

Government's Use of Consultants and Temporary Staff





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service spend wisely

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TABLE OF CONTENTS

Executive Summary	1
Key messages.....	2
Introduction	4
Most organisations use consultants and temporary staff to supplement their workforce	4
Government does not monitor how much it spends on consultants and temporary staff.....	5
Government spent \$38.5 million on consultants and temporary staff in the five years to June 2017.	6
About the audit	6
Glossary of Acronyms	9
Government’s Use of Consultants	10
The Government spent \$34.9 million on consultants in the five years to June 2017.....	10
The Government does not generally plan for or project its need for consultants	15
Most Ministries have procurement manuals in place	16
Few business cases were prepared to justify the need for consultants	19
The majority of consultants reviewed were appointed through open competition but some requests for proposals were not sufficiently clear.....	23
Government needs to widen its approaches to procuring and contracting with consultants.....	25
There are no standard terms and conditions for the use of consultants.....	26
Procurement practices could be further improved	29
The Government is not consistently managing or evaluating consultants’ performance.....	31
Government’s Use of Temporary Staff	33
The Government spent \$3.6 million on temporary staff over five years and annual spending has increased significantly.....	33
The Government does not have guidance for procuring or managing temporary staff	35
Conclusion	37
Appendix 1 – About the Audit	38
Appendix 2 – Assessment of 23 consulting contracts against good practice criteria	40
Appendix 3 – Recommendations	42

EXECUTIVE SUMMARY

Governments often use consultants and temporary staff to help them achieve their objectives. When used well, they can add real value by bringing specialist skills and experience, providing an external or independent viewpoint, identifying new ideas or innovative solutions, and managing peaks in workload or staff shortages. The use of consultants and temporary staff may be needed to help transform the business or allow change to happen, while at the same time continuing to deliver business as usual. However, if not well planned or managed, using consultants and temporary staff can be an expensive way to do business, draining budgets quickly with little or no added value. Their use needs to be carefully considered alongside planning and managing the workforce.

It is important that the Cayman Islands Government (the Government) obtains value for money from its use of consultants and temporary staff. To do this it needs to follow good procurement processes, including assessing the need and specifying the requirement; considering options for how to meet the need; tendering and contracting; contract management; and post-project evaluation. Our 2011 report, *Management of Government Procurement*, identified significant weaknesses in the Government's procurement practices that had resulted in wasted money. In response, the Government took a number of actions, including preparing the *Procurement Law 2016*, which was passed by the Legislative Assembly in October 2016 (although not yet enforced at the time of this report it is due to come into force on 1 May 2018), creating a Central Procurement Office, and developing procurement manuals.

The Government is expected to use independent experts for some aspects of its work. For example, the Framework for Fiscal Responsibility states that, for projects, the Government "*should retain independent accounting, legal, financial, economic, environmental and other technical advice as appropriate to ensure robust investment appraisals are produced*".¹ The Government generally uses consultants to provide this type of expertise for major capital projects. In addition, it uses consultants for a variety of other reasons, including ongoing public relations activities for the financial services industry and carrying out reviews to help identify potential improvements in the way it delivers some services such as social welfare programmes, immigration services, and fire services.

The objective of this audit was to determine how effectively the Government manages its use of consultants and temporary staff to ensure that it is obtaining value for money. We aimed to answer the following audit questions:

- How well does the Government plan the use of consultants and temporary staff?

¹ The Framework for Fiscal Responsibility (FFR) was agreed between the Cayman Islands Government and the UK Government in November 2011 to introduce a range of measures to contain spending and improve governance and management arrangements across the public sector. The FFR was incorporated into the *Public Management and Finance Law* in November 2012.

- How effectively does the Government procure consultants to ensure that it receives value for money?
- How well does the Government manage consultants?

Our audit focused on core government only, i.e. Ministries, Portfolios and Offices. It did not cover spending on consultants and temporary staff by Statutory Authorities and Government Companies. Our audit findings are based on our review of 23 contracts for consultants appointed between 1 July 2012 and 30 June 2017. These 23 contracts accounted for 42 per cent of the total spend on consultants during this five-year period.

KEY MESSAGES

The ability to plan for and project the need for consultants is an essential part of workforce planning. However, the Government does not generally plan or project its need for consultants, with the exception of consultancy services for major capital projects. Nor does the Government routinely monitor how much it is spending on consultants or temporary staff. We estimate that over the five years to 30 June 2017, the Government spent a total of \$38.5 million on consultants and temporary staff.

For consultants, the Government spent a total of \$34.9 million in the same five-year period. Spending fluctuated from year to year, from a high of \$8.4 million in 2012–13 to a low of \$5.0 million in 2013–14. While the Government bought a range of consultancy services, five services accounted for 80 per cent of the total amount: legal services, IT consulting and implementation, advertising and promotion, major capital projects, and public relations. The Government used more than 100 different suppliers of consultancy services, ranging from small, sole providers to large companies. The top ten suppliers accounted for around 44 per cent and the top three suppliers for more than 23 per cent of the \$34.9 million total spent on consultants.

Seven of the eight ministries we reviewed had procurement policies and procedures in place that complied with current legislation, the forthcoming *Procurement Law*, and some elements of recognised good practice. Five ministries had also identified criteria in their procurement policies and procedures for assessing when it may be appropriate to consider hiring consultants. These criteria include, for example, considering the availability of in-house staff and expertise. These are positive steps. However, there is scope to improve further the policies and procedures and to ensure that they are consistent across government. For example, procurement specialists are rarely used; payment terms are not always considered when negotiating contracts; and alternative methods for procuring and engaging consultants, such as framework agreements, are not used.

The Government does not consistently consider value for money when engaging consultants. Its guidance requires that business cases be prepared and approved for all procurements above \$10,000, and that Invitations to Tender (ITT) or Requests for Proposal (RFP) be used for open procurement. Our review found that business cases were not prepared for most consultant engagements, despite the fact that all of those we reviewed were above the \$10,000 threshold. The business cases that were prepared did not include all of the information they should have, such as a cost-benefit analysis, to justify the

business need. Most of the 23 consultant contracts we looked at had an ITT or RFP, although they were not always sufficiently clear about what was required or what procurement process was to be followed. We identified a few consultant appointments where no RFP had been prepared when one should have been, resulting in the appointment of consultants without open competition.

The Government does not have a standard contract for the use of consultants, which means it is generally accepting suppliers' terms and conditions. Some contracts are sent for legal review, but it is not clear how decisions are made on which contracts should be reviewed, and legal reviews of contracts may be inconsistent. We found that contracts had different payment terms, a lack of success measures and very few contracts required skills transfer as part of the terms of agreement. The lack of standard contract terms and conditions poses a risk to value for money.

The Government does not formally manage and evaluate the performance of consultants once they are appointed, even though contract management is an integral part of ensuring value for money. There is no central guidance on how to monitor or evaluate consultants' performance.

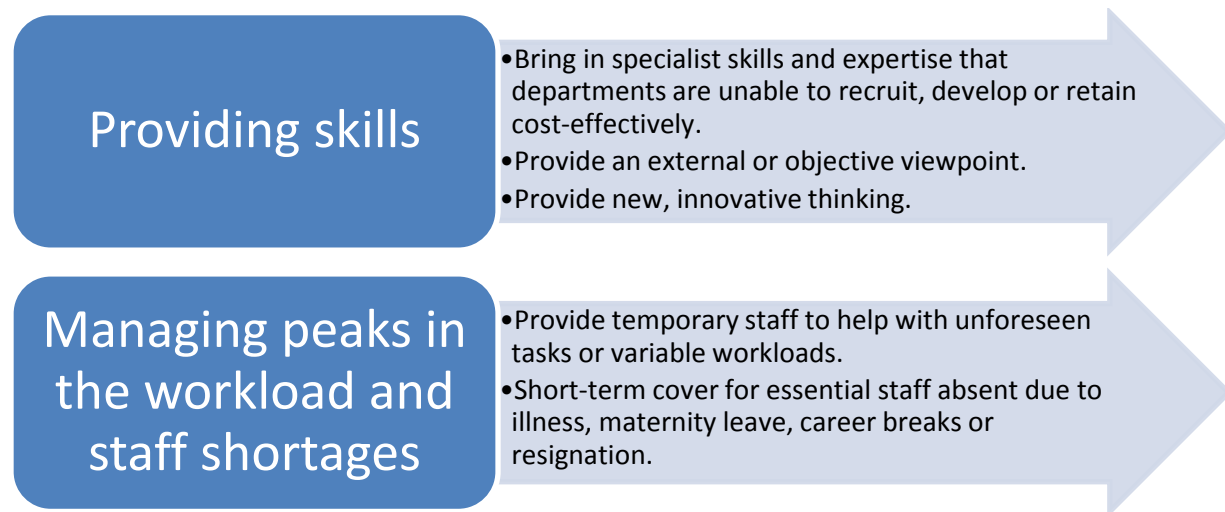
Over the five years to 30 June 2017, the Government spent around \$3.6 million hiring temporary staff, mostly through recruitment agencies. Annual spending has more than doubled over the five years, increasing from \$0.45 million in 2012–13 to \$1.2 million in 2016–17. The Government used temporary staff for a variety of reasons, including conducting surveys, providing administrative assistance; substituting for existing employees when they were unavailable; and assisting during busy periods. The Government uses a range of recruitment agencies when looking to engage temporary staff; and if temporary staff perform poorly their contracts are terminated or they are returned to the recruitment agencies.

INTRODUCTION

MOST ORGANISATIONS USE CONSULTANTS AND TEMPORARY STAFF TO SUPPLEMENT THEIR WORKFORCE

1. Organisations often use consultants and temporary staff to supplement their workforce to support the achievement of objectives. Consultants and temporary staff may be needed to help transform the business or allow change to happen while continuing to deliver business as usual. Exhibit 1 sets out the main reasons why organisations use consultants and temporary staff. When used well, consultants and temporary staff can add real value. However, if their use is not well planned or managed, they can be an expensive way to do business, draining budgets quickly and with little or no added value.

Exhibit 1 – Reasons why organisations use consultants and temporary staff

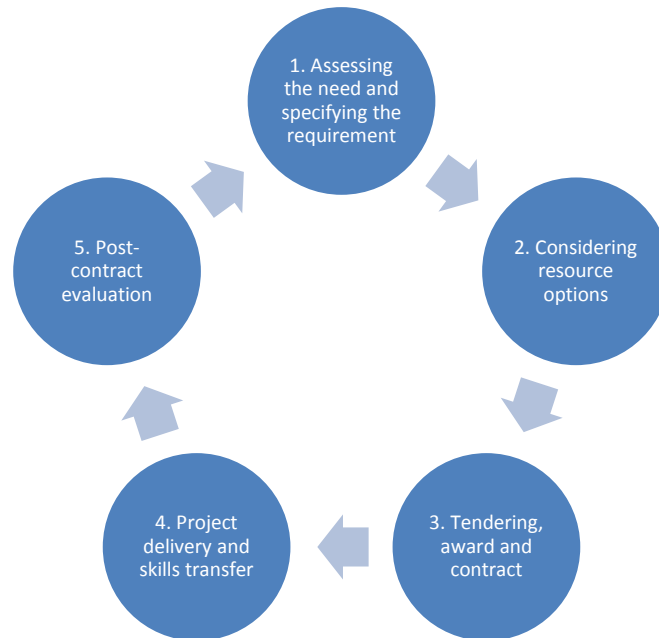


Source: UK National Audit Office reports on use of consultants

2. The use of consultants and temporary staff should be managed alongside the workforce. Workforce planning ensures that the right number of people with the right skills is employed in the right place at the right time to deliver the organisations' short- and long-term objectives. Integrating the use of consultants with workforce planning helps organisations anticipate their workforce needs (numbers and skills) and to better plan and budget for the consultants and temporary staff needed to support the achievement of short- and long-term objectives.

