

Financial Procedure Rules

Appendix F - Contract Procedures

Guide to Quotations and Tenders

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Introduction

This guide aims to explain in simple terms the procedures for obtaining quotations and competitive tenders from suppliers for the provision of Council works, goods and services.

The Council's constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.

Should you require further information or wish to comment on the content of this guide please contact the Head of Internal Audit.

How the Council Buys

The Financial Regulations detail the procedure to be followed, based upon the total estimated value of the contract in its entirety:

- Up to £25,000: works, goods and services (with the exception of public utility services i.e. gas, electric, and periodical payments) procured using an official order. Officers are responsible for ensuring that value for money is achieved and wherever possible, at least three written quotations should be obtained, if possible ensuring that at least one of these is a local supplier
- Over £25,000 and up to £100,000: should be advertised for competitive tendering on the CHEST or at least three written quotations must be obtained. In order to ensure the receipt of 3 quotations officers may consider inviting a greater number of suppliers to quote. If it is not possible to obtain three quotations (including local suppliers where possible) the spending Officer must consider whether it is appropriate to proceed with the procurement; and
- Exceeding £100,000: a competitive tendering exercise is undertaken on the CHEST, involving a minimum of three suppliers.

Lottery Funding

Where a contract is let that involves another source of funding eg, lottery etc alternative procurement rules may apply. Should you require further advice on the threshold amounts please contact the Council's Procurement Officer.

Social Value

Social Value should be included in any relevant specification and all exceeding £100,000. It must be clearly evidenced how a contract will deliver its 'social value' commitments and how this will be monitored past contract award. This is intended to support local businesses and communities which helps the authority make the best use of our resources to meet local community needs.

Exemptions to the Contract Procedures

Exemptions to the contract procedures are permitted where, in the opinion of the spending Officer, the procurement falls into one of the following categories:

- If a framework agreement is available that necessitates the Council not having to go out to tender and the goods, works and services will still provide the Council with best value for money;
- The goods, works or services are of a specialised nature carried out by only one or a limited number of firms with no reasonably satisfactory alternatives available;
- There is no genuine competition for the goods, works or services being procured.
- The procurement involves the purchase of proprietary or patented goods or services obtainable from one firm or; are sold at a fixed price;
- The goods, works or services constitute an extension or variation of an existing contract, or are required urgently, or the goods/materials, works or services consist of repairs to, or the supply of parts for, existing proprietary plant or equipment;
- Tenders are invited on behalf of any consortium or collaboration, of which the Council is a member, in accordance with any method adopted by that body. Where however, a Council officer invites tenders on behalf of the consortium the receipt, opening and acceptance of tenders must comply with the Council's Financial Regulations and Financial Procedure Rules or any overriding legislation;
- Exceptions may apply regarding the appointment of consultants, including architects, engineers, quantity surveyors, solicitors, barristers and other people providing professional services;
- The contract relates to insurance, banking or loan arrangements;
- The goods are purchased by auction;
- The contract relates to the buying or selling of land and buildings or interest in land and buildings negotiated on behalf of the Council by a professional valuer;
- The goods, works or services are of a sensitive nature (such as security) where publication of the tender documents would constitute a security breach and undermine the effectiveness of the final product;
- Another public authority in the last twelve months has procured the same or predominately similar goods, works or services from the same supplier having undertaken a procurement procedure that complies with both that authority's procedure rules for contracts of that kind and the Council's. Reliance on this procurement is contingent on due diligence checks having been undertaken, including that the relevant director or Legal Services Manager holds written confirmation of such compliance with other public authority. It is envisaged that this exemption will normally be used where neighbouring authorities work closely with the council on the delivery of outcomes requiring the procurement of goods, works or services where synergy is advantageous and this is a means of avoiding duplication.
- Procuring a partner and developing partnership arrangements – see Appendix E 'External arrangements'.

The appropriate Portfolio Holder must authorise **ANY** exemption to the contract procedures, with the report identifying the reasons justifying the exemption and demonstrating compliance with UK procurement rules.

Going out to procure

Before going out to procure your goods, works or services, a Spending Officer should consider the options available. A useful flowchart has been prepared at Appendix 1, which will help you to determine what options you have for proceeding with the purchase of goods, works and/or services.

Procurement of ICT Systems

All procurement of ICT systems must be in consultation with the ICT Services Manager and should ideally be agreed by the Digital Transformation Board, which includes the Finance Director. It is important that the ICT Services Manager is able to consider the potential threat to the council's cyber security prior to any procurement. For example, if a new provider is used, a merger is being considered or a new product is being designed, these can increase the risk of a security breach and must be evaluated.

Supplier Portal – the CHEST

When going out to purchase goods, works or services, the supplier portal the CHEST is the Council's system of choice when sending out ITQ and ITT documentation for values exceeding £25,000.

The CHEST has been created for business to find out about Council contracting opportunities.

The Portal enables all suppliers to register their capability on to a single regional web-site where they are asked to register 'once only'.

Contract Finder

All contracts over £25,000 must be published here within 24 hours of it being placed on the CHEST. The same applies when awarding the contract. It is now mandatory that all contracts over the value of £25,000 are advertised on 'contracts finder' in addition to the CHEST.

Emergency Procedures

An exemption to the contract procedures is permitted where in the opinion of the Head of Paid Service and, after consulting with the relevant Executive Member, circumstances warrant immediate action. The action taken must be reported to the next meeting of the Executive.

Advertising of Contracts (Non European or Lottery Funded Contracts)

All contracts to be tendered must be advertised on the CHEST, the Council's website, Contracts Finder and on Find a Tender (FTS) if appropriate. There is no longer a requirement to advertise in a trade journal or newspaper. The FTS and Contracts Finder do not charge for the service and cover a wide audience. All contracts with a total value that exceeds UK procurement thresholds must be awarded in accordance with UK Procurement Rules relating to public authorities. Thresholds are updated every two years with the next update due January 2024. Thresholds (inclusive of VAT) from 1 January 2022 are as follows:-

Supplies/Services	Social	Works
£213,477	£663,540	£5,336,937

Deadlines for Responding to Advertisements

Deadlines must be included within advertisements in calendar days. For contracts not requiring Contracts Finder or FTS adverts, the Council's minimum tender return time is 14 days from date of issue. However more time is usually allowed, depending upon the complexity of the contract up to a maximum of 28 days. For information regarding Contracts Finder or FTS adverts please contact the Council's Procurement Officer.

Pre Tender Requirements

Before tendering for a contract and particularly for those estimated to exceed £100,000, a detailed specification shall be prepared. The specification is a description of the services, supplies or works that the Council wants and what the supplier/contractor is expected to tender against and provide. It will incorporate performance targets or criteria for acceptance of the services, supplies or works and be included in the invitation to tender documentation. It must be agreed with the tenderer awarded the contract and form the major part of the formal contract agreed between the Council and the supplier.

