

Engaging and managing contractors and consultants

Office of the Chief Advisor - Procurement



Queensland
Government

Engaging and managing contractors and consultants
v1.4 November 2018

The State of Queensland (Department of Housing and Public Works) 2018



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Disclaimer

This document is intended as a guide only for the internal use and benefit of government agencies. It may not be relied on by any other party. It should be read in conjunction with the Queensland Procurement Policy, your agency's procurement policies and procedures, and any other relevant documents.

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Introduction

This guide provides information about the key issues associated with engaging and managing consultants for the Queensland Government.

This guide also includes supplementary material to help procurement officers determine whether to engage and manage a service provider as a contractor or a consultant for Queensland Government reporting purposes.

How is this guide to be used?

This guide should be read in conjunction with the Queensland Procurement Policy, your department's "Agency Purchasing Procedures" and any guidelines your department/agency may have produced about engaging consultants and contractors.

How does the Queensland Procurement Policy link to this guide?

Engaging consultants is a purchasing activity that must comply with the Queensland Procurement Policy.

Context – contractors and consultants

Queensland Government agencies regularly hire contractors when skills are not available within the public sector at the time.

Contractors differ from employees because they are engaged under a different set of legal arrangements, for example: taxation, superannuation and workers' compensation.

Consultants are a type of contractor that the Queensland Government defines separately for reporting purposes, and these definitions may not align with what industry and consultants/contractors call themselves. Many contractors may call themselves consultants but, for Queensland Government reporting purposes, they are most often defined as contractors.

For more information about the reporting of consultants please refer to the *Annual report requirements for Queensland Government agencies*, available from the Department of the Premier and Cabinet's website at www.premiers.qld.gov.au.

From a procurement perspective, any provider of a service needs to be sourced, selected, monitored and managed according to best practice which is outlined in this guide.

Queensland Government definition of a consultant

For Queensland Government reporting purposes, a service provider can be categorised as a consultant (which may be an individual or an organisation) if all of the following apply:

- provides expert knowledge to analyse information, draw conclusions and make recommendations in the form of a written report or an intellectual product for future action, which the agency must then decide upon or take a certain course of action
- the nature of the output is not necessarily predictable, but tends to be open ended and is more complex (for example, a range of recommendations which the agency must consider)
- develops a new concept or process and where the agency requires critical judgement to consider the recommended course of action
- is engaged for a fixed period of time at an agreed payment rate

- work is not directly supervised by the agency.

Examples of consultant's tasks include:

- providing expert advice on technical and professional matters
- carrying out research projects, attitudinal surveys, feasibility studies and fact finding investigations where recommendations are made
- developing and designing benchmarking framework/process and standards
- reorganisation of an agency or business unit
- providing advice in the development of policy and strategic planning issues.

Hint – the difference between a consultant and an operational contractor

Sometimes the distinction between a consultant and a professional contractor can be difficult to make and there may be 'grey areas' requiring the exercise of judgment on a case-by-case basis.

Just because service providers may refer to themselves as 'consultant' or it is printed on their business stationery, it does not mean they will be defined as such for Queensland Government reporting purposes.

Key characteristics of a contractor

Most providers of services are categorised as contractors for Queensland Government reporting purposes. There are generally two types of contractors.

- **Contractors for non-professional services** which include trade service providers (plumbers, carpenters, electricians and painters), cleaning services and temporary staff sourced from staffing agencies, including staff engaged to provide office services (e.g. data entry, administration).
- **Contractors for professional services.** This second type of contractor is generally where confusion may occur when categorising consultants and contractors. A contractor implements an existing process to deliver a known product/outcome.

For example, in the case of a service provider engaged to perform a job evaluation within an agency, this is categorised as a contractor and not a consultant. The output is in the form of a clearly defined product. The service provider takes data and, using expert knowledge and an evaluation framework, evaluates the job and provides a written report that specifies the job classification. There are no recommendations to be considered, simply the service provider's conclusion. The agency can accept or reject the conclusion. The output is a classification level where there is a rationale for this conclusion. The conclusion is drawn within tight parameters, against a pre-determined job evaluation framework that is already accepted by the agency.

Examples of contractors for professional services include:

- key note speakers, workshop facilitators, trainers, presenters
- information technology programmers, software development and implementation, analysts and system support staff
- market researchers, organisations compiling statistical data
- built environment design and production undertaken by architects and engineers

- feasibility studies
- valuation services on land, buildings and other departmental assets or potential assets
- legal advice
- building and construction contractors (capital works)
- road and bridge design
- road and bridge construction (capital works)
- design, conceptual design services provided by creative design houses, public relations companies etc
- general financial, legal and taxation services that provide ongoing advice on day-to-day issues
- financial audit, workplace health and safety audits and most probity advisor/audit activities.

