



Outsourced services contract clauses

Often government agencies contract out their non-core or 'housekeeping' functions, such as finance, personnel or facilities management to other entities. These entities may be either individuals or organisations. In such cases the service is provided to government through contractual arrangements.

The contract between the parties must make handling, ownership and disposal of the records clear. For those agencies using generic contract templates provided by the ACT Government Solicitor's Office the current *Contract Material* clause in the standard template is adequate.

Extracts from the clause in the generic contract template:

Ownership of Contract Material

Ownership of all Contract Material, including any intellectual property rights, vests on its creation in the Territory.

Territory Material

Territory Material will remain the property of the Territory and the Consultant must only use that material for the purpose of providing the Services or otherwise in accordance with any conditions notified to it by the Territory.

Safekeeping and preservation of material

The Consultant must ensure the safe keeping and proper preservation of Contract Material and Territory Material in its possession or control.

Delivery of material to the Territory

On the expiration or earlier termination of this Agreement, the Consultant must deliver to the Territory all Contract Material and Territory Material (other than copies of material that the Territory has authorised the Consultant to retain).

The clause does oblige the provider to follow some of the basic principles of the *Territory Records Standard Number 5 - Recordkeeping and Outsourced Government Business*. These include making records, ownership and storage.

However, if it is felt that more specific wording is required, additional clauses to

ensure control of records, access to records in custody of the provider, adequate and secure storage, disposal of records in accordance with the records disposal schedule and retrieval of ACT Government records generated by a provider performing an outsourced work or service can be made for the specific contract. If such a clause is proposed contact ACT Procurement Solutions or the ACT Government Solicitor's Office for tender/contract specific assistance.

To make sure that the agency is complying with the *Territory Records Standard - Number 5 - Recordkeeping and Outsourced Government Business*, the agency should check that:

- contracts specify which party will own each class of records at the end of the contract;
- continuity of service and the rights and entitlements of individuals and the Territory are protected in ownership arrangements;
- any restrictions on the contractor's use of information in the records is made clear in the contract;
- contracts specify who owns the intellectual property in any records made as part of the contract;
- the contract specifies any particular requirements for records description and control, as well as the measures agencies will use to ensure compliance;
- the contractor is made aware of the requirements of the *Territory Records Act 2002* and the Standards, Codes and Guidelines produced under it;
- specific instructions or standards are included in the contract to ensure that sufficient contextual documentation of the records is available at the end of the contract;
- contracts specify the records to which agencies are entitled to have access during and after the contract period;
- where appropriate, contracts specify the information technology format that the records are made and maintained in, and how this will be managed over time.