

Western Parkland City Authority

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Consultant and Contractor Engagement Policy

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1		Final	07.2019	Tom Kwok	New policy
2		Final	31.03.2020	Virginia Tinson	Updated policy
3	A5296102	Final	17.12.2021	Virginia Tinson	Revised to reflect new branding, buy.nsw website and Procurement direction.

Review date

The Authority will review this Policy every two years or more frequently if required. It may be reviewed earlier in response to a change in the Australian Government or NSW guidelines.

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1. Introduction

1.1 The Western Parkland City Authority

The Western Parkland City Authority (**Authority**) is responsible for delivering one of the largest city-shaping projects in the history of NSW. The Bradfield City Centre will be Sydney's third CBD and a new benchmark for connectivity, innovation and smart city design. The Authority is partnering with all three levels of government and national and global industry to masterplan and deliver a city focussed on advanced manufacturing, aerospace, defence, quantum computing, research and agribusiness.

Anchored by Sydney's first 24/7 international airport, the Bradfield City Centre will open Western Sydney to the world: delivering jobs, infrastructure, education pathways and enhanced liveability for the Western Parkland City.

1.2 Policy Statement

The Authority is committed to ensuring value for money whilst being fair, ethical and transparent when procuring services of consultants and contractors. The procurement of consultant and contractors supports the Authority in its Strategy to deliver the Western Parkland City. This includes leading master planning and delivery of the Aerotropolis, investment attraction and undertaking planning and infrastructure coordination across the Western Parkland City in collaboration with the local councils and State and Commonwealth government agencies.

1.3 Who does the Policy apply to?

This policy applies to staff of the Authority who undertake or are involved in procuring the services of consultants and contractors.

2. Policy Guidelines

2.1 How do I define a consultant from a contractor?

A consultant is defined as a person or organisation engaged under contract on a temporary basis to **provide recommendations or professional advice** to assist decision-making by management. Generally, it is the **advisory** nature of the work that differentiates a consultant from other contractors.

Services provided under the NSW Government Legal Services Panel are excluded from the definition of a consultant.

The advisory nature of the work differentiates a consultant from other contractors. The easiest way

to tell the difference is, typically:

- a consultant advises and recommends to an employee of the Authority without direct supervision of the Authority and represents an independent view
- a contractor executes recommendations at the direction of an employee of the Authority.

This definition doesn't apply to casual or temporary staff employed or engaged by the Authority. Sometimes it isn't easy distinguishing one from the other. These examples should help. Procurement Board Direction 2021-03 defines a consultant as follows:

“A consultant is defined as a person or organisation engaged under contract on a temporary basis to provide recommendations or professional advice to assist decision-making by management. Generally, it is the advisory nature of the work that differentiates a consultant from other contractors.”

Services provided under the NSW Government Legal Services Panel are excluded from the definition of a consultant for annual reporting purposes.”

2.2 How do I determine if they are a consultant or a contractor?

Training

- A person or firm engaged to provide advice on training needs and to develop training programs is a consultant.
- A person or firm engaged to provide the in-house actual training would not be a consultant for the purposes of these guidelines.

Information technology

- A person or firm engaged to assist the development of an information technology strategic plan and/or to assist with the development of specifications for the systems and/or to provide advice on implementation is a consultant.
- A person or firm engaged to undertake implementation in accordance with the specifications, for example, supplying or writing the software and constructing the systems, would not be a consultant.

Finance and accounting

- A person or firm engaged primarily to advise on the financial viability of a government business enterprise is a consultant.
- A person or firm engaged primarily to provide routine auditing or routine accounting services even though that includes professional advice would not be called a consultant.

2.3 How do I decide if I need to engage a consultant or a contractor?

You must be able to answer **YES** to the following questions to confirm that the engagement of a consultant is appropriate:

- The Authority doesn't have the skills and capacity readily available, or the cost to do the work in-house will be higher than engaging a consultant.
- Will this engagement deliver a clear contribution to the objectives of the Government and the Authority?
- Will the consultant focus on a specific issue or problem?
- Is there a clearly defined set of deliverables expected from the consultant?
- Is the cost of delivering the outcome clearly forecast?
- Does the engagement have a pre-determined end date?
- You must show you have approved budget available for the engagement.

2.4 What do I need to have before I look for a consultant?

The key considerations are to have a clearly documented set of outcomes expected from the consultant and the contract conditions for the engagement.

It is also important to have documented the following before going to market which needs approval by a government officer with appropriate Financial Delegation;

- Budget for the engagement
- Selection criteria or scope for the engagement
- How the engagement will take place eg. Request for Proposals (RFP), Expressions of Interest (EOI), etc. – and should include details of the selection process.

