

Hamilton Health Sciences

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Title: **PUR - Use of Consultants Policy**

Applies to: All individuals making a commitment to expend Hamilton Health Sciences funds.

1.0 **Purpose**

1.1 To outline the policy for securing the services of Consultants.

1.2 To ensure transparency and accountability in the procurement of consulting services by Hamilton Health Sciences and to ensure Hamilton Health Sciences ("HHS") is compliant with Ministry Policy regarding the use of Consultants.

2.0 **Equipment/Supplies**

None.

3.0 **Definitions**

(Ministry of Finance) Consulting Service: Refers to the provision of expertise or strategic advise that is presented for consideration and decision-making. This policy applies to ALL types of consulting services (including but not limited to):

- Management consulting
- Information technology consulting
- Technical consulting
- Research and development
- Policy consulting
- Communication consulting
- Legal Services

Consulting Services do not include:

- (i) services in which the physical component of an activity would predominate (e.g. services for the operation and maintenance of a facility; temporary help services; training/education instructors and photography), or
- (ii) (ii) services provided by licensed professionals such as medical doctors, dentists, nurses, pharmacists, chartered accountants and lawyers acting in their regulated capacities or
- (iii) Research related National Coordination/Leader agreements, Adjudication Service agreements, and Data Safety Monitoring Board agreements; in addition, this policy excludes research related consulting services occurring for research sites outside of Canada.

Consultant: An individual or firm not employed by/independent of HHS, of proven professional or technical expertise and competence that is needed by HHS. HHS does not control either the manner of performance or the result of the service. The end product is usually a written and/or oral report, study, or list of recommendations.

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Employer – Employee Relationships: Employer-Employee relationship is a relationship in which HHS has the right (whether or not it exercises the right) to supervise and control the performance of the service, as well as the result of service.

BPS – Broader Public Sector which governs mandatory directives for Supply Chain Policies and Procedures

CRA – Canada Revenue Agency

Procurement Route – procurement process flow

Originating Party - End user who is originating requirement

4.0 Background

4.1 Consultants are professionals (or firms/partnerships/corporations) that specialize in a particular area. Consultant services may involve solving problems, managing projects, doing research activities, advising on a particular matter or exploring alternatives. Consultants usually work on contract (“Consultant Agreements”), they sell their knowledge or services for a fee. Consultants can bring new ideas to projects, and organizations often learn from working with them.

4.2 This policy is in accordance with Canada Revenue Agency (CRA) publications (RC4110(E) latest revision) discussing independent contractor versus employee needs.

5.0 Policy

5.1 The Ministry of Finance mandates that competitive processes be utilized in the engagement of all consultants at HHS regardless of value.

5.2 Purchasing is responsible to receive and process all requests.

5.3 Consultant use is to be infrequent and primarily for the purpose of obtaining specialized services for clearly delineated problems or projects.

5.4 A [Consultant](#) is not to be used to carry out a major portion of a HHS Program or Project. If there is a need for someone to direct or participate extensively in an HHS Program, the person is to be employed through Human Resources (“HR”) using the regular employment process.

5.5 A [Consultant](#) is not entitled to credit or reference himself/herself other than as ‘Consultant’ in any publication. In the case of a research study consultancy agreement, reference entitlement will be in accordance with the research consultancy agreement. Publication includes but is not limited to: interviews, reports, documents or findings.

