



# Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown

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Prepared by New Zealand Treasury

Version 2.2  
April 2009

Revised and updated in 2003.  
Minor amendment made to 2003 version in April 2009.



**THE TREASURY**  
Kaitohutohu Kaupapa Rawa

New Zealand Government



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# Preface

Treasury first issued the *Guidelines for Contracting with Non-Government Organisations for Services Sought by the Crown* in 2001. We have recently completed a review of the guidelines. This involved consultation with a sample of non-Government organisations (NGOs), Government departments and other agencies, as well as considering the results and recommendations from recent reviews and inquiries into relationships between Government agencies and the community and voluntary sector. This work highlighted a number of ways in which the guidelines could be improved. As a result, we have updated and reissued these guidelines.

These guidelines are intended to encourage the use of better contracting practices by all departments and Crown entities involved in negotiating arrangements with NGOs for the provision of services that support the Government's objectives. This way, contracting can be of mutual benefit for the Government and NGOs. While the material has been prepared primarily for those agencies, it will also be of interest to other public sector agencies, and to NGOs that provide, or seek to provide, services supported with Government funding.

The guidelines are just one of a range of Government initiatives aimed at promoting better relationships between Government agencies and the community and voluntary sector. Consultation with Government agencies and NGOs played a fundamental part in the preparation of these guidelines and in our review. We expect that ongoing review and consultation with these groups will lead to further useful refinements and the guidelines will therefore be updated on Treasury's website from time to time.

Government agencies will need to consider how they will secure accountability for public money within the broader principles of good contract management outlined within the guidelines. The guidelines do make some suggestions in places but these do not diminish the need for Government agencies to exercise informed judgement about the arrangements that may be appropriate in their own circumstances. The guidelines are not, therefore, a manual on how to write contracts.

We recommend that all departments and Crown entities who contract with NGOs take the chance to check the quality of their contract management systems and the relationships they have with NGOs. Those with good systems and relationships can seek continuous improvements while others can consider opportunities for rebuilding.

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December 2003

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These guidelines may be found in electronic format at  
<http://www.treasury.govt.nz/publications/guidance/finmgmt-reporting/ngo>.

# Executive Summary

These guidelines are for departments and Crown entities as they manage their contracting and other funding arrangements with non Government Organisations (NGOs). The guidelines are aimed at contracting for the provision of services (“outputs”) with NGOs, or otherwise providing funding to NGOs, not for the routine purchase of inputs.

The guidelines are to apply to contracting relationships with for-profit organisations as well as not-for-profit organisations, but with a particular emphasis on relationships with not-for-profit organisations. The Government has expressed a clear wish for a good working relationship with the community and voluntary sector.<sup>1</sup> These guidelines are intended, among other things, to assist building this good relationship.

Contracting or funding arrangements can take a number of forms:

- either full or partial funding of the agreed services;
- entitlements attached to the user of a service;
- funding on the basis of outcomes achieved;
- grants (funding provided so long as certain conditions are met); or
- full or partial devolution of decisions on the allocation and use of funds to a community organisation.

This guide is intended to provide assistance to Government agencies in relation to all of these contracting or funding relationships. NGOs may also find it a useful reference. The term “contracting” is used generally throughout, although in some contexts other forms of agreement may be involved.

## Principles of Good Contract Management

A number of principles underpin these guidelines:

- Services purchased through contracts and other types of funding relationships should contribute to the achievement of Government outcomes and objectives. Contracting should reflect the needs of the ultimate users or recipients of the service.
- Contracts should provide appropriate accountability for public money.

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<sup>1</sup> The Statement of Government Intentions for an Improved Community - Government Relationship (available at <http://www.ocvs.govt.nz/about-us/statement-of-govt-intentions/>)

- Contracts should represent value for the public money.
- The quality of service delivery will usually be of central importance.
- The Crown and its organisations should act in good faith.
- Government agencies should understand the nature of the organisations they and the Crown contract with.

Contracting and funding relationships with the community organisations should be consistent with the relationship the Government seeks to have with the community and voluntary sector. This implies:

- Recognising the objectives of both parties.
- Respecting the autonomy of the voluntary sector.
- Communicating in an open and timely manner.
- Working constructively together.
- Recognising the responsibilities of each party to its stakeholders.

## Contract Lifecycle

These guidelines cover all aspects of the contract lifecycle:

- 1 Planning
- 2 Selecting a Provider
- 3 Negotiating the Contract
- 4 Managing the Contract
- 5 Review and Evaluation
- 6 Starting Over

An important issue to think about is at which stages the NGOs you deal with should be involved in these processes. In many cases there will be advantages to involving NGOs early in the process, at the planning stages.

## Contract Planning (Chapter 1)

Contracting should take place within a structured contract management system. A key part of this is planning. Government agencies need to be clear about:

- Their overall objectives.
- The means they are using to achieve those objectives.
- The nature of the organisation they are likely to be dealing with, and the relationship they expect or wish to have with the organisation.
- Their own contracting policies and capability.
- How they will secure accountability for public money.
- The budget constraint they operate under.
- Risk management.

## Selecting a Provider (Chapter 2)

Government agencies can identify potential providers in a number of ways:

- Asking other Government agencies, local Government, or other bodies.
- Asking other NGOs, particularly umbrella groups who will have information about NGO providers.
- From published information such as accreditation or registration.
- Advertising for expressions of interest.
- Conducting tenders for services.
- From an existing provider they have a relationship with.
- Contract managers should be aware of suitable NGOs in their area
- NGOs may take the initiative to suggest services.
- Information about potential providers may be available from needs assessment or service planning.

A contract will often be one part of an ongoing relationship between a Government agency and an NGO. NGOs are not simply an extension of the Government. They have their own objectives and interests. The contractual relationship should not be used to prevent the NGO commenting on public policy matters. To the extent that NGOs receive public money, they are, in turn, accountable for that money. They will also be accountable to their stakeholders and clients. A purchasing organisation needs to satisfy itself that an NGO can and does deliver the service and in a manner consistent with the values and standards the government expects. Ongoing relationship management may involve an element of assistance or capability development.

## Negotiating the Terms of the Contract (Chapter 3)

The next step is to negotiate the contract itself. The contract sets out each party's undertakings to the other. Negotiations will usually focus on the quality and quantity aspects of the specifications for service delivery, and the price. The price set needs to be realistic, given the quality requirements, and the likely need for ongoing delivery. Contract managers should negotiate within a clear set of parameters. It is normally in the interests of both the Government agency and the NGO to approach negotiations in a collaborative rather than a confrontational manner. A contract can range from a document of hundreds of pages of detailed specification, to a document of a few pages. The nature of the document signed will depend on the:

- Nature of the activities or services being provided for.
- Nature of the parties to the contract and the relationship between them.
- The amount of money involved.
- The term of the contract.
- Risk and risk management – what needs to happen if things do not turn out as planned?

## Managing the Contract and Monitoring (Chapter 4)

Signing the contract is only part of the Government agency's responsibilities for contract management. They are also responsible for the ongoing management of the contract once it has been signed, and the relationship with the NGO providing the service.

This will involve:

- Monitoring (including verifying) delivery against the contract.
- Assessing the effectiveness of the services delivered.
- Approval of payment, and making payment according to the contract.
- Ongoing relationship management.
- Dealing with any differences of view with the NGO.
- Negotiating changes to the contract.
- In extreme cases, taking action to enforce compliance with the contract, including exercising any rights to terminate the contract.

This provides the basis for:

- Assessing whether the NGO has delivered what was contracted for.
- Accountability for public money.
- Paying money to the NGO.
- Making decisions about how to proceed at the expiry of the contract.

## Review and Evaluation (Chapter 5)

Review and evaluation overlaps with monitoring, but it merits separate treatment given that it extends further than an individual contract.

Government agencies must build a reflective capacity into their contract management system. They should consider the following questions:

- Is the programme or policy being delivered by way of contracting effective?
- Does it represent value for money?
- What improvements can be made?
- How effective has the NGO's contract management been?
- How have the NGOs performed in respect of particular contracts?
- How have individual NGOs performed against our assessment of risk?
- How has the agency performed in respect of individual contracts?
- How effective is the agency's relationship management?

## Starting Over (Chapter 6)

The end of a contract is an important part of the contract management cycle. Government agencies need to consider what to do in the future well before the end of a contract and consult with the NGO. There are a number of possible approaches:

- Renegotiating the contract with the supplier or rolling it over.
- Selecting another supplier or tendering.
- Altering the scope of a service.
- Discontinuing the service.

# Introduction

The Government provides funding to a large range of NGOs, for a wide range of public purposes, through a number of portfolios and Government agencies. Many of these funding relationships are with not-for-profit organisations (including community and voluntary sector organisations, iwi, hapu and other Māori organisations). The Government has expressed a clear wish for a good working relationship with the community and voluntary sector, and these guidelines are intended, among other things, to help support this relationship.<sup>2</sup>

These guidelines outline some general expectations, and offer some general advice to departments and Crown entities about managing the establishment, administration and monitoring of arrangements with NGOs to fund services (“outputs”) that support the Government’s objectives. The guidelines are not intended to apply to the routine purchase of Government agency inputs (e.g. stationery or I.T. services), for which ample advice exists already and which involve straightforward commercial contracts.<sup>3</sup>

The guidelines focus particular attention on relationships with not-for-profit organisations, but will also be relevant to contractual relationships with other NGOs. They do not contain any mandatory requirements, but departments and Crown entities (henceforth referred to as “Government agencies”) should think very carefully before they decide to take a different approach, and be clear about their reasons for doing so. If a Government agency chooses to take a different approach, they should explain their reasons for doing so to the NGOs they are funding. It may be best to document these reasons to prevent misunderstandings.

