

Transparency

Publication of New Central Government Contracts

Guidance Note

Updated May 2012

Note: This guidance note comes into effect immediately and replaces previous guidance issued by ERG which covers ICT contracts

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1. POLICY COMMITMENT

- 1.1 In its publication *'The Coalition: our programme for Government'*, Government set out the need for greater transparency across its operations so that the public could hold public bodies and politicians to account.

To help achieve greater transparency the Prime Minister has set out the following requirement:

All new central government contracts to be published in full from January 2011.

The purpose of this commitment is for central government to be more transparent about how public funds are being spent to help deliver better value for money in public spending. Previous commitments have paved the way for this third commitment and all new procurements from January 2011 should be conducted on the basis that contracts will be published.

- 1.2 The Prime Minister has set out two other related requirements as follows:

- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.¹
- All new central government ICT contracts to be published online from July 2010.

For consistency, the Minister for the Cabinet Office has decided that all three commitments will apply to contracts and tenders over the value of £10,000.

- 1.3 From 1st January 2011, the commitment to publish new central government ICT contracts has been replaced by this commitment to publish all new central

¹ See Cabinet Office ERG guidance "Transparency – Publication of Tender Documents"

government contracts in full. Similarly, this guidance will also replace existing ERG (OGC) guidance on publishing ICT contracts.

- 1.4** The purpose of this guidance is to advise departments on how best they can meet this requirement. This guidance provides a set of common principles to enable departments to meet this requirement in a consistent way and serves as a guide for departments when making their own case-by-case assessments regarding the publication of their contracts. Departments are responsible for the publication of their contracts including any assessments for possible exemptions or redactions.

- 1.5** Departments should be aware that there is a separate commitment to publish new items of central government spending over £25,000 online from November 2010.² The requirements of this guidance are in addition to and may overlap with the separate commitment to publish spending over £25,000.

- 1.6** In addition to these transparency commitments, the Minister for the Cabinet Office has set out a requirement for departments to identify those new contracts that have been awarded to an SME from 1st January 2011. Further information³ has been issued by Cabinet Office (Efficiency & Reform Group).

- 1.7** The Minister for the Cabinet Office has also set a separate requirement with effect from 1st January 2011, for departments to publish their estimated and actual procurement timescales (i.e. the time taken from placing the contract advertisement/OJEU notice/ [or other notification of procurement] to contract award) for procurements with a contract value of above £10,000. This requirement does not apply to procurements with a contract value of below £10,000.

Subject to the guidance on exemptions and redactions detailed in this document, in line with the Government's policy on consultancy expenditure⁴,

² Further guidance can be found at: http://www.hm-treasury.gov.uk/psr_transparency_index.htm

³ <http://www.cabinetoffice.gov.uk/news/plans-open-government-small-businesses>

⁴ Guidance was issued to departments contact consultancy.freeze@cabinet-office.gsi.gov.uk.

Departments should publish a statement of the value to be delivered from all approved consultancy contracts of £20,000 and above, using the proforma at Annex E. On completion of the contract, the proforma should be updated with a statement of the actual value delivered.

2. SCOPE

Organisational coverage

2.1 This requirement applies to central government departments, including their agents and agencies, all Non-Departmental Public Bodies (NDPBs), National Health Service (NHS) bodies and trading funds.

Central government departments are responsible for communicating the requirement and this guidance to their delivery bodies.

For the purpose of this guidance, organisations subject to this requirement will be referred to as 'departments'.

2.2 The following organisations are not subject to this requirement:

- Intelligence Agencies
- Financial and non-financial public corporations
- Parliamentary bodies
- Devolved Administrations
- Local government and other parts of the wider public sector (for example, schools).

However, they may choose to adopt this requirement and guidance.

2.3 Where an organisation comprises both a public body and a public corporation (e.g. the BBC), this requirement applies to that part of the organisation which is classed as a public body.

What constitutes a 'contract'?

2.4 Departments are expected to publish contracts in full. The contracts themselves needed to be presented in open, machine-readable formats. For the purpose of this requirement, as a minimum, this must include the following:

- Specification
- Terms and Conditions (Ts&Cs)
- Associated Schedules (which may include the winning tenderer's bid)
- In addition to the above, departments are required to publish the completed proformas covering timescales and consultancy value statements (where applicable).

Publication should include overall pricing but in some cases, not necessarily a breakdown of pricing structure – see section 6 on exemptions and redactions.

2.5 Arrangements to provide services between Crown bodies under, e.g. MOUs are non-contractual and therefore exempt from publication. Certain other arrangements which follow similar principles may also be exempt. Such circumstances would be limited, i.e. where a department or public body can prove that they are receiving services from another public body where:

- i. it relates to the core business of the public body and
- ii. it is not something the market could provide, so therefore
- iii. they have implemented an SLA where there is no contract and no external competition.

