



## Selection and Constitutional Review Committee

Notice of a meeting, to be held in Committee Room No. 2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford, Kent TN23 1PL on Thursday, 12<sup>th</sup> April 2012 at 6.30pm.\*

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The Members of this Committee are:-

Cllr Wood (Chairman)  
Cllr Clarkson (Vice-Chairman)  
Cllrs Bennett, Chilton, Davison, Mrs Dyer, Galpin, Goddard, Mrs Heyes, Howard,  
Mrs Martin, Smith

\* **Please Note Start Time**

**N.B.** Under the Council's Public Participation Scheme, members of the public can submit a petition, ask a question or speak concerning any item contained on this Agenda (Procedure Rule 9 refers)

### Agenda

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Nos.**

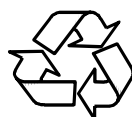
1. **Apologies/Substitutes** – To receive Notification of Substitutes in accordance with Procedure Rule 1.2 (iii)
2. **Declarations of Interest** – Declarations of Interest under the Code of Conduct adopted by the Council on the 24<sup>th</sup> May 2007 relating to items on this Agenda should be made here. The nature as well as the existence of any such interest must be declared.
3. **Minutes** – To approve the Minutes of the Meeting of this Committee held on the 12<sup>th</sup> January 2012

### Part I – For Decision

4. Amendments to Contract Procedure Rules – Buying In of External Expertise, Single Supplier Sourcing and Other Minor Changes
5. Representatives on Outside Bodies/Organisations – The River Stour (Kent) Internal Drainage Board
6. Proper Officer for Infectious Diseases Regulations

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## **Selection & Constitutional Review Committee**

Minutes of a Meeting of the Selection & Constitutional Review Committee held in Committee Room No.2 (Bad Münstereifel Room), Civic Centre, Tannery Lane, Ashford on the **12<sup>th</sup> January 2012**

### **Present:**

Cllr. Wood (Chairman);  
Cllr. Clarkson (Vice-Chairman);  
Cllrs. Bennett, Mrs Blanford, Chilton, Davison, Mrs Dyer, Mrs Heyes, Howard, Mrs Martin.

In accordance with Procedure Rule 1.2 (iii) Councillor Mrs Blanford attended as Substitute Member for Councillor Goddard.

### **Apology:**

Cllr. Goddard.

### **Also Present:**

Cllr Davidson

Head of Legal & Democratic Services, Senior Member Services & Scrutiny Support Officer.

## **291 Minutes**

### **Resolved:**

**That the Minutes of the Meeting of this Committee held on the 10<sup>th</sup> November 2011 be approved and confirmed as a correct record.**

## **292 Ashford's Future Company – 'Founding Member' Decisions**

The report advised the Committee of a need to appoint an 'alternate' Councillor to make company member decisions with regard to the Ashford's Future Company, on behalf of Ashford Borough Council, in consultation with the Chief Executive, in the circumstances set out in the report.

### **Resolved:**

**That Councillor Feacey be appointed as the Council's 'alternate' Member to make company member decisions with regard to the Ashford's Future Company.**

## **293 Date of Next Meeting**

**Resolved:**

**That the next Meeting of the Selection & Constitutional Review Committee be held on the 9<sup>th</sup> February 2012 at 6.30pm.**

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**Agenda Item No:** 4  
**Report To:** **SELECTION AND CONSTITUTION REVIEW COMMITTEE**



**Date:** 12 APRIL 2012

**Report Title:** **Amendments to Contract Procedure Rules – buying-in of external expertise, single supplier sourcing, and other minor changes**

**Report Author:** Deputy Chief Executive  
Head of Legal and Democratic Services

**Summary:** Primarily this report seeks the committee's approval to amend the council's contract procedures rules following the recommendation of Cabinet last December that agreed changes to the rules governing the procurement of external expertise (formerly described as the 'use of consultants'). The amendments follow on from internal audit reviews and recommendations also of the Overview and Scrutiny Committee. They are designed to more adequately reflect the types of work for which external expertise is engaged, and ensure that adequate justifications and approvals are in place. The amendments introduce revisions to the 'exceptions' to contract procedure rules (the occasions when the rules governing seeking quotations or tenders may be waived – called 'single supplier sourcing'), including a new process for recording such decisions, and for seeking approvals in certain instances. Both sets of change are designed to provide reasonable and proportionate safeguards, and to satisfy accountability issues including our transparency commitment.

Some other minor amendments are also proposed, that are unrelated to the above. Please note, however, that this report does not follow on from a more general review of the procedural rules; this will be carried out later in the year.

**Key Decision:** Not applicable

**Affected Wards:** None specifically

**Recommendations:** **The Selection and Constitution Committee is asked to approve the amendments to contract procedure rules in the appendix, which are highlighted as 'track changes' to the current rules.**

**Policy Overview:** The proposed changes are designed to ensure that appropriate decisions are made; that value for money is achieved, and that greater understanding of the council's needs for buying-in of external expertise develops.

**Financial Implications:** None specifically arise from this report.

<b>Risk Assessment</b>	The proposals are designed to ensure that risks of non-compliance with the council's internal controls, statutory procurement regulations and other relevant regulations and directives are avoided.
<b>Equalities Impact Assessment</b>	No specific equalities group is affected by the proposals in this report. The proposals strengthen the advice to officers concerning the need for formal open tendering, and publicising the council's prospective contracts. These aims may facilitate wider opportunities for prospective providers of services.
<b>Other Material Implications:</b>	None
<b>Background Papers:</b>	Report to the Overview and Scrutiny Committee 27 September, 2011. Report to Cabinet, 8 December 2011
<b>Contacts:</b>	Paul.naylor@ashford.gov.uk – Tel: (01233) 330436

**Report Title: Amendments to Contract Procedure Rules – buying-in of external expertise, single supplier sourcing, and other minor changes**

**Introduction**

1. In December the Cabinet agreed to recommend that this committee approve amendments to the contract procedure rules (CPRs) concerning the buying-in of external expertise (formerly the 'use of consultants'), and of the arrangements more generally governing 'single source supplies'. This report presents the full 'tracked changed' recommendations to amend the current rules.
2. The opportunity has also been taken to include some unrelated amendments. Please note that these do not follow on from a general review of the rules, other changes are possible and will be presented for consideration later in the year.

**Background**

3. In 2008 new and comprehensive procedures for the buying-in of 'consultancy' services were approved and introduced. Those changes were then annexed to our CPRs (one of the council's fundamental internal controls, and a statutory requirement).
4. A follow-up review later in 2010 found there was a need to streamline the instructions and create greater awareness of the procedures across services. Further, it was recommended the Management Team should maintain a closer interest in managing and overseeing spend in this area, given the profile of the issue with members and the public (a profile raised by the drive for greater transparency).
5. It became clear the council's accounting practice of grouping and reporting all 'consultancy' spend and bought-in professional services as one spending type had contributed to an inflated perception of the council's spending on consultancy services. So, one of the objectives of this second review has been to create new definitions to aid better internal and external understanding of our needs in this area of spending.
6. Another associated recommendation of the Internal Audit Review concerned managing and the reporting of officers' decisions to waive the need for tenders or quotations. Although expressly allowed by CPRs, there was found to be an inconsistency of reporting and a general need for more reporting of actions taken.

## Proposed amendments to contract procedure rules

7. The annex sets out the proposed amendments, with the main objectives explained below. Additions are in italics, with deletions struck through.

### *New guidance for the buying-in of external expertise*

8. Essentially the amendments move away from using the generic term 'use of consultants' and redefine this type of requirement across three categories which more reflect the type of service procured:
  - *specialist advice or specialist services* (for non-routine matters where the council does not have and would not be expected to have the required expertise)
  - *Interim support* (typically as a substitute for permanent staff due to vacancies or long term absences). Where services plan to use contractors to supplement their permanent staffing to deliver a routine service need (using contractors can provide more flexibility to deal with certain types of work) this type of arrangement would not fall under this category. Instead, it should be regarded as a 'contractor services' in the general sense and therefore subject to CPRs in the same way for other contract procurements, subject to the changes below regarding single source suppliers)
  - *'Business as Usual' operational needs that can only be externally sourced* (typically in circumstances where a service can only be provided externally, or where the council would not have or cannot reasonably be expected to have the operational skills needed)
9. The new Annex to CPRs explains these definitions and contains the procedures for officers to follow in each instance. These procedures will largely be carried out using on-line forms to simplify administration and approval flow. They are designed to ensure the Management Team considers proposals at proper times, and where necessary reports these to the Cabinet. The proposals also introduce a monitoring responsibility for the Finance Team, which will complement its budget monitoring work. One other important aim is to build up the corporate database for procurements; this will have several advantages including the council's ability to efficiently respond to information requests.
10. There then follows new advice about handling the justifications for and decision-making through the delegation they have to waive the need for tenders or quotations under CPRs (single source supplies). At present a manager is expected to report the use of the delegation within the Information Digest to Members, or through a report to cabinet. The audit and scrutiny reviews highlighted weaknesses here. Accountability can and will be strengthened by introducing a simple central overseeing role, again within the Finance Team.
11. Only one change is made to the current scope of 'exceptions' to the need for tenders or quotations. This concerns contracts for services above £150,000 where the amendments will not allow a waiver of the need for formal tenders in any normal circumstance.



12. There are some unrelated minor amendments also included in the appendix (for example the deletion of the provisions relating to the former procurement advisory board), but these do not follow from a general review. Other changes to CPRs are likely to follow later in the year once a general review is completed. This will cover changes needed to reflect the Government's and council's aims for greater transparency, including the publication of contract details. There is also to be a review of the various financial limits that apply within CPRs.
13. In anticipation of the approval of the amendments all services have been briefed about the changes and of the new procedures to follow. The full automation of administrative processes is underway and should be ready early in the new financial year.

**Portfolio Holder's view (Councillor Robert Taylor)**

14. Procedures to govern the contract arrangements for use of consultants were set up some years ago, but their integration into the Council and their complete effectiveness were clearly not entirely successful. I am grateful for the work of the Overview and Scrutiny Committee leading up to the Cabinet's decision in December to recommend the changes in this report. I fully support the proposals, therefore, and members may be assured the Head of the Audit Partnership will, through his team, carry out a further follow-up review later this year as part of a wider review of compliance with CPRs.