Building consultants and operational contractors and the Capital Works Management Framework

The Capital Works Management Framework (CWMF) provides a whole-of-government approach to the planning and procurement of building work. When engaging and managing building contractors, the CWMF and supporting guidelines should be used. More information is available from the Department of Housing and Public Works' website at www.hpw.qld.gov.au.

Consultants and contractors engaged to undertake community engagement activities

If a consultant or contractor is engaged to provide community engagement activities on behalf of an agency, it is the agency that is ultimately responsible for developing and maintaining relationships with stakeholders and citizens throughout the activity.

The onus is also on the agency to ensure the information provided in the engagement process is accurate and relevant, and the feedback processes are timely and effective.

Six steps for engaging and managing consultants

- Step 1.** Identify and demonstrate the need for a consultant.
- Step 2.** Specify what is required from the consultant.
- Step 3.** Select the consultant.
- Step 4.** Engage and manage the consultant.
- Step 5.** Evaluate the results.
- Step 6.** Performance reports.

Hint – before engaging a consultant

Before beginning the process of engaging a consultant, think about the project or problem carefully, so that you are clear about what you are asking the consultant to do.

Roles and responsibilities

Authorised (or delegated) officer

- Is responsible for approving the engagement of a consultant prior to the calling of offers. The authorised officer must be satisfied that the invitation covers a discrete project and does not bind the department/agency to further commitment to the selected consultant for additional work outside that being considered.
- Is responsible for approving expenditure and be satisfied that the project work has not been artificially “split” to enable the total project to be kept below specific department/agency expenditure approval levels.
- Signs the contract.

Hint – seek expert advice

It is strongly recommended that you involve (or obtain advice from) officers who are experienced in procuring the services of or engaging consultancies, particularly if they are high in relative expenditure or are considered as high risk. Do this as early as possible in the process.

Project manager

- Is the authorised (or delegated) officer’s agent and must be formally appointed by the authorised (or delegated) officer.
- Needs to possess sufficient knowledge about the work the consultant is doing to be able to judge if the work is satisfactory.
- Needs to be aware of his or her role and responsibilities in the process of engaging and managing the consultant.
- Is responsible for the management and review of the consultant, including:
 - monitoring the performance of the consultant to ensure that the requirements of the specification are met
 - supervising the project
 - liaising with the consultant about the project
 - dealing with unsatisfactory performance.

Hint – assess and manage risks

Assess the risks at the beginning of the project to determine how to manage them. Risks may be managed, for example, through the specification, terms and conditions of the contract and management of the contract.

Step 1: Identify and demonstrate the need for a consultant

When the need for using a consultant is identified, a strong argument for engaging the consultant needs to be made before the process begins.

Before engaging a consultant, the possibility of seconding Queensland Government public sector employees for the project should first be considered. Consultants should not be engaged if the relevant

expertise is available, at the required time, within the Queensland public sector. It is also a good idea to investigate whether suitable Commonwealth or Local Government employees could be seconded before seeking out consultants. Consultants may cost more to use than seconding public servants so it is essential that the additional cost is fully justified.

Typical reasons for engaging a consultant include:

- the work is essential and the skills and expertise are not available within the public sector
- the experience of private organisations/industry is required
- there is a need for an independent opinion.

An authorised (or delegated) officer needs to select a project manager as early in the process as possible. The project manager needs to have a thorough knowledge of the requirements of the project and be responsible for the management and review of the performance of the consultant.

It is also the project manager's responsibility to ensure that the expertise to carry out the project is not readily available from within the public sector.

It is extremely important to accurately identify whether a person should be employed within the department/agency as an operational contractor (professional or non-professional) or temporary employee, or as a consultant. There are a number of important legal issues that are affected by this distinction, including:

- taxation law requirements
- liability to superannuation guarantee charge payments
- exposure to WorkCover legislation.

If you are not sure if the services require consultants or operational contractors, contact your department's procurement area.

It is important to determine if the department/agency regards the engagement of any consultants as a significant procurement. It is also important that you check whether your department/agency has any specific policies or procedures for the engagement of consultants – these sometimes require different processes to be followed and/or different levels of approvals to be obtained than may normally be the case.

Hint – intellectual property

Intellectual property is defined as the rights arising from original creative intellectual activity.