3. Organisations should go through a number of stages when identifying the need for and procuring consultants. Good practice identifies five main stages in procuring consultants, which are set out in Exhibit 2.²

Exhibit 2 – The five main stages in planning for the use and procurement of consultants and temporary staff



Source: UK National Audit Office

GOVERNMENT DOES NOT MONITOR HOW MUCH IT SPENDS ON CONSULTANTS AND TEMPORARY STAFF

4. To ensure that value for money is being achieved, the Government and individual Ministries, Portfolios and Offices and their departments should have access to good management information on their use of consultants and temporary staff. This can help them plan more effectively in setting budgets, identifying procurement needs, managing and evaluating consultants and temporary staff, and ensuring value for money. For example, organisations should monitor and report the following management information in relation to the use of consultants and temporary staff:

- the amount of expenditure and who is spending it;
- the type of services being procured;
- the suppliers providing the services; and
- the quality of services being received.

² We have used the UK National Audit Office’s reports and self-assessment checklist for the use of consultants as a source of good practice.

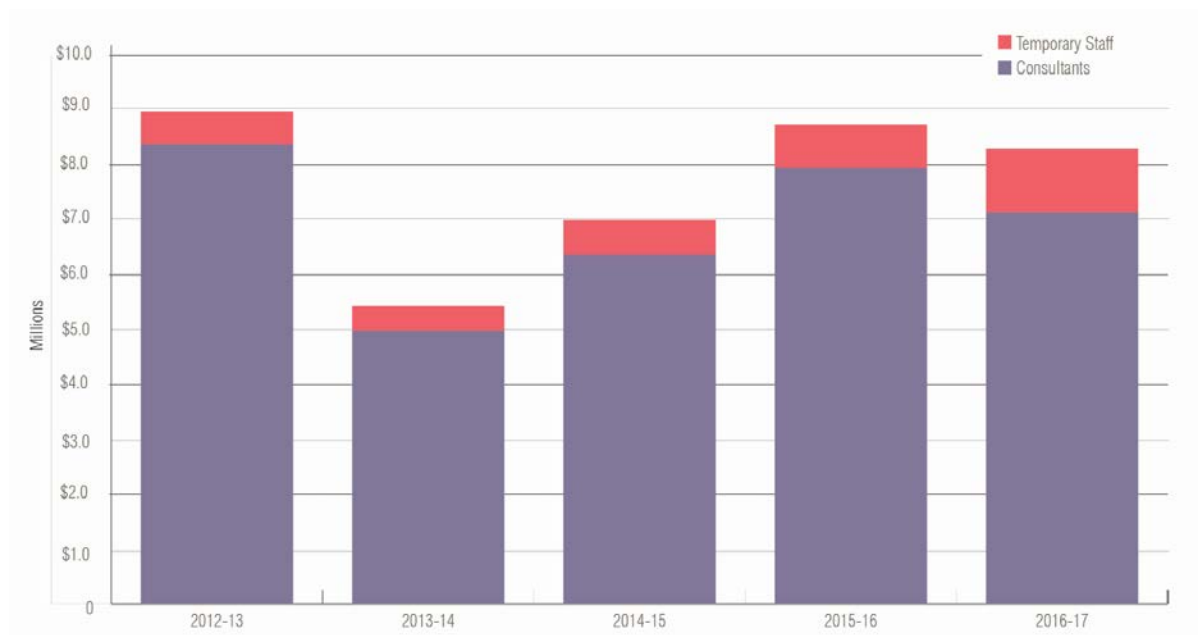
- The Government does not routinely gather or monitor information on its use of consultants and temporary staff.

Recommendation 1: The Government should monitor its spending on consultants and temporary staff to provide management information that will help inform decisions on how to best obtain the skills and knowledge that it needs while obtaining value for money.

GOVERNMENT SPENT \$38.5 MILLION ON CONSULTANTS AND TEMPORARY STAFF IN THE FIVE YEARS TO JUNE 2017

- Our analysis of the Government’s financial information shows that it spent a total of \$38.5 million on consultants and temporary staff over the five years to 30 June 2017. Exhibit 3 shows that spending varied by year, ranging from a high of \$9.0 million in 2012–13 to a low of \$5.6 million in 2013–14. In three of the five years, the Government spent more than \$8 million on consultants and temporary staff.

Exhibit 3 – Government spending on consultants and temporary staff in the five years to 30 June 2017



Source: OAG’s analysis of data drawn from IRIS for 2012–13 to 2016–17 (12 months to 30 June 2017)

ABOUT THE AUDIT

- We carried out this audit alongside a wider performance audit on how well the Government plans and manages its workforce. It is important that the Government plans the use of consultants and temporary staff alongside its workforce to ensure that it has the right people with the right skills in the right place at the right time.

8. For purposes of this audit, we gathered information from the Government's financial system (IRIS) from 1 July 2012 to 30 June 2017 to allow like-for-like comparison across five years.³ We analysed this information to identify how much was being spent on consultants and temporary staff. The findings in this report are based on our analysis of the information.
9. In July 2011, the Office published *Management of Government Procurement*. The report concluded that the Government was mismanaging the procurement of supplies, services and assets, resulting in a lack of efficiency, transparency and fairness as well as costing the Government millions of dollars more than necessary. Since then, the Government has taken a number of actions aimed at improving its procurement processes and decision making before committing to spend money. These include preparing a new *Procurement Law* (which will be brought into force on 1 May 2018), establishing a Central Procurement Office, and developing new procurement manuals. Consultants and temporary staff are usually paid at higher rates than salaried staff, so it is essential that government justify the need for bringing in external support and that it obtains value-for-money when it does so.
10. The objective of the audit was to determine how effectively the Government manages its use of consultants and temporary staff to ensure that it is obtaining value for money. We aimed to answer the following audit questions:
 - How well does the Government plan the use of consultants and temporary staff?
 - How effectively does the Government procure consultants to ensure that it receives value for money?
 - How well does the Government manage consultants?
11. The report is structured into two sections:
 - Government's use of consultants.
 - Government's use of temporary staff.
12. In carrying out this work, we analysed financial data drawn from the Government's financial system and interviewed key officials in nine Ministries and Portfolios. We selected a sample of 23 consultant contracts from eight Ministries and Portfolios, valued at around \$14.8 million (42 per cent of the total spent on consultants).⁴ For each sample, we reviewed a range of documents and assessed them against government policies and procedures and other good practices. In addition, we

³ Financial year 2016-17 was an 18-month period that ended on 31 December 2017. Financial information for 2016-17 used in this report is for the 12 months to 30 June 2017.

⁴ The sample includes three consultant contracts that were paid by the Portfolio of Legal Affairs. However, one contract was actually procured by the Office of the Director of Public Prosecutions.

reviewed Ministries' spending on temporary staff that were employed through recruitment agencies. Our review of temporary staff did not include staff in temporary acting-up positions, secondments or staff appointed without open competition that were in line with the requirements set out in the Personnel Regulations.⁵ Appendix 1 provides more information about the audit, including the audit criteria, approach and methodology. Appendix 2 provides a summary of our assessment of the sample of 23 consultant contracts against good practice criteria.

13. Appendix 3 provides a summary of the recommendations we have made for improvement as a result of this audit and management's response to these recommendations.

⁵ The *Personnel Regulations 2017* section 32 (1) (b-c) state that appointments made under section 41(13) of the *Public Service Management Law (2017 Revision)* shall be made only where (b) the person is to be appointed to a position lasting three months or less and has not previously been appointed to that position or similar positions; and (c) the necessity for the appointment is so exceptionally urgent that complying with the processes required under section 41(2) to (9) of the Law is neither feasible nor practical.

GLOSSARY OF ACRONYMS

CAB	Cabinet Office
DPP	Office of the Director of Public Prosecutions
ICO	Information Commissioner's Office
JUD	Judicial Administration
MCA	Ministry of Community Affairs
MCPI	Ministry of Commerce, Planning & Infrastructure
MDATT	Ministry of District Administration, Tourism & Transport
MEYSAL	Ministry of Education, Youth, Sports, Agriculture & Lands
MFED	Ministry of Finance and Economic Development
MFSHA	Ministry of Financial Services & Home Affairs
MHECH	Ministry of Health, Environment, Culture & Housing
MHRI	Ministry of Human Resources & Immigration
PLA	Portfolio of Legal Affairs
POCS	Portfolio of the Civil Service
OAG	Office of the Auditor General
OCC	Office of the Complaints Commissioner
OTP	Office of the Premier

GOVERNMENT'S USE OF CONSULTANTS

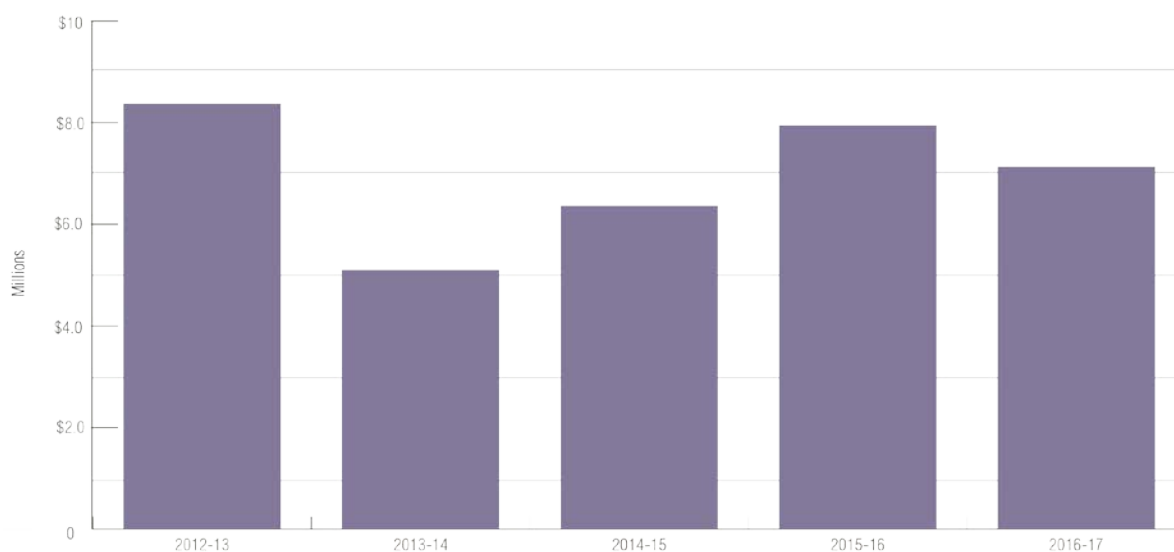
14. As part of our audit, we estimated how much the Government has spent on consultants over the five years to 30 June 2017. We reviewed Ministries' procurement policies, procedures and practices and assessed a sample of 23 consultant contracts against these and other recognised good practices set out in the UK National Audit Office toolkit.⁶ The toolkit contains good practice procedures that government bodies can adopt, and can then perform a self-assessment on how well they have used consultants.

THE GOVERNMENT SPENT \$34.9 MILLION ON CONSULTANTS IN THE FIVE YEARS TO JUNE 2017

ANNUAL SPENDING ON CONSULTANTS FLUCTUATED OVER THE FIVE YEARS

15. Our analysis of the Government's financial information shows that it spent around \$34.9 million on consultants over the five years to 30 June 2017. Exhibit 4 shows that annual spending on consultants was more than \$7 million in three of the five years, although it ranged from almost \$8.4 million in 2012–13 to \$5.0 million in 2013–14.

