



## Approved Procedure 5 - Approved Contracts for Services Procedures

<b>Introduction:</b>	<p>This Approved Procedure relates to the powers of employing authorities as defined in Part 1 section 5 of the Public Sector Management Act 1994 (PSM Act), in accordance with these procedures and as provided for in section 100(1), to engage a person under a contract for service on such terms and conditions, including the rate of remuneration, as the employing authority determines.</p> <p>This Approved Procedure applies to those employing authorities employed in the Public Service.</p>
<b>Objective:</b>	<p>To provide for a contract for services system and procedures which are in accordance with the principles set out in sections 7 and 8 of the PSM Act.</p>
<b><u>Definitions</u></b>	
<b>Contract for service:</b>	<p>A contract for service involves the relationship of independent contractor and principal<sup>1</sup>.</p>
<b>Contract of service:</b>	<p>A contract of service involves the relationship between an employer and employee.</p>
<b>Labour hire:</b>	<p>The expression 'labour hire' is a term used in the generic sense to describe the use of any form of labour market intermediary.</p>
<b>Conflict of interest:</b>	<p>A conflict of interest arises where a consultant has or appears to have obligations or interests in connection with the contract which may conflict with the employing authority.</p>
<b>Procurement strategy:</b>	<p>The type of arrangement that will best achieve the desired outcome for the public sector.</p>
<b><u>Approved System and Procedures</u></b>	
<b>Authority of CEOs (or other relevant employing authority):</b>	<p>In exercising their functions under section 100(1) of the PSM Act, CEOs (or other relevant employing authorities) have the authority to engage a person under a contract for service.</p>
<b>Appropriate circumstances for the engagement of a contract for service:</b>	<p>Determination of the circumstances where it would be appropriate for the engagement of a contract for service:</p> <ul style="list-style-type: none"><li>• the appropriate expertise is unavailable in the public sector at the time of need;</li><li>• there is a requirement for impartiality and objectivity external to the public sector;</li><li>• the required expertise and specialist skills are available only from external sources;</li><li>• there arises a need to fill a position on very short notice for which the appropriate expertise within the public sector cannot be readily made available (eg. 1-2 weeks).</li></ul>

**Inappropriate circumstances for the engagement of a contract for services:**

Determination of the circumstances where it would not be appropriate for the engagement of a contract for services:

- for the purpose of management or decision making, these tasks should remain the responsibility of the public authority's executive;
- to perform tasks which would be more cost effective if resourced internally;
- where the expertise required is available within the public sector;
- where the expertise and specialist skills can be obtained by providing developmental opportunities for existing staff within a reasonable timeframe;
- to resource ongoing functions or activities;
- where a conflict of interest could develop.

**References for the engagement of contracts for service:**

References to assist in the establishment of a genuine contract for service are contained within TR (Tax Ruling) 1999/13 available on the ATO (Australian Taxation Office) website [www.ato.gov.au](http://www.ato.gov.au).

The publication Engaging Consultants: Contracts for Professional Services Guidelines can assist public authorities in determining the appropriate circumstances in which to engage a person in a contract for service and provides comprehensive guidelines on the process of engagement. The publication is available at [www.ssc.wa.gov.au](http://www.ssc.wa.gov.au).

**Related information:**

The engagement of a person(s) under a contract for services does not diminish the responsibilities on the part of the employing authority to ensure the conduct and behaviour of a person(s) complies with the Code of Ethics and the Code of Conduct applicable to the agency in which the person(s) has been engaged.

<sup>1</sup> The true nature of the relationship must be determined through close examination of all the terms and conditions of the contract. As such, the status of the contract cannot be altered by labelling a person a 'contractor' or 'employee' when the true nature of the relationship may indicate otherwise.

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**Public Sector Commission**

[www.publicsector.wa.gov.au](http://www.publicsector.wa.gov.au)