**Contact:** Paul Naylor, Deputy Chief Executive

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## **Contract Procedure Rules**



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## 1.0 **Contract Procedure Rules**

### 1.1 **Introduction**

These Procedure Rules, which are required by Section 135 of the Local Government Act 1972, apply to all contracts that the Council enters into after 1<sup>st</sup> August 2008. Any Tender already in place for works, materials or services will be governed by the Procedure Rules in force at the time the Tender was issued.

### 1.2 **Value for Money**

In some parts of these Procedure Rules, Officers are given discretion in what they do, or are able to issue instructions based on that discretion. If this is the case, then they are only able to exercise that discretion or issue such an instruction if they can show that it allows the Council to achieve value for money and the efficient provision of services by or to the Council in all the circumstances.

### 1.3 **Best Value**

When preparing Contracts, Officers must be guided by the requirements of Best Value and must follow all guidelines issued by an Officer of the Performance and Improvement Team in consultation with the Head of Legal and Democratic Services

### 1.4 **Interpretation and Definitions**

1.4.1 These Procedure Rules are to be read in the context of legislation and relevant European Community Rules dealing with publicity, the compilation of Select Lists, issuing invitations to tender and anything else which relates to the letting of Contracts by the Council. These Contract Procedure Rules shall always be considered in the light of any procurement strategy, Government legislation and [EGEU](#) rules. Regard must also be had to the Council's Procurement Code of Practice and any guidance issued in respect of electronic tendering, framework agreements and the appointment of consultants.

1.4.2 The Head of Legal and Democratic Services is responsible for the interpretation of these Contract Procedure Rules. The Head of Legal and Democratic Services is also responsible for preparation and guidance on particular aspects of Procedure Rules, including European Public Procurement.

1.4.3 The singular shall include the plural and the masculine gender shall include the feminine gender and vice versa.

1.4.4 In these Contract Procedure Rules, the following expressions have the following meanings:-

<a href="#">ExecutiveCabinet</a>	Includes any Committee or Sub-Committee of the <a href="#">ExecutiveCabinet</a>
Contract	Includes any Official Order issued by a Head of Service or other authorised Officer
Contractor	The legal personality with which the Council contracts
Financial Procedure Rules	The Financial Procedure Rules of the Council
Goods and Services	As defined in the European Procurement Directives
Head of Internal Audit	The appointed Officer or any Officer authorised by him
Official Order	An Official Order issued in accordance with Financial Regulations
Quotation	The written statement of the market price of specified goods, services or work
Select List	The Council's Select List of Contractors
Head of Service	The appointed Head of Service, Chief Executive, Deputy Chief Executive or any person authorised by either of them.
Tender	A formal written offer made in competition to supply specified goods or services or carry out specified work at a stated cost or rate
Work or Works	As defined in the European Procurement Directives

1.4.5 Subject to 1.5 below these Contract Procedure Rules apply to all Contracts between the Borough Council and any Contractor (including consultants) whether or not the Contract involves the Council paying or receiving money or any other consideration.

## 1.5 **Exceptions to Procedure Rules**

These Contract Procedure Rules shall apply to all Contracts except:-

- (a) if the Council or the [ExecutiveCabinet](#) decides otherwise and gives its reasons in the Minutes.
- (b) in the case of an emergency or other special circumstance identified by the appropriate Head of Service. If this happens, the Head of Service must either submit a report to the next available meeting of the [ExecutiveCabinet](#) explaining why he considered it was an emergency or special circumstance or, alternatively, include a report in the Information Digest. The report must identify the particular Procedure rule(s) which have not been followed and the reasons.



- (c) ~~Contracts~~contracts of employment entered into by the Head of Personnel and Development in relation to directly employed staff. Where Consultants or other individuals (including temporary staff) are appointed to carry out specific services, Contract Procedure Rules *do* apply.
- (d) when dealing with the acquisition or disposal of interests in or rights over land.
- (e) when dealing with the Council funding of particular voluntary sector bodies
- (f) ~~When~~ using ~~Framework~~ Agreements entered into by third parties subject to
  - (i)            the proposal to use a framework agreement having been considered at a prior meeting of the Procurement Advisory Board
  - (ii)            agreement to its use by Management Team and
  - (iii)            the proposed documentation having been agreed by the Head of Legal and Democratic Services.

## 1.6 **Amendment and Review**

- 1.6.1 These Contract Procedure Rules may only be amended by submitting a report to the ExecutiveCabinet which will make recommendations to the Full Council.
- 1.6.2 The Head of Financial Services must, in consultation with the Head of Legal and Democratic Services, review the financial limits in these Contract Procedure Rules at least every five years and report any recommendations to the ExecutiveCabinet which will make recommendations to the Full Council.

## 2.0 **Certificate under Local Authorities (Contracts) Regulations 1997**

- 2.1 The Local Government (Contracts) Act 1997 and regulations made thereunder provide for a local authority to certify that it has the powers to enter into a contract.
- 2.2 If any Officer is asked to issue a certificate under the Local Authorities (Contracts) Regulations 1997, he must immediately report the situation to the Head of Legal and Democratic Services.
- 2.3 Any Certificate under the Local Authorities (Contracts) Regulations 1997 shall only be issued if the Council agrees with the proposal following a joint report to the ExecutiveCabinet by the Head of Internal Audit, the Head of Legal and Democratic Services and the Chief Executive. The form of any such Certificate must be approved by the Council's Monitoring Officer and signed by the Council's statutory Chief Finance Officer.

2.4 The [Executive Cabinet](#) will make a recommendation to the Full Council.

### 3.0 Annual Contracts/Aggregation

3.1 A Head of Service should think about tendering for an annual (or “call off”) Contract if he is likely to need a number of similar requirements during a financial year but cannot realistically estimate the amount of work or cost involved. In such cases, orders may be issued as required on the basis of previously tendered rates or prices.

3.2 Officers must not break down what would normally have been a single Contract into smaller lots in order to avoid the provisions of these Contract Procedure Rules or appropriate [E/CEU](#) Directives.

### 4.0 Market Testing/Indicative Bids

[4.1](#) ———If an Officer wants to find out about the market price of an item or service (either for Best Value benchmarking or for some other reason) then he must make it clear in the invitation that he is not planning to choose a service provider but is simply finding out whether or not the Council will ask for Tenders at a later date.

### 5.0 Contracts Excluded From Competition – [Single Supplier Sourcing](#)

#### [5.1 Single Supplier Sourcing guidance](#)

[5.1.1](#) ———Whilst there is a general presumption against single supplier tendering and sourcing for all procurements (~~– Quotations or Tenders~~ ~~or Quotations~~ must normally be sought for all Contracts with a value in excess of £5,000), it is sometimes suitable and unavoidable (where there is to be no market testing followed), but these should be the exception and decisions made transparent. The full exceptions are set out in 5.2, but below are some instances where exceptions may apply:

[5.1.2](#) What needs to be demonstrated is not that a single contractor can simply provide the most efficient and effective proposal, but that one of the exceptions in 5.2.1 applies. Managers not the contractor, are responsible for making this judgment.

[5.1.3](#) Single supplier sourcing should not be used in the following instances:

- [5.1.3.1](#) simply because a contractor (or individual is known to the council),  
or
- [5.1.3.2](#) simply because there is too little time to test the market properly (unless there is a genuine need for ‘emergency’ or ‘urgency’) or
- [5.1.3.3](#) single supplier sourcing simply being logistically more convenient.

- 5.1.4 The presumption against single supplier tendering and sourcing is that best value legislation over the use of public money dictates it is necessary to be transparent and be able to demonstrate that procurements secure value for money when tested.
- 5.1.5 Single supplier sourcing is reasonable in some circumstances and where desirable managers must document their reasons.
- 5.1.6 Therefore, **in all cases** regarding the use of the contract standing order exceptions to seek quotations or tenders, a completed **single supplier sourcing online standard form** must be sent to the Finance Manager for audit purposes.
- 5.1.7 For all proposed single supply sourcing procurements above £25,000 and below £150,000 the approval of the Management Team is needed; electronic clearance will be enabled through the online form.
- 5.1.8 Under contract procedure rules it is necessary to report waiver actions to members. In future, the summaries of and justifications for actions prepared by the Head of Service as part of the standard form will be annexed to the Finance Manager's Budget Monitoring Reports to the Cabinet (in exempt appendices if necessary in the interests of confidentiality where appropriate).

**5.2 Exceptions to market testing** ~~-except where:-~~

- 5.2.1 Exceptions to the need for tenders or quotations are **conditional** on any statutory or European constraints, including rules of aggregation that would not allow the breaking down of a contractual need to avoid open tender rules applying. There is no exception to the need for open tender through public advertisement for contract values exceeding £150,000, except where the council's 'emergency' or 'urgency' procedures apply, or in certain cases of legal service need covered by the exception at (i) below. The exceptions are where:
- (a) The Head of Service is satisfied that goods or materials are only available from one manufacturer or that services can only be supplied by one contractor.
  - (b) The identity of the person supplying a professional service is important.
  - (c) It is specialist work and the skill of the particular contractor is important.
  - (d) Parts are being bought for existing machinery or plant.
  - (e) Goods or materials are bought through a consortium of which the council is a member.

- (f) The contract is a continuation of an existing contract. This exception only applies if the new contract is negotiated with the contractor based on rates and prices which were originally agreed (in the existing contract) through the normal tendering process. This exception can only be used to allow any one contract to be **extended once except** for Housing Revenue Account programme of works contracts. In these cases the Head of Legal Services must be consulted first about any proposed negotiation of a continuation contract. In cases involving the Housing Revenue Account programme of works contracts the following will apply:
- (i) any proposed extension is agreed with the Legal Services
  - (ii) any contract or extension shall not exceed four years in duration
  - (iii) the original tender documentation having suggested the possibility of any potential extension
  - (iv) the Head of Customer Homes and Property Service being satisfied that following a review of the contractor's previous performance that it is proper for an extension to be granted
- (g) Equipment needs to be maintained by the manufacturer of that equipment and only the manufacturer can provide the maintenance.
- (h) Equipment is supplied under terms which need maintenance undertaken by a named provider.
- (i) Contracts are needed for the retention of legal counsel and other legal experts for advice or advocacy services, and the appointment of expert witnesses, in or in contemplation of actual or potential legal proceedings, inquiries, tribunals etc.