Exhibit 4 – Government spending on consultants (1 July 2012 to 30 June 2017)



Source: OAG's analysis of data drawn from IRIS for 2012–13 to 2016–17

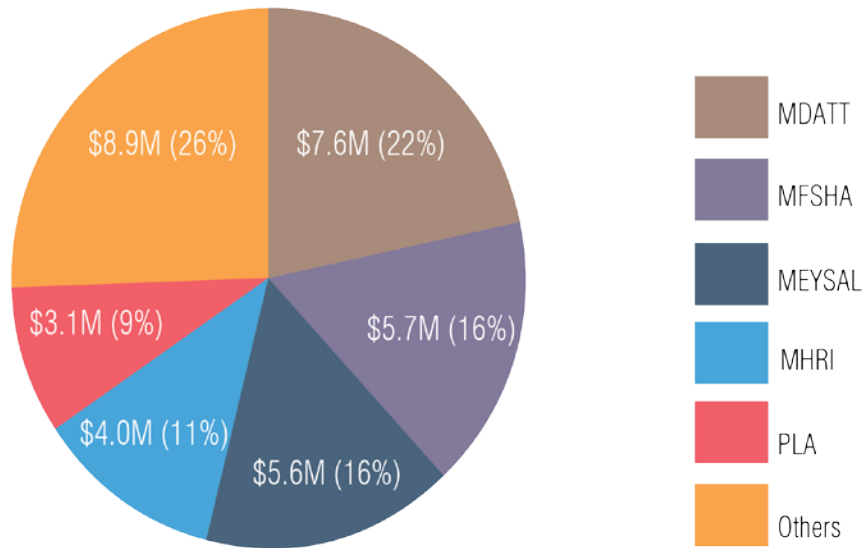
⁶ NAO web-based assessment toolkit for the use of consultants, UK National Audit Office

16. It is important that the Government plans effectively for its use of consultants to ensure that it has sufficient resources to successfully meet its objectives, whether this is delivering business as usual, or individuals projects such as developing infrastructure or reforming public services. The Government uses consultants to provide some services on a continuous basis. This is a reasonable approach so long as the Government has justified that it is better value for money to use consultants than to deliver the services using internal staff or developing in-house skills. For example, the Government has decided that it is better to always engage public relations consultants to ensure that it is keeping up to date with international developments in the financial services industry.
17. In addition to annual spending for ongoing consultancy services the Government uses consultants to deliver one-off projects. For example, to develop business cases and provide financial, legal and technical advice for major capital projects as they are given the go ahead by Cabinet. These one-off or project-specific contracts could result in significant expenditure over a number of years. The Government may therefore have significant demand for consultants in some years and less in others, so it needs to plan effectively for this demand to ensure that sufficient funding is available.

THREE MINISTRIES ACCOUNTED FOR OVER HALF OF TOTAL SPENDING ON CONSULTANTS

18. All of the Government's Ministries, Portfolios and Offices spent money on consultants over the five years we reviewed. Exhibit 5 shows that three Ministries spent 54 per cent of the \$34.9 million—the Ministry of District Administration, Tourism and Transport (MDATT) spent \$7.6 million (22 per cent), the Ministry of Financial Services and Home Affairs (MFSHA) spent \$5.7 million (16 per cent) and the Ministry of Education, Youth, Sports, Agriculture and Lands (MEYSAL) spent \$5.6 million (16 per cent).

Exhibit 5 – Total spending on consultants by Ministries, Portfolios and Offices over the five years to 30 June 2017

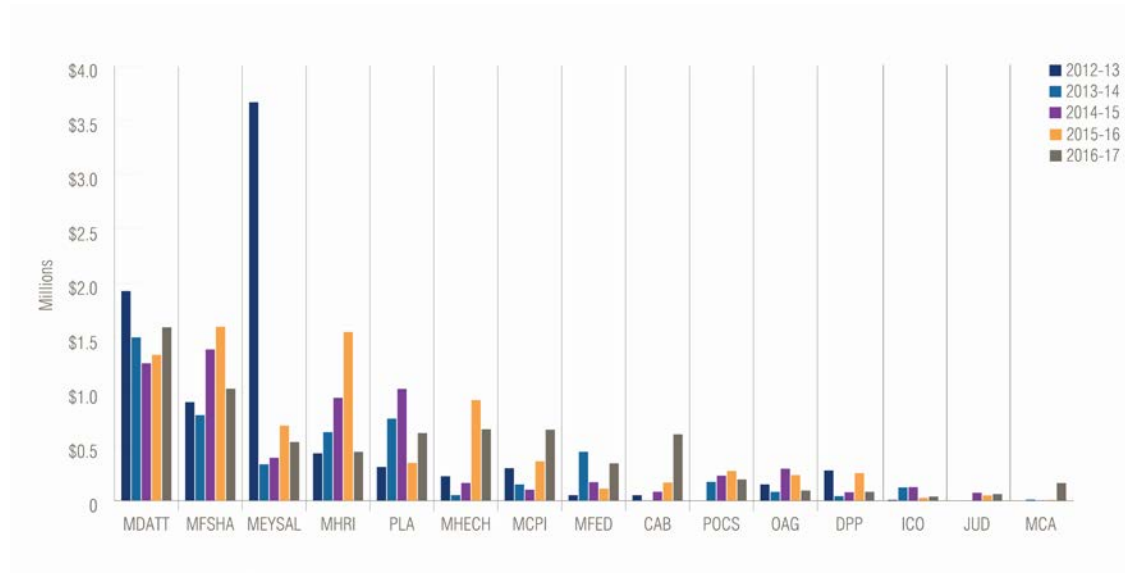


Note: PLA expenditure includes some DPP contracts; 'Others' includes 12 Ministries, Portfolios and Offices including the Office of the Auditor General.

Source: OAG's analysis of data drawn from IRIS for 2012–13 to 2016–17;

19. Annual spending by Ministries, Portfolios and Offices has varied significantly across the years. Exhibit 6 shows that MDATT consistently spent over \$1.2 million a year, and around \$1.9 million in 2012–13. It also shows that MFSHA spent over \$1 million a year in the three years 2014–15 to 2016–17; and MEYSAL spent over \$3.7 million in 2012–13, although this significantly decreased in subsequent years.

Exhibit 6 – Consultancy spending by Ministry, Portfolio and Office by year (2012–13 to 2016–17)



Note: PLA expenditure includes some contracts paid for on behalf of the DPP.

Source: OAG’s analysis of data drawn from IRIS for 2012–13 to 2016–17

FIVE CONSULTANCY SERVICES ACCOUNT FOR 80 PER CENT OF THE TOTAL SPENT

20. The Government has used consultants for a wide range of services over the five years. Exhibit 7 shows that the top five services procured were legal services, IT consulting and implementation, advertising and promotion, major capital projects, and public relations. Overall, these five services accounted for \$27.9 million, or 80 per cent of total spending on consultants.

Exhibit 7 – The top five consultancy services bought in the five years to 30 June 2017

Type of Service	Five-year Spend	Percentage of Total Expenditure
Legal services	\$8,230,277	23%
IT consulting and implementation	\$6,235,578	18%
Advertising and promotion	\$6,207,512	18%
Major capital projects	\$4,398,620	13%
Public relations	\$2,802,776	8%
Total	\$27,874,763	80%

Source: OAG’s analysis of data drawn from IRIS for 2012–13 to 2016–17

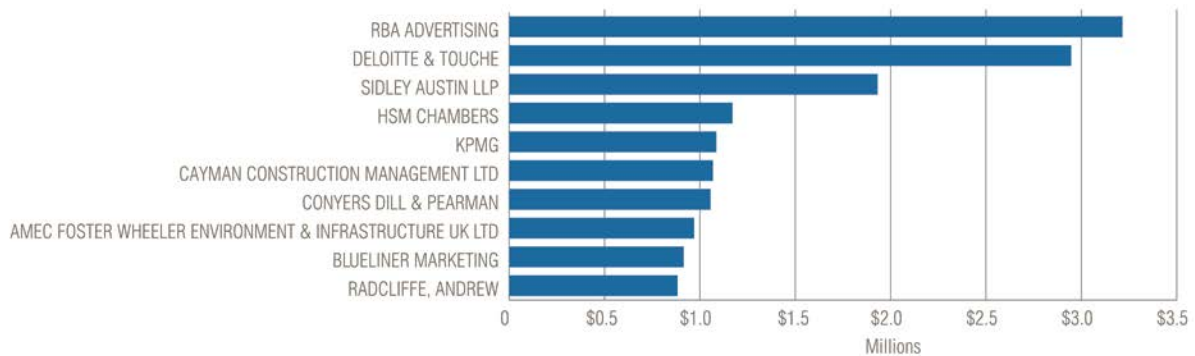
21. Spending on these five services varied across government. All ministries used consultants to provide legal services, with the Portfolio of Legal Affairs (PLA) the highest spender at around \$2.7 million (33 per cent of the total expenditure). MDATT almost solely accounted for spending on advertising and promotion over the five years, at almost \$6.1 million (98 per cent of total expenditure). Most of this spending was by the Department of Tourism on advertising agencies and placement of advertisements to promote the Cayman Islands as a tourist destination. MFSHA accounted for 92 per cent of total expenditure on public relations consultancy.
22. Most of the other types of consultancy service were used across government. Consultancy services for major capital projects included development of business cases and technical advice for a range of projects, as required by the FFR, although most of the \$4.4 million was spent by the Ministry of Health (MOH) on the Integrated Solid Waste Management System and by MEYSAL on schools projects. Others used this type of consultancy for a range of projects including the cruise berthing terminal, the long-term residential mental health facility and road projects. The MFSHA, MHRI and MDATT spent most on IT consultancy and implementation for new IT systems.

THE GOVERNMENT SPENT MORE THAN \$8.1 MILLION WITH THREE SUPPLIERS

23. Over five years the Government procured consultancy services from more than 100 suppliers.⁷ These range from small, sole practitioners to large international companies. Exhibit 8 shows the top ten suppliers that account for 44 per cent of the total spent over the five years. The Government spent over \$8.1 million (23 per cent) with the top three suppliers.

⁷ For the purposes of this audit we analysed financial information for consultants where spending was more than \$50,000 over five years. This analysis identified 100 suppliers of consultancy services.

Exhibit 8 – The top ten suppliers of consultancy services by value of spending (five years to 30 June 2017)



Source: OAG's analysis of data drawn from IRIS for 2012–13 to 2016–17

24. Some of these suppliers are used by only one or two Ministries. For example, MDATT is the sole government user of consultancy services from RBA Advertising, Blueliner Marketing, Fuseideas LLC and Network Representations. However, some suppliers such as Deloitte & Touche and KPMG, are used across government to provide a range of services, such as writing business cases for major capital projects and providing IT consulting and implementation.

THE GOVERNMENT DOES NOT GENERALLY PLAN FOR OR PROJECT ITS NEED FOR CONSULTANTS

25. Organisations should have a strategy for their use of consultants that is clearly linked to workforce planning and to plans for recruiting and training of staff. This allows organisations to consider whether they have sufficient skills and experience internally to achieve the business objectives and priorities over the medium and longer terms. It may be more cost-effective to use consultants for one-off projects, bringing in specialist expertise that is needed only in the short term, where the needed skills command a premium rate and are not affordable on a permanent basis, or where organisations may struggle to attract the right people. However, if the same skills are being purchased over and over again and a policy decision or business case has not been made to justify buying in services or expertise it may be more cost-effective to recruit or train staff to carry out this work over the longer term.

26. In November 2011, the Government and the UK Government entered into an agreement—the Framework for Fiscal Responsibility (FFR)—that introduced a range of measures to contain spending and improve governance and management arrangements across the public sector. The FFR was incorporated in the *Public Management and Finance Law* (PMFL) in November 2012. It sets out the following principles:

- Effective medium-term planning;
- Putting value for money considerations into decision making;
- Effective management of risk; and

- Delivering improved accountability.

27. The FFR states that the Government should undertake five key stages when planning, developing and executing a project, including appraisal and business case; procurement; contract management; delivery; and evaluation.

28. We found that the Government plans ahead for using consultants to support major capital projects. In line with the FFR requirements, consultants are generally used to identify and appraise options, prepare business cases at key project stages, and provide expert technical, financial and legal advice as necessary. Our report *Major Capital Projects Follow-Up* in October 2017 noted that a range of consultants had been used to support various major capital projects, such as the ORIA Terminal Redevelopment project.⁸

29. We found that for most other types of work, the Government is not routinely projecting or planning when it may need to bring in consultants to help support its activities. The need for consultants should be considered in the longer term and be clearly linked to workforce planning. This would help ensure that the Government pro-actively identifies its needs and any skills and experience gaps it has. It can then make decisions on whether to fill these gaps by training existing staff or bringing in consultants. Taking a longer-term approach would also help with budgeting, whether for staff costs or consultants, which are generally more expensive. We found limited evidence to suggest that Ministries were planning for the use of consultants as part of the budgeting process.

