



# **New South Wales Government Procurement System for Construction**

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## **Procurement Practice Guide**

### **Managing Consultancy Services engagements**

**July 2008**

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## Important notices

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### Current version

The current version of this Procurement Practice Guide is maintained on the Internet at:

<http://www.nswprocurement.com.au/Procurement-System-for-Construction/Reference-material/Procurement-practice-guides.aspx>

### Amendments

Refer to the Procurement Practice Guide Amendments Log which is available on the Internet at:

<http://www.nswprocurement.com.au/psc/ppg/amendments.aspx>

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# Managing Consultancy Services engagements

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*Glossary*

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# Managing Consultancy Services engagements

## 1 Award

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### 1.1 Letter of Award

After formal approval to award a contract for the services, prepare and issue the *Letter of Award*. If there has been any clarification, negotiation or resolution of qualifications or departures, ensure that agreed outcomes are described and/or reference is made to relevant documents in that letter.

### 1.2 Unsuccessful tenderers

Inform the unsuccessful tenderers in writing, following sample letter *Advice to unsuccessful tenderers*.

Give feedback on its tender to an unsuccessful tenderer if requested. Feedback may relate to the requirements of the Tender Document, and the strengths and weaknesses of the tender in relation to the specified selection criteria.

Do not disclose details of any other tender.

Where an unsuccessful tenderer seeks information regarding the successful tenderer's contract, information can be provided on:

- Details of the Agreement (services to be provided; commencement date of the contract; period of contract);
- The identity of the successful tenderer;
- The accepted fee and basis for future change;
- Significant evaluation criteria and weightings;
- Provision for renegotiation (if applicable).

### 1.3 Contract award information

If the selective tendering process has been used, the tender prices and award disclosure details must be forwarded to the Department of Commerce CCMS Administrator either by:

facsimile: (02) 9372 8999; or  
e-mail: [ccmsdata@commerce.nsw.gov.au](mailto:ccmsdata@commerce.nsw.gov.au)

## 2 Management

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### 2.1 Meetings

Agree with the Consultant to hold meetings to review progress, resolve problems, and coordinate the services.

The following should attend meetings at key stages:

- Principal's Representative;
- Consultant's Representative;
- persons from project-related disciplines;
- agency representatives;
- secondary consultants and subconsultants.

Agree with the Consultant as to who is to chair the meetings and who is to take minutes, or suggest doing so alternately. Have the minutes agreed upon, and distributed as appropriate.

## **2.2 Principal's obligations**

Ensure that all things the Principal must do under the Agreement are done. For example, supply the Consultant with all things required from the Principal under the Agreement; make payments in accordance with the terms of the Agreement.

## **2.3 Insurances**

Ask the Consultant to provide, at the first meeting, proof of insurance policies required to be maintained under the Agreement.

Use the following insurance checklists to assess suitability of policies:

- *Works and public liability insurance*
- *Workers Compensation insurance*
- *Professional indemnity insurance*

Notify the appropriate manager immediately of any failure by the Consultant to effect or maintain a satisfactory Workers' Compensation insurance policy. The Principal cannot take out Workers' Compensation insurance for the Consultant.

The Consultant is not entitled to payment until it has submitted proof of insurance as required under the Agreement.

## **2.4 Services Delivery Plan**

Be sure the Consultant submits the Services Delivery Plan and updates as specified. Review the content against what is specified. Do not endorse or approve the Services Delivery Plan. Where necessary, give comment or draw attention to the need for improvement.

If the Services Delivery Plan does not conform to the requirements of the Agreement, advise the Consultant in writing, pointing out where it does not conform.

## **2.5 Progress**

Check that the terms of Agreement are being met. This includes action the Principal is required to carry out.

Monitor progress. If there is doubt that the services will be completed by the agreed date or within the fee limit, discuss the matter immediately with the Consultant to reach an understanding of how the terms of the Agreement will be met.

Take action as soon as possible when delays and extra costs seem likely, to resolve the problems and to meet the original time and cost constraints. If unsuccessful, inform the appropriate manager and discuss solutions to the problems, such as extending the time allowed, providing extra funds, reducing the scope, or terminating the Agreement.

## **2.6 Audits**

Audit should be carried out during an engagement to confirm that the Consultant's quality management system is being implemented as planned.