These arrangements would be exempt from publication. However, it is the responsibility of departments to establish for themselves the contractual status of such arrangements.

2.6 Where contract specifications or associated schedules contain various diagrams (for example, in some construction contracts), departments should seek to publish these where practical (taking into account the any necessary exemptions as set out in section 6) and where the diagrams are already in an electronic format that is likely to be accessible to the public (e.g. word or pdf).

- 2.7** To meet the requirement to publish actual procurement timescales (i.e. the time taken from placing the contract advertisement/OJEU notice to contract award), departments are also required to complete and publish the template at Annex A which confirm the total duration of the procurement from OJEU/contract advertisement/[other notification of procurement] to award. This template must be published together with the contract. Further details on publishing estimated timescales can be found in the guidance issued by Cabinet Office on the publication of tender documents.

Will this apply to all contracts?

- 2.8** This requirement applies to all new contracts (including contractual documents relating to the establishment of framework agreements, Dynamic Purchasing Systems and resulting contracts) for the supply of goods, services and works issued from 1st January 2011. This requirement is not retrospective so does not apply to contracts that have already been let prior to 1st January 2011, with the exception of ICT contracts. To meet an earlier commitment on transparency of contracts, ICT contracts awarded from 1st July 2010 have already been published by departments.
- 2.9** This requirement does apply to contracts issued overseas. Where contracts are in languages other than English, departments must ensure that an English language version is available for publication.
- 2.10** This requirement does not extend to sub-contracts unless the contracting authority is a party to the sub-contract.

Minimum threshold for publication

- 2.11** A minimum threshold value of £10,000 has been set for contract disclosure. This means that departments are only required to publish all new contracts that are over the value of £10,000 (net of recoverable VAT where it can be separated out). Departments are not required to publish new contracts which fall below the total value of £10,000. However, they may choose to publish

new contracts below the threshold. Ministers may decide to set a lower threshold at a later date.

Contract amendments/variatio

- 2.12** Generally, minor variations to contracts once they have been awarded do not result in a new contract being formed between the department and the supplier. However, where the variation changes the contract significantly, resulting in a new contract, departments are required to publish the new resulting contract, where the value of the new contract is over £10,000.

Procurement exercises underway prior to 1st January 2011

- 2.13** For procurement exercises that started after 1st July 2010, there is a presumption that resulting contracts (where awarded after 1st January 2011) will be published as departments should already been taking measures to ensure that transparency commitments are incorporated into their procurement activities. There may be very limited circumstances, for example, where a procurement commences prior to 1st July 2010, where transparency provisions have not be incorporated into the procurement process. In these circumstances, before the contract is signed, departments should inform their chosen supplier of the transparency commitments set out by the Government to publish the resulting contract (taking into account any necessary redactions – see section 6).
- 2.14** Where a supplier objects to the publication of information that would not be redacted following consideration of the exemptions set out by the Freedom of Information Act, because the intention to publish the resulting contract was not explicitly included within the terms and conditions of the contract against which the chosen supplier had bid, departments will need to make a case-by-case assessment of the options available.
- 2.15** There may be a few instances, where invitations to tender are issued from 1st September 2010 which contain the relevant transparency provisions i.e.

transparency clauses within the terms and conditions, and the contracts awarded prior to 1st January 2011. In these circumstances departments should publish the resulting contracts on Contracts Finder, as there is already an intention to publish the contracts and necessary permission has been obtained from the winning supplier.

Contract Extensions

2.16 Where departments are extending the duration or scope of an existing contract (or framework agreement) and they have a contractual option to do so as envisaged in the contract notice or other publication of the original contract opportunity, this would *not* result in a new contract and departments are therefore *not* required to publish the contract details. Departments are however, encouraged to seek permission from the supplier(s) to publish the contract when negotiating a contract extension to an existing contract. A contract extension in other circumstances may result in a new contract which should be published. For new contract requirements, where extensions are envisaged, departments should ensure that all potential bidders have clear and early notice of the transparency requirement to publish the contract when the contract opportunity is advertised.

Re-tendering a contract

2.17 When re-tendering a contract, this is a *new* procurement and so departments are required to publish the resulting contract. Information about the requirement to publish the resulting contract should be made clear to all potential bidders at the beginning of the procurement process.

Contract renegotiations

2.18 Where departments renegotiate existing contracts with suppliers that result in a new contract being formed (i.e. because any change agreed is significant enough to change the nature of the original contract), departments are required to publish the new contract.

Contract termination

- 2.19** Where a contract is terminated following publication of the contract, departments should update the status of the contract on Contracts Finder (e.g. that the contract been terminated and where possible, the reason for termination).