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- 5.6** After competitive process, the Consultant must execute a Consultant Agreement and the Consultant Disclosure Form.
- 5.7 Determination regarding Employee Vs Independent Consultant Status**
- 5.7.1 The determination regarding employee vs independent consultant status is made by the Manager of the originating department. and is based on the criteria as outlined in the Canada Revenue Agency (CRA) Policy.
- 5.7.2 In cases where it is difficult to determine the correct status/service [procurement route](#), the unit and/or department is to consult with Purchasing to determine whether CRA criteria would conclude that an [employer-employee relationship](#) exists. Purchasing is responsible to make the determination that there is no employer-employee relationship. If such a relationship exists, no Consultant Agreement is to be processed.
- 5.7.3 When considering a consulting assignment/retaining a Consultant, the Consultant must fit the profile of being self- employed and NOT that of an employee.
- 5.7.4 Contractor Agreements for consulting services may only be entered into when the individuals perform their services as independent contractors, and not as employees.
- 5.7.5 If Purchasing determines that an [employer-employee](#) relationship should be established, the originating department is to follow the normal HR employment process.
- 5.8 Agreement Covering Services:**
- 5.11.1 The Consultant Agreement between HHS and a Consultant is to be prepared and executed by Purchasing prior to the beginning of any service.
- 5.8.2 Purchase orders are not to be used for Consultant Services.
- 5.8.3 Extension of the termination date, expansion of the scope of services, or modification of payment amounts is not permitted without prior approval of CEO-Executive VP-VP/Purchasing. Following such approval, Purchasing, or in the case of research activity in accordance with the policy on Research Agreements Entered into with Third Parties will initiate an amendment to the [PUR - FORM - Consulting Services Agreement](#) signed by HHS and Consultant.
- 5.9 Conflict of Interest:**
- 5.9.1 HHS Conflict of Interest Policy requires all HHS employees to disqualify themselves from participating in a HHS decision that may result in material financial gain to them. This applies to decisions relating to contracting for the services of a Consultant. Further, a Consultant is not to be engaged to perform services for an HHS employee to whom he/she is a near relative nor shall the near relative be in a decision making position with respect to the engagement and use of the consultant.

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5.10 Confidentiality, Privacy and Access to Information:

5.10.1 If the Consultant Services is to involve collection of confidential and/or private business/financial information about individuals, (staff or patients) the department proposing to engage the consultants is to be guided by HHS policies pertaining to privacy of, and access to information.

5.11 Determination of Need:

The originating department MRP/Manager is responsible for the following:

5.11.1 Determining that the nature and scope of services are required and that the costs for said services are reasonable.

5.11.2 Confirming that the services are special, temporary, or highly technical and specialized and cannot be performed economically or satisfactorily by existing HHS staff during the course of their normal responsibilities or duties.

5.11.3 The [originating party](#)/authorizing manager is to ensure that the desired professional services are not readily available internally through other HHS departments and/or personnel, and that funding is available within the department budget to cover the cost of the Consultant fee.

5.11.4

Procurement Method	Procurement Value	Approval Authority
Invitational or open competitive process	\$0 up to but not including \$100,000	VP
Open competitive process	\$100,000 or more	CEO
Non-competitive*	\$0 up to but not including \$1,000,000	President, CEO or equivalent
*Trade Agreements exemption based only	\$1,000,000 or more	Board of Directors or equivalent

5.11.5 The [originating party](#) is to initiate a [PUR - FORM - Consulting Services Agreement](#) and [PUR - FORM - Consultant Authorization Checklist](#) prior to forwarding to Purchasing or, in the case of Research activity, to the Office of Integrated Research Services..

5.11.6 Any and all requests for Consultant/Professional services must be authorized by *CEO-Executive VP-VP* and competitively bid per Broader Public Sector guidelines.

5.11.7 The [originating party](#) is to ensure that no work is performed by the Consultant until the Consultant Agreement has been executed in accordance with HHS Signing Authorization Policy (ref. FIN) or in the case of research activity, in accordance with the policy on Research Agreements Entered into with Third Parties.

5.12 Establishing Independent Contractor Status

5.12.1 As independent contractors, Consultants are accountable to HHS for the results accomplished by their work and are not subject to day-to-day

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control or direction by HHS as to the means, methods, and manner of accomplishing the required results.

- 5.12.2 As per CRA publications and forms, the following key criteria is to be considered in making the vital determination of status:
- a. The individual should generally be free of close control over the details of the work to be performed.
 - b. Training and tools will not ordinarily be provided.
 - c. Requirements and advantages applying to employees should not apply to the independent contractor, except to meet basic needs such as health and safety requirements.
 - d. The effort to be accomplished should be unique and serve the special needs of HHS. Similar requirements should not occur with any frequency, and not be of such a nature that performance by an employee would be expected.
- 5.12.3 As consultant records may be audited by CRA, HHS must ensure that Consultants do in fact perform as independent contractors. If an audit by CRA determines that an individual was utilized in a manner indicative of an [employer/employee](#) relationship and not an independent contractor relationship, assessment of payroll taxes, interest, and penalties could occur.
- 5.12.4 Completion of the Consultant Authorization form is mandatory PRIOR to RFP. This Form is to assist in making the Consultant status determination.
- 5.12.5 The initiating department is to submit *CEO-Executive VP-VP* Authorization to Purchasing or in the case of research activity, to the Office of Integrated Research Services. All documentation must be complete and fully authorized to proceed.
- 5.12.6 Once the Authorization is obtained, Purchasing, based on mandatory Ministry rulings and Broader Public Sector (BPS) directives, is to competitively bid the requirement.

