

Consultants Engagement Guidelines

Section 1 - Introduction

(1) For the purposes of these Guidelines a "consultant" has been defined as either an organisation or an individual engaged on a temporary basis to give advice or provide services of a professional, technical or general management nature. The definition is not intended to apply to the hiring of casual, contract or temporary staff to supply labour or to work under direction or supervision. The key difference lies in the fact that an employee or a contractor works under the direct supervision of the Charles Sturt University (the University) to complete a defined task.

(2) Deans and Executive Directors should be careful when engaging a consultant to be sure that the consultant is not really entering into an employer/employee relationship with the University. The University has specific obligations under the [Income Tax Act 1986](#), Section 221(a) and 221(c) refer. One obligation is to ensure that where an employer and employee relationship does exist, PAYE tax is deducted from all payments made. So that Deans and Executive Directors can be sure that an engagement is a bona fide consultancy and can be treated as such, the following test should be applied:

- a. does the appointed consultant have a bona fide registered business and a business name?
- b. does the business have a business address and office that is accessible to the public?
- c. does the consultant hold appropriate public liability, professional indemnity and other relevant insurances?

(3) Typical reasons for engaging consultancy services include:

- a. an absence of the required skills and expertise within the University
- b. existing staff being fully occupied on current workloads and work required to be done as a matter of high priority and urgency; or
- c. the need for an objective, unbiased opinion and attitude toward key issues.

(4) The use of consultants on tasks as a means of assisting Faculties and Divisions achieve their objectives does not abrogate the Faculty's or Division's responsibility for successful completion of projects. Consultants do not provide risk avoidance for a Faculty or Division if projects are not successful. Effective management of consultants and scrutiny and evaluation of their work is therefore essential.

(5) Approval to engage a consultant should only be given where the Dean or Executive Director is satisfied that the work is essential and also cannot be performed internally by that Faculty or Division. Clearly, the expenditure should be justified and when being costed should take into consideration overhead costs.

(6) Part of this consideration should involve the estimation and documentation of the cost and time implications of the alternatives. If a decision is to proceed to a consultancy, a cost and time estimate should be prepared and the availability of funds confirmed before seeking approval to invite bids from consultants. Cost estimates should include the costs of the staff and administration involved in specification preparation, briefing, tender evaluation, engagement and contract negotiation as well as assisting and supervising the consultants and evaluating their performance and effectiveness.

(7) A formal written agreement must be signed by both parties prior to the start of any part of the consultancy (see

Section 2 - Conditions for Engagement

(8) The steps involved in the processes up to inviting tenders or bids from consultants is summarised as follows:

- a. identify and describe the purpose of the consultancy;
- b. prepare terms of reference;
- c. prepare detailed objectives for the project that are specific and measurable;
- d. prepare a draft timetable of major events;
- e. detail resources provided for the project by the employing organisation;
- f. prepare a statement of conditions of engagement, including conflict of interest statement if relevant, details of ownership of intellectual property, requirements concerning disclosure and subsequent use of information, and EEO requirements;
- g. prepare a statement of criteria to be used in selection of consultant;
- h. prepare a statement detailing requirements of final report;
- i. prepare a statement of provisions under which the contract can be terminated or work reduced;
- j. where the consultancy is valued at up to \$5,000 the cost of which is to be from the Faculty's or Division's budget the Dean or Executive Director may authorise the consultancy. Consultancies valued above \$5,000 must be authorised by the Vice-Chancellor. Consultancies costing \$10,000 or more will require three written competitive quotes. All consultancy engagements will be subject to the normal University purchasing procedures (see Section 5); and
- k. invite bids by advertising and/or invitation, where appropriate.

(9) As announced by the Premier of NSW in Parliament on 14 November 1989, public disclosure of consultancies is to be made through inclusion in Annual Reports. Details of all consultancies costing in excess of \$30,000 must be published but for those less than \$30,000, the number of consultancies and the total cost of these need only be shown.