*This approach to procurement of legal services reflects the special fiduciary nature of the lawyer/client relationship to which mutual trust and confidentiality are integral, and makes the personal and professional suitability and identity of the lawyer (or other expert) critical. In addition, in the context of (potentially) litigious matters, public advertisement and detailed specification of outputs as part of a market testing approach will usually be inappropriate or impractical.*

Nonetheless there remains a need to ensure the Council receives value for money in such arrangements and that statutory rules are followed where needed. This may include some market testing where the nature of the legal work means it is readily able to be specified in advance e.g. some types of project-based non-contentious work. Otherwise, it will be important to demonstrate that procurement is open, based on highly informed market judgments as to the proper balance between cost and quality and is the subject of appropriate consultation with client officers and the Management Team where appropriate.

If there is any doubt about whether any exception can be used, the Head of Service should seek the advice of the Head of Legal and Democratic Services. The Head of the Audit Partnership may also be consulted.

- ~~—————(a) the Head of Service is satisfied that goods or materials are only available from one manufacturer or that the services can only be supplied by one Contractor. The Head of Service is responsible for this decision and must document the reasons for such decision and make this available for audit purposes~~
- ~~—————(b) the identity of the person supplying a professional service is particularly important. The Head of Service is responsible for this decision and must document the reasons for such decision and make this available for audit purposes~~
- ~~—————(c) the work is of a specialist nature and the skill of the particular Contractor is particularly important. The Head of Service is responsible for this decision and must document the reasons for such decision and make this available for audit purposes~~
- ~~—————(d) parts are being bought for existing machinery or plant.~~
- ~~—————(e) goods or materials are bought through a consortium of which the Council is a Member.~~
- ~~—————(f) the Contract is a continuation of an existing Contract – but note: This exception only applies if the new Contract is negotiated with the Contractor on the basis of rates and prices which were originally agreed (in the existing Contract) through the normal tendering process. This exception can only be used to allow any one Contract to be extended once except in the case of Housing Revenue Account Programme of Works contracts. The Procurement Advisory Board must be advised of any proposed negotiation of a continuation contract. In cases involving Housing Revenue Account Programme of Works contracts the following will apply:
  - ~~—————(i) any proposed extension being agreed with the Head of Legal and Democratic Services~~~~

- ~~(ii) any contract or extension shall not exceed four years in duration~~
- ~~(iii) the original tender documentation having indicated the possibility of any potential extension~~
- ~~(iv) the Head of Housing being satisfied that following a review of the contractors previous performance that it is proper for an extension to be granted~~
- ~~(g) equipment needs to be maintained by the manufacturer of that equipment and only the manufacturer can provide the maintenance.~~
- ~~(h) where equipment is supplied under terms which require maintenance be undertaken by a specified provider.~~
- ~~In the event of doubt as to whether any exception can be used, the Head of Service should seek the advice of either the Head of Internal Audit or the Head of Legal and Democratic Services~~
- ~~Where the estimated value of a consultancy contract exceeds £5,000 and competitive tenders or quotations are not proposed the approval of Management Team must be sought prior to entering into a contract.~~

~~Reminder - These exceptions are conditional on any statutory or European constraints; please consult the Head of Legal and Democratic Services if there is any doubt.~~

## 6.0 **Contracts which must be made under Competition**

### 6.1 **Estimate of Contract Cost**

Prior to issue of Tender documentation, the Head of Service must estimate what he thinks the proposed Contract will cost and keep a record of his estimate and how he made the calculation.

### 6.2 **Public Advertisement**

**Whilst this Standing Order gives Financial Limits regard must always be had to the EU Requirements in respect of Low Value Advertising.**

6.2.1 A public advertisement must (unless otherwise agreed by the Head of Legal and Democratic Services) be placed:-

- (a) whenever the estimated cost or income exceeds £150,000 (Goods and Services) or £250,000 (Works) except in the case of Housing Revenue Account Programme of Works

where this shall only apply to the first phase of any contract subject to full financial vetting being carried out when any (individual) extension exceeds £250,000 in value.

- (b) if a Head of Service thinks it is in the Council's interest.
- (c) if required under [EC-EU](#) Rules or Government legislation.

6.2.2 Prior to placing an advertisement the Head of Service must have a clearly written selection criteria which will be used for selecting those to be invited to tender. The selection criteria shall not include any non-commercial matters unless the Head of Legal and Democratic Services is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply. A written record must be kept by the Head of Service identifying the reasons why anyone who has responded to the advertisement has not been selected for tendering purposes. This record and the selection criteria should be retained with the contract documentation.

6.2.3 The procedure for public advertisement (except where 6.2.4 applies) is as follows:-

- (a) an advertisement needs to be placed in at least one local newspaper, if appropriate, and in one or more newspapers or journals which are likely to be read by potential suppliers. The advertisement needs to explain what the Contract is for and give potential Contractors at least 10 clear working days to express an interest.
- (b) when the closing date is reached, Tender documents must be sent to those potential suppliers who meet the right technical standards and – for Contracts costing more than £150,000 (Goods and Services) or £250,000 (Works) – who have been financially vetted. The number of people invited to tender is down to the Head of Service, who needs to ensure that he invites enough people to achieve value for money but wherever possible shall not be less than four.

6.2.4 If [ECEU](#) Rules or legislation apply, then those Rules or legislation must govern the way in which the advertisement is placed. All [ECEU](#) advertisements must be placed by the Head of Legal and Democratic Services through the Office for Official Publications of the European [Communities Union](#). The [ECEU](#) advertisement must be despatched before any national advertisement appears.

6.2.5 Except where the Select List procedures apply, any proposed tender with a value in excess of £50,000 should be advertised using the South East Business Portal (SEBP) (Minute No. 81/6/09 refers)

and allowing prospective tenderers at least ten clear working days to express an interest.

### 6.3 **Contracts for the supply of Goods or Services**

#### 6.3.1 **Estimated Value to exceed £150,000**

- (a) ~~There must be a~~Through the public and\_ South East Business Portal (SEBP) ~~there must be a public~~ advertisement unless the requirement for public advertisement has been waived- Contract Procedure Rule 6.2).
- (b) The Head of Service must prior to selecting any prospective tenderers have a clearly written selection criteria. .The selection criteria shall not include any non-commercial matters unless the Head of Legal and Democratic Services is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply.
- (c) Any Contractor invited to tender must be have been vetted for technical competence.
- (d) No contract shall be awarded unless a satisfactory financial reference in respect of the successful tenderer has been received.
- (e) When inviting Tenders, the Head of Service must at the same time inform the Head of Internal Audit and the Customer Contact Centre. They must also specify the proposed arrangements for the opening of Tenders received.

#### 6.3.2 **Estimated Value at between -£50,000 and £150,000**

- (a) Except where the Select List procedures apply the proposed procurement shall be advertised on the South East Business Portal (SEBP) giving potential suppliers at least ten clear working days to express an interest.
- (b) The Head of Service is responsible for identifying prospective suppliers. If possible, four suppliers who have been vetted for technical competence should be invited to tender. The Head of Service must keep a written record of his selection criteria. In the event of the Head of Service wishing to invite less than three tenders the prior approval of Management Team must be sought.
- (c) When inviting Tenders, the Head of Service must at the same time inform the Head of Internal Audit and the



Customer Contact Centre. They must also specify the proposed arrangements for the opening of Tenders received.

- (d) The Head of Service can accept the lowest tender as long as it is for less than £150,000 unless less than three tenders are received when the agreement of Management Team must be first obtained

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**6.3.3 Estimated Value between £25,000 and £50,000**

- (a) The Head of Service needs to be satisfied, as far as possible, that anyone invited to quote for the work is technically competent. At least three quotations must be sought.
- (b) Heads of Service should ask for quotations to be returned in a plain sealed envelope labelled "Quotation", followed by the subject to which it relates. The envelope must be addressed to the Head of Service.
- (c) Quotation envelopes shall be kept in a secure place by the Head of Service until it is time for them to be opened.
- (d) All quotations shall be opened at the same time, if possible, on the day that quotations close.
- (e) The Head of Service can accept the lowest quotation as long as it is for less than £50,000 unless it is the only quotation when the agreement of the Head of Financial Services must be first obtained.

**6.3.4 Estimated Value between £5,000 and £25,000**

- (a) The Head of Service needs to be satisfied, as far as possible, that anyone invited to quote for the work is technically competent. At least two quotations must be sought.
- (b) Heads of Service should ask for quotations to be returned in a plain sealed envelope labelled "Quotation", followed by the subject to which it relates. The envelope must be addressed to the Head of Service.
- (c) Quotation envelopes shall be kept in a secure place by the Head of Service until it is time for them to be opened.
- (d) All quotations shall be opened at the same time, if possible, on the day that quotations close.
- (e) The Head of Service can accept the lowest quotation as long as it is for less than £25,000 unless it is the only quotation when the agreement of the Head of Financial Services must be first obtained.

**6.3.5 Estimated value up to £5,000**

No tender or quotation is necessary but the Head of Service must have regard for value for money and Best Value.

## 6.4 Contracts for the Execution of Work

### 6.4.1 Estimated Value to exceed £250,000

- (a) ~~There must be a public and~~Through the South East Business Portal (SEBP) ~~there must be a public~~ advertisement (unless the requirement has been waived - Contract Procedure Rule 6.2).
- (b) The Head of Service must prior to selecting any prospective tenders have a clearly written selection criteria. The selection criteria shall not include any non-commercial matters unless the Head of Legal and Democratic Services is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply.
- (c) Prior to inviting tenders a satisfactory financial reference must be obtained in respect of the proposed tenderer together with evidence of technical competence.
- (d) A Surety Bond or guarantee from a parent company is required unless the Head of Service determines otherwise. If a Surety Bond is required for any contract, then the tender documentation needs to ask all tenderers to price for the Bond as a separate item.
- (e) When inviting tenders, Heads of Service must at the same time inform the Customer Contact Centre giving brief details of the contract and specifying the proposed arrangements for opening of tenders received.

### 6.4.2 Estimated Value between £150,000 and £250,000

- (a) Except where the Select List procedures apply the proposed procurement must be advertised on the South East Business Portal (SEBP) giving potential contractors at least ten working days to express an interest.
- (b) The Head of Service must prior to selecting any prospective tenderers be in receipt of a satisfactory financial reference and have a clearly written selection criteria which shall not include any non-commercial matters unless the Head of Legal and Democratic Services is satisfied that the provisions of the Local Government Best Value (Exclusion of Non-Commercial Considerations) Order 2001 apply.

