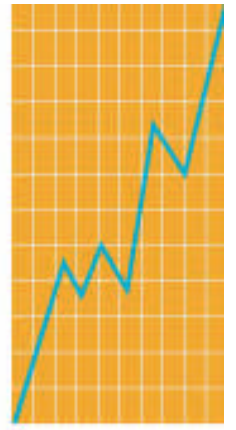


防貪錦囊
Guidelines for Corruption Prevention

best
practices



Management of Consultancies

Corruption Prevention Department

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MANAGEMENT OF CONSULTANCIES

Introduction

A consultant is a person or a company engaged under a term contract or on a job basis to provide specialist or professional advice to assist policy formulation or decision-making by the management of an organization. A consultant is also engaged to monitor contractors' performance on behalf of the organization as in the case of works projects. Consultants are generally distinguished from contractors by the advisory nature of their work.

Any poor performance of the consultant condoned by compromised staff of the organization is likely to result in money loss to the organization. Corrupt collusion between the employees of the consultant and the contractor will have more serious consequences, not only leading to money loss but also sub-standard works which may cause safety risks.

This Best Practice Module aims to provide a checklist of good practices in the administration of consultants. The measures to prevent malpractice recommended below are by no means exhaustive and should be tailored to meet the specific needs of individual organizations.

Key Principles

The key principles to be met in the engagement of a consultant are value for money, a fair, transparent and accountable system in the engagement and monitoring of consultants, and adoption of ethical practices by both the organization and the consultant.

Conflict of Interest

The organization should have clear policies to require all staff involved in the engagement of consultants to declare any actual or potential conflict of interest that may arise at any stage in the engagement and administration process.

Assessment before Engagement

As the hiring of consultants incurs cost, it is important for an organization to carefully assess every request for external consultant service. There should be guidelines specifying the need for written justifications. To ensure requests are assessed impartially, it is advisable to form an independent assessment panel comprising staff with the necessary technical knowledge as well as staff of the requesting department. A staff member at a senior level should be designated to approve requests.

In assessing requests, the approving staff member or assessment panel should have regard to the availability of expertise and resources for the consultancy within the organization and assess whether the consultancy can be provided in a more cost-effective way.

Financial Commitment Authorisation

The consultancy fee payable could be a tendered lump sum or calculated based on the overall cost of the exercise or works project (e.g. a specified percentage) including variables and reimbursable expenses. In the latter case, the total cost may be estimated by both the consultant and the organization (where practicable) to arrive at a fee commitment level for any given financial period.

Consultant Search

Value for money is best obtained through open, fair and effective competition. To enhance openness, currently appointed and new consultants should be given the chance to compete.

Short-listing

A short list of consultants in the specific field should be identified through a pre-qualification exercise. This could be done through open invitation for expression of interest, industry referrals or users' nominations. The number of short-listed consultants should be sufficient to ensure competition.

Organizations with a continuing need for consultant services should develop and maintain an approved list of consultants endorsed by a panel (e.g. a tender board). The list should be subject to periodic review for the addition and deletion of consultants based on established criteria such as past performance.

Invitation for tender proposals from consultants on the list should be based on a fair share principle (e.g. by rotation) to ensure that all the consultants are given an equal chance to compete.

Pre-qualification Criteria

To ensure transparency, pre-qualification criteria such as size of firm, expertise, years of relevant experience etc. should be pre-determined and made known to all consultants in the invitation for expression of interest.

Preparation of Project Brief

Consultancy briefs and proposed Agreements should carefully define the extent of work and outline the basis on which performance will be measured and payments will be made. These details should be sufficient to enable a knowledgeable third party to assess the performance of the consultant after the award of agreement and the payments due.

To avoid ambiguity that may lead to disputes after the award of agreement, the brief should be explicit in stating the deliverables or expected outcomes, the milestones for payment, and the skills and expertise expected of the consultant. The number and professional qualification of the staff required for the project should also be specified.

It is also important to include the requirement of ethical practices expected of the consultants and their employees (e.g. the requirement to declare conflict of interest and to avoid accepting advantages or frequent entertainment from the contractors they supervise).