Approved Supplier Lists

The Council's Contract Procedure Rules require that at least three suitable suppliers or contractors be invited to tender for each Council contract. To ensure fairness, companies to be invited to tender should be based on a combination of random selection to test the market, and previous tendering history. If four firms are invited to tender, for example, two may have carried out work of a similar nature to a good standard, and two should be chosen arbitrarily from the approved list of contractors.

There is currently only one such framework agreement in place, for property repairs and maintenance, which is subject to review every 3 years.

How the Tendering Process Works

If either Construction Line or an Approved List is not being used then all tendering requirements must be advertised to ensure that the process is competitive and secures good value for money. There are three main methods of tendering through advertisement:-

- Open Procedure – This allows suppliers that have responded to a public notice to tender without prior selection. Open Procedures can result in a high volume of responses meaning it is usually used when the size of the market is known. The minimum time limits for receipt of tenders varies on the market route decision and lasts between 15-35 days.
- Restricted Procedure – This procedure is a two stage process that runs for a period of 30 days, with the first stage in the form of a selection questionnaire (SQ). Suppliers will be short listed to receive tenders once they have passed the preselection criteria. This method is normally used where there is no framework in place for the type of goods or services required, or for contracts above the UK procurement threshold. The minimum time limits for receipt of tenders varies on the market route decision and lasts between 10-30 days.
- Competitive Procedure with Negotiation – This procedure is used when the terms of the contract can be negotiated with one or more providers but is still subject to competition. This procedure has greater freedom for use than before as covered in the new Public Contracts Directive. The process varies on the market route decision and lasts between 10-30 days. This process (along with Competitive Dialogue) should not be used for purchasing off the shelf products or services.
- Competitive Dialogue – Is used to negotiate the terms of a contract with one or more suppliers selected by it. It is used for complex contracts where the authority is not objectively able to define the technical means capable of satisfying its need or objectives, or specify either the legal or financial make up of a project. As a general rule there must be a call for competition. The period for a competitive dialogue is 30 days.

The 'award' stage considers the merits of the eligible tenders and which is the most economically advantageous. When evaluating tenders at 'award' stage the criteria used must be linked to the subject matter of the contract.

Invitation and Submission

Instructions must be issued to those companies invited to submit a quotation or a tender, asking them to complete and return the required documents by a specified date and time. These documents, which should be placed either in the Procurement area of the website or on the CHEST for the tenderer to download and complete, will usually contain the following information:

- Letter of invitation and instructions about the process;
- Pricing document and/or form of tender;
- Specification and/or schedule of rates;
- Contract conditions or conditions of purchase;
- Any relevant supporting information (maps etc); and
- Where bids are to be evaluated on the basis of Quality and Price, the tender documentation must also specify the criteria for evaluation. This is a requirement of the public procurement rules and sub criteria or weighting rules which have not previously been brought to the tenderers attention cannot be used.

An Invitation To Quote (ITQ) template is available on the Procurement page of the intranet and must be used when obtaining a quote.

It is important that firms are given sufficient time to adequately research and compile their bids. This includes enough time to seek accurate estimates from their subcontractors. The Council's minimum time for the return of priced tenders is 14 days from date of issue, although best practice suggests a maximum of 28 days.

The specified time to submit tenders/quotations may be extended in exceptional circumstances provided that all suppliers involved in the process are notified of the revised date and time and no potential supplier is disadvantaged by the deadline extension.

Whistleblowing and Contractors

The Council is committed to the highest possible standards of openness, probity and accountability. In line with that commitment we encourage contractors and others with serious concerns about any aspect of the Council's work to come forward and voice their concerns.

The Council has a whistleblowing policy that applies to all contractors working for the Council (including employees working in any partnership on behalf of the Council) and suppliers providing goods and/or services under a contract with the Council. The policy is distributed with all tender documents.

Tenders received via the Chest

For tenders in excess of £100,000, they must be verified and released by an Elected Member. If written quotations are received, the documentation should be retained.

Evaluation of Tenders and Quotations

Whilst written quotations will generally be evaluated on the basis of price only, a record must be made of the evaluation process undertaken.

An evaluation must be made of tenders submitted, comparing the tender sum against the estimate for the works, goods or services prepared in advance of the firms being invited to tender. Where errors or discrepancies are found that may affect the tender sum, the tenderer may be notified and afforded an opportunity to confirm the submitted sum without amendment or withdraw their bid. The instructions to tenderers must stipulate whether qualified or alternative tenders may be submitted for evaluation.

Not all contracts awarded by the Council are evaluated on the basis of price only. Consideration should be given to those which offer the best value for money having regard to

both price and quality factors. This is sometimes referred to as the “most economically advantageous tender” (MEAT) and provides for the contract to be awarded to the company best able to meet the Council’s specification.

To ensure fairness the quality criteria (or award criteria) and evaluation method must be clearly defined in the tender documentation. Award criteria will vary depending on the type of contract. Some examples of criteria included are:-

- Social Value content;
- Impact on climate change;
- Technical suitability;
- Financial viability and stability;
- Quality systems;
- Customer care and after sales service;
- Experience and past performance;
- Aesthetic and functional characteristics; and
- Delivery date and other management factors.

A suggested mechanism for evaluating bids is included on the procurement page of the Intranet. Unjustifiably low priced tenders should be investigated rigorously to ensure that they meet the required quality standards and, if necessary, explanations sought from the supplier concerned.

Where the quality/price matrix has not been previously agreed by the executive, then the matter must be referred to them for consideration and formal contract award. In addition, approval of the executive must also be sought where the recommended tender exceeds the pre-tender estimate by more than 10%, with explanations given as to the robustness of the original estimate.

Post Tender/Quotation Negotiation

After the receipt of tenders, officers may need to contact tenderers to clarify technical and contractual information as part of the evaluation process. Any such communication must be confidential and all correspondence must be via the CHEST.

Having selected the preferred supplier, negotiations may commence in order to secure better value for money with the final agreed price being included in the Pricing Schedule of the Contract.

Standstill Period

For contracts exceeding the UK procurement threshold the successful bidder should be notified promptly following acceptance of the tender or quotation with an Alcatel letter. A copy is available on the procurement page of the Intranet.

All unsuccessful bidders should be notified promptly with an Alcatel letter which must include the scores of the successful bidder against the individual unsuccessful bidders scores and a summary of reasons for the scores. The letter must also include a list of bid prices and bidders, although the names of the firms submitting bids should not be matched to the prices. A suggested letter is available on the procurement page of the Intranet.

Contracts exceeding the UK procurement threshold cannot be awarded until the minimum standstill period of 11 days, including the date of issue has been completed. However, in accordance with best practice, the Council may apply a standstill period for contracts exceeding £100,000.

