

## Contract development and management checklist for ROs

This document provides an overview of the key points that will need to be considered by Returning Officers during procurement and when developing and managing contracts.

As Returning Officer, following these key points will help you to ensure that you remain in control of the process and that the company contracted provides work on time and to the required standard, and does not make any decisions or variations without your full understanding and authorisation.

Where you are using a contractor to process personal data, there are special requirements that apply under data protection legislation. These are highlighted below, but you should ensure that you liaise with your council's Data Protection/Information Officer.

### Procurement

- Take advice from your local authority on procurement procedures to be followed.
- Obtain at least three quotes. Alternatively, is there a standing list of local authority approved contractors? If so, assess whether there is a contractor that would be able to meet the requirements of the specification (see below).
- Specific rules apply when you are using a 'processor' to act on your behalf to process personal data. For example, if you send data to a contractor to print election materials such as postal ballot packs or ballot papers you are using a processor. Data protection legislation requires that you only appoint a processor that can provide '**sufficient guarantees**' that the requirements of the legislation will be met. Therefore you must ensure that data protection considerations are integral to your procurement process. More information on the impact of data protection legislation when entering into contracts with data processors can be found at the end of this resource.

### The specification

A detailed specification of requirements is essential for effective procurement. As a minimum, the specification must:

- Include a detailed description of what you want them to deliver.

- Provide clear instructions as to the necessary statutory requirements and obligations in relation to the particular work or services to be undertaken, such as:
  - directions as to printing and any content and layout requirements statutory deadlines
- Contain relevant information about any data that will be provided, including processes for sending and receipt, and secure management of data.
- Be provided to all those invited to tender for the work, and the successful contractor must be able to meet all of the requirements of the specification.
- Make it clear that the successful contractor should be producing work or delivering services according to the specification and that no changes should be made during fulfilment of the contract without prior authorisation.

### Your decision

When arriving at your decision, you must consider the following:

- Have they addressed all of the points in your specification?
- Are you satisfied that they will be able to meet the requirements of the specification?
- Do they offer the best value for money?
- If they are processing personal data on your behalf, can they provide '**sufficient guarantees**' that the requirements of the data protection legislation will be met?

You need to ensure that you document your decision-making process.

## Contract management

There are obligations both on your part and on the part of the supplier and which must be reflected in the contract (see [below](#) for specific additional requirements where the contractor is processing personal data on your behalf):

### Your obligations

- Provide clear specification of requirements including quality, quantity, delivery schedules, etc.
- Nominate a contract manager to act as the main point of contact throughout the process.
- Take up formal references once a supplier has been selected.
- Make appropriate checks against the supplier's statements relating to such matters as security, health and safety, and procedures for the secure handling of data.
- Commit to supplying accurate data on time and in an agreed format, with an agreed procedure established for proof checking.
- Agree a process with the supplier to vary the contract, e.g. in the event of any last minute changes, such as increased quantities required or changes to delivery schedules.

- Obtain a statement from the supplier confirming whether they will be using sub-contractors and, if so, seek assurances that the sub-contractor will be capable of delivering the work and that appropriate quality assurance processes are in place.
- Agree a process to rectify any errors.

### **Supplier obligations**

- Provide a clear response to the specification with an unambiguous pricing schedule.
- Ensure that the Project Manager liaises with your contract manager.
- Commit to deliver work in connection with the contract on time and to the agreed specification.
- Meet legislative requirements as directed by you.
- Outline contingency plans to ensure business continuity in the event of failure of resources (workforce) or systems (machines, digital printers, transport, accommodation, etc.), and any costs associated with these plans.
- Provide re-assurance that they have sufficient resources to fulfil the contract.
- Satisfy you that they will indemnify you against any costs, claims, actions, demands and proceedings arising from any acts, errors or omissions (wilful, negligent or otherwise).
- Satisfy you that adequate insurance is in place to cover risks in relation to public liability and professional negligence.
- Satisfy you that they will adhere to all data protection legislation requirements
- Produce print-ready proofs/test documents.
- Agree a process to rectify errors.
- Allow you and/or your appointed representative to quality-assure the products at any reasonable time without prior notice. This should include the inspection of any records relating to the contract.
- Allow Electoral Commission representatives and accredited observers to observe the process (as required by legislation).

The contract must also cover the following:

### **Contract variation**

- Any variation must be made in writing and agreed by both parties.
- The contract should be capable of being adapted to take account of unscheduled activities.

### **Assignment and sub-contracting**

- No assignment or sub-contracting in whole or in part is allowed without your prior written consent.
- You must have full access to any sub-contractor(s).
- You may assign and transfer rights/liabilities to another body on failure under the whole or any part of the contract in order to ensure that you are able to fulfil your legal responsibilities.

### **Payment**

- Invoicing by supplier in accordance with tender/quotation.

- Invoice to include all supporting information in relation to the costs charged.
- You must settle within time to be agreed with the supplier.

### **Termination of contract on fundamental breach by supplier**

- The contract must allow you to terminate the contract in the following circumstances:
  - Negligent act or omission
  - An act resulting in you being unable to perform your statutory duties
  - Insolvency or dissolution of the company affecting the contract

### **Freedom of Information (FOI)**

- Even though Returning Officers are not subject to FOI, in the interests of transparency, consideration should be given to agreeing to some disclosure in the event of an FOI request.

### **Data protection and secure storage**

- You and the supplier must not divulge any confidential information relating to the terms of the contract.
- The supplier and any sub-contractors must ensure the secure destruction of all electoral registration data and related materials at an agreed point.
- The supplier must ensure the safe/secure storage of all live ballot papers.
- The supplier and any sub-contractors must ensure the secure destruction of all data related to the ballot papers at an agreed point.

### **Specific considerations where the contract involves the contractor processing personal data**

In addition to the obligations set out above, there are specific requirements under data protection legislation where you are using a contractor (i.e. a 'processor') to process personal data on your behalf. This would include, for example, where you are sending data to a contractor to election materials such as postal ballot packs or ballot papers.

Whenever you use a processor, the data protection legislation imposes a **legal obligation** to formalise the working relationship in a written agreement/contract which sets out:

- the subject matter, nature and purpose of the processing;
- the obligations and rights of the data controller;
- duration of the processing; and
- the types of personal data and categories of data subjects

In addition, the legislation requires that the contract must set out specific obligations on the processor, including that they:

- comply with your instructions
- are subject to a duty of confidentiality
- keep personal data secure and notify you of any breach

- maintain written records of the processing activities they carry out for you
- only use a sub-processor with your consent
- submit to audits and inspections and provide you with whatever information you need to ensure compliance with the data protection legislation
- delete or return all personal data to you as you requested at the end of the contract

As RO you are the data controller and you remain ultimately responsible for ensuring that personal data is processed in accordance with data protection legislation. However, if a processor fails to meet any of its obligations, or acts against your instructions, then it may also be liable to pay damages or be subject to fines or other penalties or corrective measures. The ICO has provided guidance '[Contracts and liabilities between controllers and processors](#)' which you should consider in relation to your contracts with data processors.

Our resource on data protection legislation is available on our [website](#).

### **Requirements for secrecy**

- You must provide suppliers with a copy of the requirements for secrecy.