All these funding arrangements involve an agreement of some kind. That agreement is usually a contract that can be legally enforced by either party (and hence the term “contracting” is used generally throughout these guidelines), but in some cases may involve a conditional grant. The agreement represents an exchange of undertakings by

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<sup>2</sup> Further resources and material on good practice when working with community, voluntary and tangata whenua organisations is available from (MSD ([www.goodpracticeparticipate.govt.nz](http://www.goodpracticeparticipate.govt.nz))). Resources on good practice funding are also planned.

<sup>3</sup> Government Purchasing in New Zealand (Ministry of Economic Development, 1994), and A Guide to the Management of Departmental Purchasing (Treasury, 1991). For more information on contracting generally, see Procurement: A Statement of Good Practice (Office of the Controller and Auditor General (<http://www.oag.govt.nz>)).

the parties to each provide something of value to the other, although in practice that benefit may be provided to a third party. The agreement should provide:

- Clarity about the undertaking of each party to the other.
- Certainty about the performance of those undertakings by each party.
- Justification for the payment of public money and subsequent accountability for that money.
- A clear legal underpinning to the relationship.

Contracting, however, involves more than agreeing the terms of a contract. It is important that Government agencies see the contract as embedded in a contract management system or cycle that involves:

- Planning
- Selecting a provider
- Negotiating the contract
- Managing the contract and monitoring
- Review and evaluation
- Starting over

It is also important that Government agencies recognise that the Government's relationship with an NGO normally extends beyond the requirements of the contracting process. Some Government agencies are now heavily dependent on NGOs for the provision of services, and NGOs can be important sources of innovation, information, and useful policy and operational advice. Where these relationships exist, the Government agency concerned needs to see contract management in terms of supporting the wider relationship with the NGO.

## Principles of Good Contract and Funding Management

A number of principles underpin these guidelines:

Services purchased through contracts and other types of funding relationships should contribute to the achievement of Government outcomes and objectives.

NGOs will similarly expect contracting arrangements to contribute to the achievement of their objectives.

Contracting should reflect the needs of the ultimate users or recipients of the service.

Contracts should provide appropriate accountability for public money

The information required is likely to vary depending on the amount of money involved.

### Contracts should represent value for the public money

The taxpayer should obtain the appropriate quality and quantity of service, and pay a reasonable price, for services that are effective in contributing to the achievement of the desired outcomes. The quality of service delivery will usually be of central importance.

### The Crown and its organisations should act in good faith

Acting in good faith requires actively consulting NGOs about their needs and views, considering what to do about what NGOs suggest and providing relevant information that helps NGOs to approach issues in an informed manner. In short, it is a “no surprises” approach which will help build up trust.

The Crown should act in good faith in its dealings with iwi and hapu, and ensure that decisions it takes are well informed, which will usually imply a requirement to consult with iwi and hapu in those dealings. Where a service has been developed with Māori explicitly as Treaty partners (as opposed to a service delivered to Māori as citizens) there will be an added dimension to take account of Treaty partnership.

Government agencies should understand the nature of the organisations they contract with. Contracting and funding relationships with the community organisations should be consistent with the relationship the Government seeks to have with the community and voluntary sector.

This implies:

- Recognising the objectives of both parties
- Respecting the autonomy of the voluntary sector
- Communicating in an open and timely manner
- Working constructively together
- Recognising the responsibilities of each party to its stakeholders.

# Chapter 1 - Planning

It is important that contracting and other funding takes place within a structured contract management system. A key part of this is planning. Government agencies need to be clear about:

- Their overall objectives.
- The means to achieve those objectives.
- The population to which services are being supplied.
- The nature of the organisation the agency is likely to be dealing with, and the relationship they have with the organisation. Is it a community organisation? A Māori organisation? A commercial firm?
- The agency's own contracting policies and capability.
- How to secure accountability for public money.
- The budget constraint the agency operates under, and is likely to operate under in the future.
- Risk management.

## 1.1 Defining Objectives

A Government agency needs to be clear about what it is trying to achieve. What are the Government's or the organisation's objectives? These should be set by reference to Government policy or statute, and should be underpinned by an analysis of how an intervention will contribute to the objectives, including addressing the needs of those who are expected to benefit from it. This will usually involve consulting with the ultimate users or the service, and Māori, Pacific peoples or community organisations that have an interest and expertise in a particular issue, as well as drawing on empirical evidence and international literature.

An important part of policy analysis is assessing whether purchasing services from, or entering into a funding relationship with NGOs is the best intervention the Government can make, in particular whether it is better or more cost effective than the direct provision of goods and services by Government agencies. Other forms of intervention include:

- Direct provision of goods and services by Government agencies;
- Benefits;
- Regulation;
- Taxation; and
- Publicity.

Several factors may limit a Government agency's ability to contract with NGOs:

- Legal considerations (e.g. Parliament may assign particular responsibilities to agencies or office holders, with limited authority to delegate);

- Government policy may constrain organisations' ability to contract;
- Convention or code of conduct requirements may constrain Government organisations' ability to contract;
- It may be difficult to contract for only part of a service, if it is an integral part of the whole service; and
- There must be a supplier or the potential supplier.

Contracting or other funding arrangements are the last step in a process of research, advice, planning and prioritising.

## 1.2 Defining the Service

The agency should then decide upon and describe what it is purchasing or funding (whether that is a service or something else). This should be informed by a needs analysis that draws upon:

- The objectives sought.
- Information on the effectiveness of Government interventions (e.g. evaluations).
- Any relevant national standards or legal requirements.
- Appropriate analysis, including an assessment of the needs of the users of the service.
- An understanding of the NGOs available to offer services.
- Consultation with ultimate users, NGOs, potential providers, and other stakeholders. The importance of meaningful consultation within the context of policy development and needs assessment has been consistently highlighted by voluntary organisations, iwi/Māori and NGOs.

The desired outcomes should inform the entire contracting process. Each Government agency should have a clear view of the way in which services being purchased will contribute to the achievement of the outcomes, and that should be reflected in agreements. This provides important contextual information. It will also provide a reference point for reviewing the effectiveness of the service delivery, for agreeing any changes to the contract should they be needed, and for evaluation.

The typical funding arrangement is where one or more Government agencies pay an NGO for the provision of a set of services, often to a third party. In some cases the purchasing agency will have a clear idea of the nature and quality of service that it wants to purchase from an NGO, based on a realistic and robust needs analysis, involving appropriate consultation. In such cases negotiations with the NGO are likely to be around the details of the service to be provided. In the absence of a robust need analysis there is a risk of a mismatch between a Government agency's views of what services are necessary, and those of the NGOs they deal with. The Government agency may purchase an existing service that provides a starting point for thinking about the desired service, although this should not constrain it from considering new ways of achieving its objectives. The Government agency may also have to purchase services that comply with relevant national standards, and may also need to maintain national consistency in the delivery of services.

It will usually be sensible to develop the description of the service in consultation with NGOs (current and potential), users, other Government agencies, and other stakeholders.<sup>4</sup> Many NGOs regard consultation as a central element in their relationship with Government, including iwi/Māori and community and voluntary sector organisations. NGOs that provide services to their communities will often have a good understanding of the particular needs of their communities. Consultation may need to proceed at community level and services be provided at that level.

Consultation and openness are important in making policies and programmes acceptable to the public, and can help communities understand the constraints faced by government agencies. Listening to the views of stakeholders can help anticipate implementation problems, identify alternative options for providing services or activities, and can ensure that those providing the service are clear about what is being asked of them and how performance will be determined.

Consultation does not mean agreement or even negotiation, but it is more than notification. It implies providing parties with sufficient information to allow intelligent responses to be made, and the agency entering into consultation without having finally determined its position. Government agencies need to be clear that they have properly understood and taken into account the concerns of the people they have consulted. During consultation, departments should take care not to be overly influenced by mobilised stakeholder groups to the detriment of groups without a strong voice. Several consultation rounds may be required. Proper consultation is likely to be the key to building a good relationship based on trust. Agencies need to manage stakeholder expectations around consultation, as while consultation helps provide information and good argument, it does not necessarily produce a decision that will bind Ministers. The amount of consultation effort should generally be proportionate to the length of the relationship and scale of services at stake. To help use resources most effectively, government agencies could, for example:

- use each other's networks and consultation mechanisms.
- share information gathered from consultation, and share best practice on consultation.
- develop joint mechanisms to consult communities together.

Questions that may need to be discussed during consultation include:

- What outcomes are being sought?
- What is an appropriate level of service?
- Will the service be accessible to and used by the target group?
- How would NGOs and service users prefer that the service be delivered?

In some cases the definition of the service may be developed (or already delivered) by the NGO itself, which proposes a set of activities that, in turn, form the basis for the contract.

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<sup>4</sup> Cabinet has directed government department chief executives to ensure officials identify the key community, voluntary and tangata whenua organisations in their sphere of activity and build good practice relationships into their policy development and service planning. Resources and guidelines to help build good practice relationships are available from <http://www.goodpracticeparticipate.govt.nz>.

Some users of social services have complex needs, and NGOs address these by adopting a holistic approach to the provision of support and by providing a range of services. The delivery of services within kaupapa Māori frameworks often requires Māori providers to adopt holistic service provision, requiring dealing with Māori in terms of their totality. Government agencies should put themselves in a position to understand and respond to such needs. Alternate approaches for service identification and contract development may need to be considered. For example, dealing with housing needs may require consideration of related employment, health, income and security issues. Pacific peoples and other communities may also be interested in holistic service provision.

There may be circumstances where contracts for blocks of related services, rather than individual services, will better meet the needs of the service users and provide for flexibility of service provision. This may require extensive co-operation between Government purchasers, including possibly single multi-service contracts or the use of a managing agency to manage the ongoing relationship and contract with the NGO on behalf of the other Government agencies. The selection of the manager should be discussed with the NGO concerned, and preferably proceed with the agreement of the NGO and service recipients if possible. The NGO may also wish to retain relationships with all the Government agencies involved. The managing agency selected should be the most suitable to the overall aims of the service provision. The appropriation issues associated with a number of Government organisations funding the same NGO can be addressed in a number of ways e.g. locating the money within one Vote or fiscally neutral adjustments between Votes.