If you receive a request for a debrief from any of the unsuccessful bidders during the standstill period, they must be seen within the standstill period. If this is not possible, then the standstill period MUST be extended for a debrief to take place.

After the debrief, if the unsuccessful bidder is asked to provide further evidence by the Council or the unsuccessful bidder requests the council to provide additional information, then the standstill period MUST be extended to allow this to happen.

Once this period has been completed and there has been no legal challenges by any of the unsuccessful bidders an award letter can be issued to the successful bidder. A suggested letter is available on the procurement page of the Intranet.

A further letter should be issued to the unsuccessful bidders notifying them that the standstill has been completed and an award letter has been issued. A suggested letter is available on the procurement page of the Intranet. By doing this, if the Council receives a legal challenge from an unsuccessful bidder, it reduces the time limit from 6 months to 30 days from the day after the date when the Council has awarded the successful bidder the contract.

If one or more of the unsuccessful bidders challenge the award after the standstill period has been completed then seek advice from the Council's Procurement Officer or Legal Team.

Contract Award - Quotations

Where, in exceptional circumstances, the recommended bid is not the lowest quotation received, award of the contract must be authorised by the relevant Corporate Director, having considered the reasons for other than the lowest tender being accepted.

Signing of Contracts

Where a contract is to be awarded to a new supplier / contractor which is in excess of £10,000 (cumulative), the contract should be signed off by a second officer if signed below Head of Service or Legal Services Manager level.

Contractor / Lease Due Diligence Checklist

Prior to the contract award, it is recommended that the procuring officer should, as a minimum, complete the Contractor / Lease Due Diligence Checklist at Appendix 3. Once completed, the checklist should be returned to the council's Procurement Officer to be retained alongside the contracts register.

Corrupt Practices

In every written contract a clause must be inserted to secure that the Council is entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation, if the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or not doing anything relating to the contract or any other contract with the Council or for favouring or not favouring

any person in relation to such contract, or similar acts have been done by any person employed by the contractor or acting on their behalf, or the contractor or any person employed by them or acting on their behalf has committed any offence under the Prevention of the Corruption Acts 1889 to 1916, or any amendment of them or shall have given any fee or reward, the receipt of which is an offence under the Local Government Act, 1972.

Breach Of Contract Procedure Rules

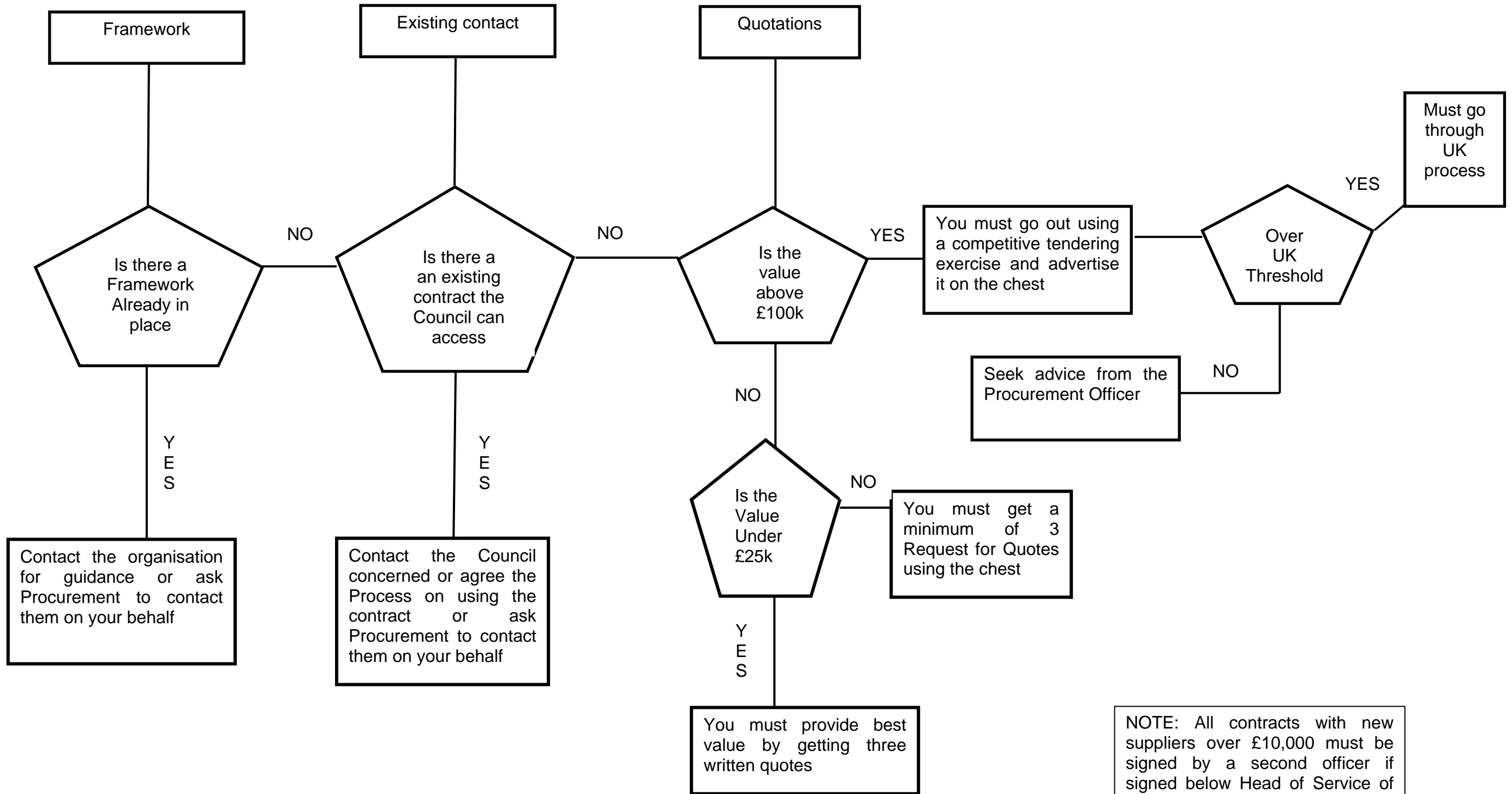
In the event of a significant or deliberate breach of these Rules, the Finance Director shall report details to the next meeting of the Executive with any proposals for remedial action.

Contracts Register

As a result of the transparency code, local authority must publish details of all contracts with a value greater than £5,000. The Council has set up a contracts register that contains contracts for the last three years. This register is required in addition to the CHEST as it contains additional information to ensure that we meet the Transparency Code requirements. This is mandatory for any spend over £5,000 and if officers are not going through the CHEST for a procurement exercise, then they will need to either advise the Procurement Officer or Legal of the details of the contract. The contract register is updated on a monthly basis and is published on the website.

