



Newfoundland &  
Labrador

## HOUSE OF ASSEMBLY MANAGEMENT COMMISSION

### DIRECTIVE

Directive Number 2010-009

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<b>Subject:</b> Policy for Hiring External Consultants	<b>Reference:</b> HOAMC Meeting: May 26, 2010 Agenda Item: Tab 5
<b>Issued To:</b>  All Members of the House of Assembly; Comptroller General; Directors of Government Accounting, Professional Services and Internal Audit, Financial Systems Control, and Corporate Services; Office of the Auditor General; Office Managers of Government Caucus, Official Opposition Caucus, NDP Caucus; Assistant Deputy Clerk, Executive Council; Director of Operations, Office of the Premier.	<b>Contact:</b>  Marlene Lambe Chief Financial Officer 729 – 2923

### BACKGROUND

The Commission is authorized by subsection 20 (1) of the *House of Assembly Accountability, Integrity and Administration Act* to establish financial, administrative and management policies for the Legislature. Subsection 20(3) of the Act states that “where a financial or management policy has not been established by the commission for the House of Assembly and statutory offices, the financial and management policies of the government shall apply.”

The Executive Branch follows the Guidelines Covering the Hiring of External Consultants which provide financial, selection and contractual guidelines when engaging external consultants. Appropriate modifications have been made to the Guidelines to reflect the financial management structure and authorities specific to the operations of the House of Assembly.

At its May 26, 2010 meeting, the Commission adopted the attached Policy for Hiring External Consultants, dated May 2010, for employees of the House of Assembly Service, Caucus Offices and Statutory Offices.

### DIRECTIVE

Pursuant to subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, the Commission adopted the Policy for Hiring External Consultants, dated May 2010, for employees of the House of Assembly Service, Caucus Offices and Statutory Offices.

William MacKenzie  
Clerk of the House of Assembly



**House of Assembly**

**Policy for Hiring External Consultants**

**May 2010**

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## **1.0 Approval**

Under the authority of subparagraph 20(6)(b)(ii) of the *House of Assembly Accountability, Integrity and Administration Act*, the House of Assembly Management Commission (Management Commission) establishes this policy respecting the hiring of external consultants.

## **2.0 Purpose**

To provide direction respecting the hiring of external consultants.

## **3.0 Scope**

This policy is to be followed in all circumstances where the House of Assembly Service, a Statutory Office, or Caucus Office engages the services of an external consultant.

## **4.0 General**

### **4.1 Responsibilities**

- a) The Clerk or the Statutory Officer is required to ensure that this policy is followed. If any proposed consulting work is not congruent with these guidelines, it is to be referred to the House of Assembly Management Commission for consideration. To ensure consistency within the Legislature, a management employee in each office/division may be delegated the responsibility by the Clerk or the Statutory Officer to coordinate and administer implementation of this policy.
- b) The Clerk is responsible for providing interpretation and advice to offices and divisions on specific contracts, and to review the policy periodically, or when requested by an office or division, to ensure that it continues to meet the operational and financial objectives of the Legislature.

### **4.2 Intent**

By including financial, selection, and contractual matters in this policy, it is the Legislature's intention to:

- a) Provide operational consistency when engaging the services of external consultants.
- b) Provide clear information on the Legislature policy.
- c) Encourage management to be thorough in the preparation of project and administrative documents, e.g. Terms of Reference.

- d) Place itself in a favourable position should any legal action be necessary to enforce any or all contractual obligations.

### 4.3 Restrictions

Contracting authorities should recognize that certain aspects of this policy contained in the Contractual Considerations Section may be more applicable to complex, higher value consulting contracts and should be applied with discretion. This policy applies to all circumstances where the services of an external consultant are directly engaged.

## 5.0 Process

### 5.1 Definitions

- a) Acceptable Proposal  
Acceptable is interpreted to mean that an office or division is able to determine that the quality of the proposals and the technical competence, experience, past performance and work on hand of those consultants submitting proposals are such as to anticipate satisfactory performance.
- b) Consultant  
An external consultant is deemed to be a private individual, group of individuals, company or institution with a high level of attainment in a professional, scientific, technical or managerial field which is engaged directly by an office or division to perform specific work of an advisory nature not covered under the Public Tender Act.
- c) Limited Proposals  
Offices or divisions identify the consultants from which they will invite proposals.
- d) Public Proposals  
Offices or divisions place an open call for proposals in the media. The respondents with appropriate qualifications will be identified and asked to make written and/or oral submissions.
- e) Fee-for Service  
Applies when a consultant:
  - i. is required to be available on an ongoing basis to perform specific tasks, upon request, and paid at an hourly rate or per diem rate (in some cases a retainer may be applicable); or
  - ii. is engaged to perform a task which has a high degree of uncertainty relative to its financial and functional scope.