Section 3 - Specifications

(10) The specification serves as both a planning and control mechanism for the project and a prescription for results (outputs) to be achieved by the consultant. The specification, in the last resort, is also the document protecting the University's legal rights.

(11) The size and scope of the specification will vary according to the project and its complexity. However the following points should be regarded as minimum standards for all specifications, even for relatively small projects. For extensive projects each item should be covered in considerable detail to ensure that what is required is perfectly clear.

Identification and Description of the Purpose of the Consultancy

(12) Describe what the Faculty or Division wants to achieve as a result of the project. A focus on outcomes for the project rather than just methods and inputs will allow a proper assessment of the final product.

Terms of Reference for the Project

(13) Define the boundaries to be worked within.

The Objectives of the Project

(14) A statement of the detailed results expected from the consultancy. These should be specific and measurable, so that there can be no doubt as to the purpose of the project.

Statement of Individual Tasks to be Performed

(15) If the consultancy is complex it may be appropriate to divide the project into sub-tasks. If this is necessary, each sub-task should also have a measurable result.

A Draft Timetable of Major Events

(16) The timetable should be flexible enough to allow negotiation, and contain "milestones" of important events. These milestones should be characterised by the production of periodic reports and the achievement of specific results. All timetables should have a commencement and completion date.

Resources to be Allocated to the Project

(17) Include such details as accommodation, equipment and staff support. Resource provision may be negotiable depending on the ultimate selection of the consultant. It is often necessary to stipulate in the specification that once a consultancy firm has been selected, because of their particular expertise, then the personnel on the project cannot be changed without the concurrence of the client.

Additional Information

(18) Any additional information such as relevant records and previous advice to the University should be provided as an attachment to the specification.

Conflict of Interest

(19) Consultants should be requested to state that there is no conflict of interest or to identify any potential conflict of interest and the steps they consider appropriate to protect the University's interest.

Ownership of Intellectual Property, Disclosure and/or Subsequent Use of Information

(20) Where appropriate these factors should be specified. This may be necessary to protect the University's interest in software or systems it is having developed or for copyright of other items being written or produced.

Equal Employment Opportunity Policy

(21) Consultants should be made aware of the University's [Equal Opportunity Policy](#) and Anti-Discrimination Legislation, and at all times during the engagement must ensure the University's policy on these matters is complied with.

Selection Details

(22) Include the criteria to be used in the process of selecting the consultant, e.g. level of skill and experience, price competitiveness and an understanding of the University's [Equal Opportunity Policy](#), the required form to be used for tenders or quotes, the deadline for the lodging of tenders/quotes, and provide a copy of the proposed contract document.

The University's Final Report Requirements

(23) Many consultancies culminate with the production of a final report. Indicate the required format and quality of the

report, if necessary, and the number of copies to be made available. The cost of the report is normally included in the consultancy fee.

Termination of Contract

(24) Provision should be made for the contract with the consultant to be terminated or the work content reduced or varied upon the consultant being given written notice.

Section 4 - Inviting Tenders

(25) The procedure for inviting bids for consultancy services depends essentially on the estimated cost and time of the proposed consultancy and the range of suitably qualified consultants to be given the opportunity to bid for the project. The University should ensure that invitations are appropriately circulated in a manner most suitable to the specific nature of the consultancy, e.g. specific industry publication, local newspapers. Persons of eminent academic standing may be invited by direct invitation to conduct a consultancy, if the Dean is satisfied that no other person is suitable for engagement. Invitations should clearly indicate that the University has an [Equal Opportunity Policy](#).

(26) Schools or Divisions that regularly use consultants, i.e. Division of University Properties for building construction, should establish a pre-registered list of consultants following public advertisements and evaluations. Firms should be able to apply for registration at any time with that registration to be reviewed annually by the Faculty or Division. When establishing the list of suitable consultants some basic information will be required such as group tax number, insurance policy details, relevant licence number etc.