PROCUREMENT FLOWCHART

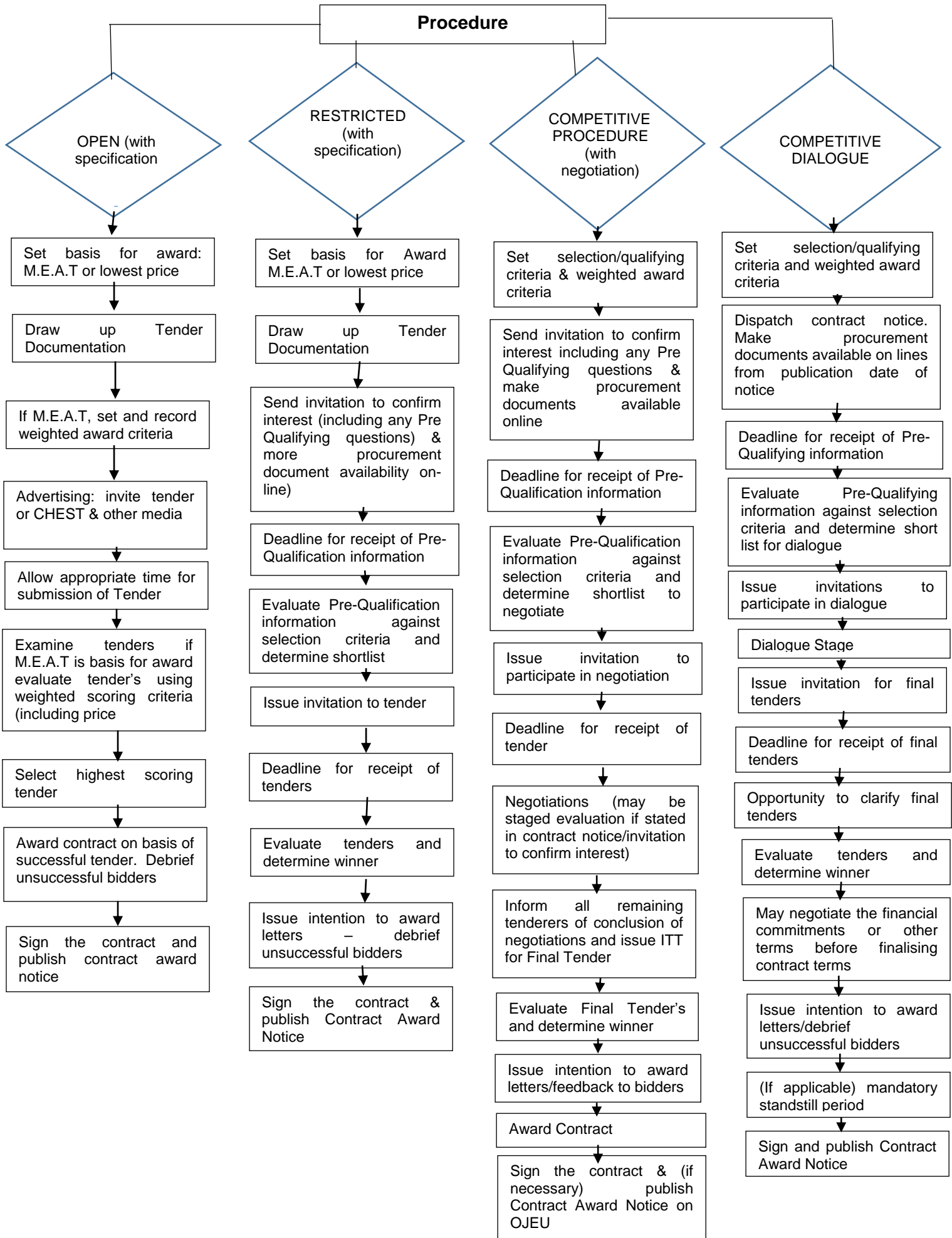
You have these options to consider before proceeding



NOTE: All contracts with new suppliers over £10,000 must be signed by a second officer if signed below Head of Service of Legal Services Manager.

PROCUREMENT ROUTES

APPENDIX 2



Financial Procedure Rules
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Guide to Contract Management and Control

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Introduction

This guide aims to explain in simple terms the procedures for managing contracts with suppliers for the provision of Council works, goods and services.

The Council's constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.

Should you require further information or wish to comment on the content of this guide please contact the Head of Internal Audit.

Currency of Contract

Once award of the contract has been formally accepted the Spending Officer will notify the successful firm and arrange for the works to commence. All contracts over £100,000 must be in writing and agreed by the Legal Services Team, but this does not prevent permission being given for works to commence prior to the completion of the written contract. In such circumstances, the Legal Services Team will issue, or authorise the issue of, a Letter of Intent to the contractor giving permission to begin work. The letter can be downloaded from the Procurement page of the Intranet.

Before allowing the works to commence the Spending Officer must be satisfied that the contractor has sufficient insurance cover and that this is effective throughout the contract period. Under normal conditions the contractor will be obliged to provide insurance for the works and injury or damage to persons and property. Please contact the Council's Insurance Officer if further guidance is required.

In most forms of contract it will be the contractor's responsibility to draw up a programme showing the anticipated duration of the work. The Spending Officer should ensure that this master programme is produced and that it is updated as work progresses.

The Spending Officer must attend site meetings to discuss progress with contractors. These meetings should be minuted for future reference and include reference to authorised variations and to any particular difficulties being experienced which may effect progress and the final cost.

Responsibility for co-ordinating operations as well as information rests with the Spending Officer. Any deficiencies in co-ordination will manifest themselves in delays and discontent amongst the parties concerned. Regular attendance at site meetings should enable the Spending Officer to spot any problems that require immediate investigation to ensure that the contractor acts promptly to prevent any reoccurrence or deterioration.

Difficulties that occur during the contract period are often attributable to poor or confused communications. An essential control is a proper system for the rapid transmission of information between parties. Efficient and effective responses to situations must be made with a minimum of delay or disruption.

Quality control during construction is achieved by ensuring that the work is carried out in accordance with the specification and drawings and to the required standards. Variation orders may be issued to correct any errors made in the design stage or to correct any unforeseen problems arising during the contract period. This may involve amendments to construction drawings, measurements, progress charts and contract programmes.

Valuations of Work Done and Interim Payments

Payments will be made to the contractor on the basis of valuations of work compiled by the contractor of the aggregate value of work completed to date. The contractor will normally submit monthly valuations together with supporting documentation to the Spending Officer for substantiation and payment. Checks must be made to establish the accuracy of the valuation and these evidenced by signature.

Payments are normally made to contractors on a monthly basis and in accordance with the specific conditions detailed in the contract document. Each payment will be certified by a designated officer and show the total valuation to date, less retention and previous payments, and any adjustments for materials on site.