## 6.0 Expenditure Approval Requirements

### 6.1 General

Before an office or division initiates any action to call for proposals and select the services of an external consultant, it must have the necessary approval to spend such funds for this purpose.

### 6.2 Estimate Preparation

- a) Offices or divisions must include all current account consultant funding requirements in the Budget Estimate under the main object of expenditure "Professional Services" [and capital account funding requirements in approved project related sub-head accounts.]
- b) Offices or divisions, to the extent possible, should include in their budget submissions detailed information on projects for which proposals from external consultants will be called. The information should include a description of the work to be performed as well as the desired budgetary funding level.
- c) Offices and divisions, during the budgetary process, may employ the block funding approach when requesting funds to cover anticipated consultant fees when detailed project information is not available during the preparation of the Estimates.

### 6.3 Approvals

- a) Approval of a funding level during the budgetary process implies Management Commission authorization to request proposals from consultants for only those projects or studies which are:
  - i. specified in the approved budget;
  - ii. the required consulting work is consistent with the basis on which the budget allocation was approved; and
  - iii. the cost is in accordance with the budgetary provision.
- b) Offices and divisions have authority to make expenditures from block funding when:
  - i. the work performed is not detailed in the estimates;
  - ii. and the associated consultant fees and expenses are not anticipated to exceed \$50,000.

- c) Offices and divisions must receive Management Commission approval to make expenditures from block funding when:
  - i. the work to be performed is not detailed in the estimates and the associated fees are anticipated to exceed 50,000.
- d) Offices and divisions must, in all cases, receive specific Management Commission approval to obtain professional services from a consultant on a fee-for-service basis when:
  - i. the timeframe of the agreement exceeds one year.

#### **6.4 Overruns**

In cases of contracts awarded at set amounts, offices and divisions must receive Management Commission approval to authorize payments which are in excess of 100 percent, in the aggregate, of approved contractual amounts; such approval to be received prior to the additional work being undertaken. If the Commission is not able to meet in a timely manner, the Speaker of the House of Assembly, in consultation with the Government House Leader, the Official Opposition House Leader and the Leader of the Third Party, may give approval to authorize the payments and report the approval at the next meeting of the Commission.

### **7.0 Proposal Requirements**

At this stage, offices and divisions will already have authority to spend approved funds.

#### **7.1 Policy**

It is the intention of the Legislature to employ, to the extent feasible, the practice of requesting multiple proposals when engaging the services of external consultants. The Legislature favours a public request for proposals and encourages offices and divisions to use this method whenever it is feasible to do so.

Circumstances may exist which mitigate against the public calling of proposals, and, consequently, offices and divisions are permitted to deviate from this preferred method. In such cases, offices and divisions are to invite proposals from any competent consultants as known to the offices and divisions; three proposals being considered as a minimum number.

Furthermore, even though the policy identifies practical exceptions and exemptions, offices and divisions are cautioned that suspending public calling of proposals should only occur after serious consideration.

## 7.2 Terms of Reference

Offices and divisions must prepare terms of reference for the work to be performed by the external consultant. This document should assist the office or division in the planning and management of the work as well as assisting prospective consultants approach the work in a cost effective manner. See Section 10 for further information on this requirement.

## 7.3 Discretionary Proposals

When engaging consultants on a fee-for-service basis, with charges on a per diem basis:

- a) Offices and divisions may use their discretion and not request proposals when total fees and expenses are not estimated to exceed \$50,000.
- b) Offices and divisions are required to have a limited call for proposals when total fees and expenses are estimated to exceed \$50,000.

## 7.4 Mandatory Proposals

Offices or divisions engaging consultants for projects or studies other than those referred to in “Discretionary Proposals” above may, when the number of consultants permit (i.e. three or more available):

- a) request limited proposals when the total consultant fees and expenses for a project or study are not estimated to exceed \$50,000; or
- b) prepare and advertise a public “Request for Proposals” when the total consultant fees and expenses for a project or study are estimated to exceed \$50,000.

