

Procurement and Contract Management Policy

Contents

Part A: Procurement process

Part B: Contractual considerations

Part C: Contract management

Annexes: 1 New supplier checklist

2 Authorised contract signatories

3 Monthly contract review checklist

4 Contracts register - information

Purpose of this policy

This policy sets out the appropriate processes and procedures for the procurement of all goods and services at the ICO needed to enable the Commissioner to carry out her functions in line with statutory and strategic requirements.

The policy applies to all ICO staff, secondees, agents and contractors, and should be read in conjunction with the ICO Scheme of Delegations.

This policy is supported by the ICO strategy Openness by Design and seeks to facilitate the recommendations set out in the Commissioner's 2019 report to Parliament; Outsourcing Oversight?

It is for budget holders to procure and manage all contracts appropriately, and all budget holders have a responsibility to comply with this policy. Support is available and should be sought from the Procurement Team or the Commercial Legal Team.

All procurement questions should be addressed to the Procurement Team (procurement@ico.org.uk) and questions about contracts should go to the Commercial Legal Team at commerciallegal@ico.org.uk.

A. Procurement process

1. Legal and external considerations

As a public body, the ICO is subject to the Public Contracts Regulations 2015 for our procurement activity. All ICO procurements should also comply with the principles of the EU Public Contracts Directive 2014 which includes equal treatment of bidders, fair competition, proportionality and transparency. Procurement should not discriminate against suppliers or bidders on the grounds of nationality. These principles shall apply to all procurements regardless of the contract value.

We must also comply with the following:

- Procurement Policy Notes (PPNs) issued by the Cabinet Office's Crown Commercial Service.
- The Management Agreement 2018-2021 with the Department for Digital, Culture, Media and Sport (DCMS).
- Cabinet Office and DCMS spend controls.
- Managing Public Money 2013 as updated in 2018.

In the event of a conflict, the legislation and controls take precedence over ICO internal policies.

As a public body we must also, where possible, follow LEAN methodology. The application of LEAN techniques aims to produce products and services that deliver in line with ICO requirements; ie the right quantity and quality of the product at the right time, in the right location, for the right price. For this reason it is good practice to involve the Procurement Team and the Commercial Legal Team at the initial planning stage of any project.