2.5 What are the requirements and conditions?

The amount of information required is going to depend on the value of the contract and how complicated the project is. You must also ensure you have appropriate Financial and Administrative delegation or approval from the appropriate delegate.

Refer to the WPCA Financial Delegations and Procurement Policy for more information.

2.6 How do I engage a consultant or contractor?

NSW State Government has a well-defined process to ensure sourcing is done in the most efficient and effective way possible.

All engagements require pre-approval by the relevant financial delegate before approaching the market.

This table gives you an idea of the process to follow based on the forecast cost of the engagement:

Non-government scheme/contract	Prequalification/NSW Government Contract
<ul style="list-style-type: none"> Under \$10k P-Card payment method = 1 verbal quote (email quotation is preferred) 	<ul style="list-style-type: none"> Under \$10k P-card payment = 1 verbal quote (email quotation preferred)
<ul style="list-style-type: none"> \$10k* to \$30k = 1 written quote 	<ul style="list-style-type: none"> Purchases over \$30k should be procured in line with scheme rules as to number of required quotations <p>For Example:</p> <ul style="list-style-type: none"> Under \$250k for ICT Services or Architectural Services requires 1 written quote. Over \$250k for ICT Services requires 3 written quotes. Under \$250k for PMS requires 1 written quote. Over \$250k for PMS requires 3 written quotes.
<ul style="list-style-type: none"> \$30k to \$680k = 3 written quotes Over \$680k = competitive tender * Up to \$5k can be sourced locally for non-metro areas 	

2.7 What is classed as a complex procurement?

Complex procurements are:

- Not under the prequalification or NSW Government contract
- High risk to the Authority’s reputation or from non-delivery
- Procurements over \$680,000 not under the prequalification or NSW Government contract require an Accredited Agency’s oversight and also require an internally approved procurement strategy. Refer to the procurement strategy template.

Note that if you envisage that engagements are likely to exceed their threshold (such as the engagement is stage 1 of a process of 2 or more stages and the final costs exceeds \$30k/\$250k respectively), then you need to proceed to the next level of procurement.

For more information refer to the Authority’s Procurement Guidelines.

Does this mean the consultant or contractor is responsible for the result?

Using consultants or contractors doesn’t reduce or eliminate the responsibility of the Authority or yourself for successful delivery of the expected result.

If you engage consultants, you will need to have a process in place to manage actual progress and deliverable quality. For each consultancy, the Authority should have a nominated Contract Manager.

2.8 buy.nsw Prequalification list

The NSW Government **buy.nsw** site provides all the information you require including links to other resources such as lists of pre-qualified suppliers and applicable schemes. The list of pre-qualified schemes can be found on **buy.nsw**. This site is the best source for whole-of-government purchasing and procurement information.

buy.nsw provides more information about Approved Procurement Arrangements.

Effective 1 October 2021, the revised Procurement Board Direction PBD-2021-03 governs the engagement of Prequalified Service Providers that provide Business Advisory Services, as well as how to manage engagements with suppliers that have not accepted the standard commercial framework.

Note that suppliers pre-qualified at a “Base” level, can only provide low risk service engagements limited in value up to \$50,000 (ex GST).

2.9 Governance arrangements for non-compliant engagements

A more robust approval process is required for each engagement that does not comply with any element of the PMS Scheme standard commercial framework, including any of the following scenarios:

- from a supplier that has not accepted the standard commercial framework
- where the engagement proposal is not compliant with the standard commercial framework.

Approval of non-compliant engagements require the following actions for each engagement:

- have the CEO approve the engagement, but only once satisfied that work cannot be undertaken under the standard commercial framework
- ensure engagements are competitively bid with at least three bids to ensure value for money
- report information about the engagement upon approval through the Board’s Major Supplier’s Portal.

Agencies must report any contract with a supplier that has not accepted the standard commercial framework, including contracts outside the PMS Scheme.

2.10 What about conflicts of interest?

This process, like any other, must be free of any conflict of interest that staff declare any conflict of interests this obligation extends to all parties advising the Authority. It is also relevant to any staff member participating in evaluation of the procurement process.

If anyone declares a conflict of interest, a decision must be made about their ongoing involvement in the procurement process.

2.11 Contract Disclosure Requirements

The *Government Information (Public Access) Act 2009* (GIPA) requires that contracts entered into

with the private sector valued over \$150,000 (incl GST), be disclosed on the NSW Government eTendering Register of Contracts within 45 working days after the contract becomes effective. The details to be included are dependent upon the value of the Contract and the method of engagement. (NB: This process is facilitated by Corporate Services).

3. Further Information

For advice and further assistance contact WPCA Procurement or Director Corporate Services.

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