3. FRAMEWORK AGREEMENTS

New Framework Agreements

- 3.1** When setting up a new framework agreement for goods, services or works to be tendered after 1st January 2011 where the terms and conditions of the contract have not been finalised and where the estimated total value of the framework agreement is over £10,000, departments are required to publish the framework agreement itself and also resulting call-off contracts above the value of £10,000 in line with the guidance set out in this document. Where the framework agreement has been published, the subsequent call-off contract(s) can refer to the framework agreement and provide its web location rather than republish the entire framework agreement.

Call-offs

- 3.2** This requirement applies to contracts resulting from a call-off from a framework agreement. Framework agreements that were set up after 1st July 2010 should already contain relevant transparency clauses to explicitly allow for publication of resulting call-off contracts. However, when calling-off from an existing framework agreement that was set up prior to 1st July 2010 or which does not contain transparency clauses regarding publication, departments should inform their chosen supplier of the transparency commitments set out by the Government to publish the resulting contract (taking into account any necessary redactions – see section 6). Where a supplier objects to the publication of information that would not be redacted following consideration of the exemptions set out by the Freedom of Information Act, because the intention to publish the resulting contract was not explicitly included within the terms and conditions of the contract against which the chosen supplier had entered into the Framework Agreement, departments will need to make a case-by-case assessment of the options

available. In making their assessment, departments may wish to seek advice from the department responsible for setting up and managing the framework agreement.

- 3.3** The transparency commitments strongly support publication. Departments must therefore be able to demonstrate that they have actively worked with the supplier to meet the transparency commitments. Similar principles apply to Dynamic Purchasing Systems.

4. DYNAMIC PURCHASING SYSTEMS (DPS)

- 4.1** The same principles apply to DPS as to frameworks. Therefore documentation used to establish the DPS must be published. When procuring individual contracts under the DPS, contracts of a value over £10,000 should also be published. These contract(s) can refer to the DPS and provide its web location rather than republish the entire DPS documentation suite.

5. DYNAMIC MARKETPLACE

- 5.1** The Dynamic Marketplace is a dynamic request for quote system set up to cater specifically for low complexity requirements of a value below the EU threshold. Departments using the Dynamic Marketplace will need to post their contracts manually to Contracts Finder in accordance with this guidance. The service provider is developing an interoperable link so that notices will automatically be published on Contracts Finder. This will be available following completion of the pilot phase.

6. EXEMPTIONS AND REDACTIONS

- 6.1** Certain redactions may be required prior to publication in order to protect certain types of information which may be considered exempt from publication. Redactions of contractual text are permitted in line with the exemptions set out by the Freedom of Information Act. This is also the

approach being taken for the requirement to publish items of central government spending over £25,000. The Freedom of Information Act contains 23 grounds for possible exemptions. For example, these exemptions may include information in relation to national security, commercial confidentiality and the protection of personal data as permitted by the Freedom of Information Act.

- 6.2** The Prime Minister's letter of 31st May 2010 signalled the importance of greater transparency to the public. Therefore, all information that constitutes a contract, as defined in section 2.4 of this guidance, should be published unless an exemption under the Freedom of Information Act applies and redaction can be justified. Where an exemption under the Freedom of Information Act does not apply or if redaction cannot be justified, departments should not withhold information from publication. Departments are responsible for making these assessments and the procedures for redactions will be at departments' discretion. Particular attention should be paid to reducing the risk of human error as far as possible.
- 6.3** Where departments propose to rely on any particular exemption, assessments should be made using the same principles as they would for considering the disclosure of information under the Freedom of Information Act. There are two types of exemptions, 'absolute' exemptions and 'qualified' exemptions. The Freedom of Information Act sets out which exemptions are absolute and which are qualified. Where an absolute exemption applies, the relevant information to which it applies is automatically exempt from publication. Redaction of the relevant information will automatically be justified in these circumstances. However, where a qualified exemption applies, this does not mean that the relevant information to which it applies is automatically exempt from publication and departments are therefore not entitled to automatically withhold the information from publication.

- 6.4** Once a department has identified that a qualified exemption applies to certain information contained within the contract, they would then need to apply the public interest test to establish whether or not the exemption is justified. If, as a result of applying this test, part of a contract is deemed to be exempt from publication, this does not automatically mean that the whole contract should be withheld from publication as each individual element of the contract should be assessed separately. It is only those elements of the contract to which exemptions apply and can be justified (where it is a qualified exemption) that should be withheld from publication. In some, but limited, circumstances this could result in all information from the contract being redacted and therefore withheld from publication.
- 6.5** Departments are responsible for following the principles set out by the Freedom of Information Act when assessing the need for redactions prior to contract publication. This means that departments must make their own case-by-case assessments based on the criteria set out in the guidance to ascertain whether their contracts require certain redactions prior to publication. Departments should be aware that information which is considered to be exempt from publication and is therefore redacted from one contract may not be covered by an exemption, or may not need to be redacted for another contract. It is therefore essential that departments assess their contracts and the information in them on a case-by-case basis and that a 'one-size-fits' all approach is not adopted.
- 6.6** As part of the tendering process, when submitting their bids, suppliers should be given the opportunity to identify which pieces of information they regard as being sensitive and would not want published and the reasons why they would not want the particular pieces of information published. Departments should not use this information when evaluating bids. Once departments have evaluated the bids and awarded the contract to the winning supplier, departments should assess the information that the winning supplier has identified as being sensitive (along with the rest of the contract) against the