(27) Where appropriate alternative procedures using "expressions of interest" methodology may be utilised. Identical specifications and briefing must be provided to all bidders.

Section 5 - Selecting the Consultant

(28) The actual process of selecting the consultant is not unlike the process of staff recruitment, that is, the task is to obtain the most appropriate skills and expertise for the consultancy. Many consulting firms have a high staff turn-over and in selecting the consultant it is important to ensure that the actual personnel provided by the firm has the appropriate expertise and experience.

(29) The Purchasing Officer in reviewing the tenders received will apply the normal University Purchase Board Constitution criteria to the selection process, namely:

- a. there is sufficient range of legitimate bids, quotes or tenders to ensure value for money comparisons;
- b. they conform with the specification and time criteria provided; and
- c. they are within budget limits for the project. Should this not be the case and it is decided to consider additional expenditure, a report should be provided detailing why the estimate was exceeded and confirming whether or not the scope of the work was correctly identified.

(30) The Purchase Board in evaluating tenders will receive a report including the recommendation for acceptance of a quote/tender and the following:

- a. a summary of quotes/tenders received in ascending order of price;
- b. an evaluation showing whether the quotes/tenders conform with the specification, and giving any reasons for variations;
- c. advice as to how quotes/tenders were invited and when and how they were received and recorded; and
- d. full details of the recommended quote/tender and the justification for the recommendation.

(31) All documentation must be kept for record and audit purposes.

(32) The report on the recommended consultant should address the following:

- a. the specification has been fully satisfied or any variations are acceptable (such variations should be detailed);
- b. the quote/tender is acceptable in terms of conditions and limitations, if any, accompanying it;
- c. the price is reasonable, confirms with market prices, and rise and fall and/or any other price variations are acceptable;
- d. the organisation to be engaged has in previous similar projects for the University been evaluated as satisfactory; and
- e. in relation to a staff recruitment consultancy, the consultant has satisfied the University that:
 - i. if tests are to be used they are relevant to the particular job, gender-neutral and culturally appropriate with provision made for persons with a disability to enable them to sit the tests;
 - ii. an effective strategy for attracting applicants from EEO target groups is in place; and
 - iii. there will be appropriate representation of target groups on selection committees.

(33) The recommendation need not solely be governed by the selection of the lowest offer received. No consultancy should be justified merely as an extension of previous work undertaken. The principal concern is to obtain best value for money whilst maintaining fully probity and equality of competitive opportunity for bidders.

(34) All written quotes and tenders received and records of verbal/telephone quotes must be kept as official documentation.

(35) Approvals of consultancies should be in accordance with current University policies, legislation and regulations, which include the following:

- a. Public Sector Management (Stores and Services) Regulation 1988;
- b. [Anti-Discrimination Act 1977 No 48 NSW](#);
- c. [Annual Reports \(Statutory Bodies\) Act 1984 No 87](#) and [Annual Reports \(Statutory Bodies\) Regulation 2010](#);
- d. Government Purchasing Policy covering offsets, preferences etc. (Department of Business and Consumer Affairs); and
- e. Premier's Memorandum: 88/72 of 14 December 1988 regarding the Procurement of Consultancy Services.

Section 6 - The Engagement Contract

(36) Following the approval to engage a consultant a formal letter of engagement, together with a contract document if considered necessary, should be forwarded to the selected consultant. The consultant should be required to provide a formal reply accepting the terms and conditions of engagement and, in relevant cases, the signed contract. For small engagements of a recurring nature the University purchase order is sufficient.

(37) As a general rule a letter of engagement may be used for smaller consultancies where the consultant does not need to be on site or use University facilities and where a written report as outlined in the specification is required as the product of the consultancy.

(38) A formal contract document should be used on those occasions when the consultancy is of a large or complex nature or a particular product or output is required to a specified standard.

