



## **Contracting for Services Policy**

GOVERNMENT OF THE COOK ISLANDS

Effective: August 2023

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### **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 domestic or international Contractors or Consultants.

This Policy must 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 must take precedence.

### **Principles**

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The Public Service Act 2009 (PSA) provides the following values Public Servants must adhere to:

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| <b>Honesty</b>                      | Acting honestly, being truthful, and abiding by the laws of the Cook Islands.                      |
| <b>Impartiality</b>                 | Providing impartial advice, acting without fear or favour, and making decisions on their merits.   |
| <b>Service</b>                      | Serving the people well through faithful service to the Government of the Cook Islands.            |
| <b>Transparency</b>                 | Taking actions and making decisions in an open and transparent way.                                |
| <b>Accountability</b>               | Being able to explain the reason for actions taken and taking responsibility for those actions.    |
| <b>Respect</b>                      | Treating the people, the Government of the Cook Islands, and colleagues with courtesy and respect. |
| <b>Efficiency and Effectiveness</b> | Achieving good results for the Cook Islands in an economical way.                                  |

The duty to act as a good employer (PSA 2009) requires employers to implement and comply with the Cook Islands Government Human Resource policies to ensure the fair and proper treatment of employees during employment, including the impartial recruitment of employees, provide employee capability development opportunities and good and safe working conditions.

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**

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The Public Service Act 2009 (PSA), Employment Relations Act 2012 (ERA) and other relevant legislation apply.

## Definitions

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**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 domestic and international, contracted to provide services to meet the short or medium-term business needs of an Agency.

**Development Partners** means a term used to refer to a broad range of actors with an interest in Cook Islands development. This includes international donors, regional and international organisations, national and local implementing agencies, civil society organisations and the private sector.

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

**Declaration of Conflict of Interest** is a declaration that must be completed when it is determined that an individual or individuals have a Conflict of Interest (see Associated Documents).

**Employee** means a person engaged to work under an employment agreement. It does not include an independent contractor/consultant engaged under a contract for services.

**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 goods 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 of the Cook Islands and Section 5 of the Public Service Act 2009.

## Procedures

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Employers are responsible for administering this Policy. The employer is responsible for ensuring all policies are easily accessible to employees. However, employees are responsible for ensuring they read and understand this policy and any relevant government policies. A breach of the Policy may be considered misconduct and may be subject to disciplinary action and/or dismissal.

## Employer Obligations

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**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 domestic 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 that, when possible, Contractors or Consultants build the capacity of local employees and that this is outlined in the Terms of Reference (TOR).
- Ensure employees have the capacity to apply the learning if applicable.
- Ensure Development Partners clarify and report the value of their expenditure.

**3. Clarify work arrangements and expectations of the Contractor or Consultant including, but not limited to:**

- The Agency retains the decision-making role in all deliverables.

- The terms and conditions of the Contractor or Consultant's work are clearly outlined in the Terms of Reference.
- 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 and evaluate the work to ensure it is completed as agreed.
- Work collaboratively with Development Partners (where required).

## **Consultants and Contractors**

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A Consultant is a person or business who has expertise or skills in a specialized field, Consultants 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.

A Contractor is a person or business who agrees to do work for an Agency on a contract basis usually for a fixed price and time period, 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.

### **Contractors and Consultants:**

- Are not Public Sector employees and do not receive employee benefits.
- Are required to fulfil the contractual obligations by which they are bound.
- 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.
- Must comply with Cook Islands tax and employment legislation.

### **Consultants and / or Contractors should only be used where:**

- Capacity constraints exist or where specialist knowledge or skill is lacking within the Agency.
- The proposed Consultant / Contractor can provide a cost-effective service that is within the Agency's operational budget.
- An independent review or evaluation of work done by the Agency is required.
- Timeframe constraints exist in the Agency.

### **Consultants and / or Contractors 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.
- To carry out work that can be undertaken by Agency Employees.

## **Procurement**

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The procurement of contractors or consultants must be clearly linked to the achievement of the National Sustainable Development Agenda 2020+ goals identified in the Agency's Strategic and Business Plans.

### **Mandatory limits and authorisation**

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

## **Preparing a Terms of Reference (TOR) (Annex 02)**

Prior to requesting the services of a contractor or consultant, the Employer must prepare a summary of work required, the length of time expected to complete the work and an estimated budget. The budget should be based on an assessment of the 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.
- Ensure that, where possible, Contractors or Consultants build the capacity of local employees where provided.

Quotations must conform to the CIGFPPM and the Purchase and Sale of Goods and Services (Procurement Policy), including:

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

## **Tender documents must comply with the CIGFPPM and use the templates included in the Procurement Policy.**

### **Tender should include:**

- a) Advertisement and/or 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 (Annex 01).
- 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 that:

- Any conflicts of interest are identified and managed appropriately.
- The contractor or consultant's qualifications and experience meets requirements.
- Relevant references from previous or current clients are obtained.
- Public servants who apply, are in compliance with the CIGOV Private Employment 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 the Contractor or Consultant. The Agency may use local market rates as a guide for domestic contractors or Development Partner rates can be obtained from their respective websites as a guide for the various categories of consultants.

## **Contract Award**

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.

Once the contract is signed, employers must ensure that 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.
- Is made aware of Public Service communication and cultural protocols.

## **Managing Conflicts of Interest and Complaints**

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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 in writing (Annex 01). 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 or relationship 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.

Where a complaint arises in relation to the conduct of a Contractor or Consultant, the complaint must be conducted in accordance with the relevant provisions outline in the CIGOV Procurement Policy.

## **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**

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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.

## **Associated Documents**

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Purchase and Sale of Goods and Services (Procurement) Policy  
Financial Policies and Procedures Manual (CIGFPPM)  
Code of Conduct Policy  
Contracting for Services Policy Guide 2023  
Private Employment or Enterprise Policy  
Risk Management Policy  
Declaration of Conflict of Interest (Annex 01)

## **Templates**

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These documents are drafted to encapsulate the minimum requirements under this policy. They can be amended by the individual Agencies if needed.  
Contracting for Services Terms of Reference (Annex 02)

## **Other information**

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