exemptions set out by the Freedom of Information Act when considering which contractual information should/should not be published.

- 6.7** Departments should engage with the chosen supplier in this process and inform them of the outcome of their assessment in terms of which information is to be published and which, if any, will be redacted. It is recommended that departments also inform the supplier with whom they are contracting, what information the department would consider to be its confidential information and would not want published. In most cases it is envisaged that the process should be a two way discussion to inform the redactions process, further guidance can be found at: <http://www.justice.gov.uk/guidance/foi-guidance-codes-practice.htm>.
- 6.8** Once departments have established which, if any, contractual information is exempt from publication, they must redact the relevant information prior to publication. It is advised that departments make a duplicate (electronic copy) of the original contract and delete the relevant information to be redacted from the duplicate copy and insert in its place a statement indicating that the text has been redacted under the exemptions set out by the Freedom of Information Act. This is the version that should be used for publication. Departments are advised not to apply redactions to the original contract as this should be retained for departmental records.
- 6.9** Detailed guidance on all exemptions provided by the Freedom of Information Act and public procurement can be found at the following:
<http://www.justice.gov.uk/guidance/foi-exemptions-guidance.htm>
<http://www.justice.gov.uk/guidance/foi-assumptions-procurement.htm>

7. TRANSPARENCY CLAUSE

- 7.1** Departments should engage with current and future suppliers to ensure that they are aware of and understand the requirements of the transparency agenda with regard to publishing contracts and the implications this will have.

It is departments' responsibility to manage their suppliers' expectations around what will be published and the scope for exemptions and redactions. Departments are therefore advised to consider incorporating the text at Annex B into the relevant commercial pages of their departmental website.

- 7.2** Departments should ensure that when entering into a new contract provisions are contained within the contractual terms and conditions to allow for the contract to be published. Contractual terms and conditions should be stated upfront in the tender documentation. Suggested text for and points to consider in a clause to allow for publication (and other associated points) is at Annex C. The new clauses have been designed to assist departments to achieve the transparency requirements and are not currently mandated. If departments feel that the text of the new clauses does not meet their requirements then the clauses may be amended in consultation with their departmental lawyers. The clauses contained in Annex C are designed as additional clauses to be added and the current confidentiality clause (E3) of ERG (OGC's) model terms and conditions (and 43 of the ICT Model Contract) remain unchanged. The transparency clauses can be used in goods and service contracts and similar principles can be applied to works contracts.
- 7.3** Where departments are using non-governmental terms and conditions, such as model contracts owned by a third party (for example, NEC, JCT and PPC 2000 model contracts) and protected by copyright owned by that third party, these should not be published. Instead, the name and edition of the form of contract must be cited together with the relevant contact point where further details can be obtained. This is to enable the public to get specific contractual information in relation to the terms and conditions. Subject to any necessary redactions in line with this guidance, departments are also required to publish any amendments that have been made to the standard form of contract.
- 7.4** When calling-off from an existing framework agreement or DPS which does not contain a transparency clause to explicitly allow for publication or where permission to publish resulting call-off contracts has not been sought by the

framework or DPS owner, departments cannot add the transparency clauses in the terms and conditions of each call-off as the terms and conditions of the framework agreement or DPS would have already been set at the time the agreement was entered into and suppliers would have bid against and accepted those terms. Instead departments should seek written permission outside of the contractual agreement – for example, through speaking to suppliers to reach an agreement on what can be published. Departments can do this by drawing attention to the transparency commitments when calling off from a framework (e.g. when running their mini-competition). Once the contract has been awarded, discuss the commitments with the supplier – including which information they would not want disclosed, agree on what will be published and have this agreement in writing. Where a supplier does not agree for the contract to be published or the particular piece of information they are concerned about being published is not covered by the Freedom of Information Act (FOIA) exemptions, then departments will need to make a case-by-case assessment on what they do. The result might be that parts of the contract are published, but not all of it.