The definition of services in the contract should reflect the key elements of the service. It will need to strike a careful balance between:

- Including enough detail to ensure there is certainty (for both the NGO and the Government purchaser) as to the nature and scope of the service.
- Allowing the NGO flexibility.

Where to strike that balance will require a judgement. The level of detail required will vary. Care must be taken to avoid compromising the effectiveness of service provision by over-prescription of its form and content. The definition of services may also be influenced by the relationship between the NGO and the Government agency. For example, a more conservative approach to specification might be appropriate when dealing with an NGO without a proven track record.

The definition of the terms of the contract will usually include information on price, quality and quantity. Quality will usually be of central importance. Timing, location and client eligibility may be important aspects of quality, depending on the nature of the service. The quality specifications need to be:

- Relevant and practical in terms of the service provided.
- Readily measurable without disruption to service delivery, intrusion into confidential NGO-client relationships, or unreasonable compliance costs.
- Cost effective in minimising risks to the purchaser and the service clients.

Maintaining a reasonable consistency of standards will require significant attention from the Government agency where similar services are being provided nation-wide.

Regulatory requirements or external quality standards may define aspects of the quality standards. For example the quality of a contract for training should usually be specified by reference to an external standard, such as an NZQA unit standard. Government agencies should make use of any available guidelines and standards. Use should also be made of examples of best practice, and benchmarking.

An agreement that covers the delivery of outputs, may include information on inputs, where:

- Inputs are an important aspect of the definition of the output or service to be provided (e.g. suitably qualified staff or process requirements).
- There is little distinction between outputs and inputs (this might occur, for example, if the point of the exercise is to develop an organisation's capability rather than to provide services to other parties).
- An input is particularly important (e.g. staff training).

There are risks to doing this however, notably:

- Failing to secure the desired outputs or services.
- Losing a focus on the objectives and services.
- Constraining the flexibility of the NGO to best manage its resources.
- Unnecessary compliance costs.

## 1.3 Funding Options

The Government uses a number of different funding arrangements, reflecting different activities that are being funded:

- either full or partial funding of the agreed services;
- entitlements attached to the user of a service;
- funding on the basis of outcomes achieved;
- grants (funding provided so long as certain conditions are met); or
- the full or partial devolution of decisions on the allocation and use of funds to a community organisation.

### 1.3.1 Part Funding

In some cases Government agencies will provide funding explicitly on the basis of making a contribution to a service or activity undertaken by an NGO, without any expectation that the Government agency or agencies involved will pay all the cost of the service.

Part payment for services may be appropriate where:

- the NGO approaches the Government agency to seek assistance for an activity it already undertakes or intends to undertake. The Government agency contribution provides for a marginal extension only
- a contribution is agreed by both parties to be short term only

- NGOs as part of their mission wish to contribute from their own resources
- other organisations or foundations are contributing, and
- the arrangement leaves intact the Government agency's ability to arrange for the provision of these services by NGOs if required in the future.

Part payment is (at least in principle) distinct from the situation in which the NGO over-delivers on the agreed output which Government agencies are paying fully or nearly fully for (e.g. by producing more of it). It is also distinct from the situation in which several Government agencies pay for all of a service. It can, however, become problematic if the Government agencies involved either expect to exercise rights as if they were purchasing all of the output, or represent to other parties in their own reporting that they have secured the delivery of outputs they had only made a contribution to. The contract and reporting requirements should reflect the contributory nature of the funding.

### 1.3.2 Contracting for Outcomes

Usually agreements are based on the services ("outputs") that the NGO agrees to provide, with outcome information providing context. It is possible to contract for outcomes directly, although this will still normally involve providing information on the services to be provided (i.e. contracting for outputs as well). This is possible where:

- The contract is for an outcome within the control of the service provider.
- The service provider NGO will be held accountable for the achievement of the outcome (i.e. failure to have the desired impact and achieve the outcome means the provider NGO does not get paid, or not paid in full).
- There is a good working relationship with a provider NGO with a proven track record.
- The purchasing agency has the contractual and policy expertise to manage this type of approach.
- There is high quality information disclosure to support the contract.

Generally, government agencies and NGOs cannot be held accountable for outcomes because of the difficulty in attributing a change in an outcome solely to the actions of the agency or NGO. Contracting for outcomes is feasible if the NGO can reasonably be held accountable for the achievement of the outcome, and the meaning of "success" cannot be manipulated.

### 1.3.3 Paying to Develop Capacity

There are some policies where the main objective from the Government's point of view is actually to develop the capability of the NGO, without any expectation that a service will be delivered. This is quite distinct from the more usual situation where a purchasing agency may assist a supplier to enhance their capacity to deliver contracted services. In such cases the contract should be drawn up to provide clear expectations as to how the money will be spent, which may include the specification of inputs. This is described further below in Section 1.11.

### 1.3.4 When is a Grant Appropriate?

A grant to support the provision of services by an NGO is an arrangement that is legally less demanding than a contract. It may however be legally enforceable to the extent that the recipient has to fulfil certain conditions to receive or retain the grant. Because a contract provides a more reliable basis for securing the delivery of a service, a contract will generally be preferred. A conditional grant may however be appropriate where:

- A grant is required by law (e.g. the Education Act 1989 describes the subsidy received by early childhood centres as a grant).
- The legal framework makes it difficult to establish contractual intention. This might be the case, for example, if the Government agency has no discretion as to whether to enter into an arrangement.
- The NGO is entitled to payment once it satisfies the eligibility criteria.
- The NGO lacks contracting capacity (i.e. it is not a legal entity). In these circumstances, however, it will usually be preferable to contract with one or more of the members of the NGO that do have contracting capability.
- The payment represents a subsidy for the work of an organisation.

## 1.4 Relationships

Relationship management is a key aspect of contract management. An agreement not only provides for the delivery of services in exchange for payment but also reflects and underpins a relationship between the parties. In some cases that relationship is limited to the terms of the agreement. Often, there will be a wider relationship, best served by seeking mutual respect and sufficient knowledge on the part of both Government agency and NGO to be able to preserve each other's interests. Many agreements between Government agencies and community or iwi/Māori organisations, however, involve a much richer relationship, because:

- The relationship may exist in the absence of any contractual relationship (e.g. a community organisation may have an input into policy development quite separate from any contract). Government agencies should consider if a Treaty relationship exists with NGOs and if iwi/Māori organisations have an expectation of a Treaty relationship. If so, it is desirable to obtain legal advice and ensure consultation with iwi/Māori NGOs and communities has occurred. Such consultation can ensure that the outputs and outcomes being sought are those of interest to the NGOs and communities, not just Government agencies; that services are coordinated with those of other Government service providers; and that any issues arising about the contract can be addressed with a consultative approach.
- The relationship may continue into the medium to long term.
- Each party may expect to undertake repeat business with the other.
- The Government agency may rely on a significant level of alignment between its objectives and those of the NGO.
- The services delivered may be difficult to specify in all respects in advance – this implies some level of discretion will rest with the supplier.

## 1.5 Incentives

It is important to consider the incentive effects of the agreement, and associated processes on the NGO, and the users or recipients of the service. How will expectations and actions affect the way people behave? The most obvious incentives are the basic terms of the contract, particularly the “rewards” (usually payment) and “sanctions” (what happens in the case of non-delivery). Other aspects of the agreement and associated processes may have significant incentive effects as well, such as:

- The specification of the service.
- The duration of the contract.
- The process for selecting the NGO (including tendering).
- The credibility of the contract management process.
- What happens at the end of the contract.

## 1.6 Accountability for Public Money

Accountability for public money is central to contracting and funding arrangements in the public sector. This involves:

- Being clear why and how money is to be spent.
- Ensuring that it is spent for the purposes it was provided.
- Having reasonable assurance that the expenditure is value for money.
- Having a credible response where the expected services are not provided.
- Accounting to Ministers, Parliament and the public.

NGOs have a direct interest in effective accountability arrangements. They will accept that there must be accountability for public money. An arrangement that does not provide for adequate accountability for public money is unlikely to be durable. NGOs themselves will also have to account to their stakeholders for their activities and the stewardship of their resources.

Generally any agreement between a Minister or a Government agency and a NGO will be a contract or conditional grant. The difference between a contract and a conditional grant lies in the mechanisms available for legal enforcement, not its length or specification. Whether or not a document or arrangement is a contract<sup>5</sup> is a matter of fact (which can be tested in court). An agreement that has the elements of a contract

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<sup>5</sup> A contract may be explicit (an explicit agreement) or implied (a court will discern a contract on the basis of the actions and intentions of the parties and the relevant context). It may be written or oral, although Government agencies should not use oral contracts for any significant transaction. A contract must be for a legal purpose (e.g. you cannot contract to rob a bank). Contracts that are otherwise binding can be avoided if they were entered into under duress or if they are based on a misrepresentation. Form may be important for some contracts (e.g. contracts involving land need to be in writing).

is likely to be enforceable as one, whether it is called a “contract”, an “agreement”, a “memorandum of understanding” or something else. A contract involves:

- Contractual intention (offer and acceptance).
- Consideration (something of value, usually money, given by one party to the other in return for its performance of its part of the contract).
- Certainty of terms (it must be reasonably clear what each party has to do).
- The legal ability of the parties to contract may also be important.

