

OGP Template Amendments which reflect the General Data Protection Regulation



Oifig um Sholáthar Rialtais
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General Data Protection Regulation Amendments

It is important that any contracting authority considering the General Data Protection Regulation (GDPR) and its implications familiarises themselves with the OGP GDPR Information Note. The GDPR information note is available by following this link [GDPR Information Note](#)

The Office of Government Procurement (OGP) has updated its standard suite of templates to aid compliance with the GDPR. We have added a new Data Protection and Security clause to the template services contract and the template goods contract to provide for the specific obligations which must be included where the contractor is acting as a “Data Processor” on behalf of the contracting authority.

Where a Contracting Authority considers that the Contractor is or might be a Data Controller in its own right or a Joint Data Controller with the Contracting Authority, the new Data Protection and Security clause will not be suitable and/or may need to be adapted and the Contracting Authority should seek legal advice before issuing an RFT/entering into the contract.

The new Data Protection and Security clause are not passive clauses. They require the Contracting Authority to take some form of action in order to comply with the provisions of this clause in a number of respects.

The new Data Protection and Security clause (D) (1) requires the processor to process the data on the “written instructions” of the Contracting Authority. In practice this means that the Contracting Authority must provide instructions in writing to the Contractor on what it wants the Contractor to do. These instructions could, for example, be set out in the Specification (incorporated at Schedule B of the Contract).

The new Data Protection and Security clause (D) (2) requires that the contractor has in place appropriate technical and organisational measures, reviewed and approved by the Client. This clause places a positive obligation on the Contracting Authority to ask the Contractor to provide details of these measures (ideally prior to entering the contract, unless these measures have already been considered as part of the tender process) and to review them in order to satisfy itself that those measures provide sufficient guarantees to ensure Processing meets the GDPR Requirements.

The new Data Protection and Security clause (H) requires the Contracting Authority to provide written instructions to the Contractor on whether to amend, delete or return Personal Data to it on termination of the contract. This creates a positive obligation on the Contracting Authority to give such instructions prior to the expiry or termination of the contract.

Schedule E of the Contract must also be completed by the Parties before the contract can be executed and it must provide details of the nature of the Processing to be undertaken.

Treatment of non-personal confidential data under the new templates

The new Data Protection and Security clause is drafted to ensure that any Personal Data processed in the course of a contract is done so in accordance with the GDPR. The new Data Protection and Security clause (N) extends the scope of this clause (subject to certain exceptions) to apply to all data provided by the Contracting Authority to the Contractor under the contract.

Changes to the template Request for Tender (“RFT”)

The template RFT has also been updated at the Instructions to Tenderers Section (Section 2.1.4 of RFT) to set out the roles of the Contracting Authority and Tenderer under data protection law with respect to any Personal Data (such as CVs) which may be requested or used as part of the tender competition.

Tenderers will also be asked to confirm in their Tenderer’s Statement (Appendix 3 of the RFT) that they can demonstrate the legal basis for the Processing of Personal Data which is provided by them during the course of the tender competition.

Other (non-GDPR) changes to the templates

The OGP has also taken the opportunity to make some other changes to the templates in order to amend or clarify certain provisions. In addition to minor drafting changes made to the templates you should note the following in particular:

Freedom of Information

The template RFT has been amended to require tenderers to specifically identify any parts or sections of their tender which it considers confidential.

Aggregate Insurance

The template RFT is updated to inform Tenderers that where their Insurance premiums offer cover on an aggregate basis (rather than a per claim basis) they will be required to provide a declaration to the Contracting Authority at Contract Stage that they are not aware of any material reason why sufficient insurance cover would not be available to protect the Contracting Authority’s interests under the contract.

Up to date evidence of compliance with Selection Criteria and Exclusion Grounds

The template RFT and Framework Agreement have been updated to inform Tenderers that they will be required to provide up to date evidence at preferred Tenderer stage of a mini competition in order to demonstrate their continued compliance with Selection and Exclusionary Grounds. Where a Tenderer cannot provide such evidence the Contracting Authority may offer the Services Contract to the next highest ranked tenderer.

New Recital to the Contract

We have added a new recital (Recital 10) to the Contract to clarify that the Contract shall be read as if it were drafted by both parties to it.