## 7.5 Suspension of Mandatory Proposals

- a) Offices and divisions are authorized to suspend the calling of limited or public proposals when the total consultant fees and expenses are not estimated to exceed \$50,000 and:
  - i. there is an insufficient number of consultants (less than three); or
  - ii. a pressing requirement does not provide sufficient time.
- b) In circumstances outlined in (a), when the total consultant fees are estimated to exceed \$50,000, departments must receive Management Commission approval to suspend the calling of limited or public proposals.
- c) Where the subject of a project or study requires a high degree of confidentiality, Statutory Offices and Divisions of the House of Assembly



Service must request Management Commission approval to suspend the requirement to request for proposals.

- d) Where the subject of a project or study requires a high degree of confidentiality, Caucus Offices must request Speaker approval to suspend the requirement to request for proposals.

## **7.6 Other Considerations**

- a) Offices and divisions, within the above limitations, may use their discretion in the consideration of unsolicited proposals.
- b) Where it is perceived to be advantageous, offices and divisions may disclose the funding level of the project or study to those consultants which are to submit proposals.
- c) Offices and divisions are encouraged to avail of the services of the Government Purchasing Agency where efficiencies can be maximized.

## **8.0 Selection Approval Requirements**

Offices and divisions, at this stage, have authority to spend approved funds and have met the requirements of Section 7, Proposal Requirements.

### **8.1 Office or Division Selection**

- a) An office or division has the authority to select the successful consultant when:
  - i. requirements or prevailing legislation and these and other relevant guidelines and regulations are met; and
  - ii. in cases when two or more consultants are deemed qualified in capacity to complete a specific project, the selected consultant has submitted the lower priced proposal.
- b) Those offices or divisions preparing an RFP are required to establish a Selection Committee to develop selection criteria to aid in the objective evaluation of proposals.

### **8.2 Management Commission Referral for Selection**

An office or division must refer its selection of a consultant to the Management Commission for approval when:

- a) following evaluation against pre-determined criteria, two or more consultants are deemed equal in capacity to complete a specific project,

and the office or division wishes to select the consultant which does not have the lower priced proposal of the two: or

- b) the selection of a consultant does not meet the requirements of this policy and other relevant guidelines and procedures.

### **8.3 Selection Considerations**

Offices and divisions are advised to consider, but not be limited to, the following factors when selecting a consultant:

- a) qualifications, background, and experience of each person assigned to the project by the consultant;
- b) level of performance displayed by the consultant in previous work of a similar nature and size for government departments;
- c) level of performance displayed by the consultant in previous work of a similar nature for external organizations;
- d) depth of the support services of the firm. For example, if a study is primarily financial management, but with data processing and operations research implications, does the consultant have specialists available to give particular advice on those aspects even though they are not full-time members of the project team?
- e) ability of the consultants to measure up to the demands of the task in terms of qualifications, experience, financial stability, reputation, and professional standards;
- f) quality of the study plan submitted to the office or division in terms of logic, method of approach, and comprehensiveness;
- g) extent to which the consultant is in harmony with applicable legislation with respect to qualifications;
- h) that rates being quoted are not in excess of the fee schedules published by various professional associations.

If during the selection process an office or division requires information on a consulting firm, it should give strong consideration to obtaining additional documentation from the senior personnel of the firm and/or from the major clients of the firm.

## 9.0 Contractual Considerations

### 9.1 General

Once a consultant is selected, it is important that an office or division document its requirements and responsibilities and those of the consultant.

### 9.2 Documentation Requirements

- a) All agreements for advice and services between Legislature offices or divisions and consultants must be in writing; either a contract or a formal Letter of Agreement.
- b) Contracts must be reviewed by the Law Clerk before being signed.
- c) Contracts should be signed by both parties before any work is performed.
- d) Without exception, contracts must be signed before any payments can be authorized.
- e) Changes to initial contractual agreements must be in writing and signed by both parties.

### 9.3 Contractual Signing Authority

The Clerk, the Statutory Officer or his/her designate, may sign a contract with a consultant.

