



26 May 2023

Tēnā koe

On 30 March 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

*Can I please OIA.*

*How many contractors are currently employed?*

*How many of those are business analysts or project managers?*

*How many have been employed longer than 6 months?*

*How many have been employed longer than one year?*

*How many current contractors held previous contracts with MSD?*

*How many contractors are being paid higher than the payband for the comparable full-time employed position?*

On 2 May 2023, the Ministry contacted you explaining that more time was required to respond to your request. In accordance with section 15(1) and 15A of the Act, you were informed that the Ministry's decision will be with you no later than 31 May 2023. The reason for the extension is that consultations necessary to make a decision on the request were such that a proper response to the request cannot reasonably be made within the original time limit.

In order to collate the current number of contractors,<sup>1</sup> the number that are Business Analysts or Project Managers, the length of time that they have been employed, and the number that have held previous contracts with the Ministry, the Ministry would need to divert personnel from their core duties and allocate extra time to complete this task. The diversion of these resources would impair the Ministry's ability to continue standard operations and would be an inefficient use of the Ministry's resources. Furthermore, we do not hold this

---

<sup>1</sup> Contractors as defined in the Ministry's *Contractors, Consultants Policy*. Please refer to the **Appendix** which contains this policy.

information in a centralised system. As such, your request is refused under section 18(f) of the Act, as it requires substantial collation. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your requests given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

Although we are unable to provide you with current contractor data, we do report on the use of engaged contractors during our annual cycle. This resource is the Ministry's publicly available 2021/22 Annual Review. The link to the Ministry's 2021/22 Annual Review can be found here: [www.parliament.nz/resource/en-NZ/53SCSS\\_EVI\\_127528\\_SS5240/5bb09bc1a83e5bd3396f8d0b9f92fb86e85e984d](http://www.parliament.nz/resource/en-NZ/53SCSS_EVI_127528_SS5240/5bb09bc1a83e5bd3396f8d0b9f92fb86e85e984d). Regarding contractors specifically, please refer to Question 68 on page 61 which presents a list of contractors and consultants in the 2021/22 financial year and the previous four financial years.

The other resource that the Ministry generates as part of its annual cycle is the Annual Estimates. In accord with section 18(d) of the Act, the Ministry's 2022/23 Estimates will be soon made publicly available. The Estimates include information about quantities and expenditure of contractors and consultants. We would encourage you to monitor the Parliament and Ministry websites so that you can access the 2022/23 Estimates once they are made publicly available.

In terms of providing you with contractor salaries relative to the equivalent fulltime permanent role, it is important to note that external resources are used by the Ministry to fill short-term or temporary highly specialised needs that complement and support the internal resources to deliver outputs and engagements. These engagements are generally short-term or temporary. As mentioned, we are unable to isolate the number of contractors without substantial manual collation, therefore this part of your request is also refused under section 18(f) of the Act. The greater public interest is in the effective and efficient administration of the public service.

I have considered whether the Ministry would be able to respond to your requests given extra time, or the ability to charge for the information requested. I have concluded that, in either case, the Ministry's ability to undertake its work would still be prejudiced.

As part of ongoing work, the Ministry is working to strengthen its contract management system through the implementation of a Procurement and Contract Management Module, connected to a new financial system. This module will provide greater oversight of procurement and contract management compliance, as well as improved access to data and reports.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui



Cain McLeod  
**Group General Manager**  
**People Group**

# Contractors, Consultants Policy

---

Last Review Date:	April 2022
Next Review Date:	April 2024
Approved by:	Organisational Health Committee
Owner:	GGM Commercial Operations

---

## Purpose

1. The purpose of this policy is to set out guiding principles that must be considered and applied by all MSD employees or authorised individuals when considering engagement of contractors or consultants. This Policy does not apply to recruitment of Permanent Staff Members or Fixed Term Employees, or other types of contracts for service (see definitions).

## Policy Statement

2. Contractors and consultants are sometimes necessary on occasions when specialist skills or expertise for a particular service, project or programme of work is not readily available from within our existing workforce. Other constraints such as time pressures, availability of appropriate internal resources, and the specialist nature of the work can necessitate the hiring of contractors and consultants.