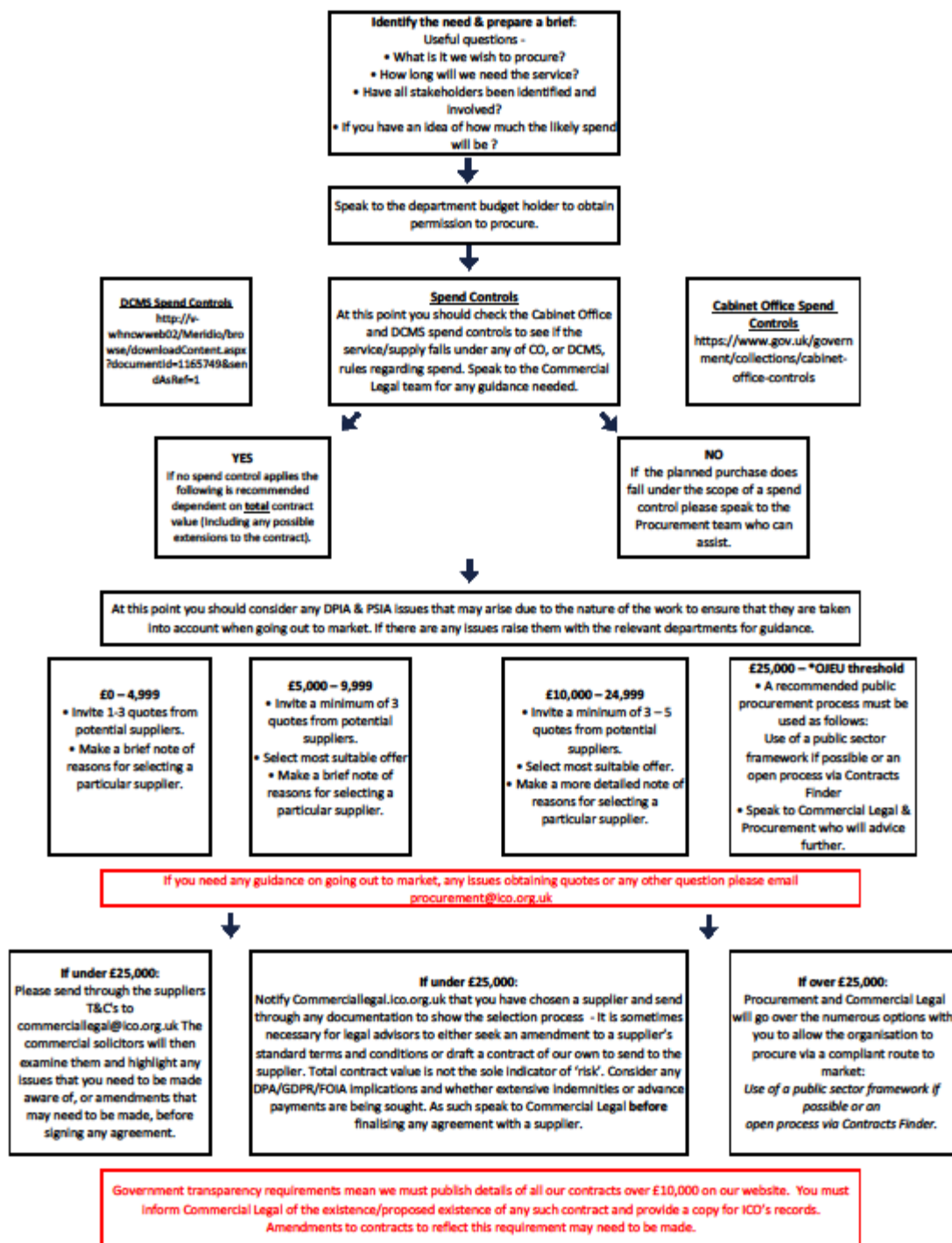
2. Overview of the procurement process

Our procurement process flow chart (overleaf – double click to open PDF - and available in ICON as a PDF document [here](#)) sets out the overall process we follow in procuring goods and services.

Once the need for goods and services has been established and approved (by the Senior Leadership Team (SLT) if required), the procuring department should contact the Commercial Legal Team to see if there are existing contracts already in place that may fulfil their requirements as, where possible, we should consider whether an existing provider may be able to meet their requirements

All approvals by SLT must be clear and transparent and records must be kept which confirm the SLT decision.

Procuring Goods & Services



Prior to allocating additional work or orders, advice should be sought from the Commercial Legal Team and the Procurement Team on the contractual and procurement implications of this.

Our procurement path will be determined by the nature and value of the goods or services being procured as detailed below.

| Total Contract Value (including contract extensions) | Procurement Process |
|---|--|
| £1-4,999 | 1-3 quotes and note reasons for selection of the supplier |
| £5,000-9,999 | 3 quotes and detailed note of the reasons for selection of the supplier |
| £10,000-24,999 | 3-5 quotes and note in detail the reasons for the selection of the supplier |
| £25,000-£181,301 | Public procurement process must be followed. Seek advice from the Procurement Team and the Commercial Legal Team before contacting any potential suppliers. |
| £181,302 and above (OJEU threshold 2018/2019) | OJEU Compliant framework or procurement process must be followed. Seek advice from the Procurement Team and the Commercial Legal Team before contacting any potential suppliers. |

The process comprises the following stages:

- Authority and budgetary permissions
- Initial instructions
- Assess available procurement avenues and the route to market
- Conduct the procurement process, to include feedback and award stages. A copy of the intended contract must be published with any tender documents.
- Evaluation and selection of suppliers. This should be undertaken by a minimum of 3 people. All conflicts of interest should be recorded
- Notification of outcome to bidders
- Finalise contract
- Post-award administration – to include publishing and storing the awarded contract
- Active contract management

3. Record keeping

It is essential that records are maintained throughout the procurement and contracts process. The ICO is subject to regular audits and detailed records must be accessible for both audit and freedom of information purposes.

The procuring department must collaborate with the Commercial Legal Team and the Procurement Team to ensure that appropriate records are kept at each stage. Examples of the records that we expect to retain are:

- Detailed business case confirming approval from SLT (where required)
- Written confirmation of approval from DCMS, if required under the Spend Controls or Management Agreement
- Written reasons or desk top analysis for the selection of suppliers
- Evidence of quotes obtained prior to selecting a supplier
- Instructions from the team or individual requesting the procurement of goods or services
- Records of any contact made with potential suppliers – advice should be sought from the Procurement Team prior to any discussions or contact with potential suppliers for any spend over £24,999
- Quotes from potential suppliers
- Evaluation and scoring records
- All correspondence with bidders including invitations to interviews and outcome letters
- Notes of interviews or presentations by bidders
- Notes of wash up meetings
- Signed contracts – originals must be stored securely by the Commercial Legal team

4. Practical considerations

On selection of a successful supplier the procuring department will:

- Complete the new supplier checklist (Annex 1) to enable Finance to set up a new supplier on our system and raise a Purchase Order number
- Check whether the supplier needs to be, and is, paying a data protection fee to the ICO
- Check whether the supplier is currently a subject of interest to the ICO as a regulator

Responsibility for these checks sits with the procuring department, who should record the outcome of these checks and send copies to the Commercial Legal Team.