Transparency of Information

All short-listed consultants should be given access to the same information (such as tender forms and guidelines on the submission of tenders) and sufficient time to prepare a tender proposal. There should be a common deadline (i.e. date and time) for proposal submissions.

If a pre-tender briefing is considered necessary, it is advisable to have all short-listed consultants briefed on the same occasion to ensure that they receive the same information. Any supplementary information given to a particular consultant should also be made available to all.

Restricted Tenders

As restricted tendering or single source tendering may invite criticism of favouritism, the choice must be fully justified, documented and approved by senior authority, preferably a panel of senior staff not involved in the nomination of the consultants.

Selection Criteria

To ensure objectivity of the tender proposal evaluation process, the evaluation criteria and their weightings (in case a marking scheme is used for assessment) should be predetermined and approved by a panel (usually the tender board). The criteria and weightings should be included in the proposal invitation document for the information of all short-listed consultants.

Once determined, the criteria should not be varied unless all short-listed consultants are given an equal opportunity to revise their proposals.

Tender Evaluation

The impact or sensitivity of the project and the cost of the consultancy service are the key factors for determining whether the tender proposals should be assessed by more than one person. For major projects, the evaluation should be undertaken by a panel with members chosen on the basis of their knowledge and expertise as well as their position.

Where feasible, there should be an independent panel member drawn from another business unit to ensure impartiality in decision-making.

The assessment of tender proposals and, in case a marking scheme is used, the scoring of the proposals against the selection criteria by the assessment panel should conform to an agreed format, with each panel members' assessment/marks recorded as well as the aggregate results.

Oral Presentations

Presentations by short-listed consultants should be restricted to appropriate cases. Any requirement for a presentation should be made known to the consultants before invitation of tender proposals. Subsequent addition of this requirement or inclusion at the request of one consultant, may be perceived as an unfair advantage and should not be allowed, unless with the agreement of the tender board and the opportunity to make presentation is given to all consultants concerned.

Tender Security

To prevent leakage of tender proposal information, steps should be taken to ensure the security of proposals received. Precautionary measures include receiving tender proposals in a double locked tender box with the keys controlled by different staff members of responsible position, and tasking an independent team of staff to witness the tender box opening.

Tendered sums should be recorded in a summary sheet. Late tenders should not be accepted but returned to the consultant concerned after recording.

All tender proposals should be subject to formal receipt and acknowledgement. They should always be securely kept to protect the confidentiality of commercially sensitive information.

Contract Agreements

While model contract agreements may be used to develop the terms of engagement, the following essential clauses should be considered for inclusion:

Probity Clause

A clause should include reference to the Prevention of Bribery Ordinance; the requirement to declare and avoid conflict of interest; and the commitment to ethical practices through the adoption of a Code of Conduct by the consultants, their staff, agents and sub-consultants.

On appointment, consultants should be required to disclose all potential conflicts. Failure to make adequate disclosure may be grounds for termination of the agreement.

Resources and Fees

The agreement should specify all necessary resources to be provided by the consultant and require him to propose all commitments and information support required of the organization.

Recoverable expenses (and any limits), hourly rates, minimum fees, as well as methods and deadlines of payment should be clearly stated. Consultants should be required to provide billing details on a timely basis for payment purposes. As far as possible, a clause on “capping” of expenses and fees should be included to avoid excessive charges.

Defaults and Claims

Contract conditions should allow the organization to deduct payment for any incomplete, delayed or omitted work, or to withhold payment until the service is performed to the satisfaction of the organization. There should be provisions for termination of the contract on default and for handling disputes and claims.

Indemnity

The consultant should be required to take out suitable indemnity cover (with an insurer approved by the organization) against any potential claims, subject to any defined risk exposure policy adopted by the organization.

Modifications and Variations

Modifications or variations of the agreement terms are corruption prone as they could be manipulated to favour the consultant (e.g. granting of extension of time to cover up delays or variations of work which have cost implications). Hence, the consultancy agreement should clearly distinguish between extensions of the scope of the contract and matters relating primarily to timing - such as delays in the submission of deliverables.