## Scope

3. This policy applies to all employees, and external resources responsible for engaging contractors, consultants.

## Principles

4. The Government's expectation is that agencies should invest more in building core administrative capability in line with the Government's vision of a stronger public service and reduce their reliance on purchasing external capability where the needs can be met internally.
5. When we engage contractors or consultants, we lose the ability/opportunity to build internal capability. In addition, there are risks of dependency, loss of control, higher costs, and the requirement to manage contractual agreements and conflicts of interest.
6. Before engaging contractors and consultants, the following guiding principles must be followed
  - a. consideration must first be given to using internal capacity and capability developments through internal employee options, or secondments, followed by recruitment for permanent or fixed term employee engagements
  - b. where the need cannot be met through staff recruitment processes contracted engagements must deliver value including consideration of the broader public value, in addition:
    - an appropriate procurement process must be undertaken
    - probity and any conflicts of interest must be considered and disclosed
    - the scope of the engagement must be clearly defined including expected duration and cost
    - a contract must be in place before resources start work
    - engaged must be approved by the appropriate financial delegation holder

- a contract manager must be assigned to oversee the delivery of the work including performance management
- engagement periods must be reasonable with exit strategies in place to ensure knowledge transfer and minimise future dependency or contract “roll over”
- payment and invoice arrangements should be defined e.g. fixed cost deliverables or time and materials and be appropriately coded in finance systems.

## Definitions

7. Resources can be categorised in several ways. This is important for external reporting obligations, legal considerations and how we engage and approve the use of contractors and consultants. The table below provides types contracted resources we use and definitions.

Type	Definition
Contractor	<p>An individual is considered a contractor if all the following apply:</p> <ul style="list-style-type: none"> <li>• is engaged on contract either directly (self-employed) or via a third party (under an all of government contract recruitment contract or MSD panel), and is not an employee</li> <li>• is paid upon provision of a GST invoice through their own legal entity or third-party e.g. recruitment agency</li> <li>• is providing backfill or extra capacity in a role that exists within MSD or acts as an additional resource for a time-limited piece of work (project work)</li> <li>• is under the direct supervision of MSD and MSD is responsible for ensuring that the required deliverables and performance standards are met</li> <li>• generally, requires access to the MSD’s IT systems to perform their duties and usually work onsite</li> <li>• charges on a time unit basis (e.g. by the hour or day)</li> </ul>
Consultant	<p>An organisation is considered a consultant if the following apply:</p> <ul style="list-style-type: none"> <li>• does not meet the definition of a contractor</li> <li>• company is engaged in a contract for professional advice or information either directly (self-employed) or through an organisation or company</li> <li>• provides expertise in a particular field and can demonstrate relevant skills and expertise not readily available from within MSD</li> <li>• is engaged to perform a specific piece of work or outcome with a clearly defined scope</li> <li>• operates independently from MSD and is responsible for all the resources and managing the risks associated with delivering the piece of work</li> <li>• generally, works offsite, but may be required to work onsite from time to time</li> <li>• generally, carries the risk of payment being withheld if the piece of work they are engaged to complete is not delivered or is not fit-for-purpose</li> <li>• charges either via a daily rate or on fixed milestones for deliverables</li> </ul> <p>Having the title of consultant doesn’t automatically mean an individual should be considered a consultant.</p>
External Security Consultant	<p>An external security consultant is a specific type of consultant who:</p> <ul style="list-style-type: none"> <li>• provides specialist investigative or security services, including services related to high-level security assessments and private investigation of individuals or groups.</li> <li>• an organisation or individual engaged to gather intelligence from open source documents on security related issues; use of surveillance on individuals, groups or meetings; security</li> </ul>

	<p>or threat assessments of individuals or groups; and analysis of any information or intelligence gathered in the manner described above.</p> <p>This definition excludes</p> <ul style="list-style-type: none"> <li>• investigations related to information technology security (including forensic IT services), routine engagement of security guard services, alarm monitoring and general media and social monitoring undertaken by third party providers.</li> <li>• external security consultants that are acting as 'process servers' to serve Court documents on our behalf. These must be already accredited through MSD of Justice or using external security consultants to undertake any training activities for staff is also excluded from this policy.</li> </ul>
Contract for Services	<p>A contract for services is an arrangement with an organisation responsible for providing goods or services to (or on behalf of) MSD. These arrangements are not contractors or consultants examples include,</p> <ul style="list-style-type: none"> <li>• outsourced or managed services where service providers have been contracted to provide all or part of a business activity or function (e.g. IT support and maintenance)</li> <li>• services to clients on behalf of the MSD (e.g. delivery and maintenance of white wear goods)</li> <li>• professional services for a specific service where qualification or accreditation to a professional body is required e.g. auditors, valuation fees, legal services. architects and quantity surveyors.</li> </ul>