- (c) the Head of Service is responsible for identifying prospective Tenderers. If possible, four Contractors who have been vetted for technical competence should be invited to tender.
- (d) A Surety Bond is not required unless the Head of Service wants one. If a Surety Bond is required for any Contract, then the documentation must ask all Tenderers to price for the Bond as a separate item.
- (e) When inviting Tenders, the Head of Service must at the same time inform the Head of Internal Audit and the Customer Contact Centre giving brief details of the contract and specifying the proposed arrangements for the opening of Tenders received.

#### 6.4.3 **Contracts estimated to be between -£50,000 and -£150,000**

- (a) If there is a Select List of potential Contractors for the type of work to be carried out, it must be used (subject to personal limit being not less than the estimated contract value when seeking Tenders) except where a public advertisement is used under Contract Procedure Rule 6.2.
- (b) Tenders shall be invited from at least three Contractors on the appropriate category of the Select List.
- (c) Where the category of work is not included in the Select List, the Head of Service is responsible for identifying prospective Tenderers. An advertisement must be placed on the South East Business Portal (SEBP). At least three Contractors who have been vetted for technical competence should be invited to tender.
- (d) When inviting Tenders, the Head of Service must at the same time inform the Head of Internal Audit and the Customer Contact Centre giving brief details of the contract and specifying the proposed arrangements for the opening of Tenders received.
- (e) A Surety Bond is not required unless the Head of Service wants one. If a Surety Bond is required for any Contract, then the documentation must ask all Tenderers to price for the Bond as a separate item.

#### 6.4.4 **Contracts estimated to be between £5,000 and £50,000 in total value**

- (a) The Head of Service needs to be satisfied, as far as possible, that anyone invited to quote for the work is technically competent and in a position to fulfil the contract.

- (b) Quotations shall be invited from at least two Contractors.
- (c) The Head of Service should ask for quotations to be returned in a plain sealed envelope labelled "Quotation", followed by the subject to which it relates. The envelope must be addressed to the Head of Service.
- (d) Quotation envelopes shall be kept in a secure place by the Head of Service until it is time for them to be opened.
- (e) All quotations shall be opened at the same time, if possible, on the day that quotations close.
- (f) The Head of Service can accept the lowest quotation as long as it is for less than £50,000 unless it is the only quotation when the agreement of the Head of Financial Services must first be obtained.

#### 6.4.5 **Contracts for less than £5,000 in value**

No tender or quotation is necessary but the Head of Service must have regard for value for money and Best Value.

### 7.0 **Tender Return**

7.1 Unless use is being made of electronic tendering, the tender documentation must make it clear that tenders are to be returned in plain sealed envelopes or packages which clearly state "Tender" followed by the subject involved and which bear no mark or identification of the sender. The envelope or package must be addressed to the Customer Contact Centre.

7.2 The procedure to be adopted in respect of electronic tendering shall be in accord with a protocol prepared by the Head of ICT in consultation with the Head of Legal and Democratic Services.

### 8.0 **Surety Bonds and Parent Company Guarantees**

8.1 Where a Surety Bond is required, it has to be:-

- (a) in a form to be determined by the Head of Legal and Democratic Services.
- (b) valued at 10% of the Contract Sum unless otherwise agreed with the Head of Financial Services.
- (c) with a financial institution approved by the Head of Financial Services.

8.2 The Head of Service can obtain a parent company guarantee instead of a Bond, in which case, it must be in a form which is acceptable to the Head of Legal and Democratic Services-

## 9.0 **Tendering and Quotation Procedures**

### 9.1 **Fixed Budget Tenders**

9.1.1 Where a project has a fixed level of funding and it is not practical to specify in detail the extent of the work, supply or service required, tenderers should be given the budget figure and asked to specify what they would provide for the money.

9.1.2 The Tender documentation needs to set out how the Tender will be evaluated.

9.1.3 The Head of Service is responsible for making sure his selection process is clearly documented and “transparent” and should keep a full written record of his evaluation process.

### 9.2 **Receiving, Looking after and Opening of Tenders (non-electronic)**

9.2.1 Except where Contract Procedure Rule 9.3 applies, no Tender can be considered unless it is received in a plain sealed envelope or package bearing the word "Tender" followed by the subject to which it relates. Tenders must be securely looked after by the Customer Contact Centre until they are passed to the Head of Service at the time when they are due to be opened.

9.2.2 All Tenders shall be opened at the same time, if possible on the day that the Tenders close. If the estimated cost is £250,000 or less, they may be opened by the Head of Service in the presence of another Officer.

9.2.3 When the estimated cost exceeds £250,000, Tenders must be opened in the presence of the Head of Service, the Head of Internal Audit and a Member of the Council. The Customer Contact Centre must not release the Tender envelopes until these people are available.

9.2.4 When opening Tenders, Heads of Service must make sure that a Tender Return Sheet is completed. Each Tender sum must be recorded on this Sheet, which must be signed by all those present at the opening and passed to the Head of Financial Services with a copy to the Head of Internal Audit.

9.2.5 The Head of Service is responsible for keeping the Tender documentation safe during the evaluation process, after which the successful Tender forms part of the contract. The second most

acceptable Tender should be kept by the Head of Service for a minimum of three months.

9.2.6 Up until a formal contract has been agreed with the successful Tenderer, all sums involved should be treated as confidential. They must only be disclosed to Officers or Members who need to know in connection with their duties or to comply with these Contract Procedure Rules.

9.2.7 In the case of contracts with a value in excess of the [EGEU](#) threshold, the outcome of the tendering exercise must be formally notified to unsuccessful Tenderers at least 15 calendar days prior to the successful Tenderer contracting with the Council. The successful Tenderer must be informed of the notification sent to the unsuccessful tenderers advising that the Council may:

- (a) until the contract has been signed either abandon the procurement or cancel the award procedure without the tenderers being entitled to claim any compensation.
- (b) suspend signing the contract for additional examination, if justified by requests or comments made by unsuccessful tenderers during the fifteen day period or by any other relevant information received during that period.

### 9.3 **Marked Tenders**

If the Tender envelope or package reveals the identity of the Tenderer:-

- (a) the Tender must be opened in accordance with Contract Procedure Rule 9.2.
- (b) if the Head of Service wants to accept the Tender, he can only do so if the Head of ~~Legal and Democratic Services~~ agrees.

### 9.4 **Late Tenders**

If a Tender envelope or package is received after the time and date for then return of tenders then it shall not be considered. This must be made clear to prospective tenderers in the Instructions to Tenderers.

### 9.5 **Tender Negotiation**

9.5.1 This will only be permitted where:-

- (a) the Tender has been invited under the European Community negotiated or competitive dialogue procedure and notice has been given by the Head of Legal and Democratic Services in the Supplement to the Official Journal of the European Communities.

OR

- (b) the Tender figure is below the appropriate European Community threshold and the Head of Legal and Democratic Services has agreed to the use of a negotiated procedure.

OR

- (c) the aim is to negotiate the continuation of an existing Contract in accordance with the provision of Contract Procedure Rule [5.2.1\(f\)](#).

9.5.2 Where a negotiated procedure is used:-

- (a) there must be a clear and rigorous method of evaluating Tenders that takes account of price, quality, innovation and improvement.
- (b) all prospective Tenderers must be told in advance how the evaluation will be carried out.
- (c) at least two Officers must carry out the evaluation and agree on the results.

9.5.3 Where post-Tender negotiations take place:-

- (a) they must always be carried out by more than one Officer from the Council.
- (b) clear delegation limits must have been given to the negotiators.
- (c) an accurate written record must be made promptly following all formal and informal meetings.
- (d) the results of negotiations must be fully documented.

## 9.6 **Tender/Quotation in Excess of Estimate**

9.6.1 Subject to 9.6.1(a), 9.6.1(b) and 9.6.2, if the most acceptable Tender or Quotation exceeds the budget estimate, it can only be accepted if it is approved by the [ExecutiveCabinet](#) and only then if it is within the budget head threshold. If it exceeds that amount the [ExecutiveCabinet](#) must make a recommendation to the Full Council.

- (a) If the cost of the scheme (including fees) is within the Capital Programme, and does not exceed the estimate by more than 10% or £25,000 (whichever is the less) the Tender/Quotation may be accepted if the Head of Financial Services is satisfied that the Head of Service can find compensatory



savings on other approved capital schemes which are within that Committee's programme and which will be underspent at completion.

- (b) for a scheme funded from the Revenue Budget, a Tender/Quotation can be accepted which exceeds the estimate by up to 10% if the Head of Financial Services is satisfied that the Head of Service can find equivalent savings within the approved Revenue Budget for that Committee.

9.6.2 The provisions of 9.6.1 may, in the case of Housing Revenue Account Programme of works be waived by the Head of Housing subject to the prior agreement of the Head of Financial Services.

## 9.7 Evaluation of Tenders/Quotations

9.7.1 Tender documentation must explain how Tenders will be evaluated.

9.7.2 The way Quotations will be evaluated needs to be recorded by the Head of Service in advance unless price is to be the only criterion.

## 9.8 Acceptance of Tenders/Quotations

9.8.1 No Tender or Quotation should be accepted by notifying the proposed Contractor in advance of the Contract itself being issued unless the Head of Legal and Democratic Services agrees.

9.8.2 If a Tender is to be accepted, the lowest Tender must be accepted if the Council is paying for goods and services and the highest Tender must be accepted if payment is to be received by the Council unless:-

- (a) the [ExecutiveCabinet](#) (in relation to [ExecutiveCabinet](#) functions) or the Council or appropriate Committee (in relation to Council functions) decides otherwise following a report from the Head of Service concerned.

OR

- (b) the Tenders or Quotations are evaluated in accordance with Contract Procedure Rule 9.7.1 and the evaluation suggests that accepting another Tender would be in accord with such evaluation criteria.

9.8.3 A Tender or Quotation that needs changing or revising (other than because of an arithmetical error or where post-Tender negotiations are permitted) shall only be accepted after consulting the Head of Legal and Democratic Services.

- 9.8.4 No Tender or Quotation which would be part of a larger Contract should be accepted unless it fully satisfies the conditions of the principal Contract concerning sub-letting.
- 9.8.5 No Tender or Quotation shall be accepted unless the Head of Service is satisfied that the Tenderer has adequate public liability and other relevant insurance.