Before payment is made, details must be recorded in a contract payments register, or other appropriate document, as a means of identifying potential contract management problems at an early stage. It is important that payments are made to contractors on time and in accordance with the periods outlined in the contract document. Interest can be claimed on late payment in accordance with the Late Payment of Commercial Debt legislation (1998).

Control of Contract Variations

It would be unrealistic not to expect the need for some amendments to be made to the original design and specifications of the project. In the interests of proper financial management it is very important, however, that such amendments are adequately controlled.

The Spending Officer must monitor variations closely to ensure that, wherever possible, approval of the executive is sought at an early stage so that the contract is not unduly delayed.

It is impractical to expect the Spending Officer to seek formal approval for every proposed change, as any delay while approval is being sought could easily cause additional extra costs that far outweigh the value of the original changes. The Spending Officer may therefore implement changes that collectively are not expected to increase costs by more than the financial values specified in the Council's Financial Regulations and Financial Procedure Rules, without the need to seek the specific approval of the executive. The Spending Officer is required to prepare and submit reports, jointly with the Finance Director, to the Executive on completion of all contracts where the final expenditure exceeds the approved contract sum by either 10% or £25,000 whichever is the lesser.

It is stressed that the financial value is the total of all variations as numerous variations, although relatively small in value individually, can collectively exceed this sum.

The Spending Officer must actively monitor the scheme, seeking explanations and considering options available in order that where possible the estimated final cost of the contract remains within the initial budget and contract period. Failure to monitor effectively may result in the Spending Officer being unaware of changes and the cost involved until the scheme is complete.

Variation orders are the means by which the Spending Officer instructs the contractor to carry out work either differently or in addition to the work specified in the contract document. In some forms of contract variation orders may be referred to as architect's instructions or contract administrator's instructions. A variation order is contractually required where there are additions, omissions, substitutions, alterations or any other changes to any parts of the works that are necessary for the completion of the contract.

Variation orders must be in the form of written instructions to the contractor and the likely cost of each variation assessed prior to the issue of the instruction. In cases where this would cause serious disruption to the contract, or where immediate action is necessary to prevent danger or damage, the instruction can be issued without prior costing, but must be costed within 7 working days of the issue date.

All standard forms of contract explain how variations are to be valued. Basically if the work is of a similar nature then the rates in the bill of quantities should be used. If not, a rate should be fixed by the contract administrator in agreement with the contractor. Alternatively, the contractor may be ordered to carry out the work on a day work basis, where it is not possible to value the work on an ordinary pricing basis.

Contract Claims and Extensions of Time

Circumstances may occur where contractors, through no fault of their own, incur additional costs that are not recoverable through the normal administration of the contract. In accordance with the appropriate contract conditions, contractors will seek reimbursement of such costs by submitting a claim for loss and/or expense.

The circumstances giving rise to claims will vary and it is impossible to compile rules to meet all eventualities, but the general principle is that contractors are entitled to any additional costs they have actually incurred due to the action, or inaction of Council officers responsible for the contract.

Engineering and building forms of contract make it clear that it is the contractor's duty to give prompt notification, in writing, of his/her intention to make a claim. Notification from the contractor must include adequate explanation and evidence in support of the claim and refer to relevant contract clauses in the contract conditions.

The most common forms of claim are for prolongation and disruption, and the costs associated with these are notoriously complex to substantiate. It is not unusual however, for claims to be exaggerated, and so it is incumbent upon the contract administrator to establish the accuracy of any claim through well-maintained documentation, and to be satisfied that the principles on which the claim is based are reasonable.

Most contractors will plan to carry out the works in such a way as to finish before the prescribed date for completion. When circumstances beyond their control occur, contractors may apply for an extension of time to avoid the imposition of Liquidated Damages. (See calculation of liquidated /ascertained damages later in the guidance).

Contract conditions indicate a number of situations that may entitle the contractor to apply for an extension of time and emphasise the duty of the contractor to submit a claim promptly. This is to prevent contractors, who are getting close to the original completion date, from submitting a claim in respect of a situation occurring many months earlier. The clauses do not however preclude the contractor from seeking an extension of time long after the event occurred.

In practice, if the time for completion has been exceeded there are three possible situations:

- No extension of time is granted and liquidated damages can be deducted for the whole of the over-run period;

- Extensions of time are granted for only part of the over-run period and liquidated damages are deductible for that period not covered by an extension of time; or
- Extensions of time are granted that fully cover the extra period and no deduction of liquidated damages can be made.

Upon receipt of a request for an extension to the contract, the period of delay must be assessed and if an extension of time is substantiated the contractor must be notified promptly, and in any event prior to the issue of the final certificate for payment. At this point, the Contractor / Lease Due Diligence Checklist (Appendix 3) should be completed again and returned to the council's Procurement Officer to be retained with the contracts register.

To safeguard the council's right to deduct liquidated damages if the contract is over-running, the Spending Officer must certify in writing that the contractor ought reasonably to have completed the works within the contract period. Liquidated damages should be recovered from the contractor where the terms of the contract have not been duly performed; any decision not to recover damages should be recorded giving reasons.

Within seven days of the expiry of the contract date for completion or as extended, the responsible Spending Officer must issue a formal certificate of non-completion in accordance with the relevant contract conditions.

Calculation and Recovery of Liquidated Damages

Every contract that is estimated to exceed £100,000 must make provision for liquidated damages to be recovered from the contractor where they have failed to complete the work within the time specified in the contract, or as extended. Liquidated damages are intended to reimburse the Council for any additional costs incurred as a result of the delay.

The Spending Officer for the contract must determine the amount of liquidated damages specified in the written contract. In accordance with the relevant contract conditions, liquidated damages must be a "genuine predetermined estimate" of the losses likely to be incurred due to delays in completing the contract.

It is important that a separate calculation is made for each individual contract and is not merely an amount extracted from a similar contract, as this may result in the amount of liquidated damages being challenged as a penalty, and therefore, not enforceable.

It is essential that details of the calculation of liquidated damages are retained to demonstrate that it is a genuine estimate of loss associated with the contract. Further guidance should be sought from the Legal Services Manager.

In accordance with the relevant contract conditions, the Spending officer will only be able to obtain payment for liquidated damages if the following events have occurred:

- Extensions of time due to the contractor have not been awarded within the time scales stipulated in the relevant contract conditions;
- The contractor has been formally notified of the Council's intention to deduct damages; or
- The contract administrator has certified, through the issue of a "Notice of Failure to Complete" that in his opinion the works should have been completed by the due date.
Note:- that under JCT Contract for minor building works this certificate is not necessary

and liquidated damages can be deducted as soon as the contractor exceeds the stated completion date.