Recommendation 2: The Government should better plan for its need for consultants and integrate this planning with its workforce planning and budgeting processes.

MOST MINISTRIES HAVE PROCUREMENT MANUALS IN PLACE

30. In our 2011 report *Management of Government Procurement* we recommended that the Government develop policies, procedures and practices for procurement of supplies, services and assets that would ensure clear direction to officials. Since then, various Government ministries have introduced procurement policies and procedures manuals, which further implement the broad rules within the PMFL and the Financial Regulations.

31. The Financial Regulations (2013 Revision) state that:

- any contract for the purchase of supplies, services and assets over \$50,000 should be subject to public tender; and

⁸ *Major Capital Projects Follow Up*, Office of the Auditor General, October 2017

- for the purchase of supplies, services and assets over \$20,000 that, in the chief officer's opinion, can be provided by only one supplier, they may be procured from a single source, subject to the overriding requirement to ensure value for money and appropriate evaluation of the supplier proposal.⁹

32. We found that all of the eight Ministries and Portfolios we reviewed, except the Portfolio of Legal Affairs (PLA), had procurement policies and procedure manuals.¹⁰ As exhibits 5 and 6 showed, most of these entities procure consultancy services each year. It is therefore important that they all have procurement manuals in place that set out the policies and procedures to be adopted.

33. A manual setting out procurement policies and procedures was originally developed in January 2013 by a working group of staff within the Ministry of Home Affairs and the Ministry of Health, and the Chair of the Central Tenders Committee. The manual was subsequently adopted by five ministries during 2014. It is currently used by the Ministry of Human Resources and Immigration (MHRI); the Ministry of Financial Services and Home Affairs (MFSHA); the Ministry of Health, Environment, Culture and Housing (MHECH); the Ministry of Commerce, Planning and Infrastructure (MCPI); and the Ministry of Finance and Economic Development (MFED). This is a welcome development as it provides a level of uniformity in decision-making and practices across government.

34. The procurement manuals set out a number of requirements, including the following:

- All procurement must go through public tender and contracts awarded through effective competition.
- All procurements over \$10,000 must have a business case. The decision to proceed without a business case should be documented and approved.
- The thresholds for procurement are as follows:
 - no quotations are necessary for purchases under \$1,500;
 - three quotations must be obtained for procurements between \$1,500 and \$10,000;
 - three quotations and a written specification are required for procurements between \$10,000 and \$50,000; and
 - all procurements above \$50,000 should be subject to public tender (i.e. open competition). The evaluation of tenders should be carried out by either a Departmental Tenders Committee (when the expected value is between \$50,000 and \$250,000) or the Central Tenders Committee (when the estimated value is expected to be above \$250,000).

⁹ Financial Regulations (2013 Revision) Part IX - Procurement

¹⁰ The eight Ministries and Portfolios included in the audit are the Ministry of Community Affairs (MCA); Ministry of Commerce, Planning and Infrastructure (MCPI); Ministry of District Administration, Tourism and Transport (MDATT); Ministry of Finance and Economic Development (MFED); Ministry of Financial Services and Home Affairs (MFSHA); Ministry of Health, Environment, Culture and Housing (MHECH); Ministry of Human Resources and Immigration (MHRI); Portfolio of the Civil Service (POCS); and Portfolio of Legal Affairs (PLA)

- Contract variations of more than five per cent for all approved contracts of more than \$10,000 need to be approved.
- Pre-payments should not be made unless unavoidable.

35. The procurement manuals are more onerous than the Financial Regulations, setting more detailed thresholds for the different types of procurement. Although the Ministry of District Administration, Tourism and Transport (MDATT) and Ministry of Community Affairs (MCA) have procurement manuals they do not include the specific requirements outlined above.

36. In addition to general policies and procedures for procurement, the manuals provide additional guidance on procuring consultancy services. This guidance states that staff should first consider whether in-house capacity or skills are available prior to considering external options; and that consultants should be engaged for a limited period only and should carry out specific tasks that involve expert skills or capabilities not normally available from in-house resources. The guidance also specifies the following six broad categories of consultancy services:

- Advisory and review services, i.e. the review and provision of advice on particular projects or problems.¹¹
- Pre-investment or feasibility studies, i.e. studies that normally precede decisions to go (or not to go) forward with specific projects.
- Design services, i.e. pre-design phase to determine the general size and scope of the project; basic design phase, which includes the preparation of detailed plans, designs cost estimates and tender documents; and support services to assist and advise on the tender evaluation and contract award processes.
- Construction supervision services, e.g. inspection and verification of work.
- Management and related services such as project management, information and communication technology services, and general management consultancy.
- Other technical services or special studies, which may include staff training programmes or provision of staff to carry out certain function or to train staff.

37. The *Procurement Law* is due to come into force on 1 May 2018 and the *Procurement Regulations* on 2 May 2018. The Government has told us that the Central Procurement Office will be issuing new procurement policies and templates that comply with the new legislative requirements for use across government.

¹¹ MFSHA use some consultants to provide advisory and review services (e.g. public relations) that are open-ended rather than time-limited, flexible to allow change in scope as required, and set out general rather than specific success measures.

Recommendation 3: The Portfolio of Legal Affairs should develop a procurement manual and implement it as soon as possible.

Recommendation 4: The Ministry of District Administration, Tourism & Transport (MDATT) and the Ministry of Community Affairs (MCA) should update their procurement policies and procedures, including the need for business cases and providing additional guidance on decision-making criteria for the use of consultants.

FEW BUSINESS CASES WERE PREPARED TO JUSTIFY THE NEED FOR CONSULTANTS

38. It is generally considered good practice to prepare business cases for review and approval by senior management to justify the need for consultants (including financial justification). As outlined in paragraphs 34-35, the procurement manuals of five ministries require such business cases to be prepared where the value of services is expected to exceed \$10,000. Exhibit 9 summarises the range of factors that the manuals state should be included in the business cases for projects.

Exhibit 9 – Factors to be included in business cases to justify the need for consultants



Source: Procurement manuals of MHRI, MFSHA, MHECH, MCPI and MFED.

39. Of the 23 consultant contracts we reviewed, only six (26 per cent) had business cases or other documents to support the need for consultants. Exhibit 10 provides information by ministry on the numbers of business cases in our sample of 23 contracts.

Exhibit 10 – Ministries that prepared business cases to justify consultants

Ministry	Total Contracts Examined	Contracts for which business cases or justification existed
MHRI*	4	-
PLA**	3	-
MFED*	1	1
MDATT	6	-
MCPI*	1	1
MHECH*	2	2
MCA	1	1
MFSHA*	5	1
Total	23	6

Notes: *The five ministries with procurement policies and procedures that specify the requirement for a business case. **PLA includes one contract on behalf of DPP.

Source: OAG analysis

40. Thirteen of the consultant contracts we reviewed were from the five ministries whose procurement policies and procedures specify a requirement for a business case to justify the need for consultants. Of these 13 contracts, the appointments of two consultants (one MHRI and one MFSHA) were as a result of emergency situations and the business case step may have been missed as a result of time pressures. Of the remaining 11 contracts, only six had business cases or justifications prepared and one of those was developed after the procurement had taken place.
41. Seven of the 23 consultants were engaged by MDATT and MCA. Both of these ministries have procurement policies and procedures, but they do not specify that business cases are required to justify the need for consultants. The Portfolio of Legal Affairs (PLA) engaged three of the contracts we reviewed but does not have a procurement policies and procedures manual. In total, the Government spent around \$12.2 million on the 17 consultants' contracts that were not justified by a business case.
42. Our review of the six business cases that were prepared found that they were not always prepared in line with guidance, which means that they did not always adequately justify the need to bring in consultants. Exhibit 11 summarises our analysis of the five business cases against the guidance set out in the ministries' procurement manuals.

Exhibit 11 – Business cases prepared in line with procurement manual guidance

	MFED	MCPI	MHECH	MHECH	MCA	MFSHA
Needs Analysis/Business Case	Business Case	Business Case	Business Case	Business Case	Needs Analysis	Needs Analysis
Clearly defined needs that warrant a project to be taken	✓	✓	✓	✓	✓	✓
The purpose and objectives	✓	✓	✓	✓	✓	✓
The scope and deliverables	✓	✓	✓	✓	✓	✓
The possible method to be followed (in-house or external)	✓	✓	✓	✓	X	X
The benefits to be obtained	✓	✓	✓	✓	X	✓
The risk associated	X	X	✓	✓	X	✓
The total cost expected	✓	✓	✓	✓	X	✓
Cost management procedures	X	✓	✓	X	X	X
Future cost saving	X	X	X	X	X	X
The resources needed to complete	✓	✓	✓	✓	X	✓
Skills transfer considerations	X	X	✓	X	X	X
The contracting authority	X	✓	✓	✓	✓	✓
Identification of individuals to manage the project ¹²	X	✓	X	✓	X	X
Any existing framework agreements	X	X	X	X	X	X
The type of tendering procedure	✓	X	✓	X	X	X
Cost benefit analysis ¹³	X	X	✓	✓	X	✓

Key: ✓ - Criteria satisfactorily addressed; X – Criteria not addressed

Source: OAG analysis

43. All six business cases (or needs analyses) defined the need, the purpose and objectives, and the scope and deliverables. However, our review of the business cases also identified a number of gaps:

- Three did not include identified risks or an assessment of risk. Guidelines suggest that risks assessed should be project risk, process risk, relationship risk and termination risk.
- Three did not include a cost benefit analysis.
- None identified future costs savings anticipated from the work.
- Most (5 of 6) did not identify skills deficits within internal resources or mention that skills transfer be considered. Good practice specifies that skills transfer is a part-justification for hiring external support and must be identified in the business case and specified as an award criterion in the Request for Tenders.

¹² This is to set out the minimum commitment of human resource needed from the contracting authority if the project is to proceed, in order to ensure that the level of commitment required is clearly understood.

¹³ The cost benefit analysis must identify costs on as wide a basis as possible, be maintained and reassessed throughout the project, and be used to set targets and plans to achieve the identified benefits. It must be annexed to the business case and lodged in the project file.

- Four did not identify the project managers that would be responsible for the project or estimate the amount of personnel time (internal or consultants) to complete the project.¹⁴
- Four did not identify the proposed procurement route to be used or the rationale for that route.

Recommendation 5: The Government should ensure that business cases are prepared to justify the need for consultants.

THE MAJORITY OF CONSULTANTS REVIEWED WERE APPOINTED THROUGH OPEN COMPETITION BUT SOME REQUESTS FOR PROPOSALS WERE NOT SUFFICIENTLY CLEAR

44. It is generally good practice that when a need for a consultant has been identified, the contracts are put out to tender, allowing a broad range of firms and individuals to apply. This not only enhances and promotes the availability of a wider range of skills and ideas but also enables better and more informed negotiations with bidders, making government a more intelligent client.
45. The Government’s regulations and guidance set out the thresholds and requirements for open competition and restricted tendering (e.g. three quotations). They also specify three exemptions to the general principle of open competition: single source procurement; states of emergency; and exceptional circumstances. Generally, requests for proposal (RFP) or invitations to tender (ITT) are required for the procurement of all goods and services over \$10,000. The Central Procurement Office (CPO) developed a standard template for RFPs for general use and issued this in late 2016.
46. The majority (15 of 23) of the consultant contracts we examined had issued a RFP for open competition. We reviewed all of the RFPs against the guidance issued by CPO and identified that five of them that were not in line with this. We would not necessarily expect RFPs that were developed before the template was issued to meet all of the requirements. However, two of the RFPs were prepared in 2017 after the CPO guidance was issued. We identified the following areas for improvement in RFPs :
- The need for the project that drives the deliverables was not clearly stated.
 - The timelines of the project were not clearly stated.¹⁵
 - The evaluation criteria for the bids and the scoring method to be used were not stated.¹⁶

¹⁴ This is to set out the minimum commitment in human resource terms needed from the contracting authority if the project is to proceed to ensure that the level of commitment required is clearly understood.