These checks need be undertaken prior to entering into a new contract with any supplier, irrespective of whether we have contracted with them previously.

Part B. Contractual considerations

All ICO contracts will be drafted by the Commercial Legal Team who will liaise with the procuring department to obtain clear instructions.

When drafting the contract the following need to be considered. This list is not exhaustive.

1. Risk

There are a number of factors which affect the level of risk in a contract, and which will change depending on the goods or services being procured. Examples of key risks to consider include:

- How important to the work of the ICO are the goods or services
- How easy would it be to find an alternative supplier
- What is the total contract value
- What are the cost to the ICO if the supplier makes a mistake or fails to provide the goods or services
- Any limit of liability in the contract
- How detailed is the description of the goods or services
- How easy is it for the ICO or supplier to terminate the contract?

In particular, and in all cases, we should consider if there are any personal data or security risks, including:

- Transfer or use of, or other access to personal data
- Transfer or use of, or other access to data obtained in the course of our regulatory role
- Access to information relating to our practices and procedures as a regulator
- Access to information that may prejudice the Commissioner's functions
- A supplier's need to physically access our premises or systems
- The contract requires a supplier to assume a public-facing role on behalf of the Commissioner
- Actual or perceived conflicts of interest on the part of any ICO staff

The procuring department is ultimately responsible for determining what risks are acceptable in any given procurement, having due regard to the Scheme of Delegations and any advice given by colleagues in the relevant teams.

Staff are reminded that our Code of Conduct requires that any actual or perceived conflicts of interest are declared using the forms available on ICON and an assessment of those risks undertaken

prior to engaging any supplier. The Commercial Legal Team will provide advice about the risks in a given situation.

2. Security

All original copies of contracts are stored securely in the Commercial Legal fireproof filing cabinet. Contracts must not be stored in lockers or in work cabinets unless staff are unable to access the Commercial Legal Team or the Commercial Legal filing cabinet due to time constraints or logistical reasons. Any contracts stored outside of the Commercial Legal filing cabinet must be transferred there by the end of the next working day.

Consideration should be given to any risk to the security of the Commissioner, staff, buildings, IT facilities or information assets. It may be necessary to include provisions in the contract for supplier personnel to have security clearance or DBS checks. The Commercial Legal Team may liaise with other ICO departments to help assess this risk and ensure appropriate measures are included in the contract.

3. GDPR and other ICO legislation

The nature of our work means that we must uphold the highest standards in relation to data protection, freedom of information and any other legislation that we regulate. It is the responsibility of the procuring department to ensure that a DPIA/PSIA is completed prior to entering into any contract with a supplier. Commercial Legal should be notified of any risks highlighted so that appropriate provisions can be included within the contract.

Procuring departments must be clear on the extent of any information sharing, the relationship between the ICO and the supplier, ie controller/processor, and the safeguards that must be applied within our contracts in each situation. Contract terms should align with the knowledge packs issued by the policy teams and official ICO guidance published on our website. Any deviation from these will require written approval from an Executive Team member.

4. Authorised Signatory

ICO contracts may only be signed by those employees with the requisite authority to do so (see Annex 2). These limits are subject to the limits set out in the DCMS Management Agreement and Spend Controls.

Staff should note the difference between levels of approval required for purchase orders or invoices as set out in the Scheme of Delegations. These arise as the payment of an invoice or approval of a purchase order does not normally create a legal obligation on behalf of the ICO. The contract is the point at which we create a legal obligation for the ICO, so much stricter controls are needed.

Purchase orders or payment of invoices should not be approved without a valid contract being in place, unless this has been specifically approved in accordance with the New Supplier Checklist. This includes any agreement that may not have a direct monetary value, such as a data sharing or non-disclosure agreement or a memorandum of understanding (MoU).

An MoU that requires any form of payment by the ICO, even if low value, is in legal terms a contract and must be drafted or reviewed by the Commercial Legal Team prior to signing.

All contracts relating to land, eg leases or any other contracts requiring the Commissioner's seal, must only be signed by either the Commissioner, or someone with delegated authority to attest the Commissioner's seal. Details of those individuals with appropriate authority can be obtained from Corporate Risk and Governance.

Secondees, agents, contractors and agency staff are not permitted to sign contracts on our behalf. This is because there are different contract arrangements for these individuals.