8. PUBLICATION

Timing

- 8.1** Following any permitted redactions as set out in this guidance, it is advised that contracts are published within 20 days following the end of the standstill period, i.e. after a set period of time has passed from which the contract award decision is made until the time at which the contract is signed. Where the standstill notice is communicated electronically the minimum standstill period is 10 days. However, where the standstill notice is communicated by non-electronic means, the minimum standstill period is either 15 days from the date of sending the standstill notice or 10 days from the date of receipt of the standstill notice. Where the standstill period applies, contract should not be published before the standstill period expires. Where no standstill period applies, it is advised that departments publish contracts within 20 days from the award of the contract.

- 8.2** If a legal challenge to a department's procurement arises (or is current) during the standstill period the contract should not be signed until any outstanding legal dispute is resolved.

Hosting arrangements and formats

- 8.3** All new contracts should be published on Contracts Finder, the government portal that hosts publication of various documents in relation to procurement and contracting. Annex D provides an introduction to Contracts Finder.
- 8.4** Departments should take the necessary commercial legal and document/records management advice to track the documents and related content decisions from the department to the website.
- 8.5** Where the document to be published is Crown copyright, a department's documents should be released under the "copyright" terms and conditions set out under the Open Government Licence⁵ for public sector information. This will license the public to reuse the documents provided they cite the source and do not misuse or deliberately mislead. Documents are made available in an open non-proprietary standardised format so that it can be re-used by third parties. Departmental transparency practitioner group representatives⁶ should be able to provide advice on the best techniques for your ICT environment for the cleansing and preparing of documents for publication.
- 8.6** The Open Government Licence does not cover the use/re-use of information that Government is not authorised to license, for example information that is protected by copyright owned by the supplier. Where information contained within the contract is protected by copyright owned by the supplier, departments should assess the information (as they would do with the rest of the contract) against the Freedom of Information Act principles to ascertain

⁵ See further information on the Open Government Licence <http://www.nationalarchives.gov.uk/doc/open-government-licence/>

⁶ To identify the department's transparency practitioner group representative contact The National Archives at: PublicData@nationalarchives.gsi.gov.uk.

whether or not an exemption applies and can be justified after applying the public interest test. Departments should note that where a piece of information has copyright protection, this will not automatically mean that redaction would be justified (especially if the information is already in the public domain). Where information cannot be redacted under the Freedom of Information Act principles, departments should state at the point of publication that the published contract may contain information which is protected by copyright owned by the supplier and which is not subject to the Open Government Licence and therefore the public will have no right to copy/reuse information which is protected by copyright owned by the supplier. Departments should also make it clear that should the public wish to copy or re-use such information they will need to seek the necessary authorisation from the copyright owner (supplier). Departments are also advised to identify which parts of the published contract are covered by the supplier's copyright and therefore not subject to the Open Government Licence.

- 8.7** The wider transparency agenda requires departments to advise Data.gov.uk about datasets being published for the public to access. The contract documents being published on Contracts Finder are contributing to a dataset and will be referenced on Data.gov.uk. The information requirement for this dataset has been managed centrally. Departments need not take any further action other than to notify their transparency representative that this is the case.