5.13 Payment for Services:

- 5.13.1 A Consultant is to submit an invoice setting forth the appropriate charges and indicating the Consultant Agreement number.
- 5.13.2 Payment is not to be made for services rendered prior to the execution of the Consultant Agreement, nor for services rendered after the expiration of the Consultant Agreement.
Any and all payments made to Consultants must be identified as EOC 65091- Consultant Fees in the General Ledger.
- 5.13.3 Payment is to be made in accordance with the schedule set out in the Consultant Agreement. In case of termination prior to completion of work to be performed under the Consultant Agreement, the project manager/department head is to determine the equitable compensation to be paid for the work completed based on its value to HHS, provided that such work was to be performed under the Consultant Agreement and that such compensation is not to exceed the total agreement price.
- 5.13.4 Final payment is to be withheld until confirmation by project manager/department head that the terms of the Consultant Agreement have been completed.

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1. (a) A departmental reviewer is to be responsible for making the actual physical comparison between the terms of the Consultant Agreement and the evidence that the terms of the Consultant Agreement have been completed satisfactorily. This evidence, or final product, is usually in the form of a report or memorandum.
2. (b) The departmental reviewer is to be someone other than the departmental employee to whom the Consultant reported and other than the HHS employee who approves the final payment of the invoices.
Any differences that may be disclosed by the comparison of the Consultant Agreement terms and the final product is to be investigated independently by the reviewer to determine the specific causes for the differences before final payment is approved. These differences are not to be investigated by either the HHS employee to whom the Consultant reported or the department head who approves the payment.
- (c) The Reviewer's confirmation is to attest to the completion of the services under the Consultant Agreement and is to be signed by the departmental reviewer and the HHS employee to whom the Consultant reported to.

5.14 Document Retention

- 5.14.1 All documents regarding the Use of Consultants are to be retained by Purchasing in the following tool kit:
- Signed Authorization to Use Consultant form
 - Requisition
 - Requests For Proposals (as applicable)
 - Any and all applicable supporting documentation
 - Signed Consultants Agreement
 - Purchase Order (EOC 65091)

For research funded Consultant Agreements, a final copy of the executed agreement is to be stored in the Research Agreements inventory and logged in the Research Agreements database, with the following audit trail for purchasing:

- Expenses will be recorded to EOC 65091
Expenses processed are to reference the Consultant Agreement inventory number in the financial system

5.15 Internal Audit Requirement

- 5.15.1 Annually, HHS Internal Audit is to conduct a review of the Use of Consultants and adherence to this Policy and submit their Findings and Observations to the Executive Board Chair in preparation for the annual Declaration of Compliance attestation.

5.16 Declaration of Compliance

- 5.16.1 Annually, mandatory review of the Use of Consultants is to be forwarded to the Executive Board in preparation for the annual attestation.

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5.16.2 Additionally, an annual Declaration of Compliance is mandatory at the Manager level and higher. This Declaration includes annual review of the Policy, submittal (on line) of the Declaration and results are forwarded to the Board Chair in preparation for the final HHS Declaration Of Compliance requirement to the Ministry.

6.0 Documentation:

[PUR - FORM - Consultant Authorization Checklist](#)

[PUR - FORM - Consulting Services Agreement](#)

7.0 Cross References

HHS Signing Approval Policy (FIN)

HHS Conflict of Interest Policy

HHS Confidentiality Policy

RES Research Agreements Entered into with Third Parties

[PUR - FORM - Consultant Authorization Checklist](#)

[PUR - FORM - Consulting Services Agreement](#)

8.0 External References

This policy is in accordance with Canada Revenue Agency (CRA) publications (RC4110(E)latest revision) discussing independent contractor versus employee issues. www.cra.gc.ca: Canada Revenue Agency – Employee or Self Employed RC4110(E) Rev. 08 discussing independent contractor versus employee issues.

OntarioBuys – BPS Supply Chain Directives

www.fin.gov.on.ca/en/ontariobuys

9.0 Developed By:

HHS Logistics

10.0 In Consultation With:

CEO

CFO

HHS General Counsel

Director, Human Resources

Director, Logistics

Director, Research

Chief Internal Audit Officer

11.0 Approved By:

Director, Logistics

CFO

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