The number, scope and timing of quality management system audits required for an engagement depend on the level of confidence in the Consultant's performance. The following may influence the decision:

- quality and timeliness of Services Delivery Plan updates,
- results of design and documentation reviews,
- compliance with the program,
- evidence that the Consultant may not be implementing the required quality management system.

It is usually enough to audit one or two of the important quality management system elements, such as design control, process control, document control or internal audit.

It is acceptable to arrange resources from the agency or the project manager for a quality management system audit but the auditor must not be directly involved in managing the Agreement.

## **2.7 Variations**

Instructing a variation to the Services is not recommended unless it is unavoidable. Variations generally increase the cost of the Services and often affect the time for completion and other aspects of the Services.

If the agency requests an increase in the scope of the work, look for other ways to satisfy the need.

Ensure that the agency understands and agrees to outcomes such as later completion or increased funding requirements before it authorises the variation.

Negotiate and agree with the Consultant on the price and time implications of a variation before instructing the variation in writing.

Refer to Procurement Practice Guide *Managing variations* for advice on procedures.

## **2.8 Sensitive information**

### **Agency-owned information**

Where access to information or information technology owned by the agency or others is to be provided to the Consultant, manage the security of such information and systems in accordance with the owner's requirements.

### **Commercially sensitive information**

Treat commercially sensitive information from and about consultants confidentially subject to Government information disclosure requirements and requirements of the law.

Direct any requests for the release of information or for advice regarding:

- Consultant applications for registration under the Consultant Prequalification Scheme; or
- Consultant Performance Reports,

to the NSW Procurement Client Support Centre:

Telephone: 1800 NSW BUY (1800 679 289)

Email: [nswp\\_support@commerce.nsw.gov.au](mailto:nswp_support@commerce.nsw.gov.au)

## **2.9 Intellectual property**

Refer to Procurement Practice Guide *Intellectual property issues* for guidance if the Consultant:

- requests approval to use, copy, supply, or reproduce agreement material outside of the Agreement;
- requests unrestricted use of any general materials developed during the Agreement;
- is using an existing design or part of a design in which it has intellectual property rights;
- cannot ensure the Principal is irrevocably licensed to use agreement material for which the Consultant does not own the intellectual property rights.

## **2.10 Services review**

Review deliverables produced by the Consultant against the requirements of the Agreement. Review by appropriate personnel and stakeholders may also be arranged.

Request the Consultant to correct any discrepancy, ambiguity or non-compliance with the Agreement. Check:

- completeness;

- accuracy; and
- attention to all corrections requested following a review.

### **2.11 Payment**

Follow the provisions of the Agreement.

Issue a payment schedule within 10 business days of receiving the payment claim. Give reasons, justified in terms of provisions of the Agreement, if withholding payment of any amount claimed. Make payments within the time prescribed in the Agreement.

Refer to Procurement Practice Guide *Managing payment claims* for more information on payment obligations and procedures.

### **2.12 Consultant's performance**

Follow the Procurement Practice Guide *Performance Management*. Remind the Consultant of the provision in the Conditions of Tendering about performance reporting.

Complete and submit Consultant Performance Reports using the *Consultant Performance Report* and its instructions:

- where the Fee is less than \$30,000, whenever performance becomes unsatisfactory;
- where the Fee is \$30,000 or more, at the following times:
  - in the first week of February, May, August and November,
  - at completion of the Agreement,
  - whenever a critical aspect of performance is unsatisfactory,
  - during the course of construction or implementation stages, if it becomes apparent that the standard of documentation or services delivered by the consultant are found to be unsatisfactory; and
  - at termination of the engagement (if it occurs).

A Consultant Performance Report may initiate action by the Department of Commerce relating to the Contractor and Consultant Review List.

If a consultant requests information on past or current performance, the request should be forwarded to the Manager, Supplier Management Systems, Policy Support Services Group, Department of Commerce.

### **2.13 Disputes**

If a dispute arises, attempt to reach settlement promptly by negotiation. If settlement is not achieved, follow the Conditions of Agreement for resolution by expert determination. Keep the appropriate manager informed including possible quantum of outcome.

### **2.14 Finalisation**

Check that the Consultant has provided evidence of completion of the Services.

Check that the Services have been satisfactorily performed and completed.

Agree with the Consultant on action for anything that requires completion.

Process the final Consultant Performance Report when all possible action is completed.

Refer to the appropriate manager if any dispute resolution becomes protracted and the Agreement is otherwise complete.