## Engagement routes and approvals

8. The following table highlights the appropriate engagement routes, financial delegations and approval processes.

	Engagement route	Procurement rules	Approvals & Delegations	Primary contract type
<b>Contractor</b>	AOG Recruitment Panel or MSD resource Panels	Secondary procurement process	Procurement Board approval (or approved delegate) <sup>1</sup> Additional financial delegations apply depending on daily rate and or total cost  People delegations apply, including full HR on-boarding requirements	AOG Resource Service Order (RSO)
<b>Consultant (including External Security Consultants)</b>	AOG Consultancy Panel	Secondary procurement process	Procurement Board approval  Additional financial delegations apply depending on daily rate and or total cost  Additional approvals for external security consultants via DCE Organisational Assurance and Communications	AOG Consultancy Service Order (CSO)

## Procurement Process

9. MSD's Procurement Policy and Government Procurement rules must be adhered to when engaging contractors, and consultants. This process ensures we address requirements to consider Public Value, Broader Outcomes, contractual considerations and manage any potential conflicts of interest.
10. Contracts must protect MSD's interest, provide value and minimise the risk of later disputes or legal actions. The contract must specify the key responsibilities, outcomes and/or milestones. Services should be on a fixed price basis where possible. Provisions for a maximum cost (based on the maximum total estimated value of the engagement) should be specified. All contracts should use AOG or MSD templates, and the Procurement and Commercial Services Team should be consulted before commitment and finalisation of the contract.

## Delegations

11. Unless otherwise specifically stated, any engagement of a contractor, or consultant must be in accordance with the financial limits specified in MSD's Financial Delegations document.
12. The proposed contract value must include the value over the whole-of-life of the contract/s. It must not be broken into separate amounts for the purposes of falling within the allowable limits. Procurement approvals do not override the financial delegation requirements.

<sup>1</sup> For IST contractors the Procurement Board delegates to Procurement and Commercial Services to ensure that procurement processes follow the Ministry's policies and guidelines through formal approval points

## Vetting and due diligence

### Contractors

13. Where contractors are engaged under the AOG Recruitment Services Contract the recruitment services agencies will complete the contractor's registration with their agency including Referee checks and reports, Credential check and verification (e.g. clearance to work in NZ) and Ministry of Justice criminal record check. Further due diligence or checks will be required by MSD as part of the induction and onboarding process. See HR hiring processes and vetting standards (for contractors).

### Consultants

14. Where consultants are engaged under the AOG Consultancy Contract the organisation will have contractual obligations to ensure proposed individuals:

- a. have the requisite skills, expertise, qualifications and experience;
- b. have obtained all security clearances and passed all probity checks required
- c. comply with all health, safety, security and other policies, codes of conduct, procedures and reasonable directions required by the MSD; and
- d. carry out their respective duties with due care, skill and diligence
- e. have declared any conflicts of interest.

### Contractors or consultants based overseas

15. Where MSD identifies a requirement to use resources that are based overseas, and those resources require access to MSD systems or information additional due diligence and/or vetting measures are required. All organisations (including those providing contractor or consultancy services) must comply with IT Security remote access standard, Service Security Baseline and MSD Data Jurisdiction Standard.

16. The following minimum requirements should be established before contract engagements. Additional verifications may be required during due diligence processes.

- a. A contract that is legally enforceable in New Zealand
- b. Evidence is provided and verified to ensure organisations meet the IT Security Remote Access standard or can provide independently certified standard (e.g. ISO27001 Annex A.7 and is independently audited every 3 years) as required by the standard.
- c. A jurisdictional assessment is completed by CISO for all jurisdictions where data is stored, processed, or accessed.

