



Secretariat

ST/AI/327
23 January 1985

ADMINISTRATIVE INSTRUCTION

To: Members of the staff

From: The Under-Secretary-General for Administration and Management

Subject: INSTITUTIONAL OR CORPORATE CONTRACTORS

Purpose

1. The purpose of this instruction is to set out detailed provisions for obtaining the temporary services of institutional or corporate contractors in accordance with section II of the Secretary-General's bulletin ST/SGB/177 of 19 November 1982 on policies for obtaining the services of individuals on behalf of the Organization. This instruction will become effective as of 1 February 1985. Provisions for obtaining the temporary services of individuals as temporary staff or individual contractors under section II, as consultants and participants in advisory meetings under section III, and as technical co-operation personnel and Operational, Executive and Administrative Service (OPAS) officers under section IV of the Secretary-General's bulletin are set out in administrative instructions ST/AI/295 of 19 November 1982 on temporary staff and individual contractors, ST/AI/296 of 19 November 1982 on consultants and participants in advisory meetings and ST/AI/297 of 19 November 1982 on technical co-operation personnel and OPAS officers, respectively.

Institutional or corporate contractors

2. The temporary services of individuals required by the Organization from time to time may be obtained by their engagement as contractors under a contract entered into directly with an institution or a corporation. The functions to be performed by the contractor shall be specified in the contract, which will contain a time schedule for their performance.

Functions

3. The functions of contractors may involve the provision of interpretation, translation, editing, library, language training, public information, secretarial, clerical, guidance services etc. In addition, consultancy services, which normally involve analysing problems, directing seminars or training courses, preparing documents for conferences and meetings or writing reports on the matters within the area of expertise on which advice or assistance is sought, may be obtained from institutional or corporate contractors.

Budgetary policy

4. Contractors may be engaged against funds authorized for the purpose of temporary assistance, contractors or consultancy. In some departments and offices, where the use of contractors is expected to be heavy, an identifiable provision may be made for this purpose under institutional or corporate contractual services. The objects of expenditure appropriate for the various functions to be performed by contractual services are published in the Allotment Accounts Code Handbook (ST/ADM/L.3 ... as periodically revised).

Legal status

5. The contractor shall be considered as having the legal status of an independent contractor. Agents or employees of the contractor shall not be considered in any respect as being officials or staff members of the United Nations.

Obligations

6. Contractors shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of their services under a contract. Contractors shall refrain from any action which may adversely affect the United Nations and shall fulfil their commitments with fullest regard for the interests of the United Nations. Contractors shall not advertise or otherwise make public the fact that they are contractors with the United Nations. Also, contractors shall in no other manner whatsoever use the name, emblem or official seal of the United Nations or any abbreviation of the name of the United Nations in connection with their business or otherwise. Contractors may not communicate at any time to any other person, Government or authority external to the United Nations any information known to them by reason of their association with the United Nations which has not been made public, except in the course of their duties or by authorization of the Secretary-General or his designate; nor shall contractors at any time use such information to private advantage. These obligations do not lapse upon termination of their agreement with the United Nations.

Title rights

7. (a) The United Nations shall be entitled to all property rights, including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or is made in consequence of, the services provided to the Organization by the contractor. At the request of the United Nations, the contractor shall assist in securing such property rights and

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transferring them to the Organization in compliance with the requirements of the applicable law. At the request of the United Nations, the contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such property rights and transferring them to the Organization in compliance with the requirements of the applicable law.

(b) Title to any equipment and supplies which may be furnished by the United Nations shall rest with the United Nations, and any such equipment shall be returned to the United Nations at the conclusion of the contract or when no longer needed by the contractor. Such equipment, when returned to the United Nations, shall be in the same condition as when delivered to the contractor, subject to normal wear and tear.

Procedures

8. The substantive office proposing the engagement of a contractor shall complete the contract for institutional or corporate contractors form PT.141 and forward it to the Office of General Services. Guidance should be sought from the Purchase and Transportation Service with regard to possible contractors already registered on the computer roster.

(a) The contract consists of the revised form PT.141, plus form PT.141/A, if a continuation sheet is necessary. In addition, supplementary data supporting the contract must be provided on form PT.141/B, which should be prepared, in four copies, or five if the personnel service is involved. These forms must be filled in, where appropriate, by the substantive office requiring the service.

(b) The substantive office should retain copies 8 and 9 of the PT.141 form and one copy of form PT.141/B and send the remaining copies of the PT.141 and PT.141/B forms to the executive or administrative office.

(c) If the institutional or corporate contractor consists primarily of one or two individuals, the appropriate personnel service must indicate its approval in accordance with the guidelines as set forth in administrative instruction ST/AI/296.

(d) The executive or administrative office should check the contract and the availability of funds and, if approved, enter the allotment account code and sign box 10 of form PT.141/B and retain a copy. The remaining copies of forms PT.141 and PT.141/B should be forwarded to the Purchase and Transportation Service of the Office of General Services at Headquarters or the appropriate general service at overseas duty stations.