## 10.0 **Contractual Arrangements**

### 10.1 **General Requirements**

10.1.1 For the purposes of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 every Contract with a value in excess of £50,000 shall be in writing and be the subject of one of the following:-

- (a) a Contract prepared or settled by the Head of Legal and Democratic Services.
- (b) one of the national standard forms of Contract previously agreed with the Head of Legal and Democratic Services for that type of work.
- (c) some other documentation approved by the Head of Legal and Democratic Services.
- (d) an Official Order (subject to Procedure Rules 10.1.3 and 10.1.4 below).

10.1.2 All Official Orders must comply with the requirements of Financial Procedure Rules. They must not incorporate or be deemed to incorporate (by acknowledging a Contractor's Official Order or otherwise) any condition unless that condition has been approved by the Head of Legal and Democratic Services.

10.1.3 If any proposed Contract for the supply of goods, plant, equipment, machinery or vehicles requires or will necessitate either the supplier or a third party providing maintenance or support the Head of Legal and Democratic Services needs to approve the terms for such maintenance and/or support.

10.1.4 Every Contract over £75,000 shall be under seal unless the Head of Legal and Democratic Services agrees it is inappropriate. A Contract of £75,000 or less can be under seal if the Head of Service considers it should be.

10.1.5 It is a requirement of the Local Authorities (Executive Arrangements) (Modification of Enactments and Further Provisions) (England) Order 2001 that any contract required to be in writing by

virtue of these Procedure Rules must either be under seal or signed by at least two Officers of the Council.

10.1.6 The Head of Service is subject to the provisions of these Contract Procedure Rules authorised to sign contracts not required to be under seal unless the value of the contract is in excess of £50,000 when it shall be signed by the Head of Service and an Officer of Grade MG7 or above.

## 10.2 **What the Contract must include**

10.2.1 Every Contract must:-

- (a) specify what goods, services or work are to be supplied or performed.
- (b) specify the price to be paid, the estimated price or basis upon which the price is to be calculated and say what discounts or other deductions have been agreed.
- (c) specify the time or times within which the Contract is to be performed.
- (d) require that goods or services used or supplied and workmanship carried out is in agreement with the appropriate Standard. If there is an appropriate and current Agreement, Standard Specification or Standard Code of Practice issued by either the British Standards Institution or a recognised body of any Member state of the [ECEU](#), then that Agreement and/or Standard should be specified with the addition of the wording "or equivalent".
- (e) ensure that relevant Council policies (including its whistle-blowing policy) are reflected in the documentation.
- (f) provide for liquidated damages to be paid by the Contractor if any Contract for works or services worth more than £75,000 is not carried out properly. This provision shall not apply to the supply of goods, plant, equipment, machinery and vehicles or if the Head of Service does not feel it is appropriate. A Contract worth £75,000 or less may provide for liquidated damages to be paid by the Contractor if the Head of Service considers it appropriate.
- (g) if possible, make provision for continuous improvement in accordance with the principles of Best Value.

10.2.2 Every Contract must include a clause which allows the Council to cancel the Contract and recover from the Contractor any subsequent loss if:-

- (a) the Contractor (or any of his employees) has offered or given any gift or other benefit to an Officer in an attempt to influence the outcome of a Contract decision.
- (b) the Contractor has shown (or not shown) any favour or disfavour to any person in relation to the Contract.
- (c) the Contractor (or any of his employees) commits an offence under the Prevention of Corruption Acts 1889 to 1916, or any subsequent amendments to these Acts.
- (d) the Contractor (or any of his employees) gives any fee or reward that is an offence under Section 117 Sub-Section (2) of the Local Government Act 1972.

10.2.3 The Head of Legal and Democratic Services may waive the requirement of Contract Procedure Rule 10.2.2 if he feels that it is not appropriate. The reason for any waiver must be recorded in writing and retained with the contract documentation.

### 10.3 **Variations during the Course of the Contract**

10.3.1 Every variation to a Contract shall be authorised in writing by a person authorised to sign Official Orders (in the case of goods or services procured by way of an Order) or by the Head of Service in the case of other types of Contract.

10.3.2 If authorising any variation is likely to cause the original Contract Sum (including any contingency sum) or total project budget to be exceeded, the Head of Service shall not issue such variation unless the Head of Financial Services has agreed. The effect of this Standing Order shall not restrict the issue of a variation if it would result in a stoppage of the Contract works or a breach of the contractual conditions.

### 10.4 **Nominated and/or Named Sub-Contractors or Suppliers**

10.4.1 No Sub-Contractor or supplier is to be nominated or named unless the proposed Sub-Contractor or supplier has been vetted for technical competence.

10.4.2 In the case of nominated Sub-Contractors:-

- (a) these Contract Procedure Rules shall as far as possible operate as if the Contract were between the Council and the Sub-Contractor.
- (b) the terms of the Tender or Quotation must require the proposed Sub-Contractor to agree that (if selected) he will enter into a Contract with the main Contractor on terms

similar to those in the main Contract as far as the work to be undertaken or goods to be supplied is/are concerned.

- (c) the Head of Service must tell the main Contractor the identity of the Sub-Contractor whose Tender or Quotation is, in his opinion, the most satisfactory. If that nomination is accepted by the main Contractor, the Head of Service shall accept the Tender or Quotation of the Sub-Contractor.

## 10.5 **Custody and Retention of Contracts**

10.5.1 The Head of Legal and Democratic Services- is responsible for safely looking after all Contracts under seal.

10.5.2 Heads of Service are responsible for the safe keeping and custody of contracts not under seal (see Standing Order 10.1.4).

## 11.0 **Maintenance of the Select List (where applicable)**

11.1 The Head of Environmental Services is responsible for compilation and review (at least every five years) of the Select List following consultation with relevant Heads of Service.

11.2 The Select List may be amended as required by the Head of Environmental Services who has discretion to (1) add a Contractor to or remove a Contractor from the Select List and (2) update the details of any Contractor on the Select List.

## 12.0 **Partnering**

12.1 There is an increasing requirement for partnering contracts. In so far as such is to be with the private sector these procedure rules will apply but such arrangements may be considered a special circumstance and the provisions of 1.5(b) may apply. Prior to the commencement of any negotiations (as compared to establishing whether such partnering may be of benefit to the Council) the Head of Service shall fully discuss the potential issues with the Deputy Chief Executive.

12.2 In the case of partnering arrangements with bodies designated as public bodies for the purposes of the Local Authorities (Goods and Services) Act 1970 these procedure rules in so far as they relate to tendering requirements shall not apply but any proposal to enter into negotiations shall be subject to the prior approval of the Deputy Chief Executive.

12.3 In all instances regard must be had to the Financial Procedure rules in relation to proposals to Externalise Services/Competitive tendering.

12.4 Any partnering arrangement must be the subject of a written agreement (in a form to be agreed by the Head of Legal and Democratic Services) clearly setting out the partners respective responsibilities and liabilities.

### **13.0 — Procurement Advisory Board**

- 13.1 — ~~The Procurement Advisory Board consists of two Members of the Council (including the Member Champion for Procurement) and a number of Officers with knowledge of procurement including the Deputy Chief Executive. Its role is purely advisory with no decision-making ability. Accordingly it considers procurement arrangements generally with the ability to recommend its views on individual procurements to Officers with delegated responsibilities and on occasions to the Executive.~~
- 13.2 — ~~It is effectively a sounding board for the benefit of Heads of Service and Management Team when considering future forms of procurement. It reviews proposed contracts having regard to a forward procurement register and, where appropriate, requests the attendance of the relevant Service Head. It can consider amendments to procurement rules and guidance.~~
- 13.3 — ~~Whilst the only direct reference to the Board in the Contract Procedure rules relate to Framework Agreements, Heads of Service are encouraged to seek the views of the Board more generally.~~

**Table to clarify Contract Procedure Rules**

NB: there are different provisions for HRA programmed works

<b>Value of Goods &amp; Services</b>	<b>Advert</b>	<b>Financial Reference</b>	<b>Select List</b>	<b>Notify Customer Services</b>	<b>Notify Audit</b>	<b>Cllr Attend</b>	<b>Others to attend</b>
Tenders Over 250k	Yes	Yes	No	Yes	Yes	Yes	Yes
Tenders 150-250k	Yes	Yes	No	Yes	Yes	No	Yes
Tenders 50-150k	Yes	No	No	Yes	Yes	No	Yes
Quotes Up to 50k	No	No	No	No	No	No	No







## **Procurement of External Expertise (formerly cConsultancy Services-services) – Annex to Contract Procedure Rules**

The following principles and amended procedures are intended to strengthen the justification, decision-making and transparency around the contracting-in of certain external expertise. They apply regardless of the source of funding. Further, these procedures introduce new arrangements for managing and reporting of decisions or proposed actions to waive the need for tenders or quotations for providing services.

### **Section A – Buying-in of External Expertise**

(redefining the ‘use of consultants’ as currently annexed to the contract procedure rules)

This annex is intended to:

- Distinguish between the various types of need for which external expertise is needed. This is so a clearer understanding may develop of the council’s needs, given the ‘use of consultants’ has had greater prominence as a transparency matter with members, the media, and the public.
- Create suitable procedures to justify, manage and oversee decisions about buying external expertise.
- Create new procedures to manage and report the use of the ‘exception rules’ to contract procedure rules, which allow the award of a contract by waiving the need for formal tenders or quotations (single supply sourcing – see Section 5).

The effect of these amendments is to move away from using the term ‘consultant’ in contract procedures in favour of definitions that more adequately reflect the nature of services needed.

### **Defining ‘external expertise’**

Three categories of external expertise are now defined for contract procedure rules:

#### **1. ‘Specialist advice or specialist services’ that are not considered normal day-to-day operational service activity**

‘Specialist advice or services’ are external advisory or professional services engaged to:

- help the council (as a whole or any of its services) **develop new policy or new practices, or consider choices to inform decision-making that are not 'business as usual' decisions** (see category 3 below)
- help carry out non-business as usual decisions taken by the council in circumstances **where the council would not usually have the required expertise to take forward a decision made (for example, expertise to help deliver a significant project).**

Examples include:

- providing external validation of internal work
- providing specialist expertise/skills/advice or analysis that is not available in-house (for example, specialist tax, non-contentious legal and planning advice) and is to inform material policy or procedural change, or choices for actions that are not part of normal day-to-day operational service activity and potentially where budgets need to be set.
- helping implementation of organisational change or with some other significant project where the required expertise is not available in-house
- providing objectivity or independence where in-house work may lead to accusations of bias
- professional judgment as technical collateral (for example expert witnesses)
- providing support for high-risk or high value projects

## **2. Interim support**

Interim support is external expertise engaged to help with normal service delivery or carrying out decisions where a council officer would usually perform the role, if available.