¹⁵ This should include the expected dates of submission of bids, rectification period, time frame for adjudication of bids, the expected contract negotiating period and the anticipated execution of agreement with the winning bidder.

¹⁶ This should set out the number of points to be awarded to bidders for the different evaluation criteria such as pricing, qualifications of the engaging team, prior experience with the government etc.

- The methods of communication with bidders were not stipulated—for example, the contact person for the procuring team and the methods of informing the winning bidder.
47. The RFP lays the foundation for the terms of the contract and should provide a good description of the buyer’s needs and deliverables. Weaknesses in RFPs may affect the quality of the tenders received, the contract negotiations, and the quality of the services or output delivered. They may also limit the Government’s ability to manage and evaluate the consultant’s performance.
48. Eight consultants were appointed through single source procurement. In total, the Government spent \$4.7 million on these consultants. Our review identified the following:
- One IT-related consultant contract, appointed by the MHRI, was assessed as an exceptional circumstance that required an urgent solution. This meant that there was insufficient time available to go through proper procurement procedures. This is allowable under the regulations and guidance.
 - Two consultants were appointed under single source procurement with the approval of the Chief Officer. One financial services consultant was appointed by MFED under single source procurement with a contract value of \$48,000; and one consultant for policy advice was appointed by the MFSHA under single source procurement with a contract value of \$117,000. The Regulations state that single source procurement for contract values over \$20,000 is allowable if justified by the Chief Officer. Justification and approval for single source procurement was documented for both of these consultants, which is in line with the Regulations.
 - Three legal services consultants were appointed by the PLA, which does not have procurement policies and procedures in place. The PLA generally engages legal counsel via email agreements and telephone conversations, as and when they are needed, and rates are agreed when contracts are signed. The PLA spent \$1.8 million on these three consultants over five years, with spending ranging from \$363,000 to \$925,000.
 - A public relations consultant initially appointed by MFSHA (formerly the Ministry of Finance, Tourism and Development) and later transferred to the MHRI under single source procurement was provided with a contract valued at \$144,000 (\$12,000 a month for 12 months). The contract was later extended by a further three years, although terminated after 18 months. The Government paid a total of \$528,568 to the consultant for services.
 - A public relations consultant appointed by MFSHA was approved by the Cabinet for single source procurement. This was a continuation of previous long-standing contracts held with the Ministry of Finance. The Government had continuously contracted with this consultant over a period of three decades. The contract did not specify a price and was based on daily rates. Over the four years to 30 June 2016, the Government spent over \$1.9 million on this contract. MFSHA terminated the contract in 2016.

49. Of these eight consultant contracts, we can therefore conclude that single source procurement was appropriate for three of them. In our view, the remaining five should not have been procured from a single source without some form of competition, such as open competition or restricted competition.

Recommendation 6: The Government should ensure that Requests for Proposals or Invitations to Tender are prepared for all open procurements and that they are in line with policies and procedures.

Recommendation 7: The Government should ensure that there is sufficient justification for single source procurements and that it is properly documented and approved.

GOVERNMENT NEEDS TO WIDEN ITS APPROACHES TO PROCURING AND CONTRACTING WITH CONSULTANTS

50. Proper procurement takes time to do well. We appreciate that there may be times when the Government needs access to consultancy services quickly, but this should be the exception rather than the norm. A range of procurement and contracting methods are often used by organisations when they know that they will need specialist skills and expertise but cannot predict with any certainty when this might be. These include the following:

- **Framework agreements with suppliers.** Using frameworks generally results in lower prices and reduces procurement costs for suppliers and customers. Using frameworks that have been set up by others can reduce set up and contract management costs.
- **Call-off contracts.** Using this type of contract means that buyers can obtain services as and when they require them, at an agreed price and under terms and conditions specified in the contract. They are generally negotiated after open or restricted competition, and they provide an arrangement that specifies a minimum and maximum amount of work that may be provided under the contract. These can be beneficial when organisations know that they will need certain services but cannot accurately predict when the need will arise; and they provide the buyer with quick access to services at a pre-determined price.
- **Multi-year contracts.** Using this type of contract can guarantee the provision of supplies or services over a number of years.

51. Our review of current and proposed legislation shows that these methods of procurement and contracting are allowable under current arrangements. The procurement manuals that exist for five ministries also refer to framework agreements as an approach that may be used. However, we found no evidence that the Government has considered using any of these methods for engaging or contracting with consultants. We understand that the Central Procurement Office (CPO) will be issuing new policy and guidance, which will include these forms of procurement, to support the new *Procurement Law* and Regulations when they come into force in May 2018.

52. Using framework agreements or call-off contracts may be particularly beneficial for the Portfolio of Legal Affairs (PLA) when it knows that it will need specialist legal expertise but cannot accurately predict when this might happen. Developing such contracts would ensure that the PLA has access to the services and expertise it needs at short notice and at a predetermined price, while fully complying with procurement legislation and other good practice requirements and making it more likely that they will achieve best value.

Recommendation 8: The Government should extend its procurement guidance to include a wide range of procurement and contracting methods to ensure that it obtains value for money in its appointment of consultants.

Recommendation 9: The Portfolio of Legal Affairs should develop framework agreements or call-off contracts for the provision of legal services.

THERE ARE NO STANDARD TERMS AND CONDITIONS FOR THE USE OF CONSULTANTS

53. In our 2011 report we recommended that the Government give priority to the development and mandatory use of standard documents in order to increase the efficiency and effectiveness of procurement.

54. The Government has developed guidance and standard templates for the preparation of business cases and RFPs. However, it does not have standard terms and conditions for contracts. As a result, the Government has generally accepted the consultants' terms and conditions, and so existing contracts have a range of different terms and conditions. This approach poses risks, as agreed terms and conditions of contracts may not be in the best interest of the Government, exposing it to more risk than is necessary or providing poor value for money.

55. As part of our audit we assessed the consultant contracts against good practice. Exhibit 12 summarises the results of this analysis and identifies a number of issues, including the following:

- One contract specified payment terms that required the Ministry to make the bulk of the payment up front prior to the contract outputs being delivered and accepted.
- Some contracts failed to specify success measures for the assignment or project, making it difficult to assess whether the consultant delivered value for money.
- Nine contracts did not include any clauses that set out any consequences to the supplier for late or non-delivery of the main output.
- Three contracts did not clearly set out termination clauses.

Exhibit 12 – Quality of consultant contracts

Ministry	Type of Consultancy	Payment terms reasonable	Clearly defined consequences to the client for late or non-delivery - incentive for completion	Quality of goods and services and success measures	Clearly defined termination clauses
MHRI	IT consulting and implementation	✓	✓	✓	✓
MHRI	IT consulting and implementation	✓	✓	✓	✓
MHRI	General Consulting - Business processes & policy review	✓	✓	✓	✓
MHRI	General Consulting - Business processes & policy review	✓	✓	✓	✓
MHRI & MFSHA	Public Relations	✓	✓	✓	✓
PLA (DPP)	Legal Services	✓	X	X	✓
MFED	General Consulting - Financial Services	✓	X	✓	✓
MDATT	Advertising and promotion	✓	✓	✓	✓
MDATT	General Consulting - Business processes & policy review	✓	✓	✓	✓
MDATT	General Consulting - Data Collection	✓	✓	✓	✓
MDATT	Advertising and promotion	✓	✓	✓	✓
MDATT	Major Capital Projects	✓	✓	✓	✓
MDATT	Advertising and promotion	✓	✓	✓	✓
MCPI	IT consulting and implementation	✓	✓	✓	✓
MHECH	Major Capital Projects	✓	X	✓	✓
MHECH	Major Capital Projects	✓	X	✓	✓
MCA	General consultancy – Business processes & policy review	X	X	✓	✓
MFSHA	General Consultancy - IT Infrastructure solutions	✓	✓	✓	✓
MFSHA	Public Relations	✓	✓	✓	✓
MFSHA	Public Relations	✓	X	✓	✓
MFSHA	General Consultancy - Policy review	✓	X	✓	X

Key: ✓ - Criteria satisfactorily addressed; X - Criteria not addressed

Note: PLA did not provide evidence of contract for two consultants

Source: OAG analysis

56. Only one (of 21) contract included a specific requirement for skills transfer. Depending on the nature of consultancy services being provided, skills transfer may not be appropriate or needed. For example, when developing business cases for major capital projects or public relations services for the financial services industry. However, as identified earlier we found that the need for skills transfer was not always adequately considered in business cases.

Recommendation 10: The Government should develop standard terms and conditions for consultant contracts that ensure that its interests are protected and it is able to achieve value for money.

MOST CONSULTANTS ARE PAID A FIXED PRICE FOR THE SERVICES DELIVERED

57. It is important to consider a range of payment mechanisms when engaging consultants—for example, fixed price or daily rate pricing. Organisations need to consider what is most appropriate to allow cost control and management and to ensure value for money, which may be affected by the price or fees agreed with the consultant.
58. From our review of 21 consultant contracts (Portfolio of Legal Affairs did not provide us with two of its contracts), we identified 14 that were fixed price contracts. Fixed price contracts generally reduce the risk of cost escalation during the project. Another four contracts were fixed price with some form of variation. These included:
- One contract based on fixed price plus a fee for any excess hours charged;
 - One two-part contract—one part fixed price and the other based on hourly rate; and
 - Two contracts based on a fixed monthly fee.
59. The other three contracts were priced using hourly rates. Of these, one contract had a retainer in addition to the agreed hourly rate. Our analysis of hourly rates paid for these contracts shows that the Government paid hourly rates of \$71 to \$902.¹⁷ These rates varied by service, supplier and seniority of consultancy staff.

LEGAL VETTING OF CONTRACTS IS PATCHY

60. In 2011 we recommended that the Government develop guidance setting out the circumstances when an entity should seek legal advice or assistance in preparing contracts. This has not happened.
61. There is currently no requirement for contracts to be reviewed by legal experts (e.g., lawyers in the Legal Department), and there is no guidance to help entities identify if a contract needs to go for legal review. We were told that decisions about which contracts should be sent for legal vetting is at the Chief Officers' discretion; they take into account the value and potential risks, but there is no guidance to inform these decisions. This means there is a risk of an inconsistent approach across government on how decisions are made as to which contracts to send for legal review.
62. From our review we identified that seven of the 23 contracts had been reviewed by the Legal Department at the request of the responsible Ministry or department. It is not clear if any of the other contracts were subject to legal review by lawyers outside government. All Crown Counsel within the Solicitor General's Office have been trained in contract law and undertook intense

¹⁷ Daily rates contracted in USD were converted to KYD using the exchange rate of 0.82. Daily contracted rates at other foreign currencies were translated at the most current exchange rates available online.

refresher training in 2015 led by a UK legal practitioner. However, they operate as general practitioners covering a wide range of legal matters. While there is no checklist used for legal reviews, and their completion relies on the experience of individual lawyers, contract reviews done by the Legal Department cover areas such as (but not limited to) liability and limitation of liability, warranties and representations, risks to the Government and how they should be managed or shared between parties, performance securities, force majeure, and remedies. However, the scope of review will often vary according to the nature of the contract. Despite these checks, and the fact that some contracts may not be reviewed at all if no request is made for legal review, there is a risk that the legal reviews of contracts are being done inconsistently, which may lead to weak contracts being signed by the Government.

Recommendation 11: The Government should develop guidance to help identify which contracts should be reviewed by lawyers or be subject to legal advice prior to signing.

Recommendation 12: The Government should ensure that the Legal Department has sufficient capacity and tools, such as standard checklists, to carry out the legal review of contracts consistently.