Contracts offer a number of significant advantages over conditional grants:

- The law relating to contract is relatively well developed.
- They provide a range of mechanisms for enforcement to each party that are not available under a grant, such as:
  - Damages (which are not limited to return of the money as with a grant).
  - Requiring performance of the contractual terms.
- A contract may establish enforceable rights for beneficiaries who are not parties to the contract (i.e. recipients of services) as long as this was clearly intended when the contract was entered into.

As such, a contract provides a more reliable basis for ensuring accountability for public money and these guidelines operate on the basis that a contract will usually be the preferred mechanism. A conditional grant may, however, be enforceable to the extent that the recipient has to fulfil the conditions to receive or retain the grant. The conditions of a grant will provide the basis for accountability. In contrast to a contract it is not clear that there are any remedies for poor performance, if the recipient can claim to have met the conditions of the grant (if poorly).

All Government agencies work to a budget. This should be reflected in an agency’s contract management. In general it will be sensible for the NGOs to be informed of this budget constraint.

## 1.7 Risk

Agreements will usually involve some implicit risk sharing. These risks may be in terms of:

- Outcome achievement (including unintended negative effects).
- Service delivery (both quality and quantity).
- Value for money (including waste and fraud).
- Capability (managing capability to ensure ongoing delivery. See section 1.11)
- Fiscal risk.
- Control risk.
- Reputation or political controversy.
- Legal.

Risk may arise from a Government agency's overall contract or funding management (e.g. tendering) as much as from a particular contract or relationship with an NGO. Government agencies need to think about risk management as part of their contract management system, and should expect NGOs do likewise.

In general, it will be sensible for risks to be borne by the party best placed to manage the risk. Different organisations may also have different risk preferences - some organisations are more willing to accept risk than others. Government agencies should not bear all the risk, but they do need to assess the capacity of the parties they deal with to bear risks. Many community organisations (including Māori organisations) may not be in as good a position to manage some risks as either commercial firms or Government agencies. Expecting community organisations to bear most of the risk could lead to:

- NGOs being reluctant to sign agreements.
- The viability of NGOs being compromised.
- Unexpected behaviour by the NGO as it seeks to manage its risks.

Perceptions of risk will often influence the level and nature of the monitoring undertaken by Government agencies. This is described further in Section 4.1 below.

## 1.8 The Contracting Capability of Government Organisations

A Government agency that has significant contract management responsibilities must treat these as part of its core business, and the staff involved must understand the processes that the department employs to manage contracting or other funding responsibilities. An agency's contract management system needs to be structured and flexible enough to manage significant shifts in Government policy. Poor quality contract management poses serious risks to the Crown and the agency.

An agency's contract management is dependent on:

- The quality of the systems employed:
  - Clear policies and processes for contracting or other funding responsibilities - planning, NGO selection (including tendering), quality assurance, relationship management, contract negotiation and drafting, and monitoring, and internal controls (e.g. one person should not be responsible for all aspects of contract management).
  - Clear ethical standards, which address conflicts of interest and promote required standards of public sector conduct.<sup>6</sup>
  - Adequate recordkeeping policies, practices and systems that enable the creation and maintenance of full and accurate records of agency decision-making and actions.<sup>7</sup>

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<sup>6</sup> For example the New Zealand Public Service Code of Conduct (available from <http://www.ssc.govt.nz/coc>).

- Management capability:
  - An organisational culture committed to high quality contract management.
  - Alignment of the management and staff with the objectives of the organisation, including operating within the budget constraints and accountability requirements of the agency.
  - Good relationship management and negotiation skills, tested by reference to results achieved in contracts and relationships.
  - Clear assignment of role and responsibility to managers and staff responsible for contracting, including delegation of authority, such as:
    - The extent of managers' ability to sign contracts.
    - The areas in which managers have discretion.
    - Which decisions are to be taken regionally and which nationally.
- Human resource capability:
  - Suitably qualified and experienced staff.
  - Access to specialist expertise, including legal, financial, contracting, policy, and cultural expertise, as well as expertise about the community and voluntary sector.
  - Training and guidance for staff, including training in dealing with community organisations, or in dealing with Māori or Pacific Island organisations where that is relevant.
  - A good understanding of the NGOs that the agency contracts with, and the people and communities to which services are provided.

Government agencies must keep their contract management under review. This should include:

- Having a clear understanding of the cost of contract management.
- Reviewing contract management against departmental and central guidelines.
- Seeking and taking account of feedback from NGOs and users.
- Benchmarking.

## 1.9 Thinking Wider Than the Agency

An agency should be aware of any Government policies or services that relate to its activities. In particular it should consult other Government agencies that also may contract with the same NGOs, or whose activities are important to the effectiveness of the NGO's services. This is important in terms of achieving objectives, minimising

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<sup>7</sup> Advice and guidance on recordkeeping practice and standards are available from Archives New Zealand (<http://continuum.archives.govt.nz>)

compliance costs (see Section 1.12 below), and avoiding the risk of either unplanned gaps in services or the Government paying twice for the same service. As part of the process of selecting a provider, agencies should require an NGO to disclose whether or not it has applications to or is receiving funding from other Government agencies for the same or a similar purpose. Verifying the information provided should be part of the normal contract management and monitoring activities (see Chapter 4 below). Agencies should consider in advance how they will deal with any “double funding” and build this into their contracts (e.g. halting or altering any further payments for the service in question, or requiring the NGO to repay any funding received for that service). It may also be important to know about relationships between local Government and NGOs.

Government agencies may wish to jointly explore the scope for having consistent documentation, or relying on vetting or accreditation of an NGO by another Government agency, taking into account any requirements specific to a particular purchaser. This may be useful, in particular, where the Government agencies are dealing with the same or similar non-Government organisations.

Government agencies should consider the options to deal with situations where multiple Government agencies contract with one NGO for a set of related services. These can be formal arrangements such as integrated contracts, “joined-up” and pooled funding arrangements or informal arrangements such as networks and alliances. Such arrangements can be costly to all of the parties involved. Agencies should consider, prior to participating in these types of arrangements, if the arrangement:

- will produce benefits that outweigh the costs for all of the parties involved.
- provides clear accountability for services or actions.
- has an agreed and understood rationale that justifies the inclusion of all participants.
- demonstrates that the outcomes for people (clients) and communities can be improved by joint action.

## 1.10 How Long Should the Agreement Be For?

A short-term agreement will be appropriate in some cases, such as where:

- The service or activity is only of limited duration.
- Funding will only be available for a limited period.
- The Government has announced a change of policy.
- There is uncertainty about the ability of the NGO to deliver.

Short-term agreements can, however, have a number of disadvantages:

- Identifying the NGO and negotiating a contract impose significant costs on all parties.
- They may focus attention on negotiating and signing the contract rather than service delivery.
- They can be more expensive (e.g. to cover establishment costs).
- They may cause financial uncertainty to the NGO.

- They may undermine the ability of the NGO to perform the services (e.g. if a lack of job security limits their ability to employ or retain the right staff).
- They may discourage planning, investment and innovation.
- They may undermine relationship-building objectives.

Where ongoing service delivery is required, and the Government agency expects to have a medium to long-term relationship with an NGO, a longer-term agreement may be appropriate (e.g. 3-5 years). This is something the agency should think about if a longer-term contract is actively sought by the NGO in order to better perform the service. This is a matter of judgement and negotiation, taking into account the:

- Service to be delivered.
- Views of the NGO that will be delivering the service.
- The track record of the NGO delivering the service.
- Nature of the relationship with the NGO.
- Life cycle of the relevant policy (has the policy been changed or is it under review?).
- Contracting capability of the Government agency (a limited contract management ability implies a conservative approach).
- Negotiation costs.
- Effect on value for money for the service.

A one-year appropriation does not prevent a longer contract. A number of approaches can be adopted to provide a balance between giving reasonable security to the NGO and protecting the Crown from risk, such as:

- Having a multi-year agreement, but negotiating the services and funding annually within that agreement. Some NGOs may not wish to enter into a long-term contract if the prices are fixed.
- Including a review at the mid-point of the contract.
- Having a clear expectation of the agreement being renewed at the end of the year, subject to satisfactory performance, and funding being available.
- Including an explicit provision in the agreement that allows it to be terminated in the event of an appropriation not being made, Government policy changing or non-performance.

It is important to be clear with the NGO about what the length of the contract is and the scope for renewal. This is particularly important when establishing short-term contracts of a one-off nature with NGOs who are used to longer contracts – it is important to be clear that the contract will not be renewed so that the NGO does not anticipate that this will automatically occur.

## 1.11 Investing in NGO Capability

Capability is what an organisation needs, now and in the future, to deliver agreed services in order to achieve desired outcomes. Capability includes:

- The people in the NGO, in terms of both the skills and competencies they bring, and the mix of individuals within it.

- The other resources the NGO uses to do its work (e.g money, information, technology, fixed assets).
- The systems, processes or ways of doing things that the NGO uses to deploy its people and resources.
- The structures, forms and governance arrangements within which the NGO operates.
- The NGO's culture.
- The way the NGO manages relationships and partnerships in order to deliver services.

There are two situations in which an investment in capability might be expected:

- An explicit Government decision has been taken to build capability.
- Future NGO capability is needed in order for the Government agency to continue to be able to obtain services.

Services provided by NGOs under contract with the Crown will often be paid for out of departmental or non-departmental output class appropriations.

It is important to note that implicit in the amount being paid by the Crown is compensation, not only for the NGO's out-of-pocket costs in providing those services, but also for the cost of maintaining or building the capability of the NGO to continue to provide those services effectively in the future. NGOs, at their discretion, are able to apply any revenue obtained from the Crown under a contract for services to capability building, as long as the services are delivered as expected. This is the normal and preferred way of providing for NGOs to obtain the capability that they require. Departments can normally expect NGOs to price their service to cover the true full cost (fixed costs and variable costs, including capability maintenance costs such as depreciation).