Typically, interim support is used to cover for lack of staff because of vacancies or long-term leave (for example maternity cover), and usually involves a fixed term.

## **3. 'Business as usual' normal day-to-day operational service needs that can only be sourced externally**

'Business as usual' needs refer to the normal course of day-to-day operational service activity and its support (in other words 'routine'). In this case external expertise is that which can only be provided by external advisers or professional services as the council does not have, could not have or would not usually be expected to have the required expertise to be capable of performing the role.

There are several examples of this need: occupational health advisers, independent legal advice or support (including counsel and solicitor advocates), routine engineering or surveying advice etc.

If a procurement is treated as falling within one of the three categories above it does not and will not be deemed to fall within any other category

**Processes to follow for each expertise type:**

**Category 1. Specialist advice or specialist services**

The justification to engage specialist advice or services under the definition at Section A must:

- 1.1 In advance be set out by completing the 'specialist adviser or services' online standard form.
- 1.2 Be sent to the Finance Manager to keep a central record.
- 1.3 Be considered by the Management Team, where the estimated value of service exceeds £5,000 and budget is available.
- 1.4 In cases where no budget is available the Management Team must consider whether alternative budgets are available and if not a report on the matter must be presented to the Cabinet, if not within the Management Team's limit of delegation.
- 1.5 Follow the council's contract procedures rules governing the need for quotations or tenders. Note, that other than in circumstances where the council's 'emergency' or 'urgency' procedures apply, or where the proposed new waiver covering certain legal service needs applies no waiver of the requirement for public advertisement for services valued at greater than £150,000 will be permitted. This is for two reasons:
  - a) the council is under a mandatory duty to achieve best value and at this level of contract value it is considered essential to test the market appropriately and open up the potential for competition.
  - b) the level is close to the European Procurement threshold for service contracts (currently £173,934). Under EU procurement regulations services are defined as either Part A or Part B. Separate guidance on the EU procurement rules will be provided by the Head of Legal and Democratic Services.
- 1.6 In cases where a manager proposes to waive the need for quotations or tenders above the minimum of £5,000 the procedures for 'single supplier sourcing' must be followed (see para 5.2 of contract procedure rules).
- 1.7 Liaise with the Head of Legal and Democratic Services over the terms and conditions of a proposed contract.

Note: the Finance Manager may postpone payments if these procedures are not followed and refer the matter to the Head of Service and the Management Team for swift resolution and action.

### **Category 2. Interim support**

The justification to engage interim support must:

In advance follow the council's procedures for engaging temporary or agency staff and be the subject of a 'request to fill (by agency)' to Management Team (following the same procedure for permanent recruitment).

- 2.1 Assuming approval is given to proceed, then engagement must follow the procurement procedures for temporary and agency staff involving first consideration by one or more of the council's three preferred suppliers (see the Intranet for full guidance).
- 2.2 Where under that guidance a preferred supplier is unable to fulfil needs, the agreement of the Head of Personnel and Development is needed for a manager to procure from another source. This will be recorded by Personnel and Development.
- 2.3 A check on the employment status of any individual engaged for interim support must be made with the Head of Personnel and Development. This is important given the potential employment rights for and tax implications of agency staff.
- 2.4 No extension beyond 12 months will be allowed without referral to Legal Services and the justification considered by the Management Team.

Note: the Finance Manager may postpone payments if these procedures are not followed and will refer the matter to the Head of Service and the Management Team for swift resolution and action.

### **Category 3. Business as Usual' external only expertise**

Buying of services for normal day-to-day operational service activity that can only be provided externally must follow the council's contract procedure rules and importantly the rules governing the need for tenders or quotations.

Note, that other than in circumstances where the council's 'emergency' or 'urgency' procedures apply, or where the proposed new waiver covering certain legal service needs applies no waiver of the requirement for public advertisement for services valued at greater than £150,000 will be permitted (separate guidance will be issued concerning the EU rules and estimating contract values).

- 3.1 In cases where a manager proposes to waive the need for tenders or quotations above the minimum of £5,000 the procedures for 'single supplier sourcing' must be followed (see para 5.2 in contract procedure rules)
- 3.2 Liaise with the Head of Legal and Democratic Services over the terms and conditions of a proposed contract
- 3.3 A check on the employment status of any individual engaged must be made with the Head of Personnel and Development. This is important given the potential employment issues and tax implications of self-employed contractors
- 3.4 Unless the procurement has stipulated a longer term need (exceeding 12 months) any later extension of arrangement must be the subject of prior consultation with Legal Services and receive the approval of the Management Team.

Note: the Finance Manager may postpone payments if these procedures are not followed and refer the matter to the Head of Service and the Management Team for swift resolution and action.

## Introduction

1. This guidance is specifically targeted at an area of procurement activity (the commissioning and use of consultants) that has not been covered by corporate guidance in the past. It takes into account external guidance from the National Audit Office<sup>2</sup>, the London Regional Centre of Excellence<sup>3</sup> (which has created a procurement toolkit as guidance for commissioning consultants), and other examples of good practice from local authorities including Wakefield (unitary) Council, which received Beacon Status for procurement in 2006/2007. The guidance also builds on a recent Internal Audit review.

## The Key Issues

2. A clear aim for this guidance and the changes to Contract Procedure Rules agreed by Members is to strengthen procurement arrangements in this area and to establish greater corporate information sharing and corporate assistance in the process. Key areas of focus are:

- a) enhancing management information about the Council's use of consultants to enable stronger corporate management of procurement activity in this area.
- b) the transparent assessments needed of whether internal resources could be used to minimise the need for consultants.
- c) the awards of contract by single tender or quotation.
- d) the sharing of information about consultants, including post-consultancy project evaluations.
- e) the need to ensure adequate transfer of skills to permanent staff.

## Intended impact

3. Spend on consultancy services fluctuates and, therefore, is not easy to predict from one year to the next. However, this is not to say that a longer-term view of consultancy spending is impossible. Through the Procurement Advisory Board working with managers a better understanding of longer-term needs will be established. This should help to develop stronger procurement arrangements, possibly leading to better value for money.

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<sup>2</sup> 'Central Government's use of consultants' - NAO report December 2006

<sup>3</sup> 'Commissioning toolkit for the procurement of consultancy and professional services' - April 2007

4. If the guidance is followed and investment in time is made by managers in the procurement process then the Council can be more confident that decisions taken and contracting arrangements for consultancy contracts are soundly based. Following this guidance does not guarantee savings in cost. One way in which cost reductions may arise is through the avoidance of procuring consultants in the first place. Whilst this may not be possible in every case the guidance places emphasis on managers testing whether there are alternatives before reaching decisions.

### **Scope of Consultancy Services**

5. Members initially adopted a 'high level' definition of consultancy services as being 'imported short term wisdom'. At a high level this is perfectly adequate but for practical purposes further definitions have subsequently been adopted which are covered later in this Annex.

6. Spend analysis has shown a wide diversity in the type of 'consultancy services' commissioned with some procurement more directly related to what this guidance terms as '**business as usual**' aspects of the Council's operations, and some procurements related to discrete areas of '**project work**'.

### **'Business as usual'**

7. Derived from best practice guidance, this definition captures work that is **ordinarily** expected to be fulfilled by services as part of their **routine work**, either by internal staff, or by 'external agents' in cases where only external agents may provide a service.

8. Examples of external agent services include, but are not limited to, the Personnel Service's routine need to use the Occupational Health advisory service, and the commissioning of Counsel's opinions by the Legal Service.

9. Where external advice is sought that may ordinarily be expected to be provided by internal staff, this amounts to '**staff substitution**'. This may happen for various reasons, including a lack of capacity, a lack of expertise and skills, or because of unpredictable timing requirements that dictate a more cost effective solution than the engagement of permanent in-house skills.

10. In situations of 'staff substitution' to fill gaps in in-house staff capacity, due to temporary absences, then this requirement would be met by the established arrangements for engaging temporary staff. **In these cases managers must follow the guidance for the engagement of temporary or agency staff and where possible use the contracts that are in place.** The guidance in this report would



~~apply where the temporary staff contract arrangements are not to be followed. Accordingly managers must ensure that they achieve value for money as well as specifying the required outcomes and skills etc required from consultants acting in a temporary staff capacity. It is also important that managers routinely review the performance of any consultants engaged in this way and ensure that outcomes are being fulfilled, and if not that feedback is given.~~

~~11. As for the category covered by the use of external agents (mentioned in Paragraphs 7 and 8) while commissioning need not follow all the guidance in this paper there remains a need to ensure the Council receives value for money. Accordingly, a separate section in this paper is devoted to this category (see Paragraphs 50 and 51).~~

### **Project-based consultancy work**

~~12. This category covers work, either capital or revenue funded, and includes the commission of consultancy services that may only be part funded by the Council, but where the Council is the lead. This category relates to the engagement of external expertise that is outside the ordinary scope of a service's everyday routine business. Again there is a wide range of possible requirements of which the following are **examples**:~~

- ~~• Specialist advice relating to a physical project's design or concept~~
- ~~• Specialist advice relating to other aspects of a physical project's management or delivery~~
- ~~• Organisational reviews and change management~~
- ~~• Policy and strategy reviews~~
- ~~• Business case and other aspects of project financial planning~~
- ~~• Feasibility studies~~
- ~~• Market analysis~~
- ~~• Public relations~~
- ~~• Senior staff or specialist staff recruitment~~

### **Establishing the Need – When is it appropriate to use consultants?**

~~13. Engaging consultants can be expensive; fees are typically charged by the day and could range from anything between £300 – £1,500 per day and sometimes even more. **Accordingly the use of consultants**~~

**must be fully justified and should be the exception rather than the norm.**

14. Using a consultant is not simply a case of identifying a problem you neither have the time or the ability to solve for yourself and, therefore deciding to 'outsourcing' the task to someone else. Certainly constraints on a manager's capacity or the skills and resources available are important factors to take into account. Reasons for thinking about engaging consultants would include:

- Access to specialist skills, either 'issue-specific', or 'sector-specific'
- As a resource to implement a 'project' or undertake some other work constrained by lack of internal capacity
- To obtain an external objective perspective on an issue or problem
- Access to some creative thinking where some is justifiably needed
- To provide renewed focus and drive to a change management project

15. However, there are **alternatives** to engaging consultants that **must** be considered. Consequently, before considering whether consultants are engaged, **managers must demonstrate** they have considered the following:

- the availability of internal expertise, including the possibilities of secondments into a team from another service
- the option of establishing an internal 'working group' to focus on an issue
- the option of training staff to ensure skills are there in the longer term
- the opportunity for liaising with other councils or organisations that have undertaken similar projects, or faced similar problems
- the scope for joint procurement of advice with another council(s) in order to save costs

16. To encourage and to capture thinking on these points a pro-forma template has been designed which must be completed for all instances where consideration is given to the use of consultants for project work. The pro-forma can be found on the Intranet and a copy is also attached to this guidance.