PROCUREMENT PRACTICES COULD BE FURTHER IMPROVED

THE GOVERNMENT DOES NOT HAVE CLEAR POLICIES AND PROCEDURES FOR EXTENDING CONTRACTS

63. It is generally considered good practice to contract with consultants for defined, short- to medium-term periods. Decisions to extend contracts should not be taken lightly, as repeatedly renewing consultant contracts can severely compromise their value for money. Any decisions to extend the work of consultants should be as carefully scrutinised as the initial procurement.
64. Our review noted that the procurement policies and manuals in place do not specifically set out the required procedures and processes that should be followed when contracts are to be extended. MFSHA generally appoints public relations consultants on open-ended rather than fixed-term contracts (we highlight two of these contracts in paragraph 48 that were appointed using single source procurement). In addition to those contracts, we identified three contracts that were extended at least once by the engaging ministry. The justification or procedure used for extending the contracts was not clearly documented. Of these three contracts:
 - One consultant contract for financial services, originally appointed under single source procurement by MFED, had been extended and the scope of work changed significantly from the original contract. The contract was extended on three separate occasions: by five months; a further two months; and a final two months. The final cost was \$120,000 against an original contract value of \$48,000.

- The remaining two MDATT contracts relate to advertising and promotion. One contract was extended four times between 2011 and 2017 and a new contract was signed on five occasions. The other advertising contract was extended at least once and a new contract was signed at least twice between 2011 and 2017.

Recommendation 13: The Government should develop clear policies and procedures for extending contracts to ensure that it can demonstrate value for money.

PROCUREMENT SPECIALISTS ARE RARELY USED

65. Procurement is a recognised specialty in many jurisdictions, and it is generally good practice for procurement specialists to be involved in procurement decisions. They can add value to the process by providing supplier and market information; providing independent challenge; having access to knowledge about previous departmental consultancy experience and management information; and having knowledge of processes and procedures. In our 2011 report we recommended that the Government develop the expertise necessary for an effective procurement function both centrally and in the entities.
66. Since then, the Government has established the Central Procurement Office (CPO) and appointed a Director of Procurement. The CPO has only two staff (including the Director) and therefore lacks sufficient resources to support all procurement across government.
67. Ministries do not have designated procurement teams or procurement specialists or champions. This means that staff who procure consultants may not have the relevant procurement skills and experience. This presents risks that staff may miss crucial steps in the procurement process or are not sufficiently skilled or experienced in reviewing tenders or contracts, which may lead to poor appointments or contract terms that do not provide value for money to the Government.
68. The Government may want to consider additional ways to enhance the role of the CPO to provide a functional leadership role across government and strengthen procurement support and skills across government. There are various options, which are not mutually exclusive, including the following:
- Expanding the role and size of the CPO to ensure that it has sufficient resources to provide support across government for all procurement.
 - Identifying and training some existing staff within Ministries and departments to be procurement specialists or champions as part of their roles and responsibilities. These staff could then carry out, or provide advice on, all procurement within their area.
 - Developing a community of interest for all procurement champions and the CPO, where they communicate regularly, share information and provide cross-government support to other departments and ministries to avoid any potential conflicts of interest.

Recommendation 14: The Government should continue to develop its procurement capacity and expertise to ensure that it has sufficient resources across government to support effective procurement.

THE GOVERNMENT IS NOT CONSISTENTLY MANAGING OR EVALUATING CONSULTANTS' PERFORMANCE

69. It is important to the success of a project that consultants fulfill their commitments. A three-fold approach is needed to help achieve this:

- a good relationship between the entity and the consultant;
- effective contract management during the assignment; and
- post-contract evaluations. Such reviews provide valuable information that can be used to inform the procurement and management of consultants in the future.

70. Contract management and evaluation should cover three areas: the deliverables and outcomes; contractor performance; and the internal contract management team. When done effectively they can provide a range of benefits, including confirming whether the anticipated benefits were achieved; helping to identify improvements needed in procurement processes, such as more detailed specifications, or in formulating future contracts; creating a final record of the contractor's performance; and assessing and improving the performance of the internal contract management team.

71. The Government does not have guidance on how to evaluate and manage consultants' performance during or post contract. Of the 23 consultants examined, some form of contract management had been done for seven contracts. However, with the exception of one, all of the evaluations were done on an informal basis. Civil servants also told us that they are not clear what sanctions are available to them in situations of under or non-performance by consultants. Any sanctions would depend on the terms and conditions of signed contracts. As Exhibit 12 showed, some contracts did not specify the quality required and measures of success, or include clauses setting out the consequences for late or non-delivery.

72. In 2011 we recommended that the Government prepare post-implementation reports to demonstrate how value for money was achieved, while capturing recommendations for improving procurement practices. This generally requires the continual monitoring of consultants' performance throughout the contract, and the existence of policies and guidance on how to manage and evaluate consultants' performance to ensure that this is done consistently.

73. Good practice on completing post-contract evaluations on the use of consultants includes ensuring that:¹⁸

- valuable information is routinely collected, analysed and shared at the end of consulting projects for benefit of future procurements (including information knowledge such as ‘contact list’ and project learnings);
- post-engagement reviews are conducted to ensure that the project outputs and intended outcomes have been sufficiently delivered, plus compliance checks to ensure that the reviews are completed properly;
- the relationship between consultants and internal staff is strong, featuring regular, open communication;
- department staff managing consultants have relevant experience, training, development and/or assistance to act for Government as ‘intelligent customer’; and
- where skills transfer was part of the engagement conditions, this has been effectively achieved.

74. Of the 23 consultant contracts we reviewed, only six post-contract evaluations had been carried out. The Government does not record or keep information on past consultants’ performance. Historical information can be useful if the same consultants are being considered for or appointed to another project. Such information could help identify areas of good performance or where more scrutiny and attention are needed. In addition, past information on consultants’ performance could be shared amongst ministries making government a more intelligent and informed buyer.

Recommendation 15: The Government should establish effective policies, criteria and processes for evaluating and managing consultant contracts, including guidance on the options available to address poor performance and on carrying out post-contract evaluation.

¹⁸ From Stages 4 and 5 of NAO Web-Based Assessment toolkit for the Use of Consultants.

GOVERNMENT'S USE OF TEMPORARY STAFF

75. Organisations in the private and public sectors regularly use temporary staff to help manage peaks in workload and staff shortages. Using temporary staff can be more cost-effective than recruiting permanent staff or engaging consultants. However, they are generally more expensive than paying salaries and wages, so their use needs to be carefully considered and planned. The benefits of using temporary staff, include the following:

- **Managing peaks in the workload.** Whole organisations or sub-sections may have certain points in the year that are busier than normal, when additional staff are needed for a short period of time to keep the business running as usual. Using temporary staff for these peak periods can help reduce staff 'burn out'; reduce the need for training, as organisations can select temporary staff who have the skills and expertise they need; and may help contain overall costs by limiting overtime payments (if overtime is likely to cost more than bringing in temporary staff).
- **Freeing up existing staff** to deliver specific projects by carrying out their normal operational duties. This may be cheaper than hiring consultants to deliver projects if the required skills and expertise are available within the organisation.
- **Providing short-term cover** for staff absences such as illness, maternity leave, career breaks or resignations.

76. Our audit reviewed the Government's use of temporary staff provided by recruitment agencies and individual contractors. In addition to temporary staff recruited externally, government has a number of existing staff in temporary positions, including temporary acting up-level and secondments, and individuals who may have been appointed, with the approval of the Deputy Governor, for short periods of time without open competition.¹⁹ We did not include these temporary appointments within the scope of our audit.

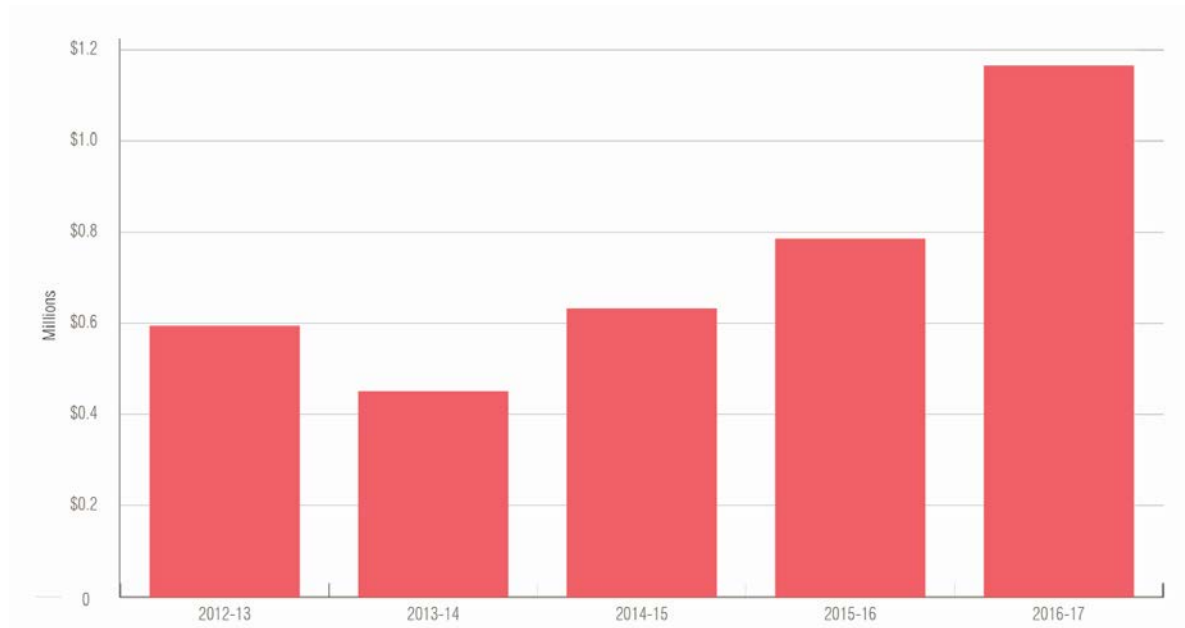
THE GOVERNMENT SPENT \$3.6 MILLION ON TEMPORARY STAFF OVER FIVE YEARS AND ANNUAL SPENDING HAS INCREASED SIGNIFICANTLY

77. Over the five years from 1 July 2012 to 30 June 2017, the Government spent around \$3.6 million on hiring temporary staff, mostly from local recruitment agencies. Exhibit 13 shows that annual

¹⁹ The Personnel Regulations 2017 section 32 (1) (b-c) state that appointments made under section 41(13) of the *Public Service Management Law (2017 Revision)* shall be made only where (b) the person is to be appointed to a position lasting three months or less and has not previously been appointed to that position or similar positions; and (c) the necessity for the appointment is so exceptionally urgent that complying with the processes required under section 41(2) to (9) of the Law is neither feasible nor practical.

expenditure on temporary staff has significantly increased since 2013–14, more than doubling from \$452,000 in 2013–14 to \$1.2m in 2016–17.²⁰

Exhibit 13 – Government spending on temporary staff in the five years to 30 June 2017



Source: OAG's analysis of data drawn from IRIS for 2012/13-2016/17

78. It is not clear why there has been a rise in expenditure on temporary staff since 2013-14. The Government does not routinely capture or monitor this information and so could not provide any explanation as to why spending had increased. We were told that the recruitment freeze introduced in 2012 may have resulted in more hiring of temporary staff, but there is no firm evidence to support this. If this were the case, we would expect the use (and cost) of temporary staff to decrease significantly in future years, as the recruitment freeze was lifted in April 2017 and entities are now able to recruit staff.

79. The Government spent over \$1.3 million with three recruitment agencies in the five years to 30 June 2017 (see Exhibit 14).

²⁰ The figure for 2016–17 is for the twelve months to 30 June 2017. 2016–17 was an 18-month period that ended on 31 December 2017.

Exhibit 14 – Top three recruitment agencies (five years to 30 June 2017)

Recruitment agency	Five-year spend	Percentage of total expenditure
Stepping Stones	\$534,910	15%
Personnel 2000	\$497,313	14%
Affinity Recruitment	\$285,997	8%

Source: OAG's analysis of data drawn from IRIS for 2012/13-2016/17

80. Our audit identified that the Government had spent around \$2 million over five years with 15 individual contractors. These individuals provided a range of temporary services including pilots for mosquito spraying during peak season, and census activities. Three ministries (MDATT, MHECH and MHRI) accounted for 69 per cent of spending on temporary staff.
81. Ministries and departments generally engage temporary staff to carry out administrative duties for general office operations, including case management and executive assistance. The hourly fee paid for temporary staff, CI\$28, compares favourably to the overtime rate for administrative assistants in the civil service (around CI\$30). This rate appears reasonable and is likely to provide better value for money than paying overtime to existing staff to work extra hours.