(39) The letter of engagement or contract should refer inter alia, to:

- a. the original specification;

- b. the tender, quote or bid submitted;
- c. any subsequent correspondence and/or negotiations between the parties;
- d. the agreed fee and method of payment (with any progress payments linked to satisfactory performance or specific tasks);
- e. the basis (if any) for fee and work variations;
- f. provision for termination;
- g. the time period for the consultancy;
- h. the personnel confirmed by the consultants to work on the project;
- i. the University's responsible officer for the consultancy;
- j. the guarantee provided by the consultant in respect of adequate and proper completion of the proposed work;
- k. penalty clauses (where applicable); and
- l. agreed documentation to be provided prior to final payment for the consultancy.

(40) The letter of engagement should be legally, financially and operationally capable of protecting the interests of the University.

(41) All contracts valued at less than \$5,000 are to be signed on behalf of the University by the Dean or Executive Director of the Faculty or Division arranging the consultancy. Contracts valued at \$5,000 or more are to be signed on behalf of the University by the Chief Financial Officer.

Section 7 - Managing the Consultant's Work

(42) Good management of consultancies is essential to ensure that:

- a. the University gets value for money and that cost overruns are eliminated or reduced to a minimum;
- b. the University gets the product that has been specified (satisfying the terms of reference);
- c. unnecessary delays are avoided and the work is completed on time to the quality required; and
- d. disputes can be settled easily without extended litigation.

(43) Some typical steps in the management of consultants are outlined below:

- a. appoint a project officer(s) responsible for the performance and management of the consultant;
- b. appoint a management committee to oversight progress;
- c. define role of management committee/officer, explain this role to the consultant(s);
- d. institute adequate record keeping procedures;
- e. define standards and set meeting and target dates for the consultant;
- f. develop a mechanism for dealing with significant changes in cost, work or target dates;
- g. develop a procedure for dealing with unsatisfactory performance, where necessary with senior University management; and
- h. evaluate the work of the consultant, and keep records of this evaluation for future reference (see Section 8).

(44) The officer nominated as the project officer in the letter of engagement should normally be responsible for:

- a. the performance of the consultant in meeting the requirements of the specification;
- b. supervising the work;
- c. liaising with the consultant;
- d. ensuring legislative and policy requirements are adhered to;

- e. the terms and conditions of engagement being followed; and
- f. the payment of the consultant's fees being approved only when the services required have been satisfactorily provided.

(45) Particular care should be taken to ensure that any advertisements placed by the consultant on behalf of the University conform with University policy and legislative requirements.

(46) Variations to the consultancy during the progress of the project must be reported upon without delay and prior approval from management must be obtained for any proposed significant changes in work or cost. It is not good practice for approvals for significant changes in work or cost to be given by officers directly involved in the supervision of the consultant. Such variations are best approved by an independent senior officer, i.e. Dean or Executive Director.

Section 8 - Evaluation of the Consultant's Performance

(47) Evaluation of consultancy projects is essential in determining whether the project objectives have been achieved and whether the use of consultancy assistance was justified.

(48) An evaluation document should contain a statement of both direct costs incurred by the consultant (fees, travel, materials etc.) and indirect costs borne by the organisation (facilities, clerical support, materials etc.) together with the estimated cost and the originally agreed cost. If the project was divided into separate tasks, these costs should be allocated to the appropriate tasks carried out.

(49) The evaluation should be completed prior to and forwarded with the recommendation for final payment to the consultant.

(50) The evaluation provides a judgement on competence of the consultant and in particular of the individual personnel who carried out the work. Such evaluation should be formally made and retained in a central register within the Faculty or Division as a permanent record for possible future reference. These evaluations can then be utilised when considering a consultant for future work, or to assist other Faculties or Divisions in considering the consultant for similar projects. While the strict confidentiality of evaluations is essential, Faculties or Divisions are requested to discuss any unfavourable report with the consultants concerned and advise them of the record that is being retained.

Status and Details

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