## Special considerations: External Security Consultants

17. There is a need to make sure that any use of external security consultants (including private investigators and forensic accountants) engaged to work on behalf of MSD are reputable and undertake their activities in ways that conform to MSD and State Services Commission expectations, and their activities adhere to all relevant legislation:
  - a. Public Service Commission (PSC) Standards of Integrity and Conduct (June 2017),
  - b. PSC Information Gathering and Public Trust model standards (December 2018),
  - c. Bill of Rights, Privacy Act, Search and Surveillance Act 2012, and PSC Code of Conduct.
18. A specific procurement process must be used, including assurance that providers and any subcontractors have necessary licenses, are compliant with: Private Security Personnel and Private Investigators (Code of Conduct – Surveillance of Individuals) Regulations 2011, and that conflicts of interest are declared and managed appropriately. For more information on the Procurement process see the External Security Use process. DCE Organisational Assurance and Communication must approve the use of External Security Consultants.
19. At times the Health Safety and Security team will also undertake threat assessments relating to individual staff (where it is completed to keep the staff member safe) With the approval of the staff member concerned this will be appropriate and desirable. If a staff threat assessment impinges on a third party or group, then the same principles in this policy will apply.
20. We must only ask an external security consultant to search for or access information that is relevant to our business purpose, and we must be able to be confident that any information we receive from an external security consultant is accurate and from a validated source before relying on it to make decisions.
21. We must ensure that any information received from external security consultants is securely stored according to current MSD guidelines and is disposed in line with current disposal guidelines.
22. We must be satisfied that the means used to collect, store and dispose information by an external security consultant are both legal and ethical. At the conclusion of the external security consultant performing work on our behalf it is expected that all information gathered and stored will be handed over to the MSD or destroyed if appropriate. We would need to ensure that any destruction of information meets all legal requirements and is securely disposed of.

### Third parties using external security consultants on our behalf

23. There may be occasions where a third party approaches us with a request to use external security consultants for work they are undertaking that is on our behalf or has a direct connection with our work. As any contract is likely to be between the third party and an external security consultant, we must be satisfied that the contract/agreement will adhere to the same principles as set out in this policy.

### External security consultants - illegal practices

24. If we become aware of any illegal actions e.g. tampering of information or exhortation undertaken by an external security consultant on our behalf including gathering and accessing information we must report the action to the Police (after discussing the situation with a General Manager and alerting the DCE Organisational Assurance and Communication). The Information team must be informed immediately to discuss how to handle the information. If the allegations are founded, we should terminate any contractual arrangement with the external security contractor through the Procurement and Commercial Services team and in consultation with MSD legal.

## Information sharing

25. We must not share information with consultants or contractors inappropriately even when they may be undertaking work on our behalf. Any information that is shared must comply with the principles of the Privacy Act and MSD Privacy Policies; if there is any doubt as to what MSD can share, this should be discussed with MSD's Information Group.

## Conflicts of Interest

26. It is important that we understand any actual, perceived or potential conflict of interests that contractors consultants, or MSD managers may have with the work to be contracted for. When working through the procurement process any conflicts of interest must be declared as part of the approval process (and then through annual reviews) by our people and potential providers.

## Restrictions on contracting with former employees

27. If an employee is made redundant, resigns or retires, MSD must not subsequently contract with that former employee or a company that comprises solely of the individual unless the nature of the work is substantially different from that originally undertaken or there has been at least a 12 month gap since employment with MSD ended.
28. Only the Chief Executive may approve an exemption from the 12 month period. Supporting reasons for the engagement of a former employee as a contractor/consultant must be fully documented.

## Employee and Contractor distinctions

29. Individual contractors or consultants can sometimes be deemed employees by IRD which may have taxation implications for MSD. IRD has additional information available on its website [at www.ird.govt.nz/payroll-employers/become-employer/ru-employer/emp-becomeemployer-employee-contractor.html](http://www.ird.govt.nz/payroll-employers/become-employer/ru-employer/emp-becomeemployer-employee-contractor.html).
30. At the time of engagement, it is important to make an assessment to ensure the correct classification is made between an employee and a contractor. In undertaking the test, care and attention must be paid to the real nature of the working relationship and not just the label given to the arrangement. The courts have also developed some legal tests to work out the difference between an employee and an independent contractor.
31. Additional information is also available on the MBIE website on how these tests are applied in ascertaining the status of an employee or contractor: <https://www.employment.govt.nz/starting-employment/who-is-an-employee/difference-between-a-self-employed-contractor-and-an-employee/>  
Non-resident tax may apply for overseas payments, irrespective of whether it is to an individual or a company or other legal entity.