## **Objectives and specifying requirements**

~~17. In all cases where external consultancy expertise is deemed appropriate for project work it is necessary for the objectives and the specific requirements of the commission to be considered and documented. These requirements must then form part of the contract with the selected consultant. It is recognised that assignments vary in scope and scale and therefore the form that these requirements are specified by needs to be proportionate to the client needs.~~

### ~~Core elements of a consultant's brief~~

~~18. In all instances of commissioning consultancy work it is necessary to set out the requirements in a 'project brief'. The following elements **must** be covered; for some types of projects these requirements will need specifying in some detail.~~

- ~~• A clear explanation of the project or consultancy requirement~~
- ~~• Objectives, (that is outcomes), of the work and what is expected from the consultant~~
- ~~• Expected timescales and any key work or project milestones for the consultant~~
- ~~• The contribution to the project or assignment the client service will make~~
- ~~• Reporting requirements and management arrangements~~
- ~~• The requirement that only suitably qualified and experienced consultants be used~~
- ~~• That the use of third parties to carry out some or all of the project is only permissible with prior written agreement from the Council~~
- ~~• Unless it is not necessary the brief should require the consultant to facilitate a transfer of knowledge or skills at the end of the assignment~~
- ~~• Access to information and other resources the consultant may require~~
- ~~• Payment profile of fees~~

~~19. A pro forma is attached as a guide for managers to use in constructing a consultant's brief.~~

## Engaging Consultants

~~20. When considering and deciding whether to engage consultants managers must:~~

- ~~• Demonstrate that the need is appropriate through the points made at Para 13 and 17 and be absolutely certain there is no reasonable, such as described in Paragraph 15.~~
- ~~• Have produced a consultant's brief as set out in Para 18,~~

~~and then~~

- ~~• Ensure there is a budget available and that this has been agreed and approved.~~

~~21. Where there is no specific budget and one cannot reasonably be made available using the budgetary control procedures (that is from transfers of budgets) then **a manager must not proceed and should report the need to the Management Team.** Management Team will then determine whether the need is a priority and if so the appropriate course of action to take.~~

~~22. Assuming financial resources are available managers should then consider the position against Contract Procedure Rules more generally. These apply to all instances of the procurement of consultancy advice and therefore must be followed. The paramount requirements are stated in Part 4 of the Constitution — Rules of Procedure — Contracts Procedure Rules and are summarised below. Note the engagement of consultancy advice falls under the category of 'services' within our procedure rules and European procurement legislation.~~

## Summary of amended Contract Procedure Rules

~~23. Tenders or quotations must be sought for all contracts **except** where:~~

- ~~a) The Head of Service is satisfied that services can only be supplied by one contractor.~~
- ~~b) The identity of the person supplying a professional service is particularly important.~~
- ~~c) The work is of a specialist nature and the skill of the contractor is particularly important.~~

~~d) The proposed contract is an extension of an existing contract (using) rates and prices which were originally agreed (in the existing contract) through the normal tendering process.~~

~~24. The Council has amended its Contract Procedure Rules in respect of contracts entered into through single tender action or single quotations (in other words in situations where there was no market testing).~~

~~25. Single tender action or single supplier sourcing may be appropriate and unavoidable in some instances, but these should be the exception and might include the following circumstances:~~

- ~~• For technical reasons only one specific company has the expertise or capacity to undertake the work.~~
- ~~• In instances where for legal reasons a company has exclusive intellectual property rights and therefore can only advise on a particular solution tied to an existing supply contract or product.~~
- ~~• In instances where a consultant was previously engaged to carry out a project and it is subsequently decided to commission some follow-up work on the rates and terms for the original assignment.~~

~~26. The above are some reasons for single supplier sourcing, but do not amount to complete justifications. What needs to be demonstrated is not that a single consultant can provide the most efficient proposal, but that only they can provide what is required. Managers are responsible for making this judgement, not the consultant.~~

~~27. Being familiar with a particular consultant, under time pressure to complete a procurement, or single supplier sourcing simply being logistically more convenient are not sound justifications.~~

~~28. Accordingly, Contract Procedure Rules were amended generally (note: not just in respect of the use of consultants) and for there to be a presumption against single supplier tendering and sourcing. Where this is deemed desirable managers must document their reasons for not seeking tenders or quotations from more than one supplier in all cases relating to (a) to (d) above and that this information is made available to the Performance and Improvement Team. In circumstances where the estimated value of a consultancy contract proposed for single supplier sourcing exceeds £5,000 the Management Team's approval is required.~~

~~29. A pro forma is attached for this purpose.~~

~~30. In cases where tenders or quotations are to be sought in competition Contract Procedure Rules require the following (summarised and as amended by the Council):~~

- ~~• Public advertisement (to generate expressions of interest) will apply for all service contracts over an estimated value of £150,000 (note this will be rare for consultancy contracts commissioned by the Council), or where a manager considers that public advertisement is in the Council's interest, or if required under European or UK Government legislation or some other external requirement. Contracts with an estimated value of £50,000 or more should be advertised on the Council's web-site.~~
- ~~• For service contracts with estimated values between £50,000 and £150,000 the proposed contract must be advertised on the web-site and the manager must, if possible, identify four prospective suppliers who are competent and who should be invited to tender. **In all cases in this category where less than three tenders are to be sought or less than three quotations are received, the consent of the Management Team is necessary before proceeding further.**~~
- ~~• For service contracts between £25,000 and £50,000 at least three quotations must be sought from competent suppliers, unless the decision is taken by a manager to proceed by formal tender.~~
- ~~• For service contracts below £25,000 at least two quotations must be sought, unless a manager decides to proceed by formal tender.~~

### **Informed Procurement**

~~31. Over many years the Council has developed arrangements for the procurement of commoditised items and works (and will continue to strengthen these), but there has been less corporate emphasis provided when consultancy and other professional services are needed. The guidance described above will help to strengthen arrangements in this area, but there are other points that need to be taken into consideration when considering how to identify and engage consultants, including arrangements to conclude contracts.~~

### **Identifying Consultants**

~~32. The Council does not have a 'select list' that covers consultancy services and does not have a corporate database of consultants it has used.~~

33. There is a vast range and number of consultancy practices and therefore depending on the particular assignment the choice could be very wide, ranging from individuals operating as private consultants to large-scale multi-national companies. Rarely therefore should managers be in a position where there is very limited choice. However, knowing how to identify which consultants are appropriate for particular needs may not be so straightforward. In many cases consultants are identified and appointed because of word-of-mouth recommendation, or simply through a manager's previous experience of a particular consultant. **These are reasonable starting points** but decisions based on these factors alone cannot guarantee success or best value for money. As described below there are various sources of information that can be accessed and with the array of support available it should be possible to identify sufficient consultancy companies to form shortlists. If for some reason this is not possible then managers should resist the temptation to search in local directories, but adopt public advertisement.

**a) — The Management Consultancies Association (MCA)**

34. The MCA is a long established UK umbrella association that represents the management consultancy industry to its clients, the media and government. MCA also works with its members to attract the top talent into the industry. The MCA provides advice on the selection and use of management consultants and is the main source of data on the UK market. To be eligible for membership of the association consultancy practices must meet the following criteria:

- Have been in practice in the UK for at least three years
- Employ at least ten consultants on a full time basis
- Practice management consultancy as a strategic activity and offer at least two main consultancy services e.g. strategy, marketing, IT, HR
- Offer fact-based advice
- Offer customised solutions

35. The MCA has an on-line service that would allow the Council to search for appropriate consultants at long or short-listing stage. In instances where management consultancy is needed managers are advised to consult the MCA web-site.

**b) — Framework Agreements**

36. These are usually large agreements put together by procurement agencies, such as the Office of Government Commerce (OGC), the procurement Regional Centres of Excellence, some larger scale procurement consortia (for example the Central Buying Consortium and the Essex Procurement Agency) and in some cases individual public sector organisations. Framework agreements typically provide access to public organisations to centrally negotiated tenders. One advantage is that, if suitable for a client's needs, they avoid the need for a client organisation to procure through public advertisement. Due to the scale of opportunity that frameworks provide to suppliers tendered rates are usually more competitive than could be achieved by clients through individual tenders.

37. The OGC, for example, has a framework contract for multi-disciplinary consultancy that covers the following areas: strategy formulation and implementation; programme and project management; ICT; human resources; procurement, and finance. Plainly framework contracts have a particular use and are unlikely to suit every need, but should be considered as part of the general search for appropriate consultancy companies, particularly where larger scale assignments are being considered in the areas mentioned.

38. The Performance and Improvement Team can advise on access to framework agreements and legal advice on their use can be obtained from our Legal Services.

**e) — The local authority network**

39. It is unlikely that our needs will always be unique and that some other council(s) will have had experience of a particular consultant or consultancy assignment. While it is impracticable to research all councils, managers typically will have developed networks across councils to allow this type of research to be made. These networks are valuable sources of information and feedback and should be used to help develop intelligence about the use of consultants and the development of consultancy shortlists.

**d) — Professional organisations**

40. Several professional associations provide on-line access to information databases to allow councils to identify potential consultants. Good examples are the Royal Town Planning Institute, and the Chartered Institute of Environmental Health. Other professions, such as the Chartered Institute of Housing and the Chartered Institute of Public Finance and the Society of Local Authority Chief Executives have established wholly owned companies providing management and consultancy services. Accordingly professional associations should be considered, but in the case of associations that have trading companies they should be considered as one option, rather than a complete solution to a client's needs.



