

# Engagement of Contractors and Consultants

## Overview

This document contains the framework and principles for Queenstown Lakes District Council's approach to engaging contractors, and defines the differences between employed staff (employees) and self-employed contractors.

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## Introduction

**Purpose** The purpose of this policy is to provide Managers with a clear framework for managing the engagement of contractors for the provision of services to Queenstown Lakes District Council.

**Scope** This policy is applicable to all QLDC employees, contractors, councillors and joint purchasing agencies.

The policy applies in all situations where a contractor is to be engaged to provide services to QLDC. This includes the engagement of consultants, contractors and other contracted service providers, whether individuals or organisations. The policy must also be considered when a decision is made to roll over or extend an existing contract for services.

This policy does not replace existing contracting and procurement policies. The requirements are to be applied in addition to the existing obligations.

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### Associated documents

Other documents that are relevant to the contents of this document are:

Type	Title
QLDC Corporate	<ul style="list-style-type: none"> <li>• Procurement Policy</li> <li>• Delegated Authority</li> <li>• Conflict of Interest</li> <li>• QLDC Contracting Guidelines</li> <li>• Health, Safety and Wellbeing Policies</li> <li>• Infrastructure and Asset procurement strategy</li> </ul>
Legislation	<ul style="list-style-type: none"> <li>• Employment Relations Act 2000</li> <li>• Health and Safety at Work Act 2015</li> </ul> <p><i>Note: Any legislation referred to should be interpreted as meaning the Act and its amendments.</i></p>
Other	<ul style="list-style-type: none"> <li>• Employment Agreements</li> <li>• QLDC Code of Conduct</li> </ul>

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## Policy

### Principles

When selecting service providers QLDC must use processes which:

- ensure that QLDC receives value for money; and
- promote even-handed treatment of all potential service providers.

As a general rule, a contestable contractor selection process provides the best way of achieving these goals.

Active monitoring of contractor performance during the course of a contract is also important and a formal contract performance assessment should be completed at the end of each contract period.

### Decision to engage

Public entities should not usually engage consultants;

- To resource core, on-going functions or activities;
- To undertake tasks which the public entity could more cost-effectively and appropriately resource itself; or
- Where there is an expectation that a conflict of interest could develop.

### Appropriate engagement

Consultants should normally only be engaged by QLDC where there is an expectation that using external resources will meet unique needs, achieve cost savings or provide a higher quality of service than using in-house staff. This may occur in the following situations:

- Specialised expertise or skills - Certain types of expertise or skills may not be available internally, and QLDC may not consider it feasible or desirable to gain the skills through internal training or recruitment.
- An external or unbiased opinion - QLDC may wish to have an independent evaluation, review or judgement that is not affected by internal considerations or influenced by past events.
- External advice to management - At critical stages QLDC may wish to take external advice – for example, at times of organisational change.
- To undertake work quickly - QLDC may need to boost its internal resources by engaging a consultant to help expedite business processes or to complete projects more quickly.
- Staff training - QLDC may find it impractical to train its staff comprehensively using its own resources. A consultant could therefore be engaged to undertake aspects of training.

QLDC Councillors cannot be engaged to carry out consulting / contract work unless approval is granted by the Mayor.

It is important to ensure that contractors and consultants comply at all times with QLDC's Health, Safety and Wellbeing policies, and other policies that are brought to the contractor's/consultant's attention from time to time.

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### **Policy continued;**

#### **Contractor vs employee**

Careful consideration should always be given to whether a contract of service (employment agreement) is more appropriate than entering into a contract for service (contractor engagement). HR or legal advice should be sought if there is any doubt about the appropriate method of engagement.

HR or legal advice should also be sought if consideration is being given to extending an existing fixed term contract. Where contracts are being repeatedly rolled over or extended this may indicate an organisational need that could be addressed more appropriately and effectively by direct employee recruitment.

Existence of the following factors may indicate that a contract for service is appropriate:

- The intention of QLDC and the contractor is not to form an employment relationship, and the actual nature of the relationship reflects this.
- The contractor controls how and when the job is done.
- Payment is made in a lump sum at the end of a job, or in instalments as progress is made on the job.
- The contractor can choose who does the job, and can hire other people without the approval of QLDC.
- The contractor pays any tax, ACC and insurance directly.
- The contractor can make a profit or suffer a loss directly.
- The contractor supplies his or her own equipment and materials.
- The contractor is free to accept similar work from a number of sources at the same time.

Whether a person is engaged as an employee or as a contractor/consultant will depend on an overall assessment of the factors listed above, with no one factor being determinative. If few or none of the factors above are present, then an employment relationship is likely to be appropriate, and conversely, if most or all of the above factors are present, then a contractor/consultancy relationship is likely to be appropriate.

It is important for QLDC to ensure that the most appropriate form of contractual relationship is adopted, as the consequences for QLDC if the Employment Relations Authority or Employment Court find otherwise may be significant to the organisation.

#### **Provider Selector**

As a public entity QLDC must obtain value for money when making procurement decisions and needs to be able to demonstrate that this has occurred. QLDC should also act transparently, fairly and even-handedly when selecting and purchasing services. A contestable procurement process is usually regarded as the best way of achieving these goals.