If, however, the Crown agrees that it would be desirable to provide direct financial support (additional to any contract for the provision of services) to an NGO to help build its capability, then an output class appropriation is inappropriate and another type of appropriation should be used. If this support is not in the form of a loan, an appropriation for other expenses should be used.

Investing in NGO capability can also include encouraging and promoting good practice and appropriate standards, rather than direct financial support.

For example, encouraging good employer provisions and practices to build people capability might take the form of:

- encouraging and recognising the emphasis that an NGO places on best employment practices within their workplace (e.g. by negotiating a provision in the contract that obliges the NGO to undertake its work in a best practice manner); or
- helping develop new participatory mechanisms or advice on EEO policy for employees within an NGO's workplace, as part of the parties' agreed contractual arrangements.

Because the focus of encouraging good practice and appropriate standards is to build capability, it is best to develop such arrangements in consultation with the NGO. In some circumstances it may not be practicable for the NGO to implement such policies or mechanisms (e.g. very small size).

## 1.12 Compliance Costs

Any contract or funding management system will necessarily impose some costs on both parties to the contract, but unnecessary compliance costs should be avoided for both parties. There are a number of areas in which unnecessary compliance costs can be reduced:

- Contract duration.
- Standardised internal processes.
- “Short form” contracts that can be used for smaller contracts, reserving “long form” contracts for larger contracts. Inclusion in the agreement of detailed administrative requirements lengthens the contract with material that could just as easily be agreed outside the contracting process. This would mean that alterations to administrative requirements would not require a change to the contract.
- Standard conditions that are incorporated into all contracts (it may be sensible to discuss the development of such standard provisions with the parties the agency regularly contracts with, since they may be ambivalent about standard provisions – welcoming any reduction in compliance costs, but wanting scope to negotiate over some of these conditions).
- Standardised reporting templates.
- Monitoring and reporting regimes that make as much use as possible of the information that NGOs develop for their own accountability purposes. This could include, for example, information provided to the Charities Commission or to accreditation, certification or licensing bodies.
- Monitoring and reporting regimes that make as much use as possible of the information that other Government agencies that fund the NGO collect for their own accountability purposes.

## 1.13 Regulatory Considerations

Government agencies must understand any regulations relevant to their contracting arrangements. These include:

- Regulations specific to their sector (e.g. private childcare centres receive grants from the Government, through Vote: Education, on the basis of the number of children enrolled. To qualify for these grants they must comply with the regulations relating to childcare centres, and are subject to review by the Education Review Office. The regulations define important aspects of the quality of the service).
- Regulations of general relevance. A particularly important example is the Commerce Act, which is intended to promote competition in markets. The Act prohibits a range of anti-competitive practices.
- Legal requirements relating to public money, notably the appropriations system. Departments must ensure that any expenditure under a contract (or grant) is consistent with appropriations from Parliament, and their purchase agreement. Considering the appropriation implications of contracting or funding should be part of the planning for both contract management and the budget process. Crown entities

should ensure that any expenditure is consistent with their purchase agreement and statement of intent.

- In addition, the Department of Labour provides guidance on government policies and legislation relating to employment, including contracts for the procurement of services in the public sector. This includes guidance on relevant legislation and policy on occupational health and safety, being a “good employer”, and pay and employment equity. See <http://www.dol.govt.nz> for more information.

# Chapter 2 – Selecting a Provider

## 2.1 Suggested Approaches

A key step in contracting is selecting the NGO to deal with. A number of approaches can be adopted:

- There may be an existing provider that the purchaser has a relationship with.
- Contract managers should be aware of suitable NGOs in their area.
- NGOs may take the initiative to suggest services or activities.
- Information about potential providers may be available from needs assessment or service planning.
- Ask other Government agencies, local Government, or other bodies.
- Ask other NGOs, particularly umbrella groups who will have information about NGO providers.
- Published information such as accreditation or registration.
- Advertise for expressions of interest.
- Tenders for services.

The quality of the service or activity being paid for will usually be of central importance in the selection of the NGO.

## 2.2 Relationships with the Community and Voluntary Sector

A contract with a community organisation will often be part of an ongoing relationship. That relationship may begin before any contract or funding agreement is in place, and may continue in the absence of any such agreement. The relationship may involve more than the service or activity being paid for. It may also mean involving the community organisation in other activities such as policy development, recognising the information and expertise that many community organisations possess. Contract management needs to be thought about as an aspect of relationship management (and vice versa).

NGOs are not simply an extension of the Government. They have their own objectives and interests. NGOs may be involved in activities that the Government does not wish to fund. NGOs, in turn, may only be interested in part of a service that a Government agency wishes to purchase.

Service delivery will be coloured by the NGO's objectives. This will be part of what is being paid for. These objectives need to be well understood lest they undermine the relationship between the Government agency and the NGO. It is important for Government agencies to ensure NGOs can provide services in a culturally appropriate way to ensure the services will be effective. Mainstream NGOs dealing with particular groups may sometimes need to consider collaborative ventures with iwi/Māori or other community groups.

Government agencies should not try to use the contractual relationship to prevent the NGO commenting on public policy matters, including funding issues. Equally, Government agencies should also be careful to ensure that contracts do not breach public service standards of political neutrality.<sup>8</sup>

To the extent that NGOs receive public money, they are, in turn, accountable for that money. They will also be accountable to their stakeholders and clients.

Government agencies must consider the implications of NGOs' separate status. They must:

- Avoid trying to control an NGO's activities, outside of the contractual rights and obligations.
- Remember that the NGO will not automatically give priority to the agency's interests or those of the Crown.

## 2.3 Capability of the NGO

Government agencies need to be confident an NGO can actually do what it undertakes, and in a manner consistent with the values and standards the government expects. Information to provide this assurance can come from:

- The track record of the NGO and the ongoing relationship.
- From sources external to the NGO, such as:
  - The credibility of the NGO with users.
  - Accreditation, licensing or certification of the NGO.
  - External audit.
  - Legal personality.
  - Referees, including other Government organisations.
- From the NGO itself, such as:
  - Financial information e.g. audited financial statements.
  - Disclosure of complaints against the NGO (e.g. to a relevant professional disciplinary body).
  - Evaluation of the cultural appropriateness of the organisation. This is obviously important where major recipients of a service are Māori or Pacific peoples.
  - Evidence of appropriate governance and management systems and internal controls. This may include, for example, adequate segregation of duties between the governing body and management, the presence of independent trustees or directors on boards (people who are not also managers or employees of the NGO), having good employer practices<sup>9</sup> or using independent auditors.

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<sup>8</sup> Refer to the Political Neutrality Fact Sheets issued by the State Services Commission, (available at <http://www.ssc.govt.nz/election-guidance>)

<sup>9</sup> See Glossary

- Evidence of investment in appropriate quality assurance systems and certification processes relevant to the sector.
- Training and experience of staff.
- Specific investigation.
- Evidence of adequate recordkeeping policies, practices and systems.

Some of these issues can be reflected in the contract, for example:

- The size of the contract.
- How the timing of payment is structured (e.g. a cautious approach to payment might be adopted with an NGO without an established track record. This requires judgement - too cautious an approach may compromise the NGO's viability).
- Requirements as to the NGO's accreditation or solvency.
- Monitoring.
- Ongoing assistance.

In some cases a Government agency may want to consider assisting an NGO to develop the necessary capability (see section 1.11). This will usually only be relevant for not for profit organisations, although there may be exceptions to this. Assistance could be:

- Part of the price.
- An additional amount directed to a specific activity or input (e.g. staff training).
- Assistance in kind.

In some cases it may also be sensible to see whether there are opportunities for collaboration between NGOs (e.g. encouraging collaborative or partnership ventures between mainstream and Māori providers where the mainstream provider lacks the ability to provide culturally appropriate services).

## 2.4 Unincorporated Organisations

Purchasers should exercise care in dealing with an unincorporated organisation, as it will lack the legal capacity to contract. In addition, the individuals involved in the organisation may face personal liability for its activities. In some cases one or more parties to an unincorporated organisation may themselves be incorporated (e.g. in the case of a joint venture) and it may be possible to contract with them. There may also be an umbrella organisation that can be contracted with rather than the unincorporated organisation.

## 2.5 Tendering or Not?

Tendering should be an important part of a Government agency's contract management system. Tendering involves inviting people to submit a bid to deliver the good or service that the purchaser wants. Government agencies should develop clear criteria for determining when it is appropriate to tender for services rather than using one of the other approaches listed at the beginning of this chapter. Tendering might not be necessary where:

- The supplier has specialist expertise.
- There is only one supplier (this should be periodically tested).
- The service is relatively low cost, and the costs of tendering clearly outweigh the benefits.
- The service has been recently tendered for.
- The service fits with another service already provided by one supplier (the bundle of services as a whole may subsequently be put up for tender).
- There is not time to tender (e.g. an emergency). This might happen, for example, where a contract for an essential service has to be terminated at short notice. Poor planning, by itself, is a poor excuse for not tendering.

Tendering offers a number of significant advantages. It:

- Establishes the most competitive price and terms available.
- Provides fairness between potential suppliers.
- Reduces the risk of allegations of purchaser bias or political interference.
- Can develop the market for services.
- May bring forward innovative solutions.

On the other hand it does have certain disadvantages:

- It can impose significant costs on the purchaser and the bidders, which can exceed its benefits.
- Potential providers that lack experience or capability in tendering (especially small providers) may be disadvantaged by this process. It is therefore important to have a transparent and robust process for managing tenders, and to clearly communicate expectations about tendering to potential providers. This is further discussed below in Section 2.6.
- Existing relationships may be prejudiced (including encouraging competition between organisations in the tender that will be expected to co-operate with each other in the future. This may be ameliorated, to some extent, by consultation with potential providers before the tender process, by encouraging collaboration between NGOs, and by accepting tenders from joint ventures. Care must be exercised to avoid breaching the Commerce Act).
- It can take a significant amount of time.
- It can expose the purchaser to the risk of litigation if it is mismanaged.