The State of Queensland should own the intellectual property, especially if it is integral to the operation of the State's activities. In some circumstances, the State will be deemed to own the intellectual property that is created by others "by or under the direction or control of" the State. Legal advice should be sought on this issue.

If others, including the consultant, want to use the intellectual property, the department/agency could license its use in appropriate circumstances. Joint ownership of intellectual property between the consultant and the State of Queensland is also possible in some circumstances, but seek legal advice first. The idea is to strike a fair deal for both parties, but importantly, to protect the interests of the State of Queensland.

Step 2: Specify what is required from the consultant

It is critical that a clear specification is developed, so that both the department/agency and the consultant know precisely what is expected of each party. The specification serves as a planning and control mechanism for the project. It is also a standard against which to measure whether the consultant has achieved the required results. If help is required to formulate a clear specification, seek advice from people with relevant skills in the area.

Insurance for consultants

A risk assessment will help to determine which types of insurance are required for the consultant and how much (dollar value). The types of insurance that may be required include:

- professional indemnity insurance
- public liability insurance - needed if the consultant is located on Queensland Government premises
- WorkCover - required only if the consultant has employees.

The consultant is required to pay the premiums. Ensure that the consultant has the appropriate insurance for the job prior to work starting.

Hint – criteria for selecting the consultant

The selection criteria should reflect whether the consultant can deliver the project outcomes. Consider:

- conformance to the specification
- the merits of their proposal
- capabilities and experience of the consultant
- price.

What to include in the specification

The content of the specification will depend on the complexity of the project. The following should be included as minimum criteria:

- purpose of the consultancy - state outcomes that are specific and measurable
- the scope of the project
- timeframes for work to be achieved, including milestones with defined outcomes and service standards
- resources to be allocated to the project. For example, equipment, departmental staff support
- key personnel - see the following “Hint”
- essential requirements that are to be satisfied to achieve a successful outcome
- desirable requirements. The following requirements are considered relevant, but these may need to be expanded depending on the nature of the consultancy:
 - experience in work of a similar nature
 - track record in similar work - obtained from internal and external sources
 - technical skills - the credentials of key personnel, systems
 - management skills - organisation, quality system
 - method - how the project is to be tackled
 - time performance - the ability to complete the project on time
 - quality assurance - specify the appropriate level of quality assurance required of the consultant

- reporting requirements expected from the consultant - the format, the quality and number of copies
- requirement for costing the consultancy when tendering (e.g. hourly or daily rates and breakdowns of consultant overheads)
- intellectual property
- termination of the contract
- payment of fees.

Hint – key personnel

The consultant may be required to perform the consultancy services using specified personnel. Key personnel are the persons whose names are included in the consultant's offer or who are subsequently appointed with the department's/agency's written consent.

Step 3: Select the consultant

The primary aim of the process is to obtain the most appropriate skills and expertise for the consultancy at the best value for money while adhering to the Queensland Procurement Policy's principles.

The strategies to be used in approaching markets are developed from the procurement planning and supply market analysis processes.

A number of factors will impact on how many consultants will be approached in a particular purchasing exercise, in what manner the department/agency will go to the market and the form of the arrangement that is intended to be established. These factors include:

- the nature and complexity of the consultancy
- the availability of the services required and the characteristics of the market
- the importance of the consultancy to the department/agency
- any action the department/agency may want to take to develop or influence the market
- the cost of the consultancy
- the processing costs associated with the procurement
- taking a particular course of action to advance the Government's economic, environmental and social objectives
- the internal systems in place to control and manage the department/agency's procurement expenditure
- probity and accountability considerations.

Hints – invitations to consultants and selection panels

Invitations to consultants - when invitations are requested, consultants will often contact government officers to clarify issues. It is critical to provide consistent responses in writing, so that different information is not provided to different offerors, which may give one offeror an unfair advantage in the process. All potential offerors should be given copies of the information that is provided to each of the consultants.

Consultants should be given adequate time to prepare an offer - a minimum of about three weeks (depending on the complexity of the job) is recommended. Consultants should be aware that their offers could be the subject of Right to Information applications. If there is sensitive material contained in the offer,

then consultants should mark their offers with “Commercial in Confidence”. When opening offers, ensure that there are at least two officers present and that one officer is independent of the evaluation process.

Selection panels - for high relative expenditure, high risk or complex consultancies, a selection panel should be established to prepare the specification and evaluate offers.

Evaluating offers

For high value consultancies or those that are highly complex, it is good practice to have a panel of officers, with relevant knowledge, to evaluate the offers. Where possible it is desirable to include an officer who has experience in the procurement process on the panel.