Depending on the value of the project and the nature of the required services contestability can be achieved by a number of different mechanisms.

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These may include:

- obtaining and comparing a number of quotes from various potential service providers;
- issuing invitations to tender to a pre-determined list of suppliers (a 'closed tender');
- engaging in a formal 'open tender' process that gives all potential suppliers the opportunity to tender.

See the Auditor General's Statement on Procurement Practices and the QLDC Procurement Policy for more guidance regarding procurement processes and contestability mechanisms.

### **Non-contested Selection**

Non-contested procurement from a selected provider ('sole provider procurement') is usually only justifiable in certain unique circumstances such as:

- When tendering is not practicable (e.g. in an emergency);
- The required services are available only from one source, or only one supplier has the capacity to deliver at the time required, *and this can be adequately attested*;
- Standardisation or compatibility with existing equipment or services is essential, and can only be achieved through one supplier (including regional product alignment);
- There is a legal requirement or directive to use one supplier; or
- The cost associated with any other form of procurement would be out of proportion to the value of the procurement or the likely benefits to be gained.

The low value of individual contracts does not of itself remove the need to consider contestability. Value for money can still be achieved with low cost approaches such as seeking several quotations from different providers. Where sole provider procurement is repeatedly used with one provider, consideration should also be given to the cumulative value of the contracts when considering the appropriate form of procurement.

### **Sole provider**

In situations where procurement of services from a sole provider is considered (without a contestable process) a clear rationale must be available to support this decision. The rationale must be fully documented and refer to the exception relied on to justify the decision to proceed on a non-contestable basis. All relevant facts in support must be outlined (e.g. efforts made to identify other possible service providers to engage in a contestable process).

Consideration should also be given to the length of the proposed contract. In general, contracts entered into on a non-contested sole provider basis should be for short periods of time only, such as weeks or months and be of relatively low value.

Where a sole provider approach is adopted, this decision must also be reviewed if consideration is given to rolling over or extending the existing contract. The circumstances originally justifying a non-contestable process may no longer be applicable and a contestable selection process may be required for future service

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provision. At a minimum, a sole provider contract should be reviewed, and consideration given to the appropriate procurement mechanism, at least once in each 6-12 month period.

To ensure that QLDC receives the best value for money evidence should still be available regarding negotiations over price/calculation of payment even where a sole provider is selected. For example, a fixed cost price for a project may be less risky and better value than entering into an agreement based on an hourly rate for an open ended period. Price could also be made dependant on outcomes attained. The reasons for pricing/cost decisions must be transparent.

### **Delegations**

Managers engaging contractors must be aware of, and comply with, all necessary financial approval delegations relevant to the arrangement.

In addition, any decision to engage a contractor on a 'sole provider' basis for a contract amount in excess of \$100,000 per annum must be approved in writing by the CEO.

Where multiple contracts are entered into with a single contractor, consideration should be given to the cumulative total and value of all the contracts when considering the appropriate level of managerial approval for the arrangement.

### **Conflict of interest**

*Concurrent* employment and contracting arrangements can potentially give rise to performance issues, conflicts of interest and probity concerns. When there is a potential for such a situation to arise care must be taken to ensure proper provider selection processes are followed and the QLDC Conflict of Interest Policy is fully complied with. Potential conflicts must be identified and appropriately managed throughout the procurement / engagement process and on an on-going basis throughout the term of any contract that may follow.

Engaging *former* employees as contractors raises the same risks of actual or perceived impropriety in procurement situations. These risks must also be recognised and actively addressed on an on-going basis. In addition to the requirements above, it is ordinarily expected that QLDC should be able to demonstrate that:

- a) the employee left the organisation under normal circumstances (as opposed to departing for performance, disciplinary or similar reasons and being re-engaged); and
- b) the benefits to QLDC of re-engaging the former employee as a contractor can be objectively justified.

### **Current / former employees**

The following situations must be approved in advance by the relevant GM. Approval must only be granted if the GM is satisfied that the arrangement is appropriate in the circumstances and that all potential conflict and probity issues have been adequately addressed.

1. Any decision to engage a current QLDC employee as a contractor.
2. Any decision to engage a former QLDC employee as a contractor, within 6

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months of the employment relationship ceasing.

### **Contract management**

The Contracts Manager is allocated responsibility for monitoring each contract and the performance of each contractor. The Contracts Manager needs to have sufficient skills and knowledge to be able to effectively monitor performance, compliance and health & safety management with the terms of the contract. The contractor should be notified of any concerns regarding performance under the contract and a clear plan put in place to address any issues that arise.

All documentation relating to provider selection, engagement of contractors, performance against specifications, problems, health, safety and wellbeing etc. should be retained by the Contracts Manager and be readily accessible at all times. All key documentation must be available on the contract file.

### **End of contract reports**

A formal report should be produced when a contract comes to an end and feedback on this should be provided to the contractor. The end of contract report should consider the performance of the contractor, compliance with the contract requirements, health and safety management, and identify any issues that have arisen during the course of the contract.

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