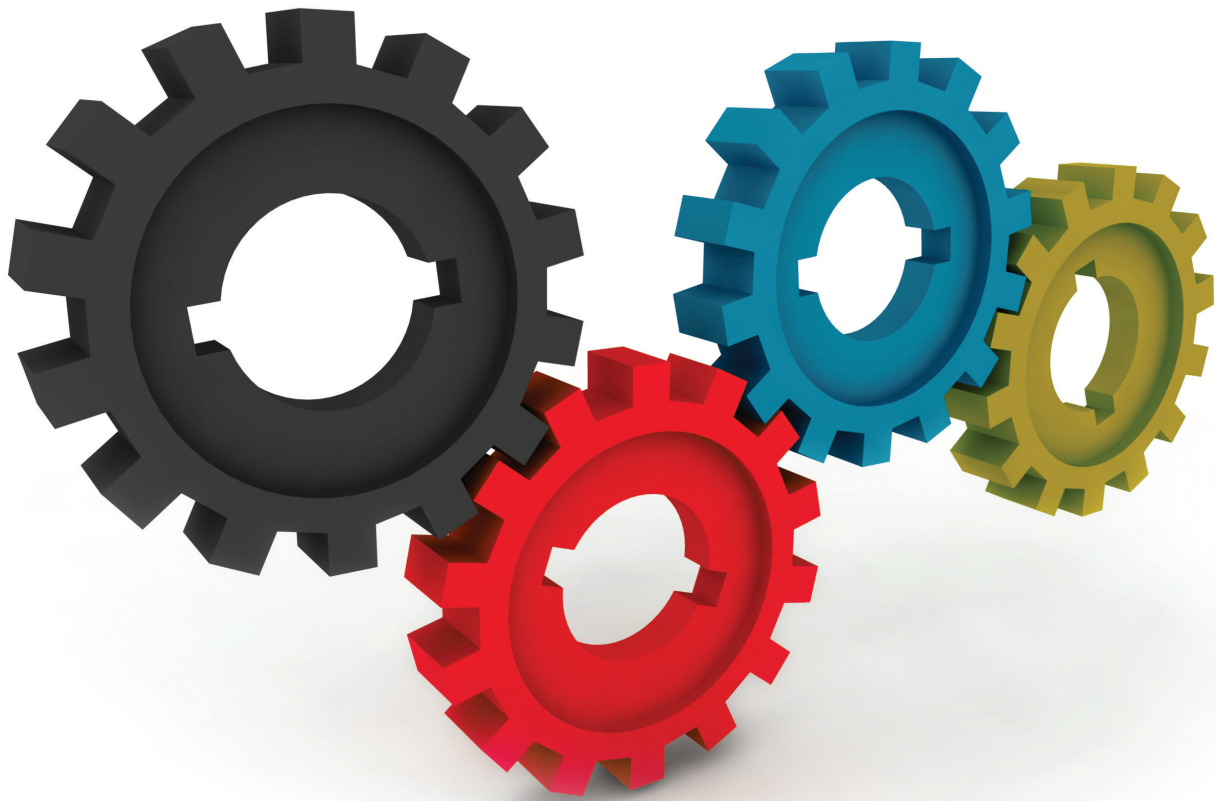


The Public Relations Procurement Toolkit

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Module 4: The PR Contract

This is one of a series of modules that together comprise the PR Procurement Toolkit – a joint initiative of the Chartered Institute of Public Relations (CIPR), Public Relations Consultants Association (PRCA), Central Office of Information (COI) and the Chartered Institute of Purchasing and Supply (CIPS).

The Toolkit as a whole is designed to help clients of the PR profession – in functions including Marketing and Procurement – and their suppliers, including agencies and other service providers, to work together to maximise the value delivered by PR practitioners and PR activity. The modules within the Toolkit are independent but interlinked, each covering a specific stage of the client/supplier relationship.

Contract law varies widely from country to country, and contracts should always be agreed locally under the supervision of a local expert. However, there are some common factors which should be considered in most cases:

Specified personnel

When the client feels that a specific individual or team is fundamental to the successful delivery of activity on their behalf, it is reasonable for this to be stated in the contract. The contract can be considered to be terminated - or subject to review – should the named individual or team no longer be available. However, it is also reasonable for the agency to require, in return for such a commitment, a certain guaranteed level of income from the client.

Pitch team

It is reasonable – and indeed, recommended – that the client should specify in the contract that the team that they meet during their agency selection process is the team that will actually work with them. This helps to prevent agencies using a specialist 'new business team' at the selection stage, who are then never seen again, leaving the client with a team they do not know or necessarily want.

Performance-related bonus/penalty

If a performance-related bonus or penalty system has been agreed, this must be specified in detail in the contract. If the system is too vague, or too complex, to be easily and fully set out within a contract, then it probably won't work in practice and should be reconsidered.

Intellectual property

Ownership of intellectual property created as a result of the agency's work for the client should be clearly assigned. It does not matter to which party it is assigned, as long as the issue is clear and agreed.

Operational territories

Where the PR activity will (or may) take place in more than one country, it may be necessary to review the contract and adapt it to each jurisdiction.

Survival of clauses

Both client and agency should consider carefully which clauses should survive the contract, and for how long. Clauses which may survive might relate to non-solicitation of staff by either agency or client, and the use of privileged (but non-confidential) information.

Dispute resolution

The contract should set out a process for resolving disputes between client and agency. This might usefully involve a third-party arbitrator.

TUPE indemnity

The client may require:

- An indemnity in respect of any failure by the service provider to comply with its obligation to inform you, the client, of any proposed measures that it proposes to take in connection with the transfer i.e. if it will be making any changes to transferring employee's terms of employment or working conditions in compliance with its obligations to inform.
- An indemnity to cover liability for any claims for automatically unfair dismissal brought by an employee who resigns and claims constructive dismissal before the transfer arguing that any change in role constitutes a material detriment.
- An indemnity for post transfer employment liabilities, including dismissals, as some claims remain with you, for example in constructive dismissal cases.

The agency may require:

- Indemnities to cover pre-transfer employment liabilities (pay, cost of benefits, claims which have arisen).
- An indemnity in respect of any failure by the client's to comply with its information and consultation obligations under TUPE.
- An indemnity to cover liability for any employees who are not detailed on a list of transferring employees, but who are employed by the client and assigned to the business immediately before the transfer and who will therefore transfer to your organisation automatically.

See http://www.hrlaw.co.uk/site/toptips/outsourcing_agreements for further details