5. Termination

Where possible, all contracts should include a no-fault one-month termination clause. Budget holders must seek advice from the Commercial Legal Team before taking any steps to terminate a contract for any reason. This is to ensure that the ICO complies with any contractual provisions around termination or notice.

6. Single Tender Contracts

All uses of Single Tender Contracts need approval prior to proceeding; please see section 2.2 of the Management Agreement with the DCMS available [here](#). The use of a single tender is only acceptable if there is no other reasonable alternative supplier. This needs to be justified and documented prior to the procurement activity commencing.

All single award contracts over the value of £25k will be reported to Audit Committee on an annual basis. This will also include accumulative contracts over a two year period that combined come to over £25k.

Part C. Contract management procedures

1. Overview

Procuring departments are responsible for the required outcomes for each contract and should be accountable for successful contract performance. If there are any concerns about a supplier, assistance and advice should be sought from the Commercial Legal Team and the Procurement Team to ensure that we comply with our contractual obligations.

The focus should be on successful outcomes and procuring departments are expected to take account of public service and accountability obligations and risks. It is the procuring department's responsibility to ensure they are familiar with the provisions of their contract and the ICO's expectations of their chosen supplier.

Prior to any discussions with the Commercial Legal Team and the Procurement Team about options for engaging a supplier, procuring departments should consider whether KPIs or other performance indicators are appropriate for the contract.

It is expected that all ICO IT contracts will contain performance measures such as Service Level Agreements and KPIs as standard.

In order to ensure the ICO receives value for money, procuring departments should:

- measure and report to the relevant Director on performance of their contracts on a regular basis;
- use KPIs and data efficiently to incentivise good performance from suppliers;
- administer contracts proactively and efficiently, making maximum use of benchmarking and performance measurement data;
- use a balanced scorecard to measure hard data such as KPI performance alongside soft measures such as customer satisfaction and relationship management, with a focus on achievement of outcomes;
- react quickly to issues when they arise;
- ensure KPIs and incentives are appropriate and proportionate to the contract; and
- challenge KPIs and incentives regularly and where appropriate, ensure a mechanism to change and evolve them through the life of the contract.

2. Performance review

The procuring department is responsible for highlighting any concerns about performance under the contract to the Commercial Legal Team. In the first instance, you should liaise with the supplier and try to resolve the issues informally either by email or phone call. Phone calls should be followed up with an email which sets out any agreement reached with the supplier including any timescales agreed to remedy the problem.

It is expected that in the case of our IT or higher value (above OJEU)/risk contracts, regular service review meetings should be conducted between the supplier and procuring department so that issues can be resolved quickly and with minimal disruption.

Those engaged in IT procurement (or higher value/risk contracts) should consider the following contract monitoring options:

- the use of milestones and deliverables;
- end user satisfaction surveys;
- service uptime and responsiveness requirements;
- business support metrics such as, service ticket response times;
- the provision of service credits when required performance levels are not met; and
- the provision of performance metrics by the supplier so that performance levels can be monitored.

3. Signed contracts

Once a contract is signed by the authorised signatory, original copies are to be sent to the Commercial Legal Team for scanning and storage.

Original copies are stored in individual numbered envelopes in the fireproof filing cabinet in Wycliffe House. Details of each new contract stored are listed in the cabinet index.

Scanned copies are kept in the relevant EDRM folder created for the awarded supplier and contract.

4. Publishing information about awarded contracts

All relevant contracts are published on Contracts Finder.

In the interests of transparency, each month on our website we publish details of contracts awarded with a value in excess of £10,000.

5. Contracts register

Details of signed contracts are logged on the contracts register which is managed by the Commercial Legal Team (see Annex 4).

The contracts register includes a periodic review date. For low risk contracts the review date may be annual. For higher risk contracts, the review date may be biannually or quarterly.

6. Contract checks – periodic and pending expiry

The Commercial Legal Team and Procurement Team will contact the procuring department about any contracts flagged for periodic review. The procuring department is requested to complete the monthly contract review checklist (see Annex 3) to identify whether there are any issues.

Along with this review document, the procuring department will receive a summary of the total financial expenditure to date. This is to provide a prompt for the procuring department to review whether re-procurement, a further Purchase Order or additional budgetary permissions are required.

Where contracts run for 18 months or less, the Commercial Legal Team and Procurement Team will schedule a review date at an appropriate midpoint.

In addition to annual checks, a contract expiry review is scheduled in the ICO contracts register 3-6 months prior to the contract end date. The date of this review will depend on the likely time needed to re-procure the goods or services. At this point the Commercial Legal Team and the Procurement Team will contact the procuring department to establish whether the contract is to be extended, terminated or re-procured.