In certain situations the Spending Officer may consider it beneficial to waive liquidated damages rather than to risk the submission of a claim from the contractor that could potentially be for a higher value. In such instances, it must be clearly demonstrated why it is in the best interest of the Council, not to apply damages.

Contract Cost Control and Monitoring

The Spending Officer for each contract must ensure that suitable procedures are in place for the effective monitoring of progress and cost, with the objective of ensuring that the contract is completed within the approved contract sum and that any unavoidable costs are identified quickly.

To achieve this a financial statement, assessing the probable final cost must be prepared by the Spending Officer every time a contract payment is made. This statement should take into account all known factors including variations and any adjustment of prime cost and provisional sums, and progress towards completion. The financial statement attached at Appendix 1 is recommended for this purpose.

The Spending Officer must seek explanation for any significant differences between the previous financial statement and take appropriate action should it be likely that the approved contract sum or expected date for completion will be exceeded.

The Spending Officer is required to prepare and submit reports, jointly with the finance director, to the Executive on completion of all contracts where the final expenditure exceeds the approved contract sum by either 10% or £25,000 whichever is the lesser.

In addition the Spending Officer must prepare regular reports reviewing the capital programme provisions for their service, and a quarterly return of the estimated final costs of schemes in the approved capital programme. This must be submitted to the Executive as part of the performance management framework.

Certificate of Practical or Substantial Completion

On completion of the works the contract administrator must issue a Certificate of Practical or Substantial Completion. This certifies the date when, in his/her opinion, the works reached practical completion.

Appendix 1 – Suggested Project Financial Statement

PROJECT:		DATE
Report : No 3 (week 12)	Omissions £	Additions £
Contract Sum		418,495.00
Contingencies / claims	25,000	
Prime Cost Sums	53,900	39,962.30
Provisional Sums	49,050	17,362.85
Variations		67,855.67
Anticipated Variations		5,000.00
Sub Total	127,950	548,675.82
Less omissions		127,950.00
Estimated Final Cost		420,725.82
Progress :-		
Date of Commencement	17 April 2015	
Date of Anticipated Completion	5 February 2016	
Duration	42 weeks	
% of contract period complete	85%	
Valuations		
Gross Valuation No 3	£340,000	
% of estimated final cost	81%	

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Guide to Contract Completion and Review

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Introduction

This guide aims to explain in simple terms the procedures for completion and review of contracts with suppliers for the provision of Council works, goods and services.

The Council's constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.

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Taking Possession of the Completed Work

In the run up to completion, the Spending Officer for the contract must ensure that appropriate arrangements are made for the formal hand over of the completed works. The requirements for taking over and maintaining the completed work should have been specified in the tender and contract documents and will usually involve functional testing and inspection of the various aspects of the services, supplies or works incorporated within the contract specification.

The Spending Officer should ensure that unacceptable defects are dealt with before determining that a state of practical completion can be certified. A Certificate of Practical or Substantial Completion must be issued promptly once tests have been completed and the Spending Officer is satisfied that in accordance with the terms of the contract, the works are substantially completed.

Defects Liability Period and Inspections

For construction and engineering works the contractor is responsible for making good any defects that become apparent during the defects liability period (or maintenance period). This period runs from the date of practical completion (or substantial completion), as shown on the completion certificate, for a period as stipulated in the contract documentation, normally six or twelve months, depending on the standard form of contract used.

At the time the practical completion certificate is issued a list of outstanding works (the snagging list) will be provided to the contractor and remedial work completed as soon as possible within the specified maintenance period. These defects must be put right at the contractor's expense if, in the opinion of the contract administrator, they are due to the neglect or failure of the contractor to comply with their contractual obligations.

Inspections of the satisfactory completion of any work on the 'snagging list' must take place near the end of the defects liability period, but within the period stated in the contract documents, so that the contractor may be held responsible for rectifying defects for which they are liable. The Spending Officer is entitled to withhold payment to cover the cost of any work outstanding at the end of the defects liability period. They may also arrange for the defects to be completed by other means and the costs recovered from the defaulting contractor.

In order to safeguard against default by the contractor, either in completing the works or in carrying out the remedial measures, sums are retained from interim payments made to the contractor. The normal procedure is:

- A fixed percentage (eg 5%) is deducted from each valuation until a maximum limit is reached (e.g. 3% of the contract sum);
- Retention remains at this maximum limit until substantial achievement of the works is achieved;
- Upon substantial completion of the works, half of the retention money is released; and
- Upon issue of the maintenance certificate confirming that all outstanding defects have been rectified, the balance is contractually due for release.

The final retention sum should only be released once all defects have been rectified and the Spending Officer has agreed the contractor's final account.

Contractor's Final Account

At the end of, or during, the maintenance/defects liability period the contractor will produce their final account. Controls in place throughout the contract should have ensured the continuous measurement and valuation of the works from the outset. Such controls will ensure that full documentation is available for examination to support the final account. Subject to the co-operation of the contractor, this should make the agreement and payment of the final account no more than a formality, since the majority of items will have been verified during the contract period.

The checking and agreement of the final account can, however, become a very time consuming task and may not be completed until well after the end of the defects liability period. Traditional problem areas, such as claims, should have been considered and settled during the period of the contract, although there may be occasions when alternative arrangements have to be initiated in order to reach a financial settlement with the contractor concerned.

In these circumstances, the Spending Officer should report on the position regarding settlement of the final account and any claims and details of the estimated final costs. In accordance with Financial Regulations and Financial Procedure Rules, the Spending Officer is required to prepare a quarterly return of estimated final costs of schemes for submission to the Executive as part of the performance management framework.

The Spending Officer should ensure that every effort is made to satisfactorily conclude settlement within the period stated in the contract or otherwise within a reasonable period thereafter. Although pressure should not be applied to settle at any price, neither is it in the Council's best interest to allow settlement of the final account to drift on for many years.

Final Cost Report and Internal Audit Examination

Once the contractor's final accounts and any claims have been settled the Spending Officer must submit a report to the executive where the final expenditure exceeds the approved contract sum by more than 10% or £25,000, whichever is the lesser. This report should provide a cost appraisal of the final expenditure and explanations for any increases over the original contract sum approved.

There is no requirement for the contractor's final accounts to be audited in detail prior to the release of the respective final payment. Internal Audit shall, however, examine final accounts to the extent that they consider necessary and are entitled to receive such information and explanations as required in order to be satisfied as to their accuracy.

Learning from Experience

Following completion of the project, it will be necessary to undertake a thorough and formal post completion review. This is important since the success of future contracts could be improved by the results of constructive analysis of performance on completed schemes.