THE GOVERNMENT DOES NOT HAVE GUIDANCE FOR PROCURING OR MANAGING TEMPORARY STAFF

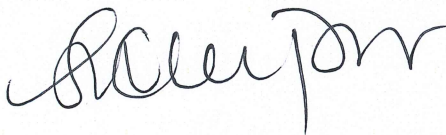
82. The Government mostly uses temporary staff to fill vacant administrative positions. We were told that temporary staff are usually brought in on fixed-term contracts, ranging from a few weeks to three months and renewed as necessary. However, the Government does not hold sufficient information on how long temporary staff have been engaged.
83. When temporary staff are needed, ministries generally contact several recruitment agencies to provide suitable candidates for the roles. This provides a range of staff with a range of skills and expertise to choose from. However, there is no written guidance on how to recruit temporary staff. Given that the Government has spent between \$0.4 million and \$1.2 million a year on temporary staff over the last five years, it is important that it provide appropriate guidance to ensure that temporary staff are appointed appropriately.
84. The Government has no formal mechanism for managing temporary staff and no guidance has been issued on how this should be carried out. As a result, when it does happen, it is done inconsistently across the ministries. We were told that if ministries experience poor or non-performance of

temporary staff they generally request that the recruitment agencies replace them. However, no documents are retained to support this.

Recommendation 16: The Government should establish guidance for procuring and managing temporary staff.

CONCLUSION

85. The Government uses consultants and temporary staff to support its delivery of its objectives and priorities. However, it does not routinely monitor how much it is spending on consultants and temporary staff and can improve how it plans and projects its needs for them alongside its own workforce.
86. The Government has improved its approach to procurement since we reported in 2011 and most Ministries and Portfolios now have procurement policies and procedures manuals in place. However, these are not always followed and more needs to be done to better demonstrate the value for money obtained from using consultants.
87. Most of the consultant contracts we reviewed did not have a business case to justify their need even though the procurement manuals call for these; and the business cases that were prepared could have been better. I am pleased that most of the contracts we looked at had been subject to open procurement, although there is scope to improve Requests for Proposal. However, I also noted that some consultants had been awarded through single source procurement method when they should have been subject to some form of tendering, whether it be restricted or open procurement. The Government does not have standard terms and conditions of contract for its use of consultants, which also poses risks to value for money.
88. Once appointed, the Government rarely manages or evaluates the performance of consultants. Contract management and post-contract evaluations are essential components of obtaining and demonstrating value for money.
89. We gratefully acknowledge the cooperation and assistance we received from Government officials in all phases of our audit work.



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Auditor General
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28 February 2018

APPENDIX 1 – ABOUT THE AUDIT

OBJECTIVE

1. The objective of this audit was to determine how effectively the Government manages its use of consultants and temporary staff to ensure that it is obtaining value for money. We aimed to answer the following audit questions:
 - How well does the Government plan the use of consultants and temporary staff?
 - How effective is the Government at procuring consultants to ensure that it receives value for money?
 - How well does the Government manage consultants?

CRITERIA

2. Audit criteria set out the expectations, or standards, against which an audit can assess observed performance in order to develop findings, make recommendations as appropriate, and conclude on audit objectives. We set the following criteria for this follow-up audit:
 - Government has a clear understanding of how it uses consultants.
 - There is a clear plan for using consultants that is integrated with workforce and other strategies
 - Clear and appropriate procurement guidelines that ensure value for money are in place.
 - There are appropriate oversight and governance arrangements in place.
 - Consultant engagements have clear mandates, delivery arrangements and success measures and are overseen by experienced and capable engagement teams.

AUDIT SCOPE AND APPROACH

3. The audit reviewed the Government's processes for planning and projecting its needs for consultants and temporary staff, and its decision-making process for bringing in external services. The audit examined the policies, procedures and practices in procuring consultants and in evaluating and managing their performance.
4. The audit focused on core government, and did not cover the use of consultants and temporary staff by statutory authorities and government companies (SAGCs). As most Ministries, Portfolios and Offices use consultants or temporary staff to some extent, we aimed to review how well this was being done across government. Our audit covered the following Ministries and Portfolios:
 - Ministry of District Administration, Tourism and Transport
 - Ministry of Finance and Economic Development

- Ministry of Health, Environment, Culture and Housing
- Ministry of Commerce, Planning and Infrastructure
- Ministry of Financial Services and Home Affairs
- Ministry of Human Resources and Immigration
- Ministry of Community Affairs
- Portfolio of Legal Affairs

5. The audit was conducted in accordance with International Standards on Assurance Engagements.

Our audit approach included:

- Obtaining the agreement of relevant government officials to the audit objective, questions and criteria.
- Researching processes to gain a full understanding of activities.
- Analysing financial information. As the Government did not have readily available management information on its use of consultants and temporary staff we collated financial information from the Government's financial system (IRIS) and carried out our own analysis of the data.
- Interviewing key individuals in each of the Ministries and Portfolios identified above.
- Reviewing relevant legislation, including the *Public Management and Finance Law (2013 Revision)*, *and 2017 Revision*, *Financial Regulations 2013*, and *The Procurement Law 2016*, and assessed policies, procedures and practices for the procurement of consultants against these.
- Assessing policies, procedures and practices in procuring consultancies against recognized good practice. We used the UK National Audit Office web-based assessment toolkit for the use of consultants as the good practice benchmark.
- Selecting a sample of 23 consultants used by the Government over the past five years and obtaining and reviewing all relevant documentation to assess whether they had been procured in line with Government's own policies and procedures.
- Providing a draft report to relevant government officials for review of factual accuracy, and obtaining responses to the report's recommendations set out in Appendix 3.
- Presenting a final report of the audit to the Legislative Assembly.

AUDIT STAFF

6. The audit was carried out under the direction of Angela Cullen, Director of Performance Audit and assisted by Julius Aurelio (Audit Manager) and Gabriel Ncube (Audit Project Leader).

APPENDIX 2 – ASSESSMENT OF 23 CONSULTING CONTRACTS AGAINST GOOD PRACTICE CRITERIA

Engaging Ministry	MHRI	MHRI	MHRI	MHRI	MHRI & MFSHA	PLA	PLA	PLA (DPP)	MFED	MDATT	MDATT	MDATT
Year of agreement	Nov-15	Oct-14	Oct-14	May-17	Nov-11	No info	No info	Jul-12	Aug-16	Jan-11	Apr-17	May-15
Type of consultancy	IT consulting and implementation	IT consulting and implementation	General Consulting - Business processes & policy review	General Consulting - Business processes & policy review	Public Relations	Legal Services	Legal Services	Legal Services	Financial Services	Advertising	General Consulting - Business processes & policy review	General Consulting - Data Collection
Type of contract	Fixed price	Fixed price	Fixed price	Fixed price	Fixed monthly	No info	No info	Hourly rate	Fixed monthly	Hourly rate	Fixed price	Fixed price
ASSESSING NEEDS AND SPECIFYING REQUIREMENTS												
Needs analysis/Business Case Prepared	N	N	N	N	N	N	N	N	Y	N	N	N
ITT/RFP Prepared	N	Y	Y	Y	N	N	N	N	N	Y	Y	Y
ITT/RFP includes Evaluation, Negotiation and Award	N	Y	Y	Y	N	N	N	N	N	Y	Y	Y
TENDERING AND CONTRACT AWARD												
Bid Evaluated (Assessment reports available)	N	Y	Y	Y	N	N	N	N	N	Y	Y	Y
PROJECT DELIVERY												
Contract(s) signed between engaging parties	Y	Y	Y	Y	Y	N	N	Y	Y	Y	Y	Y
CONTRACT MANAGEMENT												
Evidence of progress reports, meetings etc.	N	N	N	N	N	N	N	N	Y	Y	Y	Y
PERFORMANCE/CONTRACT EVALUATION												
Evidence of contract/performance evaluations, feedback etc.	N	N	N	N	N	N	N	N	N	Y	Y	Y

Engaging Ministry	MDATT	MDATT	MDATT	MCPI	MHECH	MHECH	MCA	MFSHA	MFSHA	MFSHA	MFSHA
Year of agreement	Mar-15	Jun-13	Jan-11	Jan-16	Jan-15	Oct-15	Jan-17	Nov-14	May-14	Mar-16	Jan-16
Type of consultancy	Advertising	Major Capital Projects	Advertising	IT consulting and implementation	Major Capital Projects	Major Capital Projects	Major Capital Projects	General Consultancy - IT Infrastructure solutions	Public Relations	Public Relations	General Consulting - Various engagements
Type of contract	Fixed price plus excess hours	Fixed fee & Hourly rates	Hourly rates with retainer	Fixed Fee	Fixed Price	Fixed Price	Fixed price	Fixed price	Hourly rates	Fixed price	Fixed price
ASSESSING NEEDS AND SPECIFYING REQUIREMENTS											
Needs analysis/Business Case Prepared	N	N	N	Y	Y	Y	Y	N	N	N	Y
ITT/RFP Prepared	Y	Y	Y	Y	Y	Y	Y	Y	N	Y	N
ITT/RFP includes Evaluation, Negotiation and Award	Y	Y	Y	Y	Y	Y	N	Y	N	N	N
TENDERING AND CONTRACT AWARD											
Bid Evaluated (Assessment reports available)	Y	Y	Y	Y	N	N	Y	Y	N	Y	N
PROJECT DELIVERY											
Contract(s) signed between engaging parties	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y
CONTRACT MANAGEMENT											
Evidence of progress reports, meetings etc.	Y	Y	Y	Y	Y	Y	Y	N	Y	Y	N
PERFORMANCE/CONTRACT EVALUATION											
Evidence of contract/performance evaluations, feedback etc.	Y	N	Y	N	N	N	Y	N	N	N	N