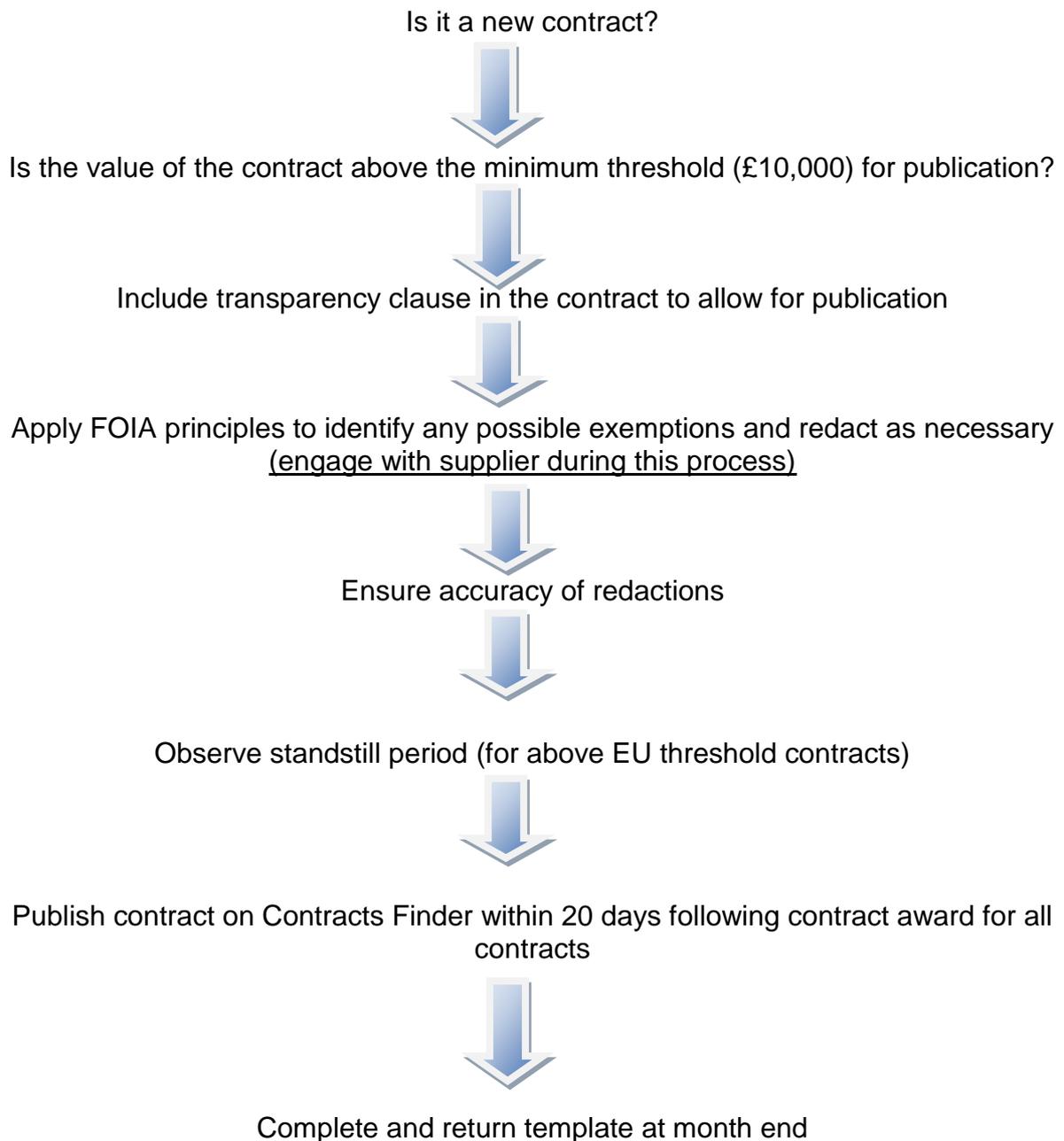
9. COMPLIANCE AND MONITORING

- 9.1** The Cabinet Office is required to report progress to the public sector transparency board chaired by Francis Maude, the Minister for the Cabinet Office (MCO). Departments are therefore asked to complete the template already provided to them (and which can be requested by departmental transparency practitioner group representatives) and return it to transparency@cabinet-office.gsi.gov.uk on the date requested (usually

around the 5th of the month). These returns are compiled into a monthly report which is published on the Cabinet Office website.

CHECKLIST

Below is a set of questions for departments, which serves as a checklist to help them meet this requirement. Departments are advised to consult with their legal advisors throughout this process.



ANNEX A – TEMPLATE FOR PROCUREMENT TIMESCALES

ACTUAL PROCUREMENT TIMESCALES	
Department/organisation	
Title of procurement	
Start date	
Planned date of contract award	
Actual date of contract award	

ANNEX B – SUGGESTED TEXT FOR DEPARTMENTAL WEBSITES

Achieving greater transparency of public sector procurement and contracting

Government has set out the need for greater transparency across its operations to enable the public to hold public bodies and politicians to account. This includes commitments relating to public expenditure, intended to help achieve better value for money.

As part of the transparency agenda, Government has made the following commitments with regard to procurement and contracting:

- All new central government ICT contracts over the value of £10,000 to be published in full online from July 2010.
- All new central government tender documents for contracts over £10,000 to be published on a single website from September 2010, with this information to be made available to the public free of charge.
- New items of central government spending over £25,000 to published online from November 2010.
- All new central government contracts to be published in full from January 2011.

Suppliers and those organisations looking to bid for public sector contracts should be aware that if they are awarded a new government contract, the resulting contract between the supplier and government will be published. In some circumstances, limited redactions will be made to some contracts before they are published in order to comply with existing law and for the protection of national security.

ANNEX C – STANDARD TRANSPARENCY CLAUSE

1. New clause 43A/E3A

Core – Right to Publish

The first sentence in the new clause clarifies that the content of the contract is not confidential information except any information which can be withheld from publication after a Freedom of Information Act analysis has been conducted. In the ICT Model Terms and Conditions an amendment to the definition of Contractor's confidential information is also needed. This is to make it clear that the parties do not intend the content of the contract to fall within the restrictions on dealing with Confidential Information which are placed on the parties in the contract, or in law. The second sentence in the new clause expressly gives the Authority the Contractor's consent to publish the contract to the general public provided that the appropriate redactions have been made.