Such a review is often overlooked but should be seen as an essential component for achieving good value for money from the contract process. The Spending Officer should ensure that a review is undertaken as soon as practically possible following completion of a project. There should be three distinct elements to the review:

- The provision of sufficient information by the Contractor to allow the Council to get the optimum from the facilities, works or services;
- The identification of any problems encountered during the contract and possible solutions to prevent them happening again, to ensure that lessons are learnt for future contracts (resulting in improved economy, effectiveness, and efficiency); and
- A review of the control procedures and whether the completed contract was successful in achieving the objectives and performance expected as detailed in the original contract specification.

Performance of the Contractor

A review should also be undertaken of the performance of the contractor to assist in the future selection of tenderers. Appraisal forms designed for this purpose are provided as appendices; Appendix 1 for contractors and Appendix 2 for consultants.



Appendix 1 – Post Contract Appraisal Form (Contractor)

Contractor: _____

Project: _____

Date of Practical Completion: _____

Details	Good		Satisfactory	Poor
1. Site organisation				
2. Head Office organisation				
3. Relationship between client/ contractor				
4. Quality of Workmanship				
5. Contractor's compliance with Health and Safety standards				
6. Control of sub-contractors				
	Yes	No	Comments	
7. Did contractor have any difficulty in providing adequate labour or plant?				
8. Did the contractor sub-contract a large proportion of the work?				
9. Were the works completed on time, taking into account any extensions granted?				
10. Did the contractor complete any remedial works without being unduly pressed?				
11. Did the contractor make unreasonable claims?				
12. Were contractual claims settled satisfactorily?				
13. Were the final accounts settled satisfactorily?				
14. Did the contractor re-programme or reschedule works efficiently where problems were encountered or where extensions of time were granted?				
15. Would you employ this contractor again?				
16. Any further comments				

Signature of Spending Officer: _____

Date: _____



Appendix 2 – Post Contract Appraisal Form (Consultant)

Consultant: _____

Project: _____

Date of Practical Completion: _____

Details	Good		Satisfactory	Poor
1. Organisation				
2. Quality of pre-contract service				
3. Quality of post contract service				
4. Financial Control				
5. Co-operation with client/project sponsor				
6. Co-ordination with other consultants, relevant persons and bodies				
	Yes	No	Comments	
7. Were services generally completed on programme in both pre and post contract stages?				
8. If no, were the circumstances outside the consultant's control?				
9. Were any parts of the commission sub-let?				
10. Did the consultancy employ adequate staff of the required quality?				
11. Did the partners supervise the project adequately?				
12. Were any unreasonable claims for additional fees, or requests for extensions to the programme submitted?				
13. Would you engage this consultant again?				
14. Any further comments				

Signature of Spending Officer: _____

Date: _____

Financial Procedure Rules Appendix F - Contract Procedures

Guide to the Engagement and Use of Consultants

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Introduction

Planning the Engagement

Selection of Consultants

Contract Award

Managing the Engagement

Reviewing Performance

Appendix 1 - Quality/Price Mechanism for the Selection of Consultants

Appendix 2 – Post Contract Appraisal Form (Consultant)

Introduction

This guide aims to explain in simple terms the procedures for engaging and using consultants for the provision of Council works, goods and services where the value of the contract exceeds £25,000.

The Council's constitution incorporates Financial Regulations and Financial Procedure Rules that provide a framework for managing the Authority's financial affairs. They apply to every Member and Officer of the Authority and anyone acting on its behalf.

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The key stages relating to the engagement of consultants can be subdivided into five distinct phases;

- Planning the engagement;
- Selection of consultants;
- Contract award;
- Managing the engagement; and
- Reviewing performance.

Guidance on each of these stages is set out below.

Planning the Engagement

The use of consultants can be an efficient and cost effective way of supplementing the Council's capacity to achieve service objectives. Their use, however, can be expensive compared to properly planned use of our own staff and should only be used in the following circumstances, where:

- Specialist skills are required that are not available in house; or through existing Council arrangements;
- Council staff who could undertake the works are already fully committed in the time scale required; and
- An independent opinion, advice or investigation is necessary.

Occasionally the Council needs to obtain advice regarding the feasibility of works of a specialist nature. In such cases specialist consultation is permitted as an initial step, but this should be done without any guarantee of extending the appointment to cover any consequentially approved project.

When considering the engagement of consultants the Spending Officer must justify the engagement, ensuring that budgetary provision exists and that a comprehensive brief has been developed.

In all cases it is essential that a clear and well thought out brief for the engagement is drawn up. In particular the brief should include the following items:

- The purpose of the project together with any necessary background information;
- The scope and content of the project;
- The required timing of the project and an assessment of the consequences of failure to meet time targets; and
- The expected budgetary constraints.

The brief should really be able to be broken down into evaluation criteria for use in monitoring the consultant's performance. For relatively straightforward or repetitive projects an adequate brief may be drawn up in a single step, but for larger, more complex projects the brief as finally agreed, may be the product of an evolutionary process.

Selection of Consultants

The competitive process relating to consultants must follow the principles for appointing contractors, with the condition that in circumstances requiring flexibility, or a specialism, the Spending Officer may need to refer to wording regarding exemptions to the Contract Procedure Rules.

The engagement value, used to determine the correct method of procurement, shall be defined as the total fees payable plus an estimate of the total expenses reimbursable to the consultant.

If a consultant applies to be included on an Approved List then at least two satisfactory written references should be obtained to confirm that the consultant has demonstrated an ability to carry out work of a similar nature to that required. Further guidance on Approved Lists is contained within the Guide to Quotations and Tenders.

It is increasingly common for tenders not to be evaluated on price alone, as the cheapest price may not represent the best value. The Council's Contract Procedures provide for contracts being awarded on a value for money basis, or the "most economically advantageous tender" (MEAT).

A suggested mechanism for evaluating bids on both quality and price is attached as Appendix 1, but whatever evaluation model is used, it is vital that tender documents clearly state the criteria upon which the assessment is to be made; to ensure the process is transparent, documented and complies with public procurement rules.

Contract Award

All engagements must be made in writing in accordance with the Council's Contract Procedure Rules, and as set out in the Guide to Quotations and Tenders, and a record of the engagement notice or letter placed on the engagement file. If required clarification should be sought as to the consultant's previous employment via their CV or via Human Resources.

The Council's Scheme of Delegation to Officers gives authority to all Service Directors "to engage specialist or consultant services where necessary if within an approved cost or estimate or provided that the cost does not exceed the limit, over which Service Directors may not agree to transfer expenditure from one estimate to another".

Consideration should be given to the employment status (IR35) of specialist or consultant services. The HMRC employment status assessment tool will need to be completed where appropriate.

It is good practice for a meeting to take place shortly after the engagement has been made to 'fine tune' the brief and to ensure that both parties are clear as to the arrangement. The Spending Officer must minute the meeting and document any revision to the initial brief. Significant changes to the brief should not be necessary unless the brief was poorly defined in the first instance. In such circumstances the Spending Officer would be open to criticism

that the revised brief bears little resemblance to that for which tenders were initially invited, thus distorting the process.