## Knowledge Transfer

32. Where consultants or contractors have been engaged to implement new systems or processes, the contract must specify the provision for training or the transfer of knowledge to permanent staff so that responsibility for the management and maintenance of systems and processes is transferred to the MSD's staff in a planned manner.

## Reporting and Expenditure

33. For public trust and confidence, government agencies need to provide clear and consistent reporting on their expenditure. Our contractor and consultant engagements must be defensible and withstand public scrutiny. Each year we publish all engagements and spend data in the annual review This is aggregated across Government and published by Te Kawa Mataaho.

34. Reporting must include:

- a. all contractor and consultant operating and capital expenditure, including those working on ICT projects

35. Reporting excludes:

- a. professional services outside of core business, e.g. for example, cleaning services, registered trades, building security, audit fees, actuarial fees and legal fees paid to a firm of solicitors
- b. contracts for services e.g. outsourced services - service providers that have been contracted to provide all or part of a business activity of function
- c. services received from other government agencies
- d. staff on secondment from other government agencies

## Responsibilities

Person/Party	Responsibilities
Organisational Health Committee	Approve the Policy. Approval of new or major amendments to the Policy.
Procurement Board	Endorse the Policy. Endorse amendments to the Policy.
Chief Executive (CE) / Deputy Chief Executives (DCEs)	Awareness of the Policy. The CE provides strategic oversight to ensure MSD's contractor and consultant engagement practices are appropriate, transparent and represent value for money. This includes approving contracts in accordance with MSD's financial delegations. Individual DCEs should familiarise themselves with the Policy and are responsible for ensuring there are adequate systems and processes in place to enable compliance. These responsibilities include approving contracts in accordance with MSD's financial delegations.
Group GM Commercial Operations	The Group GM Commercial Operations is accountable to the DCE People and Capability and is responsible for: <ul style="list-style-type: none"> <li>• the development, review, maintenance, and implementation of the Policy</li> <li>• communicating the Policy and updates to all staff</li> <li>• monitoring and reporting on compliance with the Policy across MSD</li> <li>• reporting to the Leadership Team and Governance Committees on significant issues</li> </ul>
Budget and hiring Managers	Ensure full understanding of the Policy and compliance requirements.

## Related policies and guidance

Word/ phrase	Definition
<a href="#">Code of conduct</a>	The Code is a guide for you on how to go about your work and how best to serve the Government of the day. It does not cover every situation or requirement that you experience in your role, but it does include very clear expectations about behaviours or conduct that we cannot and will not tolerate.
Data Jurisdiction Standard.	Mandatory requirements where resources are based overseas and require access to MSD systems, data or information.
<a href="#">Financial Delegations</a>	When spending MSD money, Budget Managers need to act within the scope of their delegation, act with probity, and follow the rules and policies of the MSD and the Government.
<a href="#">Government Procurement Rules</a>	Guidance for government agencies on procuring goods and services. MSD is mandated to follow the Rules.
<a href="#">HR hiring processes and vetting standards (for contractors)</a>	All contractors are now recruited through MyHR. Vetting standards help ensure the suitability of the people we employ and promote and that our workforce continues to meet high standards for integrity and honesty.
IT Security <a href="#">Remote Access Standard</a>	Mandatory requirements where resources are based overseas and require access to MSD systems, data or information.
<a href="#">MSD vetting guidelines and standards</a>	Robust standards of integrity and personnel security enable the public and organisations to have trust and confidence in our workforce. These standards help ensure the suitability of the people we employ and promote and that our workforce continues to meet high standards for integrity and honesty.
<a href="#">Privacy Policy and Guidelines</a>	The Ministry has an enterprise-wide privacy policy. It outlines the minimum standards of behaviour required to comply with the Privacy Act as well as our expectations of all staff.
<a href="#">Procurement Policy</a>	The purpose of this policy is to set out the principles of best practice and minimum standards for the purchase and procurement of goods, services and works by, or on behalf of, the MSD. The policy describes rules, behaviours, and standards relevant to procurement activities and the conduct of individuals undertaking procurement.
<a href="#">Security Service Baseline</a>	Standards required where suppliers are used by the Ministry to store or process Ministry corporate, staff, client or partner information