In selecting the consultant, ensure that maximum value for money for the department/agency is obtained. The main aim is to ensure that the consultant can do the job to the standards required by the department/agency. This may not always mean accepting the lowest priced offer.

Proposals from consultants should be assessed against pre-determined selection criteria. The selection criteria should have been clearly stated in the invitation to offer document.

Hints – seeking advice, assessing the capability of the consultant and professional memberships

Seeking advice

Seek advice from others with experience in the type of consultancy you require; within your department/agency and from other departments/agencies. Check out the consultant’s reputation; ask for relevant and current referees, look closely at past experience, ask for examples of previous relevant work.

Assessing the capability of the consultant

One of the selection criteria you should consider when evaluating offers is the capability of the consultant. Look at:

- the consultant’s track record in similar work
- the proposed method (how the project is to be tackled)
- the consultant’s understanding of the outcomes, task and associated organisational and environmental issues
- the consultant’s experience and qualifications
- the availability of staff with the required skills
- the consultant’s capacity to complete the project on time (and previous record at meeting deadlines).

Professional memberships

Consultants who are providing professional services are often members of institutes/societies (e.g. financial advisors, organisational psychologists). While membership of a professional organisation may not be mandatory, it could be a desirable criterion for particular professions or for certain projects.

The evaluation process must be documented and capable of withstanding scrutiny. This documentation should clearly demonstrate how the successful offeror was selected. Keep in mind that such documentation is open to audit scrutiny and Right to Information requests.

The project manager should complete a report on the recommended consultant which clearly indicates the reasons for selection. An officer with the appropriate financial delegation must approve the recommendation.

All documentation must be kept for audit purposes, record and other purposes in accordance with the *Financial and Performance Management Standard 2009* and the *Public Records Act 2002*.

Step 4: Engage and manage the consultant

Using consultants to assist the department/agency to achieve its objectives does not mean that the department/agency relinquishes its responsibility for successful completion of projects. Effective management of consultants, evaluation and reporting of their work is essential.

Hint – variations to contract

Variations are changes to what was originally in the conditions of contract. The most common variation is that the consultant needs more time to complete the work. Before signing the contract, a strategy should be developed to deal with variations, if they arise. Variations must be agreed to by both parties in writing before they occur. You may also need to seek legal advice before varying a contract.

All consultancies, regardless of the value, require a written contract between the parties that is signed and dated. This may be in the form of a simple “Letter of Acceptance” or a purchase order for low relative expenditure and low risk consultancies. The letter should clearly define the requirements and obligations of both parties.

Managing the consultancy

It is important to remember that the process does not end with the signing of the contract. Consultancies need to be monitored to ensure that satisfactory outcomes are being achieved on time and within the budget. Typical measures to ensure effective management of consultants include:

- appointing a project manager (or in some cases a steering committee) with a clearly defined responsibility for the management of the consultant
- maintaining adequate records
- clearly defining performance standards expected of consultants
- specifying the requirements for reports and meetings with the consultant
- developing procedures for dealing with:
 - a consultant’s unsatisfactory performance
 - variations in cost and time
 - assessing the work and performance of the consultant at regular intervals.

Communication between the project manager and consultant(s) needs to be effective and regular to make sure that the project is on track and that the department/agency is getting what has been asked for.

For high relative expenditure/complex consultancies, project management meetings are part of the role of the steering committee. Keep documentation of all communications on file.

Hints – appointment of a consultant as manager of a project and the payment of fees to consultants

Appointment of a consultant as manager of a project

The consultant should not be appointed as a manager of a project. This is the role of an internal officer who has been chosen as the project manager or another suitably qualified officer to ensure the department's/agency's interests are protected.

Payment of fees to consultants

It is not good practice to make advance payments to consultants. It is strongly recommended that payments be staged and linked to milestones in the project and evaluated by the project manager. The milestones should represent quantifiable achievements (for example, a draft report or a final report). Retain the bulk of the total fee for when the job has been completed and evaluated as satisfactory by the project manager.

Avoid paying an hourly rate without a performance timeframe - set the price, wherever possible. For example, a maximum of 200 hours at \$50 per hour.

Don't pay simply because an invoice is received. Payment is dependent on the project manager being satisfied that the work has been done to the standard specified in the contract. In cases where work is not satisfactory, seek legal advice before payment.