Quality as well as price will be an important consideration in terms of accepting a bid. For example, if many of the users of a service are Māori or Pacific Island peoples, it will often be important to ensure that an NGO is able to deliver the service in a culturally appropriate manner. A very low price in a bid may raise questions about the capacity of the organisation submitting the tender to deliver the service to the necessary quality.

It is important to be clear that a tender for a particular service is not a general funding round, so as to not encourage NGOs to send in inappropriate bids, regardless of their capacity to deliver. This places significant costs on both the NGOs and the Government agencies, and can raise unrealistic expectations.

## 2.6 A Tender Process

It is important to have a clear and robust process for managing tenders. A poorly managed tender can compromise relationships with the bidders, and can leave the purchaser open to legal action on the basis of either a lack of fairness, or that the tender documents represent a contract. There are a number of steps that can be taken to minimise these risks:

- A transparent process for dealing with tenders. This should include identifying in advance criteria that will be used to evaluate tenders, and allowing adequate time for key steps.
- Make it clear that the lowest or any tender will not necessarily be accepted.
- Have clear rules for dealing with late tenders, and non-conforming tenders (automatically rejecting non-conforming tenders may rule out innovative suggestions for achieving desired objectives).
- A robust decision process, which could involve using a panel with the relevant skills. Where many of the users of the service are Māori it will be sensible to ensure that there is Māori representation. The panel needs to be constituted in such a way as to avoid any suggestion of a conflict of interest.
- If a tender process and negotiations result in a significantly different specification to that in the original invitation to tender, it may be necessary to allow further bidding (for at least the short-listed bidders). Agencies should take legal advice in this situation.
- Briefings for unsuccessful bidders on why their bid failed.

It is particularly important to have a way of managing the conflict of interest involved where the Government agency also delivers or may deliver the service to be purchased.

- For more information on tender processes see *Procurement: A Statement of Good Practice* (Office of the Controller and Auditor General (<http://www.oag.govt.nz>)).

As part of the Government's overarching procurement policy that seeks full and fair competition for domestic suppliers, the Government has adopted a policy of improved transparency of information on government contracts. This policy requires notification, to the Industry Capability Network (ICN), of the intended procurements of goods and services exceeding a value of \$50,000 (excl. GST), and the publishing of contract award notices.

- More information on implementing the ex-ante notification policy and the Post-Award Transparency Policy is available from the Ministry of Economic Development website ([www.med.govt.nz/irdev/gov\\_pur.html](http://www.med.govt.nz/irdev/gov_pur.html)).

Taking account of the exceptions in the guidance documents, Government agencies should consider if they have an obligation to notify intended procurements and/or publish contract award notices. Contracts for provision of public health, education and social welfare services are excluded from these policies.

# Chapter 3 - Negotiating the Terms of the Contract

## 3.1 Negotiations

Once an agency has identified its objectives, the nature of the services it wants to purchase, the preferred provider, and is satisfied that the provider can deliver the services the next step is to negotiate the contract itself. The contract sets out each party's undertakings to the other.

Where a provider has been selected on the basis of a tendering process, the bid and tender documents will provide a clear basis for negotiating the details of the contract. If negotiations result in a significantly different contract specification, it may be necessary to allow re-bidding by other bidders. Government agencies need to consider whether it is ethical to use concepts from an unsuccessful bidder in the final contract. They need to be able to explain any such apparent uses.

Negotiations will usually focus on aspects of the specifications for service delivery (particularly quality and quantity), and price. The price is likely to be a reflection of the quality requirements, but agencies should obtain an in-depth breakdown of how the NGO is determining its price and review the costs for reasonableness.

Contract managers should negotiate within a clear set of negotiating parameters. This benefits both the Government agency and the NGOs, as it:

- Reduces the risk of the Government agency agreeing to terms that are inconsistent with its overall objectives.
- Means that the NGO should be dealing with managers who can reach an agreement, rather than having to refer decisions elsewhere. Contract managers should have authority to conclude negotiations, even if they do not have authority to sign the contracts.

It is in the interests of both the Government agency and the NGO to approach negotiations in a collaborative rather than a confrontational manner. The outcome should be a situation where there is a mutual benefit - the Government agency is confident of getting the desired services for a reasonable price, the NGO is confident of delivering those services within the available resources.

Government agencies must enter negotiations with a clear idea of their interests and those of the Crown. The Crown should actively seek value for money. At the same time, Government agencies need to understand the interests of the NGO they are contracting with. Government agencies want NGOs to deliver services under the current contract, but also have an interest in their viability into the future, and maintaining a good relationship. NGOs – for profit and not-for-profit - must at least cover their costs of service provision, including the cost of capital.

Purchasers want to achieve cost-effective services. They need to be aware of the risk of under-pricing the service they are purchasing. 'Driving down' the price could undermine the quality of service delivery and damage the capacity of the NGO to deliver. This is particularly an issue with small or new not-for-profit organisations that

may have limited management and contract negotiation experience. Similarly, Government agencies need to think about how risk is apportioned in the contract and which party is in the best position to manage particular risks. Government agencies should avoid negotiating contracts that leave the Crown holding an undue proportion of the risk.

Both parties need to be clear about whether the Government agency (or several Government agencies together) is paying for all or nearly all of the service. Alternatives include paying at full cost or for only part of the service, with other resources coming from the NGO or elsewhere.

It is sometimes helpful for the Government agency to disclose its negotiating parameters to the provider, including any constraints they operate under such as:

- Budget – including appropriation authority.
- Law.
- Government Policy.
- The need to maintain national consistency.
- The need to operate within national standards.
- The need to operate within convention or within ethical conduct requirements.

Following preliminary discussions, the Government agency should prepare a draft contract as a basis for further negotiations with the NGO. In situations where the Government agency has departed from its own contracting policies or procedures, the reasons for the variation should be recorded and the contract should outline what procedures have been put in place to mitigate any risks arising from the change, e.g. more intensive monitoring. A checklist of contents for a contract is set out below as a reminder of issues that need to be considered. This checklist does not take the place of advice from the agency's own legal team.

It is possible to cover all of this in a short contract. Neither the order nor the language listed needs to be used, but it is important to think about whether each of the items is clearly covered in the contract. A contract can range from a lengthy document with detailed specification, to a document of a few pages, or even an oral agreement. Oral contracts are not appropriate for Government agencies, however, and NGOs should be clear that a contract does not arise until a contract document has been signed. The length and nature of the document signed will depend on the:

- Nature of the activities or services being provided for.
- Nature of the parties to the contract and the relationship between them.
- Amount of money involved.

### 3.2 Contents Checklist

Some Government agencies use “short form” contracts to reduce the costs to themselves and suppliers where there are relatively small amounts of money involved, reserving “long form” contracts for significant amounts of money (or particularly significant risks).

It is important to think about how the contractual documentation is presented, in terms of both clarity and compliance cost. Many organisations use standard terms for parts of contracts that they do not expect to vary from contract to contract. This can reduce uncertainty and negotiating costs for both the Government agency and the NGO. Having such standard terms annexed to, or a separate part of a contract can also significantly reduce the size of the balance of the contract.

Item	Description
1 Parties – who is the contract between?	Identification of the legal parties to the contract
2 Introduction/Preamble – what is the contract about?	<ul style="list-style-type: none"> <li>• The purpose of the contract</li> <li>• This could include a discussion of the objectives/ outcomes the contract is intended to contribute to (alternatively this could be in the service definition section)</li> <li>• This could include a definition of terms if necessary (or this could be an annex)</li> </ul>
3 Duration – how long is the contract?	<ul style="list-style-type: none"> <li>• Term of contract, and any related information. Could be included in the Introduction or Service Definition</li> </ul>
4 Service Definitions – what is being delivered?	<p>Scope of services to be provided, including quantity and quality. The latter may include (where relevant) specific information on:</p> <ul style="list-style-type: none"> <li>• Location</li> <li>• Timing</li> <li>• Client eligibility</li> <li>• Accreditation requirements</li> <li>• Skills of staff</li> <li>• Quality of premises and equipment</li> <li>• Statements on why the NGO is able to offer culturally appropriate services</li> <li>• Relevant regulatory requirements</li> <li>• Client satisfaction surveys</li> <li>• Purchaser reviews</li> </ul>
5 Payment – in return for what payment?	<ul style="list-style-type: none"> <li>• What is the basis for payment?</li> <li>• A payment schedule (i.e. at what points will payments be made?).</li> <li>• Variations to payment (including the circumstances in which payments may be withheld).</li> <li>• <b>NO PAYMENT SHOULD BE MADE BEFORE A CONTRACT IS SIGNED</b></li> </ul>
6 Information and Relationship Management	<ul style="list-style-type: none"> <li>• Any expected meetings/visits</li> <li>• Contact people</li> <li>• Information to be recorded</li> <li>• Information (including reports) to be supplied to the purchaser by the provider</li> <li>• Information (including reports) to be supplied to the provider by the purchaser</li> <li>• Reporting intervals</li> </ul>

Item	Description
	<ul style="list-style-type: none"> <li>• Recordkeeping policies, practices and standards</li> <li>• Procedures for Ad hoc reporting</li> <li>• Notification – where? how? who?</li> <li>• Co-operation with evaluation or audit</li> </ul>
<p>7 Variation – what if you need to change the contents of the contract?</p>	<ul style="list-style-type: none"> <li>• What happens when the contract needs to be modified?</li> <li>• Provision for changing the terms of the contract or activating contingencies provided for in the contract</li> <li>• Process to be followed including consultation and notification</li> </ul>
<p>8 Disputes – what happens if the parties disagree?</p>	<ul style="list-style-type: none"> <li>• How disputes will be dealt with</li> <li>• Notification, consultation procedures</li> <li>• Dispute resolution (informal, mediation? arbitration?)</li> <li>• Termination of contract</li> <li>• Liability for debts</li> <li>• Compensation</li> </ul>
<p>9 General contractual obligations</p>	<p>Matters common to all contracts, or all contracts of a similar type entered into by the agency. May include elements listed above. Other potential examples:</p> <ul style="list-style-type: none"> <li>• Treaty of Waitangi (e.g consultation with Māori is recognised in policy and processes and also occurs outside of contractual arrangements; services delivered are culturally appropriate)</li> <li>• Good employer requirements<sup>10</sup> (e.g. ethics and integrity; offering training and development opportunities, observance of EEO principles and opportunities).</li> <li>• Requirements to offer culturally appropriate services</li> <li>• Service delivery ethics</li> <li>• Public sector ethics and codes of conduct</li> <li>• Use of sub-contractors</li> <li>• Ownership of assets or intellectual property created (in some sectors this may need to be tailored to particular contracts)</li> <li>• Relationships with purchaser (may be covered by 6 above)</li> <li>• Confidentiality (including any privacy issues)</li> <li>• NZ law to apply</li> <li>• Linkages with other providers</li> <li>• Survival of any terms past the expiry of the contract</li> <li>• Contract for service rather than contract of service (i.e. the NGO or its staff do not become employees)</li> </ul>

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<sup>10</sup> See Glossary.

