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| Chapter 14 – Hiring contractors |
| This chapter looks at  hiring contractors to provide work or services for a fee. |

# 14.1 Introduction

Most committees will need to purchase goods or have services performed on their behalf as part of their management of the reserve. For example, a committee may need to ensure that the reserve is mowed regularly.

Even if the committee has employees who can perform some of these functions (see chapter 13 ‘Employees’), there will usually be services for which the committee will need or choose to:

* use volunteers (see chapter 15 ‘Volunteers’), or
* hire a contractor (see this chapter).

If your committee intends to hire a contractor, it must follow processes that are transparent, accountable, and consistent with good public sector governance practice.

# 14.2 Hiring a Contractor

A contractor is a person, business or company hired by the committee to undertake works or services for an agreed fee, based on a quotation. The work may be for:

* a particular project, for example, building a playground, or
* ongoing works, for example, mowing lawns every month.

For information about the difference between an employee and a contractor see the [Employee or contactor](https://www.business.gov.au/people/contractors/employee-or-contractor) page on the Australian Government website business.gov.au. The website also has information about [contractor rights and protections](https://www.business.gov.au/people/contractors/contractor-rights-and-protections).

# 14.3 Incorporate before hiring contractors

If your committee intends to hire a contractor, it is a good idea to first be incorporated. This helps to protect committee members personally. It is simple for a committee to incorporate under the *Crown Land (Reserves) Act 1978.* The department can assist your committee to do so. Contact your local DELWP [regional office](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations). See 6.3 ‘Benefits and safety of incorporation’ for further information.

# 14.5 Process of hiring a contractor

The information in this section applies to hiring contractors to provide services. It also applies to contracting to buy goods, and for entering other purchasing contracts, such as development works.

Before hiring a contractor, your committee needs to:

* Obtain an appropriate number of quotes. The higher the likely price, the more quotes should be obtained.
* For substantial contracts, the committee will need to call for expressions of interest and conduct a tender process. Advertise all tenders.
* Provide a clear written statement of the work or service to be performed and the terms and conditions of the contract, including key milestones and the completion date. For example, ‘the contractor will mow the reserve every month for 12 months using their own equipment and fuel’.
* The committee should formally decide which contractor, either a person or organisation, will be awarded the contract. Do not leave it to just one or two committee members to decide on behalf of the committee.
* When making its decision, the committee must comply with the requirements for declaring and managing conflicts of interest. Remember, a conflict of interest exists whether it is real, potential or could be perceived as such by the community. See 4.8 ‘Conflict of interest – standing agenda item’ and 5.4 ‘Conflict of interest’.
* Record the committee’s formal decision in the committee minutes.

## Advertising tenders

The opportunity to tender (apply) for a contract must be advertised. The amount, type and breadth of advertising should be proportionate to the nature and size of the contract on offer. The community must be satisfied that interested people and organisations have had a fair opportunity to learn about, and apply for, the tender.

Example

The opportunity to tender for a contract to provide substantial services to a major committee, such as to paint all the buildings in a significant new development, is likely to be of interest to potential tenderers outside the local community.

If a committee member will be submitting a quote or tendering for a contract, it is vital to advertise the opportunity. This will help to ensure that the selection process is, and is perceived to be, fair, transparent and accountable.

## Choosing the contractor

The committee chooses the successful contractor by taking into account price, quality of work, timelines, and other relevant factors. Your committee’s decision must be:

* consistent with your duties of honesty, integrity, and impartiality
* made formally and recorded in the minutes of a committee meeting.

See the [Code of Conduct for Directors of Victorian Public Entities](https://vpsc.vic.gov.au/resources/code-of-conduct-for-directors/) for further details.

## Applications by committee members

**Committee members are actively discouraged from submitting quotes or applying for tenders.**

It is a conflict of interest for a committee member to apply for a contract with the committee. If a committee member intends to submit a quote or tender, ensure that the opportunity to apply for the contract is advertised appropriately.

Deal with the conflict of interest in accordance with the committee’s *Conflict of interest* policy. See 4.8 ‘Conflict of interest – standing agenda item’ and 5.4 ‘Conflict of interest’ for details. This includes ensuring that the conflict is formally declared at a committee meeting and documented in the minutes, together with how the committee will manage the issue.

The committee member with the conflict **must never** be part of the discussion or decision-making process about the contract, either at the committee meeting or elsewhere.

Your committee will need to be particularly careful and thorough in how it manages and documents all aspects of the selection process.

In the rare event that a committee member is likely to be the successful applicant for a contract, your committee must be convinced that the **community** would perceive this appointment as fair and transparent.

***Always* contact the local DELWP** [**regional office**](https://www2.delwp.vic.gov.au/communities-and-regions/regions-and-locations) **for advice before appointing a committee member as the successful applicant for a contract.**

## Payment of a contractor

Generally, a contractor submits an invoice on completion of a service or task, or at agreed intervals for a longer-term contract. Payment of the final invoice effectively ends the relationship between the contractor and the committee. Your committee should ensure that the service or work is performed to a suitable standard before paying for it. Payment of invoices should not be made at the start of the services or works.

# 14.5 Occupational health and safety

Although most obligations of an employer do not apply, the committee must still provide contractors with a safe and healthy working environment and ensure that no one is exposed to a health and safety risk because of the actions of a contractor. For further information see:

* sections 21 to 23 of the *Occupational Health and Safety Act 2004*
* the [WorkSafe Victoria](https://www.worksafe.vic.gov.au/) website or phone 9641 1444 or 1800 136 089 (toll free).

# 14.6 Work done by agencies

A committee may enter arrangements with an agency, such as the local council, for work on the reserve. All employer obligations for this work belong to the agency. Your committee should ensure that the agency's obligations as an employer are clearly written into its contract with the committee.

If work is undertaken by an agency for no fee, record the details including the reasons for the arrangement. For example, if a local council collects rubbish from a reserve for no fee or a fee less than the market rate.

# 14.7 Electronic copy

An electronic copy of this document is available from the DELWP website ([www.delwp.vic.gov.au/committees](http://www.delwp.vic.gov.au/committees)).