Step 5: Evaluate the results

Evaluate the consultant's performance

The project manager needs to complete a written report that evaluates the consultant's performance. The evaluation of the consultant's performance should be completed before final payment to the consultant to ensure that all elements of the specification have been met. This is achieved by comparing the results to the objectives set out in the specification. Performance is assessed as satisfactory only when the outcomes that are detailed in the specification are achieved. Performance criteria should be documented in the specification, so that the project manager knows how to measure performance and so that the consultant will know what to expect. Any adverse performance assessments of consultants should be drawn to their attention and their responses should also be included in performance assessment documentation.

Hint – working with consultants

An effective working relationship between the project manager and the consultant should be developed and maintained to facilitate the success of the project.

A common complaint is that consultancies often tend to unnecessarily extend for long periods of time. There is a need for regular checks on outcomes, which should have been clearly defined in the specification and the contract.

Step 6: Performance reports

All performance reports on consultants should be in writing and kept on a central register within the department/agency. These evaluations can then be used when considering the consultant for future work and to assist other officers or departments/agencies when considering the consultant for similar projects.

Hint – register of consultants

Keep a central register within the department/agency of prequalified consultants with proven track records, especially for departments/agencies that are regularly using certain types of consultants.

Furthermore, where departments/agencies have a regular need to engage consultants of various types it is often sensible to consider the establishment of registers of prequalified and/or preferred suppliers (consultants). The register of prequalified suppliers should be updated regularly to make sure that all new providers of the services have had the opportunity to become prequalified and provide the services.

Questions and answers

| Question | Answer |
|--|--|
| If internal departmental officers are capable and qualified to do the required job, but not available due to other work commitments, should external consultants be hired? | Reassess the work priorities of internal departmental officers. Can their existing work be deferred or can the project ('consultancy') be deferred? Are other public service staff available? If not, seek external consultants on the basis of no readily available staff. |
| What if there is only one consultant who can do the job? (For example, a well-known academic who leads in a particular field). | This is a sole invitation process, where just the one particular consultant is invited to offer. You will still need to seek a full offer from the prospective consultant. It is not good practice to advise the sole offeror that they are the only consultant offering. You must submit a written justification for sole supplier situation to your authorised officer for approval. |
| During the offer period can I give out additional information or clarify any issues to prospective consultants, if they request it? | Yes, but if you provide additional information to one consultant, you must advise all other consultants of the same information in writing. |
| When is it necessary for the consultant to have professional indemnity insurance? | You will need to assess the risks involved in the project. If it is determined that the department/agency may be exposed to risks of a professional nature resulting from the engagement of a consultant, then you will require the consultant to have professional indemnity insurance. |
| How is the amount of professional indemnity insurance determined? | The nature of the consultancy determines the degree of risk to which the department/agency is exposed. A risk assessment should determine the estimated value of loss which may be incurred and the most probable time for the loss to become apparent. Although a consultant may complete the project, risks may be identified or materialise after the project has been completed. If this is the case, then you must ensure that the consultant takes out professional indemnity insurance to fully cover the risk period. You will also need to check your department's/agency's requirements. Most insist on a minimum amount of insurance. |
| When is it necessary for the consultant to have public liability insurance? | When the consultant is performing work on Queensland Government premises or if Queensland Government officers are working on the consultant's premises or when there is a risk of innocent persons receiving injury. |

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| <p>How is the amount of public liability insurance determined?</p> | <p>A risk assessment will determine the estimated value of loss.</p> |
| <p>What should I do if the consultant seems to be on the wrong track?</p> | <p>Check to see if your specification is clear and that the consultant understands it. You can negotiate with or counsel the consultant to ensure that they have a full understanding of the requirements. Another option is that you can terminate the agreement in circumstances, for example, where the consultant is repeatedly unwilling or unable to deliver, according to the specification.</p> |
| <p>What should I do if the consultant keeps asking for time extensions?</p> | <p>Check the contract to determine if the milestones are fair and reasonable and that the consultant is on track with the project. Ask the consultant to document the reasons for the time extensions. Consider any cost implications and any associated problems that may be caused by the project's outcomes being delayed. If the extensions are warranted, document the new time lines and milestones and amend the contract.</p> |
| <p>What should I do if I think the consultant is not performing?</p> | <p>Talk to the consultant and find out why. If the response is not satisfactory provide advice to the consultant in writing and give them a specific period (e.g. two weeks) to justify why the contract should not be terminated.</p> |
| <p>What action needs to be taken if the bill for the consultant's work is more than the fee specified in the contract?</p> | <p>Point out to the consultant the agreed fees in the original contract. The consultant should not be performing additional work without prior approval from the project manager. Seek a full explanation from the consultant. If there is no valid reason provided, then only the fee specified in the contract should be paid. If there is a valid reason for the additional fee, seek approval from the authorised officer.</p> |