### 3.3 Basis for Payment

The basis for payment for services should match (where possible) the:

- Nature and scope of the services; and
- The pattern of costs incurred by the provider.

The agency must agree a regime for determining payment. There are a number of possibilities:

- Fee for service – a set amount paid each time a client uses a service.
- Block payments - a predetermined payment for delivery of the service.
- Cost and volume – combines aspects of fee for service and block payments.
- Paying the cost of a particular input (e.g. a staff salary).
- Hybrid payments – a combination of some of the above payments. Typically relevant for complex services or a group of services.
- Special payments – made for activities outside the normal scope of the service (e.g. contributing to policy development, providing significant amounts of information above that required for monitoring).

There are a number of ways in which the payment can be structured (see section 4.3 below), including:

- In arrears.
- On delivery.
- By time period.
- In advance (at the beginning of the contract or before service delivery).
- At the end of the contract.

No payment should be made until the contract is signed. This is equally important for a conditional grant.

### 3.4 Surpluses

An important part of the overall contract management system is how to deal with any surplus that remains when the agreed outputs have been delivered. The ability of an NGO to retain part of any surplus can provide an important incentive to achieve efficiencies and to innovate – something always worth encouraging, including through other means, such as willingness to consider proposed innovations.

On the other hand, Government agencies need to seek value for money, avoiding providing for large, easily earned surpluses, after all expenses including depreciation and a normal return on capital have been covered. (In this context, surpluses do not include a moderate return on capital or expenses necessary to cover infrastructure costs such as depreciation.) Similarly, departments should be confident, when negotiating a lower price, that this will not put service quality at risk of falling below agreed standards. The Government agency will also need to keep the price under

review when contracts are renegotiated in the light of knowledge acquired about costs and surpluses. There are a number of approaches that can be adopted in relation to a surplus:

- The NGO returning any surplus. This is appropriate where the surplus is due to the NGO under-delivering on the quantity or quality of the services.
- The Government agency and the NGO agreeing to the provision of more of the same services.
- The Government agency and the NGO agreeing to the delivery of additional related outputs.
- It may be appropriate for the NGO to retain the surplus as profit. This approach relies on a robust contract management system, and good information on service delivery.
- Grant money that is not spent for the purposes originally provided should be returned to the Government Agency. It may be appropriate to renegotiate the conditions of a grant to reflect changing circumstances.

Deciding on the most appropriate approach to dealing with surpluses may also depend on an assessment of risk. The basis for these assessments should be documented. This may be particularly relevant when the NGO is a not-for-profit organisation. Government agencies should assure themselves ahead of time that the NGO has appropriate internal controls or governance structures to ensure that any agreed surpluses are applied by the NGO appropriately. At the least, agencies should verify how the surplus has been spent by the NGO.

# Chapter 4 - Managing the Contract and Monitoring

Signing the contract is only part of the Government agency's responsibilities for contract management. Agencies are also responsible for the ongoing management of:

- The contract once it has been signed, and
- The relationship with the NGO providing the service.

This will involve:

- Monitoring (including verifying) service delivery against the contract.
- Assessing the effectiveness of the services delivered.
- Approval of payment, and making payment according to the contract.
- Ongoing relationship management.
- Dealing with any differences of view with the NGO.
- Negotiating changes to the contract initiated by either party.
- In extreme cases, taking action to enforce the conditions of the contract, including exercising any rights to terminate the contract.

This provides the basis for:

- Assessing whether the NGO has delivered what was contracted for.
- Accountability for public money.
- Paying money to the NGO.
- Making decisions about how to proceed at the expiry of the contract.

## 4.1 Monitoring

Monitoring includes verifying that the terms and conditions under the funding agreement have been met. Monitoring will be based on:

- Information reported by the NGO in accordance with the contract.
- Information from other parties (e.g. surveys of users).
- The ongoing relationship with the provider.
- Reviews or audits conducted under the contract.
- Information from other sources.

Government agencies want NGOs to deliver services under the current contract, but will also have an interest in their viability into the future. Ideally, the information sought should provide an indication of the ongoing viability of the NGO, the improvements in outcomes sought, not just outputs produced and certainly not focus mainly on inputs to the NGO's activities.

Monitoring and contract management imposes costs on the purchaser and the NGO providing the service. There is a range of possible ways to reduce unnecessary costs, while still receiving assurance about the effective use of public money (see section 1.6 and section 1.12). This includes:

- Realism about the number of reports required from NGOs.
- Performance indicators should be simple, meaningful, and relate to contracts.
- Supplying standard reporting templates to NGOs to fill in. Then the NGO need not generate a report itself, and the information is in a standard form. Some Government organisations now supply electronic templates.
- Monitoring arrangements that are structured according to risk.
- Where appropriate, developing contract and capability building objectives that are consistent with the NGO's own performance management system. (eg objectives that make use of information that the NGO is already collecting)

Feedback on the monitoring should be provided in a timely manner to NGOs, to help them understand its use.

The level and nature of the monitoring undertaken by the Government agency may differ according to:

- The nature of the service.
- The track record of the NGO.
- The amount of money involved.
- Perceptions of risk.

Some Government agencies structure their monitoring arrangements according to assessments of risk. The basis for these assessments should be documented. This may mean focusing resources and greater attention on contracts where risk is assessed to be higher, and requiring some minimum reporting under the contract for lower risk contracts but providing for a power to do a more in-depth audit. The Government agency can then audit 1 in 10 (say) such contracts, either on a random basis, or on the basis of a risk assessment or a mixture of the two. This could include an audit of the Government agency's contract management, as well as of the performance of the NGO.

Government agencies need to exercise informed judgement about such monitoring arrangements and where the agency's resources are best directed as is appropriate in their own circumstances. (See also section 1.7)

Māori, hapu and iwi providers have often expressed the need for monitoring and reporting processes to focus more on outcomes that were collectively desired by Government and Māori communities. The outcomes reported against should also be culturally appropriate and relevant to the service provision model.

## 4.2 Ongoing Relationship Management

Managing the contract is part of ongoing relationship management with the NGO delivering the service or otherwise in receipt of Government money. The contract will record the basic expectations each party has of the other, and where the relationship is working well, there will usually be no need to enforce the terms of the contract. The NGO is entitled to be informed in a timely manner of any concerns the Government agency has about performance under the contract, and should be encouraged to provide feedback on the Government agency's performance.

The need for on-going relationship management is often paramount. Government agencies should actively ensure they have sufficient understanding of the culture and language of service recipients and the NGOs they contract with to ensure effective service provision. A good ongoing relationship and successful contract will be aided by an understanding at the outset by both agencies and NGOs of each other's expectations of the way the relationship will be managed. It may be sensible to make a senior contact point known to NGO's to help resolve difficulties that may arise. Government agencies will often benefit from indicating a point of contact with them to assist in resolving contracting matters.

## 4.3 Payment

Where practicable, payments should be aligned with expected deliverables. However, this is not always possible or desirable. In some circumstances it may be appropriate to have all or the majority of payment made up front (e.g capacity/capability building, where contract is for relatively small amounts of money or where risk is assessed to be lower), or to pay in instalments - depending on the total amount of money involved. When structuring payments, and in particular, instalment payments, agencies should balance the need to ensure that the NGO has funding so that it can deliver the service sought against the obligation to provide accountability for public money.

Full payment should not be made until final reports or information required to be provided under the terms of the contract or funding arrangement have been received and reviewed. Government agencies should not, however, use their own poor planning as an excuse to withhold payments from NGOs. An NGO satisfying its end of the contractual arrangement is entitled to be paid on time, in accordance with the payment schedule set out in its contract. Failure to pay in accordance with the payment schedule when the NGO has met the terms of the contract may be a breach of the contract. Failure to pay may threaten the ability of the NGO to continue to deliver the service.

The Government agency will also need to consider in advance the implications for payment of any failure on the part of the NGO to meet the terms of the contract (e.g holding over a reasonable percentage of a payment until the agreed terms are met).

No payment should be made before a contract has been signed.

If there are delays in signing a contract which compromise the delivery of an important service, then the Government purchaser should consider entering into a short term contract until the contract is signed (this could include extending an existing contract for a short period).

## 4.4 Things Change

Circumstances change. The agency may need to consider changing the terms of the contract, and the contract should provide some scope to do this. A proposal for change could be initiated by either the Government agency or the NGO, and will be a subject for negotiation for the parties. In considering possible changes, the Government agency should think about:

- The likelihood that proposed changes will better achieve its objectives.
- The views of the provider.
- The impact on the users of the service.
- The realistic scope for change.
- Any legal issues.

