



ARMS: RECORDS MANAGEMENT CLAUSES FOR CONTRACTORS

Wording for inclusion into Pre-Qualification Questionnaires/ITT and ITN documents*

Tenderers should note that as a Scottish Public Authority, the Council is bound by the provisions of the Public Records (Scotland) Act 2011. In terms of this legislation, all public records managed by the Council must be managed in accordance with our Records Management Plan (RMP), which has been approved by the Keeper of the Records of Scotland. The RMP can be accessed at [insert hyperlink to approved plan].

The RMP, and the guidance issued by the Keeper, indicate that certain records created by the successful tenderer(s) appointed under this tendering exercise are themselves likely to be considered as “public records” under section 3(1) of the Public Records (Scotland) Act 2011. The Council is accordingly obliged to take steps to ensure that these records will be managed properly during their operational lifetime, and that appropriate steps will be taken to ensure they are retained for a suitable period after they cease being operational (which may include identifying records for transfer to permanent archive).

All tenderers must therefore complete the section of the [PQQ/ITT] relating to records management policies and procedures to allow the Council to ascertain the extent to which the tenderer will comply with good records management practice in relation to public records created under the subject matter of this tender.

Additional guidance on records management issues generally, and on contractors’ obligations under the Public Records (Scotland) Act 2011 in particular, can be found at: <http://www.nrscotland.gov.uk/record-keeping/public-records-scotland-act-2011/resources/model-plan-guidance>.

***Note:**

ITT = Invitation to tender. PQQ = Pre-qualifying questionnaire. These are two documents issued by contracting authorities under EU procurement rules when they are competitively procuring goods, services or works.

ITN = Invitation to negotiate, issued by contracting authorities using negotiated procurement methods.

ITT SECTION ON RM POLICIES AND PROCEDURES

Section C11 – Records Management (x% of available marks):

All Applicants, whether or not operating in the UK, should attempt to answer each of the following questions, substituting where relevant the appropriate legislation / Code of Practice etc. which are applicable in their own domestic jurisdiction.

If the Council requires further information under this heading we will consider your responses further with a view to assessing whether your application is taken further or not. In reaching this decision the

Council will consider how severe the shortcomings in your records management processes are, how up to date your policies and procedures are, and evidence of corrective measures which you have taken to remedy the position in the intervening period.

If there are specific additional requirements in relation to records management identified below then failure to demonstrate compliance with these additional specific requirements will result in your application being rejected.

The questions below follow the structure of the “Guidelines for Contractors” issued by the Scottish Council on Archives.

QUESTION	MANDATORY
You should have appropriate written processes and procedures for managing records	
Please upload a copy of your Records Management Policy or equivalent (covering general policy, organisation and arrangements including training). Please define attachment name and reference the question number	Y
If no system or policy in place, please give reason.	N

QUESTION	MANDATORY
Identify person responsible for record-keeping	
Does the Applicant have an identified person who is responsible for records management within the organisation?	Y
If Yes, please give that person’s name, qualifications and experience. If a consultant/organisation, please state consultancy’s/organisation’s name, qualifications and the services provided to the Applicant.	N

QUESTION	MANDATORY
Keep appropriate records	
Indicate how your organisation decides which records to create and maintain.	Y
Please describe the systems used to maintain records (whether electronic systems or manual processes or a combination of both)	Y
Indicate how your organisation decides which records to create and maintain.	Y
Please describe the systems used to maintain records (whether electronic systems or manual processes or a combination of both)	Y

QUESTION	MANDATORY
Know Where records are	
Describe where your records are held and how these are accessed when required by your staff.	Y

QUESTION	MANDATORY
Records support compliance activities	
Describe and quality assurance or other accreditation which your records management procedures have been awarded or are currently being assessed	Y

QUESTION	MANDATORY
Compliance with data protection	

Summarise your policy in respect of adherence to the requirements of the Data Protection Act 1998 where records contain personal data.	Y
Provide details of any regulatory or enforcement action which has been taken against your organisation by the Information Commissioner (or any local privacy or data protection regulator)	Y

QUESTION	MANDATORY
Apply Appropriate Retention and Disposal Rules	
Does the organisation have specific written procedures determining how long different types of records are retained for? (this is usually known as a retention schedule)	Y
Please upload a copy of your document retention schedule or equivalent (covering general policy, organisation and arrangements). Please define attachment name and reference the question number	N
If no system or policy in place, please give reason.	N

QUESTION	MANDATORY
Keep records in safe place	
Briefly describe the security measures in place to ensure these records are kept safe and secure. Include details of backup records, disaster recovery plans etc. where relevant to records management	Y