APPENDIX 3 – RECOMMENDATIONS

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>1. The Government should monitor its spending on consultants and temporary staff to provide management information that will help inform decisions on how to best obtain the skills and knowledge that it needs while obtaining value for money.</p>	<p>Management agrees with this recommendation.</p> <p><u>Additional response from MDATT:</u> Noted. The contracts under scrutiny in this audit are for either highly specialised services or a one-off scenario such as the cruise berthing facility and it would not be feasible for the Ministry/Department to hire and maintain a team of employees with this level of expertise making skill transfer as part of the contract terms 'Not Applicable'. Additionally, a contract for critical services such as Marketing & Communication services for a particular source market requires an entity to have leverage and scale in the relevant media and advertising industries in order to provide the Department with innovative, creative and effective strategies that allow the Department to successfully market and advertise to the target audiences within each source market. It is in the best interest of the Cayman Islands Global Marketing Strategy to hire experts in the specific source markets to elevate the Cayman Islands brand. This also allows for turnkey execution in addition to providing the mandated outputs of the team located in Grand Cayman.</p>	<p>Financial Secretary, Chief Officers</p>	<p>As part of the preparation for the 2018 Annual Reports.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>2. The Government should better plan for its use of consultants and integrate this with its workforce planning and budgeting processes.</p>	<p>Management agrees in principle with the recommendation but notes that it would not be appropriate to maintain a team of employees with the level of expertise required for all consultancy contracts.</p> <p><u>Additional response from MDATT:</u> The contracts under scrutiny in this audit are for either highly specialised services or a one-off scenario such as the cruise berthing facility and it would not be feasible for the Ministry/Department to hire and maintain a team of employees with this level of expertise hence skill transfer is 'Not Applicable'. Additionally, a contract for critical services such as Marketing & Communication services for a particular source market requires an entity to have leverage and scale in the relevant media and advertising industries in order to provide the Department with innovative, creative and effective strategies that allow the Department to successfully market and advertise to the target audiences within each source market. It is in the best interest of the Cayman Islands Global Marketing Strategy to hire experts in the specific source markets to elevate the Cayman Islands brand. This also allows for turnkey execution in addition to providing the mandated outputs of the team located in Grand Cayman.</p>	<p>Financial Secretary, PoCS, Chief Officers</p>	<p>As part of the planning for the 2019 budget.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>3. The Portfolio of Legal Affairs should develop a procurement manual and implement it as soon as possible.</p>	<p>Notwithstanding the absence of a procurement manual, the Portfolio of Legal Affairs (PLA) has been adhering to best practices such as requiring at least 3 quotations for procurements valued between \$1,500 and \$10,000, and requiring procurements from \$50,000 to be offered for public tender (with amounts above \$50,000 to be reviewed through the DTC). This applies to the procurement of goods and services other than legal services, for which a different approach is taken (see Management Response for Recommendation 12).</p> <p>However, the PLA accepts the need for a procurement manual and will aim to implement one which is tailored to reflect the fact that unlike other CIG entities, PLA's main area of procurement will likely be legal services. In this respect, the Central Procurement Office (CPO) has advised that it is in the process of preparing policies and procedures which are intended to be launched alongside the new Law and Regulations. PLA may wish to adopt those policies and procedures which, according to the CPO, are intended to be all-encompassing.</p>		<p>May 1, 2018 (at which time, the new Procurement Law and Regulations will also come into effect).</p>
<p>4. The Ministry of District Administration, Tourism & Transport (MDATT) and the Ministry of Community Affairs (MCA) should update their procurement policies</p>	<p>Management agrees with this recommendation.</p>		<p>Immediately.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
and procedures, including the need for business cases and providing additional guidance on decision-making criteria for the use of consultants.			
5. The Government should ensure that business cases are prepared to justify the need for consultants.	<p>Management agrees with this recommendation and further notes that Business Cases are a requirement under the new Procurement Law and Regulations, which will commence in May, 2018.</p> <p><u>Additional response from MDATT:</u> Agreed. The Ministry of DATT procurement policy was implemented in 2014. A Business case requirement and criteria on preparing one is not specifically stated in the current policy. However, the policy states all purchases over \$1,500 require a 3 quote form to be filled out and within this form a justification/business case is required hence many other procurements carried out by the Ministry do have a written justification.</p>	Chief Officers, Central Procurement Office	1 May, 2018, in line with commencement of the Procurement Law and Regulations.
6. The Government should ensure that Requests for Proposals and Invitations to Tender are prepared for all open procurements and that they are in line with policies and procedures.	Management agrees with this recommendation and notes that detailed guidance and requirements on the use of requests for proposals are included in the new Procurement Law and Regulations.	Chief Officers	1 May, 2018, in line with commencement of the Procurement Law and Regulations.
7. The Government should ensure that there is sufficient justification for single source procurements	Management agrees with this recommendation and notes that detailed guidance and requirements for single source	Chief Officers	1 May, 2018, in line with commencement of the

Recommendation	Management Response	Responsibility	Date of planned implementation
and that it is properly documented and approved.	procurements are included in the new Procurement Law and Regulations.		Procurement Law and Regulations.
8. The Government should extend its procurement guidance to include a wide range of procurement and contracting methods to ensure that obtains value for money in its appointment of consultants.	Management agrees with this recommendation and notes that the new Procurement legislation provides guidance and requirements for the various procurement methods recognised under the UN Model Law on Public Procurement.		1 May, 2018, in line with commencement of the Procurement Law and Regulations. Additional policy and guidance documents ongoing.
9. The Portfolio of Legal Affairs should develop framework agreements or call-off contracts for the provision of legal services.	<p>Given the unpredictability as to when a request for legal advice might arise and the nature of the issue(s) for consideration at any given time and the urgency in having the advice, reliance on the Chief Officer's discretion to use a single-source means of procurement for legal services is in our view, justified. In such instances, more traditional procurement exercises requiring business cases, tendering, etc. are simply not practical.</p> <p>Even in instances of single-source procurement, the PLA endeavours to ensure that value for money is achieved by using its knowledge/experience of the charges/fees levied by the legal advisor engaged to ensure favourable rates of engagement.</p> <p>It should also be noted that given the scope of the PLA's work in matters of public/administrative law, constitutional law and human rights, it has developed relationships over the years with</p>		PLA will engage with various firms on the possibility of call-off or similar agreements for legal services but is unable to commit to any actual implementation date at this time. Depending on the outcome of its discussions, we would tentatively suggest the second quarter of 2018.

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>firms and counsel with considerable expertise in these areas. These legal service providers, having essentially been “pre-qualified” in terms of their knowledge, experience, and favourable fees due to previous work with the PLA, can therefore be readily called upon to assist with pressing requests for legal assistance. These service providers will often be UK-based (for example, Blackstone Chambers with which the CIG has a long-standing working relationship) and prove to be more cost-effective when compared with legal services procured locally. These firms have generally been willing to offer rates comparable to those charged to the UK Government Legal Department (“UKGLD”) (formerly, the Treasury Solicitor) and other UK government entities. This is consistent with the objective of ensuring value for money.</p> <p>Where issues arise which require PLA to look for legal expertise outside those firms/counsel with which it has established working relationships, PLA will seek recommendations on qualified counsel from UKGLD and request the UKGLD to negotiate for CIG the reduced rates which would ordinarily be extended to the UKGLD and other UK government entities. These rates which range from 175 – 400 pounds will usually be more favourable than those offered by local service providers.</p>		

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>Solicitor General’s Office (SGO) lawyers instruct external counsel where matters (litigation and advisory) are briefed out. This leads to a transfer of skills and knowledge, which inevitably benefits the work and knowledge-base of the SGO.</p> <p>PLA Management nonetheless agrees that the suggested call-out arrangement may be useful and will explore the feasibility of this proposal with various legal service providers.</p>		
<p>10. The Government should develop standard terms and conditions for consultant contracts that ensure that its interests are protected and it is able to achieve value for money.</p>	<p>Management agrees with the recommendation but notes that a variety of templates will be needed as it is unlikely that a single standard template would be suitable for all types of contracts.</p> <p><u>Additional response from MDATT:</u> Noted. The Ministry of DATT already has in place consultant contract templates depending on the type and contract sum. The templates are reviewed by the Portfolio of Legal Affairs from time to time. All contract terms and conditions criteria were met in this audit except for skill transfer considerations which has been addressed in the management response for recommendations #1 and #2. In addition, once both parties set out contract terms and conditions, contracts are then reviewed by external lawyers who are subject matter experts</p>	<p>PLA, Central Procurement Office</p>	<p>End of Q2 2019</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
	hired by the Ministry/Department.		
<p>11. The Government should develop guidance to help identify which contracts should be reviewed by lawyers or be subject to legal advice prior to signing.</p>	<p>Management agrees with the recommendation.</p> <p><u>Additional response from PLA:</u> PLA agrees that this would be desirable. As indicated in our meeting with auditors, it is entirely left to the CIG entity to determine whether a contract will be sent to PLA for vetting. In certain instances (such as contracts prepared by PWD which are often standard-form and based on existing industry templates), documents rarely – if ever – come to PLA.</p>	<p>PLA, Central Procurement Office</p>	<p>End of Q2 2019</p> <p>The type of contracts which should be reviewed by the SGO will be a matter of CIG policy; any decision to be taken in this regard will likely involve engagement of a number of stakeholders. From PLA’s perspective, it is difficult to estimate a likely implementation date for this recommendation</p>
<p>12. The Government should ensure that the Legal Department has sufficient capacity and tools, such as standard checklists, to carry out the legal review of contracts consistently.</p>	<p>Although there is no standard checklist for reviewing contracts, as emphasised in our meeting with auditors, particular consideration will be given to areas including (but not limited to) liability and limitation of liability, warranties and representations, risk to CIG and how that should be managed/ or shared between the parties, performance securities, force majeure, remedies. We would also reiterate that the scope of review will often vary according to the nature of the contract (for example, an IT contract or data</p>		

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>licence agreement may give rise to different considerations than a construction contract).</p> <p>Accordingly, the concept of a standard checklist for <u>all contracts</u>, might provide no more than a useful starting point for contract review.</p> <p>A further point is that in spite of legal advice recommending the inclusion of certain provisions to safeguard CIG’s interests (for example, liquidated damages for late delivery/completion and detailed acceptance procedures), client entities may ultimately decide not to act on these recommendations for one reason or another. In certain instances, the client’s reasons for departing from the recommended course will not be expressed to the reviewing lawyer.</p> <p>For particularly complex or more unusual contracts, the SGO will recommend to the client entity the engagement of specialist contract advisor(s) (as was done, for example, in the case of a multi-million dollar road development contract).</p> <p>Given the volume of contract work observed across CIG in recent times (for example, for the 2016/17 financial year, the SGO was asked to review 66 agreements and related documents), the establishment of a dedicated contracts unit could be considered in the future. However, any decision in this regard would ultimately depend</p>		

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>on, among other things, whether the demands of an increased volume of contract work could be dealt with by the SGO's existing complement of lawyers. This in turn would depend not only on the number of contracts for review but their subject matter, complexity and novelty as well as the volume and demands of non-contract work (contentious and non-contentious) within the SGO. Consideration would also have to be given to alternatives such as the cost-effectiveness of outsourcing certain contract work as a possible means of dealing with increased contract work across CIG.</p>		
<p>13. The Government should develop clear policies and procedures for extending contracts.</p>	<p>Management agrees with this recommendation.</p> <p><u>Additional response from MDATT:</u> Agreed. The Ministry of DATT has discontinued the use of Evergreen clauses in its contracts. In addition, the Ministry hired an Operations Administrator in the Department of Tourism to improve the efficient management of consultant contracts in the areas of procurement, contract management and evaluation to avoid procurement delays.</p>	<p>Central Procurement Office</p>	<p>End of Q1 2019</p>
<p>14. The Government should continue to develop its procurement capacity and expertise.</p>	<p>Management agrees with this recommendation.</p> <p>Management notes that this work is well on its way and will continue under the leadership of the Central Procurement Office</p>	<p>Financial Secretary, Central Procurement Office, Chief Officers</p>	<p>Communications by CPO on the new Procurement Law and Regulations to begin February, 2018.</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
	<p>and with the commencement of the new Procurement legislation in May 2018. A new website, additional training/ information sessions for Executives and staff involved in procurement, and the ongoing development of policies and guidance documents will complement the new Procurement legislation and help to build capacity and expertise.</p> <p>Management acknowledges the need to complement this with a cohort of trained specialists whose full-time focus is procurement and whose skills, and procurement outcomes, will be improved because they are doing transactions in sufficient volume to gain expertise and not simply conducting procurement as an occasional activity.</p>		<p>Procurement Champions within each central Government Agency to be identified by 30 June, 2018.</p> <p>Capacity of CPO to be enhanced by 31 December, 2018.</p>
<p>15. The Government should establish effective policies, criteria and processes for evaluating and managing consultant contracts, including guidance on the options available to address poor performance and on carrying out post-contract evaluations.</p>	<p>Management agrees with this recommendation.</p> <p><u>Additional response from MDATT:</u> Agreed. Although criteria and processes are not documented, for the most part the Ministry/Department consistently evaluates and manages consultants' performance as evidenced in the progress reports, minutes of meetings, performance feedbacks/post project evaluations conducted which were provided to the Audit Office.</p>	<p>Central Procurement Office, ODG</p>	<p>December, 2018</p>

Recommendation	Management Response	Responsibility	Date of planned implementation
<p>16. The Government should establish guidance for procuring and managing temporary staff.</p>	<p>Management agrees with this recommendation.</p> <p><u>Additional response from MDATT:</u> Agreed. The Ministry/Department hires temporary staff for vacant positions awaiting recruitment or for specific one-off projects where additional staff is required to achieve objectives. The Ministry recommends this should be a centralised process managed by the Portfolio of the Civil Service. If this is not possible, the Ministry will have documented guidelines after consultation with the Portfolio of the Civil Service and the Central Procurement Office.</p>	<p>PoCS, Financial Secretary, Central Procurement Office.</p>	<p>December, 2018</p>

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