ICT Model Terms

43A The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Agreement, the Contractor hereby gives his consent for the Authority to publish the Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including from time to time agreed changes to the contract, to the general public.

Change to definition in the ICT Contract

"Contractor's any information, which has been designated as

Confidential Information"

confidential by either Party in writing or that ought reasonably to be considered as confidential however it is conveyed, including information that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Contractor, including IPRs, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential;

ERG (OGC) Model Terms

E3A The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract is not Confidential Information. The Client shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA. Notwithstanding any other term of this Contract, the Contractor hereby gives his consent for the Client to publish the Contract in its entirety, (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted) including from time to time agreed changes to the contract, to the general public.

2. Other Elements

The Authority may wish to consider adding the following clause about consultation with the Contractor and assistance.

43B

- (i) The Authority may consult with the Contractor to inform its decision regarding any exemptions but the Authority shall have the final decision in its absolute discretion.
- (ii) The Contractor shall assist and cooperate with the Authority to enable the Authority to publish this Agreement.

E3B

- (i) The Client may consult with the Contractor to inform its decision regarding any redactions but the Client shall have the final decision in its absolute discretion.
- (ii) The Contractor shall assist and cooperate with the Client to enable the Client to publish this Contract.

2. Change to Commercially Sensitive Information definition

The Commercially Sensitive Information Schedule should be subject to the same Freedom of Information Act analysis as the rest of the contract. However, if the Contractor wishes to state that something is commercially sensitive which would otherwise not be published as part of the contract then it may be preferable for it to be communicated to the Authority in a separate letter. This may occur where the parties agree that it is not an operational necessity for the information to appear of the face of the contract. An amendment is not needed in the ICT Model Terms and Conditions.

ERG (OGC) General Model Terms

“Commercially Sensitive Information”

means the information (i) listed in the Commercially Sensitive Information Schedule; or (ii) notified to the Client in writing (prior to the commencement of this Agreement) which has been clearly marked as Commercially Sensitive Information comprised of information:

- (a) which is provided by the Contractor to the Authority in confidence for the period set out in that Schedule or notification; and/or
- (b) which constitutes a trade secret.

ANNEX D – PUBLISHING ON CONTRACTS FINDER

Introduction

Contracts Finder⁷ is a single platform providing access to public sector procurement related information and documentation. The government Buyer will post details about their procurement and contracting activities thereby meeting all of the Prime Minister's Transparency in Procurement and Contracting commitments from January 2011. Suppliers can search for opportunities, and, the public are able to see what government organisations are spending, on what and with whom.

This annex describes how Buyers from departmental procurement functions will use the Contracts Finder to deliver their Transparency Agenda obligations for opportunity, tender and contract documentation. Contracts Finder provides detailed on-screen help drop down menus and an on-line user manual.

Contracts Finder

Contracts Finder provides:

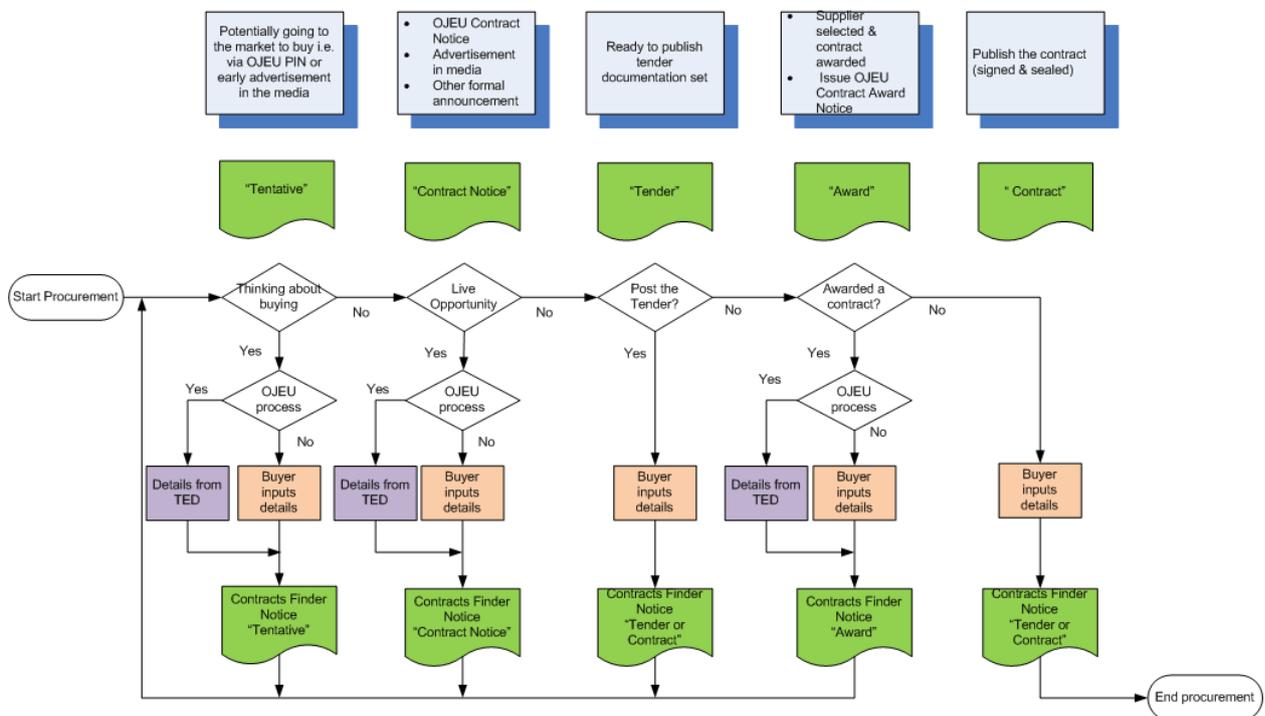
- Buyers with the capability to publish live tender opportunities and contract award documentation/notices, along with tender and contract documentation.
- The public with the means to see, access and download from a single place public sector tender and contract documentation.
- Access to and download of summary data from multiple procurement activities according to interest (e.g. by department, by value, by start date, etc.).
- Suppliers with access to the procurement intentions and needs of the public sector.
- Email alerts about contracts of interest.