(e) On receipt of the PT.141 and PT.141/B forms the Purchase and Transportation Service shall be responsible for:

- (i) Obtaining a completed PT.139 form from the institution or corporate body recommended by the requesting office, if one is not already on file;
- (ii) Reviewing, together with the requesting office, the completed PT.139 form, as well as those completed by any other institutions or corporate bodies which the Service believes are potentially suitable and should also be considered;

- (iii) Evaluating, together with the requesting office, the proposals received and coming to agreement on the preferred contractor;
- (iv) Determining whether the terms of the proposed contract require, under the relevant financial rules, submission to the Committee on Contracts and arranging for such submission, if required;
- (v) Approving, where submission to the Committee on Contracts is not required, the amount of remuneration to be paid to the contractor;
- (vi) Negotiating the contract with the contractor and awarding the contract.

(f) The Purchase and Transportation Service should sign the contract on behalf of the United Nations, obtain the signature of the contractor and distribute the copies of the contract (including the obligating copy to the Accounts Division of the Office of Financial Services).

Commencement of assignment

9. No contractor shall commence work on an assignment until a valid contract, duly signed and dated by the contractor and countersigned and dated by the authorized representative of the United Nations, has been established. In exceptional circumstances, an exchange of telegrams confirming the exact terms of the contract may be recognized for the purpose of establishing the commencement date. The Office of Financial Services will not honour for payment any claims for services rendered before the date on which the contract was signed by the authorized representative of the United Nations or the exchange of telegrams took place.

Evaluation and certification of services

10. Any request for payment to a contractor shall be initiated by the office which requested the services. Where the contract entered into provides for payment in instalments upon satisfactory completion of specific phases of the assignment, the requesting office shall complete and transmit to the Accounts Division of the Office of Financial Services, through the executive officer, a copy of form F.183 for each interim payment requested.

11. Where the contract provides only for lump-sum payment or where final payment is proposed, in addition to form F.183, the requesting office shall complete and transmit to the executive or administrative officer copy 9 of form PT.141. If the nature of the work or services provided permits, the end product of the work or services should be appended. If it is not possible or practicable to append an end product, the requesting office shall provide such other evidence as may be required by the executive officer to satisfy him or her that the work or services have been performed.

12. It shall be the personal responsibility of the head of the requesting office to ensure that the work and services for which payment is requested have, in fact, been satisfactorily completed and to provide any information and explanation that may be required to justify payment.

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13. Before transmitting form F.183 to the Accounts Division, the executive or administrative officer shall satisfy themselves that:

(a) The evaluation of services rendered which has been made by the requesting office would warrant payment under the terms of the contract;

(b) The payment proposed conforms to the terms of the contract. The executive or administrative officer's signature on form F.183 shall serve as his or her certification of the above. The executive or administrative officer will also transmit copies of the evaluated PT.141 form to the Office of Personnel Services or the Office of General Services, as appropriate, retaining one copy for the records of the executive or administrative office.

14. When the service has been evaluated as less than adequate or poor, or if a "No" is checked, a copy of that evaluation should be sent to the purchase and transportation service and to the personnel service where appropriate.

Remuneration

15. The determination of the level of remuneration to be offered to a contractor is the responsibility of the approving official in the appropriate executive or administrative office. When the institutional or corporate contractor consists primarily of one or two individuals, the appropriate personnel service should approve the level of remuneration. No official in any other service has authority to make a financial or other commitment, either orally or in writing, to an individual whose services are sought as a contractor.

16. The appropriate executive or administrative office should consult with the appropriate general service to establish the level of remuneration to be offered to an individual who is to be engaged as a contractor on the basis of the following guidelines:

(a) The primary consideration in establishing the level of remuneration shall be the nature of the services to be provided by the contractor (e.g., the complexity, difficulty and extent of the work to be performed and the degree of expertise required to accomplish it);

(b) The estimated time required for the contractor to undertake the work involved shall be taken into account, as well as the current market rate for comparable work, if available;

(c) The remuneration to be paid shall be the minimum amount necessary to obtain the services required by the Organization. The level of expertise of the contractor must be appropriate to the importance of the services to be performed.

17. The total remuneration payable to a contractor by the United Nations shall be specified in the contract and expressed in gross terms, i.e., before tax. The Organization shall not be responsible for the payment of any taxes due on the remuneration paid to the contractor by the Organization for his or her services. The payment of any taxes for which the contractor is liable shall be the sole responsibility of the contractor. The contractors shall not be entitled to

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reimbursement of such taxes or to any benefit or payment of subsidy which is not expressly provided for in the contract under which he or she is engaged.

18. The remuneration of a contractor is normally paid on satisfactory completion of the services described in the contract. Subject to the provisions of financial rule 110.23 on advance payments, such remuneration may, however, be paid in instalments, in accordance with a schedule of payments linked to the completion of specific phases of the services and expressly set out in the contract. Each payment to a contractor shall require certification, using the payment voucher for outside expertise and professional services (form F.183) by, or on behalf of, the head of the department or office to which the services are provided that the appropriate phase of the services as described in the agreement have been completed satisfactorily. No remuneration shall be paid if the contractor fails to complete the services specified in the contract to the satisfaction of the United Nations.