It shall be a condition for the engagement of any consultant for the supervision of a Council contract, that the consultant is compliant with the Council's Financial Regulations and Financial Procedure Rules. In this regard, the Spending Officer is required to ensure that the consultant is supplied with, or has access to, these documents.

Managing the Engagement

Throughout the engagement the Spending Officer must ensure that monitoring arrangements provide assurance that the performance of the consultant is as expected, in accordance with the levels and standards of the service specified in the conditions of appointment. A record must be made of the performance review and this placed on the engagement file.

All deviations from the original brief shall be documented along with a mutually agreed course of action for resolving the problems within an appropriate and defined time scale. Any financial effects should, where possible, be agreed in advance. If such action fails to rectify the situation within the specified time scale then the Spending Officer should notify the executive of the circumstances.

On no account must the Spending Officer allow an engagement to drift away from the defined requirements of the engagement brief over a protracted period of time, as problems are best addressed when they arise.

In any event, the Spending Officer must submit a report to the executive where the final cost of the engagement appears to exceed the approved contract sum by either 10% or £25,000 whichever is the lesser.

In all cases where an engagement brief is revised, a copy must be supplied to the consultant for their records and it made clear in writing that the new brief supersedes the old, to avoid any confusion.

Reviewing Performance

On completion of the engagement it is essential that the Spending Officer undertakes a final review to compare the work produced or service provided against the defined objectives. If any objectives have failed to be achieved, the reason for the failure must be documented together with any corrective action that needs to be taken.

In every case the Spending Officer shall, as soon as possible, complete and retain on the engagement file, a 'Consultant Post Contract Performance Appraisal Form' see Appendix 2.

Appendix 1 - Quality/Price Mechanism for the Selection of Consultants

The following model is suggested, which sets out a quality and price mechanism for the appointment of consultants including architects, engineers, surveyors and project managers. The procedures demonstrate how quality is taken into account during the tender process and justifies any decision for accepting a bid other than the lowest.

The principal features of the quality/price mechanism are as follows.

A quality/price mechanism should be established before bids are invited and tender documentation designed to ensure that the mechanism can be applied to responses received. In accordance with public procurement rules, the tender documentation must specify the criteria for evaluation. A quality/price ratio agreed at the outset represents the percentage weightings given to quality and price. The more complex the project, and hence the greater degree of innovation likely to be required from the consultants, the higher the ratio should be. In considering a quality/price mechanism, however, it should be recognised that some projects may not require such detailed assessment.

The quality/price mechanism should be agreed by the tender evaluation panel.

The Public Services (Social Value) Act 2012 should be taken into account on all relevant new contracts. This covers such factors as policies aimed at supporting small local firms, supporting voluntary organisations and the employment of young people.

The impact on climate change and how the contract will reduce or increase carbon emissions for the council and the Borough should be taken into consideration on all relevant contracts. Advice is to be taken from the council's Climate Change and Environmental Projects Officer on the weightings to be used during the tender evaluation process.

In assessing the quality after tenders have been received, each member of the panel should compile their own marks with an average being taken for assessment purposes. Relevant documents should be signed and retained for future reference.

Indicative ratios suggested for various types of projects are:

Type of Project	Indicative Ratio Quality/Price
Feasibility studies and investigations	85/15
Innovative projects	80/20
Complex projects	70/30
Straightforward projects	50/50
Repeat projects	20/80

Quality criteria should be grouped under six main headings and weighted. Recommended headings and suggested weighting ranges are;

Quality Criteria	Suggested Weighting Ranges*
Practice or Company	20 – 30%
Project organisation	15 – 25%
Key project personnel	30 – 40%
Project execution	20 – 30%

Social Value	up to 10%
Climate Change	10 – 50%

* Weightings will total 100%

A quality threshold should be established and suppliers should be informed of this minimum requirement in advance (e.g. a minimum total score of 65 points out of 100 in respect of the quality criteria stated above). Tenderers must achieve this minimum score before prices are considered.

Submitted tenders are assessed for quality by marking each of the four criteria out of 100, multiplying each mark by the respective weighting percentage and then adding them together to give a total quality score out of 100. Consultants passing the quality threshold (ideally two or three) are interviewed, their quality scores reviewed and their prices examined. In assessing the price, the lowest compliant bid scores 100 and the others score 100 minus the percentage figure above the lowest price.

Example

Three prices are received and scored as follows:-

Company	Price	Score	Calculation
Consultant A	£1,500	100	Lowest = 100
Consultant B	£1,750	83.3	$100 - ((250/1500) \times 100)$
Consultant C	£1,900	73.3	$100 - ((400/1500) \times 100)$

Or if lowest price is £10/hour and the next is £12.50/hour; the scores are 100 and 75 respectively.

The final quality/price assessment is achieved by multiplying the quality and price scores by the respective weightings set by the quality/price ratio and adding them together to give a total score out of 100 (e.g. if the ratio is set at 70/30 and the quality score is 80 and price is 75, the total score is $(80 \times 70\%) + (75 \times 30\%) = 78.50$). On this basis the highest scoring consultant should be awarded the contract.



Appendix 2 – Post Contract Appraisal Form (Consultant)

Consultant: _____

Project: _____

Date of Practical Completion: _____

Details	Good		Satisfactory	Poor
1. Organisation				
2. Quality of pre-contract service				
3. Quality of post contract service				
4. Financial Control				
5. Co-operation with client/project sponsor				
6. Co-ordination with other consultants, relevant persons and bodies				
	Yes	No	Comments	
7. Were services generally completed on programme in both pre and post contract stages?				
8. If no, were the circumstances outside the consultant's control?				
9. Were any parts of the commission sub-let?				
10. Did the consultancy employ adequate staff of the required quality?				
11. Did the partners supervise the project adequately?				
12. Were any unreasonable claims for additional fees, or requests for extensions to the programme submitted?				
13. Would you engage this consultant again?				
14. Any further comments				

Signature of Spending Officer: _____

Date: _____

Appendix 3

Contractor / Lease Due Diligence Checklist

Provider: _____

	YES	NO	NOT REQUIRED
Procurement Process			
Conflict of Interest Form			
Due Diligence			
Companies House printout			
Audited Accounts			
Credit agency check (if required)			
Contractor Documentation			
Contract (signed)			
Service Level Agreement			
Timetable / Scheme of Work			
Contractor staff list (inc DBS checks if required)			
Leases			
Legal - Terms and Conditions sign-off			
Finance – affordability checks			
Section 151 Officer (or Deputy) Sign-off (required for all leases – no other officers can sign a lease for the council)			

In accordance with Part 4.06.07/9 and Part 4.06.07/18, once completed this form should be returned to the Procurement Officer to be retained alongside the councils' contracts register.