

# Records Management: Retention Scheduling

## 5. Contractual Records

### 1. Introduction

**1.1** This guidance is aimed at Departmental Record Officers and purchasing or contract staff in Government departments and agencies. It reflects the current (1999) state of the law but does not represent legal advice. The Public Record Office (PRO) will endeavour to update the guidance in the light of new legislation but responsibility for checking on more recent enactments rests with the reader.

**1.2** The role of Government purchasing and contract work has increased in importance over the last decade. It has become a critical element of corporate planning where the need for more accountable and effective government underpins much of a department's work. Records created in the course of this work may be crucial in providing evidence of departmental effectiveness and in handling any litigation that might arise from it. They are also essential for auditing purposes.

**1.3** The purpose of this guidance is to describe best practice for managing and disposing of contractual records created by government departments and agencies.

**1.4** The legislation underpinning the retention of records relating to contracts is the **Limitation Act 1980** (in Scotland the **Prescription and Limitation (Scotland) Act 1973**, as amended by similar legislation in 1984 and 1987). Other relevant statutes include:

- Unfair Contract Terms Act 1977
- Latent Damage Act 1986
- Consumer Protection Act 1987

**1.5** The PRO guidance *Retention Scheduling: Buildings Records (1998)* and *Retention Scheduling: Accounting Records (1998)* is also relevant in the matter of the retention of contractual records.

### 2 Documentation

**2.1** Departments should ensure that a record of all contracts and related transactions is kept on registered files. The files must contain a complete and accurate record of all internal and external documentation so that the stages and reasoning of the transactions are apparent. Such accurate and authentic record keeping will ensure that an adequate audit trail is provided.

**2.2** In addition to providing the means whereby a transaction can be audited, full and accurate record keeping of contractual matters provides:

- value for money, by ensuring that work can be executed promptly, swiftly and accurately

- evidence of what has occurred in the event of further development or discussion of the matter covered by the contract
- evidence in the event of accusations of error, fraud or impropriety
- precedents for future action, including any re-tendering process

**2.3** The amount of documentation generated by different types of contract will vary according to the size of the transaction. It will usually consist of some or all of the following:

- conditions of contract
- tender invitation
- suppliers' proposals
- tender receipt record
- evaluation criteria and report
- specification
- schedule of works
- drawings
- regulations (eg health and safety)
- bills of quantity
- surveys
- final accounts
- certificates (test, authorising payments, fire, etc)
- minutes and papers of meetings
- claims and variations
- signed contract

### **3 Limitation Act 1980 and Prescription and Limitation (Scotland) Act 1973**

**3.1** The Limitation Acts, which apply to proceedings by and against the Crown, have the effect that proceedings to recover money must be instituted within six years of the money becoming due. If proceedings are not instituted within the relevant period, the claim is statute barred.

**3.2** The direct effect of the Limitation Acts is therefore that many contractual records need to be retained for six years after the end of the contract. Similar considerations apply to other financial records (see the PRO guidance *Retention Scheduling: Accounting Records*, para 2.2, 1998). Some special contracts are executed under seal and the limitation period in these cases is twelve years.

**3.3** While six years after the end of the contract may be the retention period for the majority of contractual records, a lesser period will be suitable for many:

records relating to contracts that are for £5,000 or less should not be kept for longer than 2 years after the end of the contract

records relating to contracts that are for a period of more than ten years should be reviewed when they are five years old to determine whether they are still needed for current business and thus for further retention. Thereafter they should be reviewed every five years.

**3.4** A risk assessment of the destruction of contractual records should be undertaken to ensure that action taken is commensurate with departmental accountability and with the cost of further storage.

**3.5** A model disposal schedule of contractual records, showing retention periods, follows:

### **Schedule of Contractual Records**

General Notes:

1 Records relating to contracts worth less than £5,000 should be destroyed when they are two years old.

2 Records relating to contracts worth more than £5,000 relating to **goods** would normally be kept in accordance with the model schedule below. Those relating to **services** should be retained for two years after payment of the last account.

3 Records relating to contracts that are for periods of more than ten years should be assessed for further retention when they are five years old; those retained should be re-assessed five years later.

Type	Item	Description	Disposal (maximum period)
Policy matters	1	Policy on contracts, normally contained in a separate registered file series	First and Second Review
Initial proposal	2	End user requirement	6 years
	3	List of approved suppliers	An active document - updated regularly
	4	Statements of interest	1 year from date of last paper
	5	Draft specification	Destroy when specification has been agreed

	6	Agreed specification	6 years from end of contract
	7	Evaluation criteria	6 years from end of contract
	8	Invitation to tender	6 years from end of contract
Tendering	9	Unsuccessful tender documents	1 year after date of last paper
	10	Successful tender document	6 years from award of contract
	11	Background information supplied by department	1 year after date of last paper
	12	Interview panel - report and notes of proceedings	1 year from end of contract
	13	Commissioning letter	1 year from end of contract
	14	Signed contract	6 years from end of contract
Contract operation and monitoring	15	Reports from contractors	2 years from end of contract
	16	Schedules of works	2 years from end of contract
	17	Bills of quantity (building contracts)	16 years
	18	Surveys and inspections a. equipment and supplies b. buildings	a. 2 years from date of last paper  b. Second Review
	19	Records of complaints	6 years from end of contract
	20	Disputes over payment	6 years from end of contract
	21	Final accounts	6 years from end of contract
	22	Minutes and papers of meetings	Second Review
Amendments to contracts	23	Changes to requirements	6 years from end of contract
	24	Forms of variation	6 years from end of contract
	25	Extensions to contract	6 years from end of contract

#### 4 Contractual Records and Policy Issues

**4.1** Some contractual records will be associated with major policy developments in government departments. In such cases care should be taken during the appraisal process that all the records relating to the same issue, whether they are case papers, policy papers or contractual records, are reviewed using the same criteria, and particularly in accordance with the PRO Acquisition Policy and departmental operational selection policies. This might mean, for example, that some contractual records are kept with policy files for Second Review.

## **5 Retention in non-paper format**

**5.1** Some departments and agencies are already transferring paper records to other media, such as microfiche, or holding the records in digital form. In these instances departments should follow the requirements of legal admissibility and in particular the contents of BSI DISC PD 0008, *Code of practice for legal admissibility and evidential weight of information stored on electronic document management systems* (1999) and BSI DISC PD 0010, *Principles of good practice for information management*.

## **6 Other publications and further information**

**6.1** The Public Record Office is currently working on a series of records management standards which aim to promote good practice in the management of public records throughout all stages of their life cycle. Four standards have been published so far:

- RMS 1.1 File Creation
- RMS 2.1 Tracking Records
- RMS 3.1 Storage of Semi-Current Records
- RMS 5.1 Disposal Scheduling

Other standards are planned for succeeding years, covering subjects such as documentation of records work and business recovery plans.

**6.2** A second series of booklets currently in production (of which this is one) gives guidance on the retention of records common to most government departments. Buildings records, personnel records, accounting records, and health and safety records have been covered so far and more are planned for 2000.

**6.3** Guidance on acquisition and appraisal are the subjects of a third series of publications. The first two booklets in this series cover *Planning of Records Appraisal* and the *PRO Acquisition Policy*.

**6.4** In the area of electronic records a major publication, *The Management, Appraisal and Preservation of Electronic Records*, was issued in March 1999. This is in two volumes covering principles and procedures. More booklets will follow in this series.

**6.5** A fifth series, covering Information Policy, is planned for 2000.