

Outsourced services contract requirements

When agencies contract an external entity to provide services, they need to consider what evidence should be created and captured about how that service was delivered. Contracted service providers often create, send, or receive Territory records on behalf of agencies. In addition, many contracted services may include significant data collection and analysis processes in support of those services. Contracts should provide clear legal obligations describing how the contracting organisation and employees must handle Territory records.

The contract between parties must make handling, ownership and disposal of records clear.

Professional records management advice should be sought in making decisions about what records of the service will be needed by the ACT Government and how long they should be kept.

When making decisions about the creation and retention of records about a service, agencies should consider the level of risk to the ACT Government or the community of not having the records available. Common risks will include financial and business continuity risks, however, consideration should also be made of risks to ACT Government accountability, to the wellbeing of the community, or to the preservation of the history and memory of the ACT.

This may apply for services provided to the ACT Government, such as staff rehabilitation services or research and analysis. It will also apply to services provided to others on behalf of the ACT Government, such as out of home care for children or first aid provision at ACT government events. Such arrangements are less likely to be needed for grants-funded activities such as for arts productions or community events. However, it is still useful to consider recordkeeping requirements when establishing or reviewing grants programs, and it is good practice to require grants recipients to account for their spending of grants monies and report on the outcome of the funded activities.

When specifying the requirements of an outsourced service, officers should consider questions such as:

- What records will be needed to carry on the service if the agreement were to end unexpectedly? These might include case files for people who have received a service, or accounting records about payments for services from and to the service provider.
- What records will be needed to demonstrate that the service was provided correctly? This might include records of oversight committees or other governance bodies within the contractor's own administrative structures (such as for a not-for-profit entity), or other records that document the provider's decision-making about and monitoring of its activities under the contract.
- What records will be needed to protect the rights and entitlements of individuals who receive or perform services through the provider on behalf of the ACT Government?

This might include personnel files for the provider's employees who may be exposed to dangerous substances while maintaining ACT Government properties

- What records will the community expect to be able to access into the future for research or historical purposes? This might include research material supporting consultants reports that form the basis of significant decisions about governance of the ACT and the life of its citizens, or details of long-term environmental hazards such as the location and management of asbestos dumps or other dangerous waste.

If records will be needed for any of these reasons, agencies may need to place contractual requirements on the service provider. These requirements may need to specify:

- That particular records need to be created
- The length of time they must be retained, and under what, if any, circumstances the contractor may be allowed to destroy the records
- What systems should be used to create them, and/or what format they should be created and managed in to ensure that they remain usable and accessible for as long as they are required
- What metadata about the records should be created and kept, for example, audit and access logs, identity metadata about service recipients
- Restrictions around access to the records
- Arrangements for returning the records to the ACT at the conclusion of the contract or at another specified time

Tenders and contracts

Most tenders for service provision will be arranged using generic contract templates such as those provided by the ACT Government Solicitor's Office or Procurement ACT. These templates will vary slightly depending on the monetary value of the contract and the area of procurement (ICT system, outsourced service, etc). The standard templates have a number of clauses related to intellectual property, privacy, and non-disclosure that cover many of the requirements and principals of recordkeeping.

If more specific wording is required, additional clauses to ensure adequate handling of data or records in the custody of a service provider can be made for the specific agreement. It is strongly recommended that records management requirements are identified while preparing for the procurement process. Details of recordkeeping requirements should be incorporated into the *statement of requirements/statement of work* or *schedules*, along with service details, deliverables, and reporting. If additional requirements are proposed, contact Procurement ACT or the ACT Government Solicitor's Office for tender/contract specific assistance.

Statement of requirements

The following table describes a number of conditions and requirements that can be included in tenders to ensure that suppliers are properly maintaining records when providing services to or on behalf of the ACT Government.

It is important to note that the wording of the requirements is descriptive, and represents the substance and intent of such sections. Any final and specific wording should be discussed with Procurement ACT or the ACT Government Solicitor's Office.

Requirement descriptions
Supplier must allow ACT Government to retain ownership of its records, information, and data.
Unless authorised in writing by the ACT Government or to comply with legislative requirements, supplier must not use ACT Government records, information and/or data for any secondary purpose other than provision of the service. Secondary purposes include but are not limited to software development and testing, training, research or marketing.
The Supplier must not transfer, or permit the transfer of custody or ownership, or allow the destruction, of any Territory Record without the prior written consent of the ACT Government. A territory record is a record made and kept, or received and kept, by a person in the course of exercising a function under a territory law.
Provision to enable the ACT Government to delete or destroy records, information and/or data according to records disposal schedules, or at the expiration or termination of the agreement.
Provision to arrange the export and transfer of records, information and/or data by the ACT Government when required, including on termination of the agreement.
Supplier must notify the ACT Government in the event of a records, information and/or data loss, breach or other security incident within an agreed timeframe.
The Supplier must maintain proper business and accounting records; and must ensure that it keeps all records relating to the Contract in accordance with any applicable regulatory or statutory requirements and in any event for a period of at least seven years after the expiration or earlier termination of the Contract.
Systems must fully support the ACT Government's compliance with the following legislation:

- Health Records (Privacy and Access) Act 1997;
- Information Privacy Act (ACT) 2014;
- Privacy Act (Cth) 1988;
- Territory Records Act 2002; and
- Freedom of Information Act 2016.

Outline all relevant security accreditations including:

- International Organization for Standardization (ISO)
- System and Organization Controls (SOC)
- Health Insurance Portability and Accountability Act (HIPAA)
- General Data Protection Regulation (GDPR)
- Payment Card Industry (PCI)

Supplier must verify all claimed accreditations through full copies of relevant compliance reports. Supplier must maintain all accreditations throughout the life of the agreement and inform the ACT Government immediately if any accreditation is lost or suspended.

Supplier must incorporate substance of these clauses in any agreement with subcontractors who are supporting delivery of services to ACT Government.

Systems should provide appropriate security controls for the secure storage of ACT Government records, information and data. Systems must provide records, information and data security in transport, both for client connections and for any integrations with other systems. Provider must host IT systems in physically secure data centres.

Supplier must describe all circumstances where ACT Government records, information and/or data may be transferred or viewed offshore. Systems must be managed and accessed only by personnel in Australia. This must include any subcontractors of the Supplier. All exceptions to this must be documented by the supplier.

Systems must provide a method for separation of ACT Government records, information and/or data from other tenants, to ensure compromise of another tenant doesn't affect ACT Government operations, records, information and data.

Provision to empower the ACT Government to test or audit the application for security vulnerabilities, where the supplier does not provide acceptable reports of penetration testing results or accreditation compliance audits.

Supplier must provide information about the system's security design and security controls with sufficient detail to support the development of ACT Government security procedures, risk assessments and compliance reports.