QUESTION	MANDATORY
Ensure systems are secure and sustainable	
Describe any digital sustainability strategies within your organisation which monitor continuing accessibility of digital records	Y
If no system or policy in place, please give reason	N

WORDING FOR INCLUSION IN CONTRACT CONDITIONS

1. Records Management:

1.1 The Contractor shall, for the duration of this Agreement, provide the Council with all assistance reasonably requested by the Council to assist the Council in complying with its obligations under the Act and with the Council's Records Management Plan where such compliance is in respect of records created or to be created by the Contractor on behalf of the Council in terms of this Agreement. This assistance will be at no cost to the Council.

1.2 The Contractor shall, for the duration of this Agreement and, in respect of records created during the term of this Agreement for the duration set out for that class of record in the Contractor's Retention Schedule after the termination or expiry of this Agreement, comply with the Records Management Provisions set out in schedule x. [if applicable: The Contractor shall also comply with these provisions, for the period described, in relation to any pre-existing records which are transferred to the Contractor pursuant to this Agreement.]

1.3 In this Clause 0, the term "Act" shall refer to the Public Records (Scotland) Act 2011; "Records Management Plan" means the plan prepared by the Council and approved by the Keeper of the Records of Scotland under section 1 of the Act, "Records Management Provisions" refers to the policies, procedures and arrangements for the management and preservation of the records created by the Contractor further to this Agreement, as such policies, procedures and arrangements are more fully set out in schedule x hereto; and "Contractor's Retention Schedule" refers to those parts of the Records Management Provisions relating to how long particular records or classes of records created or managed by the Contractor are to be retained for after they have come to the end of their normal operational use.

1.4 At the end of the relevant period set down in the Contractor's Retention Schedule for a particular record or class of records, then if the Contractor's Retention Schedule for that record or class of records, lists the final disposal of the record or class of record as "Pass to Council", the Contractor shall offer to transfer the records in question to the Council, such transfer to include full ownership of the records (including transfer of the status of data controller of any personal data as defined in the Data Protection Act 1998 contained in the records, full beneficial ownership and transfer of any intellectual property rights relating to the records.) The transfer shall be at no cost to the Council. The Contractor shall ensure that all relevant indices and any other relevant information reasonably required to locate individual items within the records, including metadata and database schema, are also offered to the Council on the same terms.

1.5 If the Contractor shall become bankrupt (whether voluntary or compulsorily), unable to pay its debts, insolvent or make any arrangements with its creditors, or if any resolution is adopted for the winding up of any party, or if a receiver, administrator or administrative receiver is appointed over the whole or any part of its assets or if either party goes into liquidation (whether voluntary or compulsorily) otherwise than for the purposes of amalgamation or reconstruction or any form of execution levied upon its assets, then immediately on the occurrence of any of these events, the records which would, in terms of clause 1.4, fall to be offered to the Council at the time stipulated in the Contractor's Retention Schedule, shall be deemed to be held on trust by the Contractor on behalf of the Council. The Contractor shall thereafter, if and when so required by the Council, transfer the records in question to the Council, such transfer to be on the same terms as would apply to a transfer made in terms of clause 1.4.

Schedule x: Records Management Provisions

[include relevant provisions of the Contractor's records management arrangements as assessed in the tender process together with any particular requirements imposed by the Council in terms of the Agreement. The Contractor's Retention Schedule must be included or validly incorporated by reference, and for any records which the Council's own policy on archival appraisal determines should be transferred to permanent archive, the retention schedule must be marked with a final destination for these records of "Pass to Council."]

Drafting Notes:

The data protection clause in the contract should ensure that the Contractor secures all consents necessary to permit any personal data to be transferred to the Council (or, for non-consensual processing, must explain the non-consensual basis of the processing). In either case, you will need to address transfer to the Council in the relevant fair processing notices. These are not required if the Contractor is set up under the agreement as a data processor rather than a data controller but this is not recommended for most purposes.

The survivorship clause should be amended to include the records management clause as surviving termination of the agreement.

The FOI clause needs to consider which records, if any, are held by the Contractor on behalf of the Council and so would fall to be included in the scope of any relevant FOI request made to the Council. Delivering up obligations should be included if any records are held in this way. [Note: this is not an attempt to introduce FOI by the back door. The FOI clause covering this eventuality is simply to reflect the position when information is held on behalf of a public authority, and so covered by existing FOI rules, in terms of section 3(2)(b) of the FOI(S)A 2002.]