Currency of payment

19. The currency of payment shall be specified in the contract. Contractors who are not required by the United Nations to travel outside the country of their usual residence shall normally be paid in the currency of that country. Those who are required to travel outside the country of their usual residence may receive their remuneration in another currency when appropriate. Every effort should be made to make payments in the local currency when it is a non-convertible currency of which the United Nations has an accumulated balance.

Travel

20. If contractors are required by the United Nations to travel beyond commuting distance from their usual place of residence, such travel at the expense of the United Nations, unless otherwise covered by the contract, shall be governed by conditions equivalent to the relevant provisions of the 100 series of Staff Rules (chap. VII) concerning the travel of staff members. Such travel, when by air, shall be at the least costly airfare structure regularly available or its equivalent, unless a higher standard is approved in advance by, or on behalf of, the Assistant Secretary-General for Financial Services, and first class when by rail.

Service-incurred death, injury or illness

21. A contractor engaged under a contract who is authorized to travel at United Nations expense or is required under the agreement to perform his or her services in a United Nations office, or his or her dependants as appropriate, shall be entitled, in accordance with the terms of the contract, in the event of death, injury or illness attributable to the performance of services on behalf of the United Nations while in travel status or while working in an office of the Organization on official United Nations business to compensation equivalent to the compensation which would be payable under appendix D to the Staff Rules of the United Nations to a staff member performing similar functions.

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Medical clearance

22. Contractors normally need no medical examination before being engaged. However, a contractor who is expected to work in any office of the Organization shall be required to complete a statement of good health. A contractor may not be authorized to travel outside the country of his or her normal residence at the expense of the United Nations unless the individual concerned submits a statement from a recognized physician certifying that the individual is in good health, is fit to travel and has had the required inoculations for the country or countries to which he or she is to travel. If the appropriate statement is qualified in any way or cannot be provided, the appropriate United Nations medical service must be consulted.

Insurance

23. (a) The contractor shall indemnify, hold and save harmless and defend at its own expense the United Nations, its officers, agents and employees from and against all suits, claims demands and liability of any nature or kind, including costs and expenses, arising out of acts or omissions of the contractor or his or her employees in the performance of services under a contract with the United Nations.

(b) The contractor shall provide and thereafter maintain for the duration of the contract and any extension thereof all appropriate workmen's compensation insurance and furnish proof to the satisfaction of the United Nations of adequate liability insurance.

Termination of contract

24. A contract may be terminated by either party before the date of expiration of the contract by giving notice in writing to the other party. The period of notice shall be 5 days in the case of contracts for a total period of less than two months, and 14 days in the case of contracts for a longer period. In the event of the contract being terminated prior to its date of expiration in this way, the contractor shall be compensated on a pro rata basis for not more than the actual amount of work performed to the satisfaction of the United Nations. Additional costs incurred by the United Nations resulting from the termination of the contract by the contractor may be withheld from any amount otherwise due to the contractor from the United Nations.

Arbitration

25. Any controversy or claim arising out of, or in accordance with the contract or any breach thereof, shall, unless it is settled by direct negotiation, be settled in accordance with the UNCITRAL Arbitration Rules currently in force. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy or claim.

Assignment of personnel

26. The contractor shall not assign any persons other than those accepted by the United Nations for work performed under the contract.

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United Nations privileges and immunities

27. Nothing in or relating to the contract shall be deemed a waiver of any of the privileges and immunities of the United Nations.

Amendments and assignments

28. No change in or modification of the contract shall be made, except by prior written agreement between the Chief or Deputy Chief of the Purchase and Transportation Service of the Office of General Services and the contractor. The contractor shall not assign, transfer pledge, subcontract or make other disposition of the contract or any part thereof, or of any of the contractor's rights, claims or obligations under the contract except with the prior written consent of the United Nations. The department or office wishing to amend a contract should issue a new PT.141 form, clearly marked to show that it is an amendment.

Official not to benefit

29. The contractor represents and warrants that no official of the United Nations has been, or shall be, admitted by the contractor to any direct or indirect benefit arising from the contract or the award thereof. The contractor must agree that a breach of this provision will be a breach of an essential term of the contract.

Record keeping

30. A copy of each contract shall be kept on the official status file of the contractor. All other documents and correspondence with respect to the agreement shall be kept on file by the department or office concerned.

Reporting procedures

31. Departments and offices shall be responsible for maintaining a current log of all expenditures for contractors that they engage each year. These logs shall be prepared separately for expenditures under each section of the budget and for each source of extrabudgetary funds for all programme and miscellaneous accounts. The logs shall indicate the work assignment and its purpose, the body or programme for which it is intended, the name and nationality of the contractor, the commencement and date of expiration of the contract, the estimated work months required to complete the contract, the fee or other remuneration and the basis for its payment, the travel cost and an evaluation of the contractor's services under the contract.
