

Tool: Access to contractor information clause

Purpose

- To give procuring and audit authorities access to information held by contractors for the purpose of audits in exceptional circumstances.

Public Procurement
Principle: **Accountability**

Procurement Stage:
Tendering

Audience: **Procuring Entity**

Description

An access to contractor information contract clause provides contracting and audit authorities' additional scope for their respective accountability and control functions that can be used in exceptional circumstances. This can be used to mitigate risks of waste, fraud and corruption associated with accelerated procurement procedures. These risks may stem from increased discretion provided to procurement practitioners in identifying needs; less competition because of pressures to execute procurement quickly reduced *ex ante* controls to enable fast-track delivery of supplies, services and works.

An access to contractor information contract should include:

- the type of records and necessary reporting standards to be maintained by the contractor and subcontractors related to a specific procurement contract;
- the duration for which a contractor and subcontractors must keep the records related to a specific procurement contract;
- the procuring and contract authorities' rights to access contractor and subcontractor records related to a specific procurement contract;
- the contractor's obligations and rights to have their records related to a specific procurement contract accessed; and
- the responsibility for the cost for maintaining the records and audits.

It does not reduce the procuring or contract authority's responsibilities. It is considered as complementary to other standard contractual clauses and it does not override a contract authority's responsibility to manage a contract in accordance with all contract provisions.

Box: Access to contractor information contract clause

1. Contractor records

1.1 Types of records that must be kept by the contractor

(a) keep and must require its subcontractors to keep adequate records, in accordance with [appropriate accounting standards], in sufficient detail to enable the amounts payable by the contract authority under this contract to be determined; and
(b) retain and require its subcontractors to retain for a [specified time period] after termination or expiration of this contract all records relating to the goods, services or works provided.

1.2 Costs of contractor's record keeping

The Contractor must bear its own costs of complying with this clause.

1.3 Maintenance of contractor's records

This clause applies for the contract period and for a [specified time period] from the termination or expiry of this contract.

2. Contract authority's access to records

2.1 Right to conduct audits

The contract authority or a representative may conduct audits relevant to the performance of the contractor's obligations under this contract. Audits may be conducted of:

- (a) the contractor's operational practices and procedures as they relate to this contract, including security procedures;
- (b) the accuracy of the contractor's invoices and reports in relation to the provision of the goods, services or works under this contract;
- (c) the contractor's compliance with its confidentiality, privacy obligations and security obligations under this contract;
- (d) material (including records) in the possession of the contractor relevant to the goods, services or works under this contract; and
- (e) any other matters determined by the contract authority to be relevant to the goods, services or works under this contract.

2.2 Access by the contract authority

The contract authority may, at reasonable times and on giving reasonable notice to the contractor:

- (a) access the premises of the contractor to the extent relevant to the performance of this contract;
- (b) require the provision by the contractor, its employees, agents or subcontractors, of records and information in a data format and storage medium accessible by the contract authority by use of the public organisation's existing computer hardware and software;
- (c) inspect and copy documentation, books and records, however stored, in the custody or under control of the contractor, its employees, agents or subcontractors; and
- (d) require assistance in respect of any inquiry into or concerning the goods, services or works or this contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the public organisation), any request for information directed to the contract authority, and any inquiry conducted by legislature.

The contract authority must provide access to the contractor's computer hardware and software to the extent necessary for the contract authority to exercise its rights under this clause, and provide the contract authority with any reasonable assistance requested by the contract authority to use that hardware and software.

2.3 Conduct of audit and access

The contract authority must use reasonable endeavours to ensure that:

- (a) audits performed pursuant to clause 2.1; and
- (b) the exercise of the general rights granted by clause 2.2 by the contract authority, do not unreasonably delay or disrupt in any material respect the contractor's performance of its obligations under the contract.

2.4 Costs

- (a) Except as set out in clause 2.4(b), each party must bear its own costs of any reviews and/or audits.
- (b) If the contractor is able to substantiate that it has incurred direct expenses in the contract authority's exercise of the rights granted under clause 2.1 or clause 2.2 which, having regard to the value of this contract, are substantial, the contract authority and the contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

2.5 Supreme audit institution

The rights of the contract authority under clause 2.2(a) to 2.2(c) apply equally to the supreme audit institution for the purpose of performing supreme audit institution's statutory functions or powers.

2.6 Contractor to comply with supreme audit institution's requirements

The contractor must do all things necessary to comply with the supreme audit institution's notified under clause 2.3, provided such requirements are legally enforceable and within the power of the supreme audit institution.

2.7 No reduction in responsibility

The requirement for, and participation in, audits does not in any way reduce the contractor's responsibility to perform its obligations in accordance with the contract.

2.8 Subcontractor requirements

The contractor must ensure that any subcontract entered into for the purpose of this contract contains an equivalent clause granting the rights specified in this clause.

2.9 No restriction

Nothing in this contract reduces limits or restricts in any way any function, power, right or entitlement of the supreme audit institution. The rights of the contract authority under this contract are in addition to any other power, right or entitlement of the supreme audit institution.

2.10 Duration of this clause

This clause applies for the contract period and for a [specified time period] from the termination or expiry of this contract.

Source: Adapted from Department of Finance and Deregulation, Australia (2007), "[Standard Contract Clauses to Provide ANAO Access to Contractors' Information](#)".

Further Resources

Department of Finance and Deregulation (Australia) (2007), "[Standard Contract Clauses to Provide ANAO Access to Contractors' Information](#)".

OECD (2009), "[Guidelines for Fighting Bid Rigging](#)" (available in 15 languages).