

BEIS Heat Investment Vehicle Supplier Onboarding - Frequently Asked Questions

Dynamic Purchasing Systems agreement

THIS FAQ DOES NOT CONSTITUTE LEGAL ADVICE AND IS PROVIDED FOR GENERAL INFORMATION PURPOSES ONLY AND DOES NOT CONSTITUTE LEGAL OR OTHER PROFESSIONAL ADVICE. PROVIDERS /PARTIES INTERESTED IN APPLYING TO THE BHIVE DPS SHOULD SEEK SPECIFIC INDEPENDENT LEGAL ADVICE. WE ACCEPT NO RESPONSIBILITY FOR LOSS WHICH MAY ARISE FROM RELIANCE ON THIS FAQ.

September 2021



Subject	FAQ	Answer
Data protection Clause 20	Clause 20 covers personal data, since we will be contracting with public authorities, is there any personal information involved?	<p>This is a standard public sector contract clause. The GDPR provisions have been added to future proof the DPS. The assessment should be carried out on the facts at the time.</p> <p>If there was any sensitive data to be protected, then the full GDPR provisions would have to be looked at. We would expect suppliers to have basic personal data protocols in place.</p>
Confidentiality (Clause 17) and Freedom of Information (Clause 19):	Clause 17 and Clause 19 cover Confidentiality and Freedom of Information (FOI), which stipulate that all relevant information can be passed onto other government departments, transferees, any request for information under the FOI and Environmental Information Regulations (EIR). There may be information that we would rather not disclose to the public / our competitors. If so, then we may want to ask for limits to be put in place for these specific clauses.	This is a standard public sector contract clause. Where there is a genuine concern over release of information the Provider can seek an exemption.
Audits (Clause 11)	BEIS has the option to audit us, as the Provider. Why are such extensive audit powers required?	This is a standard public sector contract clause to enable government to check requirements for performance of public sector contracts.

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Audits (Clause 11)	We are expected to keep all information related to the BHIVE Framework and Contracts for up to 7 years after the last Contract expires. Why are we required to hold the records for so long?	This is a standard public sector contract clause. This helps to resolve contractual issues after contracts expire and puts a best practice requirement on suppliers to maintain records.
Representations and Warranties (Clause 8)	There are a number of warranties that we need to make on signing the DPSA and each Contract with a public authority. Can you explain why these are required?	Standard public sector contract clause and the terms must be complied with.
Insurance Obligations (Schedule 8)	Schedule 8 covers Insurance Requirements. This states we need to provide evidence of our insurances, however, should we prefer not to share these certificates, is there an alternative way we can prove our insurance coverage?	<p>This is a standard public sector contract clause. The terms must be complied with, and you must submit evidence that the necessary insurances are in place.</p> <p>A letter from your broker to prove you have the cover required by the DPSA would be acceptable.</p>
Variations to this DPS Agreement (Clause 12)	Clause 12 covers Variations to this Agreement. We note only the Administering Authority can seek to vary the Agreement. Is it possible that the Provider may also need to vary the Agreement?	<p>The DPS Agreement is a standard agreement with all Providers. Therefore changes need to apply across all contracts. If the change is, for example, a change to where notices need to be sent then the DPSA provides a mechanism for managing these risks.</p> <p>In the event of material changes the Administering Authority would need to consider these and decide whether to propose the change to all DPSAs.</p>

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Intellectual Property Rights (Clause 16)	Clause 16.5 requires us to provide an indemnity to the Administering Authority against breaches of 3 rd party Intellectual Property Rights. Is this requirement absolute?	Yes, this is required
Freedom of Information (Clause 19)	Clause 19.1.2 states we only have 2 working days to provide information that the Administering Authority have requested under FOI. Is it possible to request a longer period?	This is consistent with Cabinet Office Model Services Contract. The Administering Authority will need prompt notification to ensure it can meet its legal obligations to respond to requests within statutory time limits.
Liability (Clause 22)	Clause 22.1.2 requires us to provide uncapped liability for committing bribery. Is this requirement absolute?	Yes, this is required
Liability (Clause 22)	Clause 22.4 stipulates that the Administering Authority may be able to recover losses incurred as a result of Default by the Provider. Can this requirement be removed?	This clause is required and cannot be removed. It is for the Provider to take a view on this.
Administering Authority's Termination Rights (Clause 25)	It appears only the Administering Authority can terminate this Agreement. We would expect that the Provider also has the right to terminate the contract?	Pursuant to the Public Contract Regulations 2015, the Provider may leave the DPS when they want to.
Administering Authority's Termination Rights (Clause 25)	Clause 25.1.2 stipulates that the Administering Authority can terminate the Agreement if we have not remedied a Default within 20 working days. Can a longer period be taken?	This clause already permits a longer time period as specified by the Administering Authority.

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Consequences of Expiry or Termination (Clause 27)	If this Agreement is terminated, would it be possible to receive back our Confidential Information provided?	The Provider's Confidential Information is likely to apply at Call-Off level not DPSA.
Assignment and Novation (Clause 29)	Clause 29 covers Assignments. Are we able to assign this Agreement to affiliates?	If the Provider intends that an affiliate should be on the DPS then it would need to apply in the name of that affiliate.
Assignment and Novation (Clause 29)	Clause 29 covers Assignments. Are we able to subcontract without consent?	As per affiliates above, a new party or a sub-contractor would need to apply to join the DPS.
Assignment and Novation (Clause 29)	Clause 29.1 stipulates those complaints must be rectified within 5 working days. Is it possible to extend this period?	No changes will be accepted to this clause and market standards. It is for the provider to take a view on this.