It is the responsibility of the procuring department to respond to the review in sufficient time to allow the Commercial Legal Team and the Procurement Team, to either give notice to terminate the contract, draft an extension to the contract if this is required or re-procure the goods and/or services.

Annex 1: New supplier checklist (to send to Finance and Commercial Legal)

It is assumed that by this stage a check of the viability of the company has been assessed by the delegated authority and the Commercial Legal Team where necessary.

The following information has to be provided by the supplier to enable the Commercial Legal Team to authorise the set-up of a new supplier. An e-mail from the supplier will suffice, or it can be a pdf document, or a quote on company letter head. **For authenticity purposes**, this needs to be the original email sent by the supplier with any attachment (it cannot be second hand information, which means you have to email the supplier's original e-mail as an attachment to Finance and the Commercial Legal Team rather than forwarding it).

The following information will be required:

- Business name
- ICO registration number
- Company registration number
- Full business address (to include town and postcode)
- Email address (for payment remittances to be sent to)
- Account name/Sort Code/Account Number (provided by the supplier on letterhead paper)
- What will the work involve?
- Is it regular work or a one off spend?
- What the likely **total** contract value or spend with supplier will be
- Any terms and conditions

Additional useful information which may be provided:

Account Manager/Key Contact

Email

Telephone number

Please request the above details from the supplier and send them to both finance.queries@ico.org.uk and CommercialLegal@ico.org.uk

There may be delays in setting up suppliers if this required information is not complete.

Please provide the following information to the supplier:

Dear Supplier,

Our billing address is:

Finance Department
Information Commissioner's Office
Wycliffe House,
Water Lane,
Wilmslow, Cheshire
SK9 5AF

We require a purchase order number to be referenced on your invoice before we can make payment. Please e-mail invoices to finance@ico.org.uk

Annex 2: Authorised Contract Signatories

| Designated Officer | Maximum contract value and type |
|---|---|
| Commissioner plus Head of Finance (level G) or Director of Resources (level G2) or DCEO (level H) | <ul style="list-style-type: none"> • Unlimited • All contracts¹ • MoUs |
| Level H plus Head of Finance (level G) or Director of Resources (level G2) | <ul style="list-style-type: none"> • Unlimited • All contracts¹ • MoUs |
| Director (G2) plus Head of Finance (level G) | <ul style="list-style-type: none"> • Up to £1,000,000 for IT contracts • Up to £500,000 for all other contracts¹ • MoUs |
| Director (level G2) | <ul style="list-style-type: none"> • Up to £100,000 for all contracts¹ • MoUs |
| Head of Department (level G) | <ul style="list-style-type: none"> • Up to £25,000 |

¹ except those requiring the Commissioner's Seal which only the Commissioner or an officer with specific delegated authority under paragraph 7 of schedule 12 to the Data Protection Act 2018 can sign

Annex 3: Monthly contract review checklist

Quality Assurance overview

| Points to consider | Y/N | Comment (For each point, please provide some brief detail.) |
|---|-----|--|
| 1. Is the service what was expected? | | |
| 2. Has the supplier delivered everything that was agreed under the contract? | | |
| 3. Are you happy with the quality of service provided in respect of the deliverables? | | |
| 4. Has the service developed or changed over last 12 months? | | |
| 5. If the service has changed/developed, are any amendments necessary to any privacy notice (Staff or ICO general privacy notice) available here? | | |
| 6. If the service has changed/developed, have you considered whether a further PSIA should now be undertaken? | | |
| 7. Have you reviewed any existing PSIA in respect of this contract? | | |
| 8. Have you considered the financial resilience of the supplier to provide the goods and/or services over the next 12 months? | | |

Annex 4: Contracts register – information

The ICO contracts register includes the following fields:

- Department
- Type: Direct Contract (C), Licence (L) and Framework Call-Off (F.Co) and reference
- Goods / Services contracted
- Supplier Name
- Supplier Contact Details
- Effective Date (DD/MM/YY) – if service commencement date is different, included in brackets
- Initial Term (plus options to extend)
- Initial Term End Date / Extension Term End Date (DD/MM/YY)
- Notice / Breakpoint
- Estimated Total Contract Value (ex. VAT) (where VAT is included, stated as comment)
- Annual Contract Value
- Actual spend so far
- Reminder data for Budget Holder (DD/MM/YY)
- ICO Service Manager
- Signed Original location (usually fire safe cabinet on first floor)
- Environmental terms included?
- Where / what / when published
- Over £10k TCV (Y/N)
- Confirmed by Budget Holder as live for contracts audit (Y/N)