an expectation that a conflict of interest may arise

### **Consultants**

---

A Consultant is a self-employed independent business person who has expertise or skills in a specialised field who are also referred to as Technical Assistant (TA). Consultants or TA's usually do work that is short term in nature, will give professional expert opinion or advice on specific subject matter, or provide services in his/her field of knowledge or training. This includes conducting studies, evaluations or reviews that involves providing a report that agencies can act upon. Consultants can also become a Contractor to implement recommended advice or actions over the medium term. Consultants can include appropriately qualified volunteers.

## Types of Consultants or Technical Assistants (TAs)

There are two types of Consultants or TAs, short term and long term.

- Short term
  - Have clear, measurable and time limited outputs e.g. facilitation of training or establishing a new IT system
  - Do not build relationships with staff as they are engaged to provide or deliver a service and then move on, and are not able to implement their own advice or recommendations
- Long term
  - Can become contractors and provide services or expertise to strengthen agency policies, systems or procedures which rely on the competence of local staff to accept and implement changes
  - Imparts knowledge and builds capacity and capability of local staff (nationals)

### Consultants should only be used where:

- Specialist knowledge or skill is lacking within the agency
- It is more timely and cost-effective to utilise a qualified expert to do the work
- An independent review or evaluation of work done by the agency is required

### Consultants should not be engaged:

- Where there is an expectation that a conflict of interest could develop
- If the agency has staff who can provide this specialist knowledge or skill

## Procurement

---

The procurement of contractors or consultants must be clearly linked to the achievement of the national sustainable development plan goals identified in the agency's strategic and business plans.

### Mandatory limits and authorisation

Employers must adhere to Government Financial Policies and the Procedures and the Purchase and Sale of Goods and Services (Procurement) Policy. Any deviations or waivers from the Policy must be requested in writing to the Financial Secretary or Tender Committee prior to commencing the procurement process.

	Quotations	Tender
1	Prepare Terms of Reference (TOR)	Prepare TOR and tender documents (refer to MFEMs Procurement Policy)
2	Obtain quotes and/or advertise	Obtain tender committee approval
3	Evaluate applications	Advertise request for tenders
4	Conduct due diligence	Establish tender evaluation team
5	Interview shortlisted candidates	Evaluate tenders and due diligence
6	Select contractor & negotiate terms	Negotiate terms with preferred supplier
7	Sign contract	Obtain tender committee approval
8		Award contract

Employers should seek to obtain a minimum of three quotes where quotations are required and plan for a lengthy process where a tender is required.

### Preparing a Terms of Reference (TOR)

Prior to requesting the services of a contractor or consultant, the employer must prepare a summary of work required, length of time expected to complete the work and estimated budget. The budget should be based on an assessment of time required from the contractor or consultant, including resources and support to do the work e.g. office equipment (laptop) etc., and other expenses.

**The TOR should include:**

- An overview of the project/programme proposal
- Background information
- Purpose of the project/programme
- Scope of the TOR
- Contractor or Consultant/TA qualifications
- Objectives and Methodology
- Governance and Management
- Budget and Head of Agency Authorisation
- Relevant Reports and Documents

**Quotations should include (refer to the CIGovt. Purchases Services Policy):**

- A full description of the services being purchased
- Gross fees with tax payable
- Availability
- Fees and timing of payments
- Contact person

**Tender documents should include:**

- a) Request for tenders
- b) Contract for Supply of Products and Services;
- c) Contract for the Engagement of a Consultant;
- d) Contract for Construction;
- e) Tender Report;
- f) Declaration of Confidentiality and Conflict of Interest;
- g) Document Checklist;
- h) Self Evaluation Checklist;
- i) Tender Log

**Due Diligence**

As part of the evaluation process the Employer must conduct due diligence to ensure:

- Any conflicts of interest are identified and managed appropriately
- The contractor or consultants qualifications and experience meets requirements
- Relevant references from previous or current clients are obtained
- Public servants who apply, comply with the Private Employment or Enterprise Policy

**Negotiation of terms and conditions**

Prior to signing a contract, employers must clarify expectations and work arrangements when negotiating the terms and conditions of the contract. For tenders, the tender evaluation team can negotiate terms and conditions, including the final contract value with the preferred supplier.

Fees for services are negotiable between the employer and contractor or consultant. Employers may use local market rates as a guide for national contractors or development partner rates can be obtained from their respective websites as a guide for the various categories of consultants.

**Contract Award**

All Contracts are subject to Cook Islands laws. The contents of the contract must be checked by the Crown Law Office prior to signing to ensure they adhere with legal requirements. Once the contract is signed, employers must ensure the contractor or consultant:

- Has a valid and current business license/approval to provide services in the country
- Meets applicable entry/work permit requirements with the Immigration office
- Is made aware of their tax obligations and need to speak to tax officials
- Is made aware of public service communication and cultural protocols

## **Managing Conflicts of Interest**

---

Employers must manage any conflicts of interest that may arise when procuring the services of a contractor or consultant. Individuals should declare any conflict of interest. Or if a conflict of interest is identified, then the employer or relevant parties need to manage this appropriately.

Under this policy, conflicts of interest can be deemed to exist if the contractor/consultant:

- Is providing advisory services to other public sector agencies and/or private organisations which can result in contradictory advice being given to the different agencies
- Is already engaged in another activity that contradicts work with the current contract.
- Has a business with a government employee who is directly involved in any part of the procurement process

## **Monitoring and Accountability**

---

Employers have the sole authority to engage contractors or consultants and are ultimately responsible for monitoring the work and overall performance of the contractor or consultant.

Regular reviews of work or at agreed stages of the project is essential. This will include progress meetings, reviewing draft reports or other milestones.

Reviews should address the timeliness and quality aspects of the project and any concerns must be discussed with the contractor or consultant as they are raised. Notes should be retained (the contractor or the consultant should be advised of this at the outset), and used as part of the post-consultancy evaluation.

## **Other Provisions**

---

All documents and materials produced by the contractor or consultant is the property of the Cook Islands Government and as such, the Employer must ensure this is understood and specified in a contract.

All records relating to key aspects of the contractor/consultant must be kept for at least seven years and will only be accessible by the employer and/or authorised staff. After the seven year period, the agency may destroy the documentation in adherence with government official information management policies.

The Office of the Public Service Commissioner is responsible for reviewing and updating this policy and associated documents annually.

## **Other information**

For policy queries contact the Office of the Public Service Commissioner on phone (682) 29 421 or email: [opscinfo@cookislands.gov.ck](mailto:opscinfo@cookislands.gov.ck)

## **Associated Documents**

Purchase and Sale of Goods and Services (Procurement) Policy

Financial Policies and Procedures Manual (CIFPPM)

Code of Conduct Policy

Private Employment or Enterprise Policy

Recruitment Policy

Risk Management Policy