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Advisory services resource pack for Organisations of Persons with Disabilities (OPDs): Resource 4: Contracting



This resource covers the process of entering into a legal agreement to deliver advisory services, after the general scope of work has been discussed.

Prepared by the Inclusion Advisory Group (IAG) of CBM Global Disability Inclusion, with input from the Pacific Disability Forum.

Contracts for advisory services

Different types of agreements can be negotiated by organisations of persons with disabilities (OPDs), including partnership agreements, legal contracts, collaboration agreements or memoranda of understanding (MoU). **This guidance focuses on legal contracts**, as these are the most common form of legal arrangement for advisory services.

Questions that OPDs might consider when entering into a contract relating to the provision of advisory services (in addition to general points about contracts) include the following:

- Are the timelines in the contract realistic, adjustable, and manageable for the OPD, particularly if the timelines are short?
- Are any reporting formats and timelines agreed upon, so that the OPD has a good understanding about what kinds of reports are deemed acceptable?
- How could payments for advisory work be distributed between an individual staff members and the OPD? There are several options, such as part payment to both: disputes may be averted if a standard policy is developed early.
- Is it possible to share ownership of any information written by the OPD within the contract, that is, intellectual property?



Other matters to consider include:

- **Confidentiality:** in consulting arrangements you may learn about issues that you might want to use in your advocacy work, but may be prohibited from doing so because of confidentiality clauses.
- **Competition:** sometimes, competitive processes related to the provision of advice under contracts, might cause relationship tensions between OPDs within a small sector.
- **Individuals or a team:** there are pros and cons of both:
 - Selecting named individuals may be the preference of contracting organisations, but can cause problems between staff within OPDs.
 - A team approach bring a wider range of knowledge and skills to the work.
- **Human resource management:** for example, how will an OPD respond if a particular adviser (staff member of the OPD) is no longer available and has to be replaced, and have all the salary and conditions issues have been factored into the costing?
- **Standard words:** an up-to-date, agreed, and standard set of words about the OPD and its history, focus and expertise/networks, can be given to include in written documents (saves re-writing each time).
- **Legal advice:** it is useful to find a pro-bono or costed lawyer or legal specialist who is happy to provide advice on legal consequences of each new contract and help you feel confident to navigate any issues of concern.

Overall, an important principle is not to sign a contract if you are not sure you will be able to deliver the requested tasks, advice, or services.

Sub-contract related clauses

Donor organisations that consider disability inclusion as part of their international development programs commonly pass on contractual obligations/policy requirements to those organisations that actually implement programs. These organisations, such as managing contractors, non-governmental organisations (NGOs), and regional organisations, are then obliged to pass them on to organisations such as OPDs which are sub-contracted to provide particular services in different countries or regions.

In this context, contracts may include clauses relating to:

- Child protection
- Prevention of sexual harassment and abuse
- Anti-trafficking
- Counter-terrorism

- Anti-fraud
- Safety and security of personnel

Each OPD will need to read, consider, and decide whether they agree with these clauses and are able to comply with them. Some contracts may require OPDs to have specific policies and systems in place or meet specific requirements. Some of these may be beyond the scope or ability of the OPD to organise themselves and this could prevent the OPD from proceeding with a contract. OPDs may find alternative ways of working, such as by partnering with more experienced organisations that have existing policies and processes..

Other options for formalising arrangements

OPDs have a choice about whether they wish to enter into formal arrangements with other organisations to provide advisory services.

If they do wish to proceed, there are various ways that OPDs can be paid to provide services, including through contracts, MOUs, letters of agreement, service orders or partnerships. In principle, OPDs should have a choice about the nature of formal agreements covering their service provision. However, donor governments often require formal contracts to be the main form of agreement within their procurement systems. There are ways in which these can be adjusted to suit OPDs and the particular legal jurisdiction where the OPD works, but it may take effort by the OPD to insist on these adjustments being made.

Beyond the use of formal legal contracts, other options include:

- An exchange of letters which describes agreed services and confirms that an invoice will be paid when the services are delivered.
- A partnership agreement or memorandum of understanding, under which costs can be re-imbursed using an exchange of letters.
- A collaboration agreement or memorandum of understanding outlining how the OPD will engage with another organisation equally without getting paid.
- Negotiated payment by another organisation to the core costs of the OPD, such as through the payment of the salary of a staff member, or an annual contribution, and there is agreement that advice is provided on demand, within agreed parameters (i.e., the advice is not specifically costed, but paid for through a more generic payment to the OPD).
- The OPD can invite other organisations to attend OPD-determined events, seminars and briefings, charging participants a fee for attendance and costs, thereby covering costs without being contractually tied to one or more specific organisation.