The reasons for changing the contract should be documented and the resulting contract should outline what procedures have been put in place to mitigate any risks arising from the change.

## 4.5 Dealing with Disputes

It is in both parties' interests to avoid disputes that may escalate to Ministers, the Ombudsman or the Courts. Differences of opinion arise in any relationship. Dealing constructively with such differences of opinion is a feature of a good relationship. One of the advantages that a well constructed contract can provide, is the possibility of minimising disagreements by providing a tool to deal constructively with any disagreements that arise by:

- Clearly recording the expectations that each party has of the other;
- Clearly outlining how disputes will be dealt with;
- Providing for a means of dealing with any likely areas of disagreement (e.g. using independent mediation);
- Including a process by where each party can signal to the other a desire to alter the terms of the contract;
- Recording agreed changes to the contract by annexing them to the contract.

In general, the optimal approach to dealing with differences is to deal with them promptly. This forms part of relationship management by discussion and mutual agreement. In some circumstances, outside help to might be required to deal with any dispute that the parties cannot resolve between themselves. In general both parties are likely to regard formal legal remedies as a last resort. Government agencies should not, however, shrink from making use of formal remedies if necessary. Government agencies should also bear in mind that the NGO is able to enforce its rights under the contract.

The contract should include clear provisions setting out the circumstances in which either party can terminate the contract.

## Chapter 5 - Review and Evaluation

Review and evaluation overlaps with monitoring, but it merits separate treatment given that it extends further than an individual contract.

Government agencies must build a reflective capacity into their contract management system. They need to be able to think about the following questions:

- Is the programme or policy being delivered by way of contracting effective?
- Does it represent value for money?
- What improvements can be made?
- How effective has the organisation's contract management been?
- How have the NGOs performed in respect of particular contracts?
- How have individual NGOs performed against our assessment of risk?
- How has the successful service provision contributed towards desired outcomes?
- How has the agency performed in respect of individual contracts?
- How effective is the agency's relationship management?

This should be informed by:

- Information from monitoring individual contracts.
- Feedback from service users, NGOs and other interested parties.
- Evaluation.
- Audit.
- Reviews of contract management.
- Risk assessments.
- Any other available information and analysis.

The answers to these questions should in turn feed into:

- Policy advice.
- The budget process.
- Decisions about particular contracts, relationships or services.
- The contract management system.

## Chapter 6 - Starting Over

The end of a contract is an important part of the contract management cycle. Government agencies need to consider what to do in the future well before the end of a contract. This requires returning to the planning part of the contract management cycle. There are a number of possible approaches:

- Renegotiating the contract with the supplier or rolling it over.
- Selecting another supplier or tendering.
- Altering the scope of a service.
- Continuing the service but identifying ways in which the provider could be developed further to enhance or improve service provision.
- Discontinuing the service.

The decision taken should be informed by:

- The ongoing relationship with the provider.
- Any feedback available from the users of the service.
- Monitoring of the provider's performance.
- Evaluation of service or policy.
- Update of user/recipient needs analysis.
- Any other information available on value for money (e.g. benchmarking).
- Legal obligations.
- Changes to Government policy.
- Legislative changes.

A decision to discontinue or alter a particular policy, for example, might be taken because it had been successful and was no longer necessary or a priority, or, conversely, because of evidence that it was not effective or represented poor value for money, or because of a change to Government policy. A contract might be put up for tender because:

- The NGO no longer wanted to carry out the service.
- Dissatisfaction with the performance of the NGO (this should have been raised with the NGO before a final decision on the contract is made).
- A desire to test the market.
- A desire to give other potential providers an opportunity.

A contract might be re-negotiated with the NGO because of:

- A need to maintain continuity of supply.
- A long running relationship and satisfactory performance.
- No other suppliers being available.

The existing provider should be given ample notice of the approach that the Government agency proposes to take and the agency should ensure there has been consultation and communication about it.

Where a contract is to be varied or extended for a future period, the costs of the contract, what has been achieved or delivered to date under the contract, and what still has to be achieved/delivered should be reviewed before progressing. The actual costs of service delivery under a first contract should be checked before establishing the costs of a subsequent contract. A contract should not be rolled over to ensure continuity of supply simply because of poor planning by the Government agency.

# Checklist for Agencies

	Chapter(s)
Are you clear about what you are trying to achieve? Does this inform your contracting or funding processes?	1
Is contracting with or funding an NGO the best way of achieving your objectives?	1
What is the nature of the contracting or funding relationship? Are you – Purchasing all of a service? Making a contribution to an NGOs activities? Directly contracting for outcomes? Assisting an NGO to develop capacity? Making a grant?	1
Does the definition of the service being paid for strike the right balance between providing certainty as to what is being provided, and allowing flexibility, while avoiding unreasonable compliance cost?	1, 3
Has there been appropriate consultation with users, NGOs and other stakeholders?	1
What sort of organisation will you be contracting with or likely to be contracting with?	1, 2
How will you work with iwi/Māori ?	1, 2, 4
What incentives do the contracting or funding arrangements set up?	1
Do the contracting or funding arrangements provide adequate accountability for public money?	Introduction, 1, 3, 4
Would a grant be appropriate rather than a contract?	1
Do the contracting or funding arrangements allocate risk appropriately?	1, 3
How adequate are your own contracting policies, systems, management and staff? Are they consistent with the principles of good contract management?	Introduction, 1
Do other parts of Government have an interest in contracting or funding arrangements you are involved in?	1
Would it be sensible for the Government agencies involved to co-operate in managing the contracting arrangements with the NGO?	1
How long should the agreement be for?	1
Do the arrangements avoid unnecessary compliance costs for the parties?	1, 3, 4
Are the arrangements consistent with relevant regulatory requirements?	1
How will you identify the NGO you will be contracting with or funding?	2
Do you have an existing relationship with the NGO?	2
Do you understand the nature of the organisation you are dealing with?	2
Are the contracting or funding arrangements consistent with the independence of NGOs?	2

	<b>Chapter(s)</b>
Are you confident the NGO can meet its obligations?	2
In what circumstances would a tender process be appropriate?	2
Are you clear about your negotiating parameters, including the budgetary constraint you operate under? Should the NGO you are negotiating with be made aware of those parameters?	3
Do your contract managers have adequate authority to conclude a deal?	3
Will the price negotiated allow for delivery to an appropriate quality of the desired time period (which may be the medium to long term)?	3
Have you included everything you need to in the agreement?	3
What is the basis for payment? Can you make payments on time according to the contract?	3, 4
How will a surplus be dealt with?	3
Is an appropriate monitoring regime in place?	4
Do you know how to manage the ongoing relationship with the NGO appropriately, including giving feedback on performance and reporting?	4
What happens if things change during a contract?	3, 4
What about disputes?	3, 4
Does your contract management system include a review and evaluation capacity? Do you know if contracting or funding arrangements are effective? Are the intended results being achieved? How well have particular contracts worked? How well does your relationship management work? Does this information feed into policy, funding and contracting decisions?	5
What happens at the end of a contract?	6
Does the NGO understand what happens at the end of the contract?	6

# Glossary of Terms

## Appropriation

The Crown (including departments) cannot spend any public money, or incur any expenses without the authority of Parliament. This longstanding feature of our constitutional arrangements is enshrined in the Constitution Act 1986 and the Public Finance Act 1989. Such an authority is generally called an appropriation, and the Government and its departments must spend money (including contracting) within the relevant appropriation.

## Crown

The definition of Crown in the Public Finance Act 1989 is used in these guidelines.

*“Crown” or “Her Majesty”*

- a. Means Her Majesty the Queen in right of New Zealand; and
- b. Includes all Ministers of the Crown and all departments; but
- c. Does not include –
  - (i) *An Office or Parliament; or*
  - (ii) *A Crown entity; or*
  - (iii) *A State enterprise named in the First Schedule to the State-Owned Enterprises Act 1986.”*

## Crown entity

Corporate bodies legally separate from the Crown, but subject to a measure of control by the Crown (e.g. ACC and District Health Boards). Does not include State Owned Enterprises. Defined by listing on the 4<sup>th</sup> schedule to the Public Finance Act 1989, or being a subsidiary of an organisation listed.

## Department

An organisation that is part of the Crown (e.g. Ministry of Foreign Affairs & Trade, Department of Labour).

## “Good employer” practices

Compliance with relevant employment relations and human rights legislation<sup>11</sup> as well as fair and ethical practices, such as:

- positive relationships with unions in the contractor’s trade or industry;

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<sup>11</sup> This includes the Employment Relations Act 2000, Human Rights Act 1993, Minimum Wage Act 1983, Equal Pay Act 1972, Wages Protection Act 1983, Holidays Act 1981, Parental Leave and Employment Protection Act 1987, Volunteers Employment Protection Act 1973, Health and Safety in Employment Act 1992, Machinery Act 1950, Hazardous Substances and New Organisms Act 1996.

- participatory mechanisms for employees, in addition to participation in matters such as health and safety;
- observance of EEO principles and opportunities;
- work/life balance policies;
- provision of training and development opportunities; and
- ethics and integrity.

### **Input**

A “factor of production” used to produce an output (e.g. staff time, travel, telephone calls, computer equipment, rental accommodation).

### **NGO**

“Non-Government organisation”. In this guide unless context requires otherwise “NGO” encompasses:

- community or voluntary organisations;
- Māori iwi and hapu organisations;
- for-profit organisations where Government organisations contract with them for the delivery of outputs

### **Outcome**

Defined in the Public Finance Act 1989 as the “impacts on, or consequences for the community of the outputs or activities of the Government”.

### **Output**

Goods or services produced.