⁷ The Contracts Finder service is accessible via the web-site:
www.businesslink.gov.uk/ContractsFinder

Further development will give buyers an option to publish some documentation electronically via their e-Procurement systems.

Procurement Lifecycle

Buyers will meet their Transparency agenda commitments by using Contracts Finder to post tender and contract documentation and other information/documentation to form a coherent documentation set for the individual procurement’s lifecycle. This diagram illustrates where transparency commitment arise during a “generic” procurement lifecycle.



The Contracts Finder service supports the procurement lifecycle in:

1. Opportunity phase – Advertising via an OJEU PIN, Contract Notice or an advertisement
2. Tender phase – managing the Tender documentation
3. Contracting Phase – taking the final Contract documentation

4. Award – posting the change status for a procurement and link to the OJEU Contract Award Notice for those above the threshold
5. Service Delivery Phase - posting updates to documents such as contract changes where they result in a new contract or where a contract is terminated.

Preparing for Publication

Buyers will have ensured their suppliers are aware of the Transparency Agenda and have formally acknowledged and agreed the Transparency clauses included in department's general Ts&Cs. In practice, the suppliers should be advised and encouraged to identify (and segregate where possible) such information / data / images which they believe are commercially sensitive. Buyers will work with the Suppliers on this, but also remember that the final decision about publishing information rests with the department.

Buyers are recommended to consider the following:

- Identify the “best” time for publishing with respect to the procurement approach being used.
- Identify the documents required for publication – this guidance recommends a minimum set for transparency, but underlines that a greater degree of transparency is to be encouraged.
- Ensure the documentation is in the correct file format.
- Ensure that confidential information has been identified and dealt with (redacted or cleared for publication).
- Collate the information required for Contracts Finder to help it link other sets of documentation relating to the same procurement activity.



Annex E - Consultancy value statement

Consultancy Value Statement

Introduction

Departments should publish on Contracts Finder a statement of the value to be delivered from all approved consultancy contracts of £20,000 and above, using this proforma. On completion of the contract Contracts Finder should be updated with a statement of the actual value delivered.

Process

Publication should be at the "Contract" stage of the procurement lifecycle. The statement should be published as a separate document attached to the published contract notice alongside the contractual documentation. Please note that publication and any exemptions to publishing should be in accordance with the policy stated in Cabinet Office guidance on the publication of contracts. Please also note that the text in bold on this template statement must be included without amendment to assist key word searching.

[Section 1: To be completed and published at award of contract]

Consultancy Value Statement: Value to be delivered

Name of Supplier: *[insert the name of the supplier]*

Title of contract: *[insert the name of the contract]*

Requirement Summary: *[insert a brief summary describing the consultancy requirement]*

Financial Value Statement: *[insert details of the financial/quantifiable value to be delivered by the contract as stated in the business case]*

Non-Financial Value Statement: *[insert details of any non-financial/unquantifiable value to be delivered by the contract, as stated in the business case]*

[Section 2: To be completed and published at the end of contract]

Consultancy Value Statement: Actual Value Delivered

Financial Value Statement: *[insert details of the actual financial/quantifiable value delivered by the contract, as identified as part of the end contract performance review]*

Non-Financial Value Statement: *[insert details of the actual non-financial/unquantifiable value to be delivered by the contract, as identified as part of the end contract performance review]*