



Australian Government

Department of Finance and Deregulation

Standard Contract Clauses to Provide ANAO Access to Contractors' Information

Purpose

The non-mandatory standard access clauses have been developed for inclusion within tender documentation and contracts to provide the ANAO, and Commonwealth agencies access to information held by contractors, including third party subcontractors for the purpose of audits.

Introduction

As part of the Government's response to the Senate Finance and Public Administration Reference Committee Report, *Contracting Out of Government Services*, May 1998, a commitment was made for standard access clauses to be developed.

The Department of Finance and Deregulation, and the Australian National Audit Office (ANAO) have jointly developed the attached standard access clauses. The clauses were last revised in May 2007.

Application

Agencies are accountable for their agency's procurement performance. As part of their accountability responsibilities, agencies should consider, on a case-by-case basis, the inclusion of the attached standard access clauses, noting that the clauses may need to be tailored to reflect their individual circumstances. Agencies should also consider the cost implications on business when considering the use of these non-mandatory standard access clauses.

The inclusion of standard access clauses provides the ANAO and Commonwealth agencies access to various types of information held by contractors and third party subcontractors, including access to records, information and assets directly relevant to the contract performance. The clauses do not enable access to information that is outside the scope of the specific contract.

The standard access clauses are not mandatory and do not remove the accountability and transparency requirements of departments and agencies when undertaking tender processes and managing contracts.

These standard access clauses should be used in conjunction with other contractual clauses, including performance management. The clauses do not override agencies' responsibilities to continue to manage a contract in accordance with all contract provisions.

Information management and access

1. Books and records

1.1 Contractor to keep books and records



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The Contractor must:

(a) keep and must require its subcontractors to keep adequate books and records, in accordance with Australian accounting standard, in sufficient detail to enable the amounts payable by the Customer under this Contract to be determined; and

(b) retain and require its subcontractors to retain for a period of seven years after termination or expiration of this Contract all books and records relating to the Services.

1.2 Costs

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

1.3 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

2. Audit and access

2.1 Right to conduct audits

The Customer 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 Services under this Contract;
- (c) the Contractor's compliance with its confidentiality, privacy obligations and security obligations under this Contract;
- (d) material (including books and records) in the possession of the Contractor relevant to the Services or Contract; and
- (e) any other matters determined by the Customer to be relevant to the Services or Contract.

2.2 Access by the Customer

The Customer 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 Customer by use of the Customer's existing computer hardware and software;



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(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 Services or this Contract. For these purposes an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Department), any request for information directed to the Customer, and any inquiry conducted by Parliament or any Parliamentary committee.

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

2.3 Conduct of audit and access

The Customer 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 Customer,

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 Customer'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 Customer and the Contractor will negotiate an appropriate reimbursement. Any reimbursement must not be greater than the direct expenses incurred and substantiated.

2.5 Auditor-General and Privacy Commissioner

The rights of the Customer under clause 2.2(a) to 2.2(c) apply equally to the Auditor-General or a delegate of the Auditor-General, or the Privacy Commissioner or a delegate of the Privacy Commissioner, for the purpose of performing the Auditor-General's or Privacy Commissioner's statutory functions or powers.

2.6 Contractor to comply with Auditor-General's requirements

The Contractor must do all things necessary to comply with the Auditor-General's or his or her delegate's or the Privacy Commissioner's or his or her delegate's requirements, notified under clause 2.3, provided such requirements are legally enforceable and within the power of the Auditor-General, the Privacy Commissioner, or his or her respective delegate.



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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 Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner. The rights of the Customer under this Contract are in addition to any other power, right or entitlement of the Auditor-General or a delegate of the Auditor-General or the Privacy Commissioner or a delegate of the Privacy Commissioner.

2.10 Survival

This clause applies for the Contract Period and for a period of seven years from the termination or expiry of this Contract.

Tender Clause

1. Australian National Audit Office

1.1 The attention of Tenderers is drawn to the *Auditor-General Act 1999 (Cth)*, which provides the Auditor-General or an authorised person with a right to have, at all reasonable times, access to information, documents and records.

1.2 In addition to the Auditor-General's powers under the *Auditor-General Act 1997 (Cth)*, if the Tenderer is chosen to enter into a contract, the Tenderer will be required to provide the Auditor-General or an authorised person, access to information, documents, records and **[Agency]** assets, including those on the Tenderer's premises. This will be required at reasonable times on giving reasonable notice for the purpose of carrying out the Auditor-General's functions and will be restricted to information and assets which are in the custody or control of the Tenderer, its employees, agents or subcontractors, and which are related to the Contract. Such access will apply for the term of the Contract and for a period of 7 years from the date of expiration or termination.

Tenderers should obtain, and will be deemed to have obtained, their own advice on the impact of the *Auditor-General Act 1997 (Cth)* on their participation in the Tender.