To prevent manipulation, formal procedures should be in place to provide for the examination and approval of extensions of time and variations of work, taking into account the cost implications to the organization. Financial limits should be set for the approval authority. It is advisable to form a panel to approve extensions of time and variations involving high cost.

Negotiation

Negotiation in respect of major consultancy contracts should be conducted within established negotiating parameters and desirably by more than one person.

Negotiated contract terms must be documented so as to achieve adequate accountability and to enable appraisal by independent third parties if necessary. Reports and recommendations following negotiation should include a summary of both positive and negative features of alternative proposals.

Preferred practices in post tender negotiations are detailed further in another Best Practice module available on request from the Advisory Services Group of the Corruption Prevention Department.

Prohibited Actions

Negotiators should not disclose technical information or intellectual property that may result in the improvement of a competing proposal. They should also be advised against the following practices:

- indicating to a consultant a price that he must meet to obtain further consideration;
- advising a consultant of his price standing as compared to another consultant (nevertheless, a consultant may be informed that his price offer is considered too high or unrealistic for consideration); and,
- furnishing information about other consultants' tender proposals.

Tender Award

The evaluation panel or responsible staff member should analyse the proposals, prepare an evaluation report, and submit the report to more senior authority or a tender board for final approval. Full justification should be given if the best proposal is not recommended.

All successful and unsuccessful consultants should be notified of the results at an early date.

Performance Monitoring

To ensure consultants with satisfactory performance records are retained on the approved list, there should be procedures for the appraisal of consultants' performance. The organization's nominated contract supervisor should prepare progress and performance reports at regular intervals on standard forms for management information.

Evaluation

Procedures should be in place to identify unsatisfactory performance and initiate action, such as the issue of written notices to the consultant with suggestions for correcting any deficiencies and warnings in case of persistent deficiencies. Any notices, warnings and recommended remedial actions should be recorded.

Consistently inadequate performance should lead to termination of the agreement and/or suspension from invitation to submit tender proposals in future. Termination or any sanctions imposed must be documented for future reference.

Review on Completion of Agreement

The project supervisor of the organization should prepare an overall appraisal report upon completion of the agreement. This should take into account the complexity of the contract and any other factors for measuring the project outcome against stated objectives/requirements.

Retainer-style Agreement

If the consultant is engaged on a term agreement, there should be a system for issuing formal instructions for each task assignment. These should be in the form of specific orders that supplement the general terms and conditions of the basic agreement.

The principle of regular performance reporting should also apply to term consultants, with assessment on a time and/or project basis as best suits the nature of the work.

Term appointments should be limited in time (normally 2-3 years) with a review of both performance and continued need of the consultant at the end of the term. Any reappointment should be made according to the standard conditions of consultant selection and appointment in force.

Payment Procedures

Expenditure reports on consultancy agreement should be readily available to the management detailing the fees charged, milestone payments made, total amounts paid, etc.

Consultants should be required to provide billing details for payment claims and the reimbursable components of their fees should be subject to random sampling verifications.

Responsible supervisory staff should be tasked to verify consultant charges. Adequate guidelines should be given to them as necessary to ensure they discharge these duties effectively.

Documentation

Adequate records should be maintained throughout the selection and administration process, detailing the tender proposals, the evaluation criteria, the recommendation and the decisions made. These records should be subject to independent audit review.

It is advisable to maintain a database containing the details of individual consultancy agreements, their progress and final performance reports. This enables monitoring of potential overlaps of consultancy services and verification of cost effectiveness.

Advisory Services Group

In addition to the series of Best Practice Modules, the ICAC maintains an **Advisory Services Group** to provide free and confidential corruption prevention advice to private organizations covering various aspects of their activities such as staff administration, stores management and administration of contracts. For further information, please contact the Advisory Services Group at telephone no. 2526 6363 or fax no. 2522 0505 or email address asg@cpd.icac.org.hk.



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