### 9.4 Contractual Components

To ensure consistency in the preparation of actual contract documents, offices/divisions are encouraged to include, where applicable, clauses specifying intentions, constraints, responsibilities, etc. in the following matters:

- a) Nature and Scope  
A contract should describe in as much detail as possible the nature and scope of the project including adherence to any professional standards or codes. Reference should be made to the date and nature of any interim reports or periodic progress to be attained. The "Terms of Reference" may be referred to and attached as a Schedule to the Agreement if appropriate, and, in this case, it should be stated that the Agreement shall predominate in case of a conflict between the Agreement and Terms of Reference.
- b) Financial Implications  
A contract should identify, but not limit itself to:

- i. total contract price and other pertinent pricing information in both words and numbers, including progress, interim or advance payments;
  - ii. billing and payment arrangements;
  - iii. expenses, for example, travel, accommodations, postage, etc; and
  - iv. adherence to professional fee schedule.
- c) Timeframe of Contract  
The office/division should stipulate:
  - i. the period of time for which the contract is in effect; or
  - ii. the delivery of the product which brings the contract to conclusion.
- d) Termination of Contract  
Both parties should fully understand the conditions under which the contract is terminated: completion of work, non-performance by either party, lapse of specific time frame, etc; and the type and time of any Notice requirement. Reference should be made to:
  - i. Whether compensation is limited to payment for satisfactory work done to the date of termination at the rates provided in the contract with no compensation for consequential losses; and
  - ii. Commitments made which, at the time of termination, cannot be revoked, for example, advance payments, retainers and leasing of equipment.
- e) Delays  
The Parties should agree upon their responsibility, if any, in the event of delays caused by mechanical breakdowns, slow performance, strikes, lockouts, acts of God, etc.
- f) Definitions  
The contract should provide explicit definitions of important terms or trade usage expressions so as to avoid misunderstandings.
- g) Ownership of Acquired or Prepared Materials  
If a work project is of the nature whereby materials of any kind are acquired or prepared, the contract should specify ownership, copyright and patent rights, whether copies may be retained, and acknowledge credits to be included in any publications.

- h) Confidentiality of Information  
Both parties to the contract must be aware of the sensitivity of the subject matter and of contractual constraints regarding the disclosure of any information, materials, etc. collected or prepared during the course of a project.
- i) Record Keeping Requirements  
If the Legislature wishes to audit the working or financial records of the consultant, or to inspect, supervise or direct any aspect of the project, the contract should stipulate the conditions, for example, access method, type of records, retention period, etc. necessary to satisfy the Legislature's right.
- j) Legislature Indemnification  
Offices and divisions must ensure that the Legislature is not held liable for injuries or damages caused by or to consultants, or held responsible for other pertinent liabilities except as stated in the contract.
- k) Re-assignment of Work  
Sub-contracting of the work in total or in part must be approved in advance by the office or division which engaged the consultant.
- l) Employment Status  
For the sake of clarity, it should be noted that any individuals engaged in a consultant capacity are not considered to be Legislature employees.
- m) Address of Parties  
Both parties should designate an address to which correspondence can be delivered and considered legally accepted by the other party.
- n) Scope of the Contract  
Both parties to the contract must specify the documents which comprise the total agreement and make specific reference to pertinent documents external to the contract (include as schedules where possible).
- o) Adherence to Legalities  
It is implied in any contract that a consultant, or for that matter any party, shall not break, or cause to be broken, any laws in the performance of his/her contractual obligations.
- p) Applicable Courts  
The contract should state any preferred procedure for resolving disputes arising from the contact, such as a procedure for arbitration and if the consultant is external to the Province, the contract must stipulate whether the provincial laws and courts of Newfoundland shall apply or those of a different jurisdiction.

- q) Non-Performance  
A contract should stipulate a legal position should an act of God, for example, fire or flood, make it impossible for one or both parties to perform.
  
- r) Holdbacks  
Offices and divisions must withhold all or a portion of a consultant fee until such time as they are satisfied that the work has been properly completed and is judged acceptable.

## 10.0 Terms of Reference

Terms of Reference may include, but is not limited to, the following elements:

- a) The background - a statement outlining the situation leading to the requirement.
- b) The objective - a statement describing what is to be achieved.
- c) The scope - a description of the range, extent, and bounds of the work, and where appropriate, the parameters or indicators by which satisfactory completion is judged.
- d) Details of any constraints imposed, such as government policies and standards, current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources, and other relevant restrictions.
- e) Details of available client support and client responsibilities.
- f) The manner in which work documents shall be presented and the number of copies required of each.
- g) A time schedule for the completion of each stage of the work and for the entire work.
- h) Financial limitations of the project budget and breakdown within which the work shall be performed.
- i) Progress report requirements and other control procedures to be applied by the client agency during the work.
- j) Approval and acceptance requirements relating to performance of the several stages and of the work as a whole.