## **Awarding Contracts and Agreeing Terms**

41. Where tenders or quotations have been sought the decision to award a contract needs to be based on objective criteria resulting from an evaluation of the proposals made. Price will be one factor, but the paramount consideration must be the extent the proposal meets with the consultancy brief. Here managers must be clear about the skills they are looking for as consultants will tend to promote the particular skills they have; the two may not be the same. Also be aware that consultants will make up for shortfalls in their own skills by saying they will commission other specialist expertise as part of their proposal. So managers must evaluate proposals carefully and document the results. As part of this process references must be requested and where appropriate examples of similar types of work to that of the project being undertaken must be provided. It will be the manager's responsibility to check such references.

42. Often consultants will submit their standard terms and conditions that then become a starting point for the basis of a contract. The Council is looking to draft a standard set of terms and conditions covering consultancy work, but meanwhile any standard terms submitted by a consultant must be referred to Legal Services for comment.

43. Leading up to the award of a contract it may be necessary to clarify the more detailed, but nevertheless important terms before a contract is finalised. **Ideally these issues should all be covered by the instructions issued at the time of requesting tenders or quotations. Remember if you do not think about these points the consultant will, but may choose not to be upfront about them all.** The detailed points to consider are:

- The number of consultancy days, where applicable, allocated across the individuals in the consultancy team
- Fixed price or capped fees
- The consultancy day rates
- The level of any contingency, if considered applicable
- The rates for expenses and travel time
- What constitutes a consultancy day, does this exclude travelling time?
- The use of sub-contractors
- Ownership of intellectual property rights

- Performance criteria
- Insurance required

## **Post-Contract – Consultancy Management**

44. Managers making the decision to appoint and award a consultancy contract will more often than not be the consultancy project sponsor. For smaller scale assignments they may also be the project manager, bringing them into close day-to-day contact with the consultant. **It is the Project Manager's responsibility** to ensure that consultants are given appropriate access to information and resources they will need to fulfil the contract. This would include the need to brief staff and other services about the consultancy assignment, where this is desirable.

45. It is also the **Project Manager's role to monitor the performance of the consultant**. Here performance will be measured against the agreed brief, the achievement of specific project milestones, and feedback received from staff associated with the consultant's work.

46. **Payments should be made only against the payment milestones** agreed in the contract and should relate to agreed outcomes. Care should be taken to avoid interim payments not based on specific outcomes previously agreed.

47. If the Project Manager identifies any difficulties or problems during the project **these should be discussed with the consultant at the earliest possible opportunity**.

48. The ultimate test of performance is usually associated with a **consultants report on findings and recommendations**. This report will be considered by both the Project Manager and the Project Sponsor, if not one and the same. A consultant's report should:

- Address the agreed brief and cover what they said they would do in the proposal (now part of the contract)
- Should be clear, well-written, concise and unambiguous
- Free of jargon
- Contain well-argued conclusions and recommendations supported by relevant data
- Provide a practical basis for taking a problem forward

## **Post Project Evaluation and Feedback**

~~49. To aid future decision-making and learning all managers appointing consultants must carry out a post project evaluation and quality control check. This need not be a lengthy piece of work, but is designed to aid a managers learning and build up our corporate information about consultants and how they performed on particular projects. The Corporate Centre should hold copies of this information.~~

### **Use of external agents where only external suppliers can provide a service**

50. In Paragraph 12 situations were described where services may require the routine use of external services that can only be provided by external agents, examples of this could include the Occupational Health advisory service, and the use of Counsel by the Legal service. There may be other such examples.

51. In these circumstances managers must be satisfied that the use of external agents is proportionate to their service and the Council's needs and that where choice is available the principles within this report are followed. From time to time there should be a review of the arrangements made by managers to ensure that the procurement of this type of service is achieving intended outcomes and providing good value for money.

### **The role of the Corporate Centre**

52. It is planned to develop the role of the Corporate Core so that it can assist services in identifying appropriate procurement solutions; this role will complement the role to be undertaken by the Procurement Advisory Board.

53. The corporate centre's role will be developed so that it is aware of framework contracts and has access to these and can advise accordingly. It will also have a role in collating information about the use of consultants by the Council, to establish a central record that can be used to inform future procurement decisions.

### **Pro-Forma(s)**

54. See document on next page, which is a pro-forma for use by Managers when commissioning consultancy services. We are planning for the pro-forma to be an on-line document on our Intranet, which the Performance and Improvement Team will have access to so that corporate management information may be readily maintained.



**ASHFORD**  
BOROUGH COUNCIL

## **Use of Consultants Pro Forma**

**Project Title:**

**Prepared By:**

**Date:**

**Approved By:**

**Signed:** \_\_\_\_\_

\_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_

## **Guidance on Use of Consultants Review.**

1. In September 2007 the Council agreed a framework for the procurement of consultancy services and a number of changes to Contract Procedure Rules. Final approval of this document was provided by the Procurement Advisory Board in February 2008 and can be found [here](#).
2. A summary of the key points and changes made by this document are highlighted below. As part of the framework a pro forma (this document) has been developed to assist Officers in the decision making process that should be taken when considering using a consultant. When considering the use and appointment of a consultant this pro forma must be completed and a copy submitted via the intranet.
3. The submittal of this pro forma is not related in anyway to seeking authority to appoint a consultant. The decision to appoint a consultant lies entirely with the manager concerned. This pro forma serves two purposes: To assist an Officer in considering all the options available when thinking of using a consultant and to provide a central database that allows a corporate overview of the use of consultants across the Council as requested by members.

## **Summary of key points and changes**

- The use of consultants must be fully justified and should be the exception and not the norm.
- Officers must be able to demonstrate that they have considered alternatives to the use of consultants.
- In all instances of commissioning consultancy work the objectives and requirements for the work must be set out in a project brief.
- Officers must ensure that there is an agreed and approved budget available. Where no specific budget is available and one cannot reasonably be made available then approval to proceed must be provided by Management Team.
- At all times Officers must follow Contract Procedure Rules as stated in part 4 of the Council's Constitution.
- Contract Procedure Rules have been amended so that there is a presumption against single supplier tendering and sourcing. Where an Officer wishes to appoint a consultant via a single supplier route for a project and where the anticipated cost is in excess of £5,000 Management Team approval must be sought prior to proceeding to appoint the consultant.


- ~~For contracts with estimated values between £50,000 and £150,000 if less than three tenders are sought or less than three quotations received then consent from management team is required before proceeding with the appointment of a consultant.~~
- ~~Officers must carry out a post project evaluation which must be included on an updated pro forma.~~

## ~~Purpose of assignment~~

### ~~1. Background & Strategic Context~~

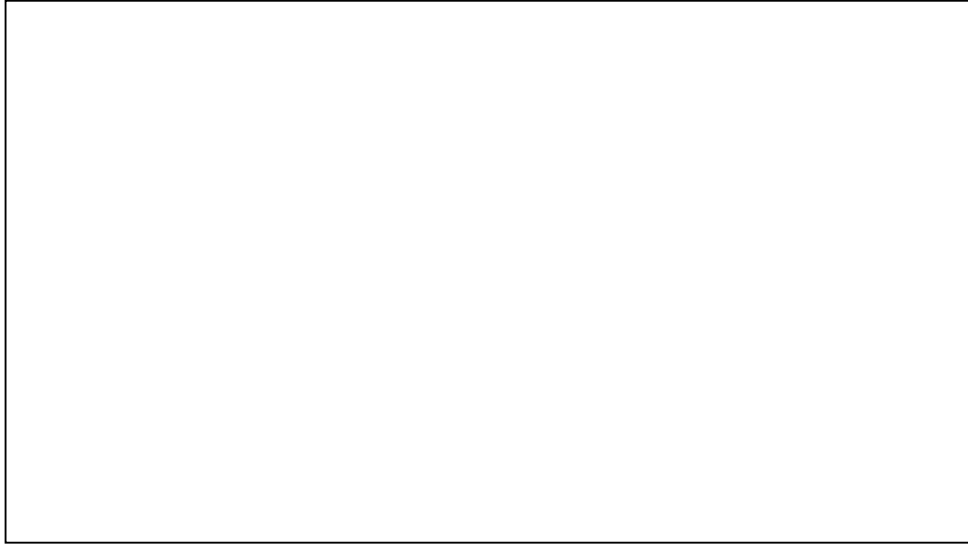


### ~~2. Expected Benefits & Dates~~



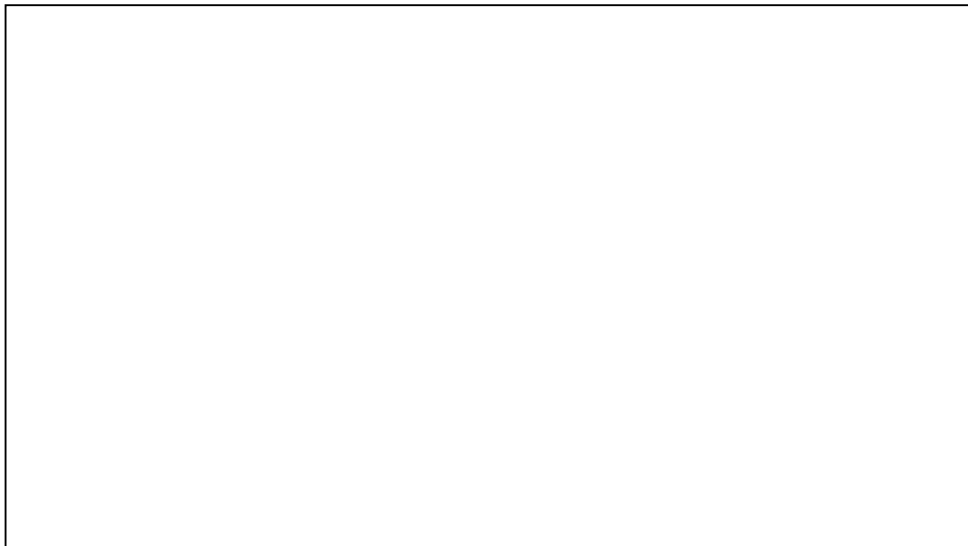
## **Appointment of Consultants**

- ~~1. Consultant Identification & Tendering Process (including justification for single supplier tendering and sourcing)~~

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## **Alternative Options**

- ~~1. Status Quo~~

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2. ~~In-House Option (including secondment and training)~~

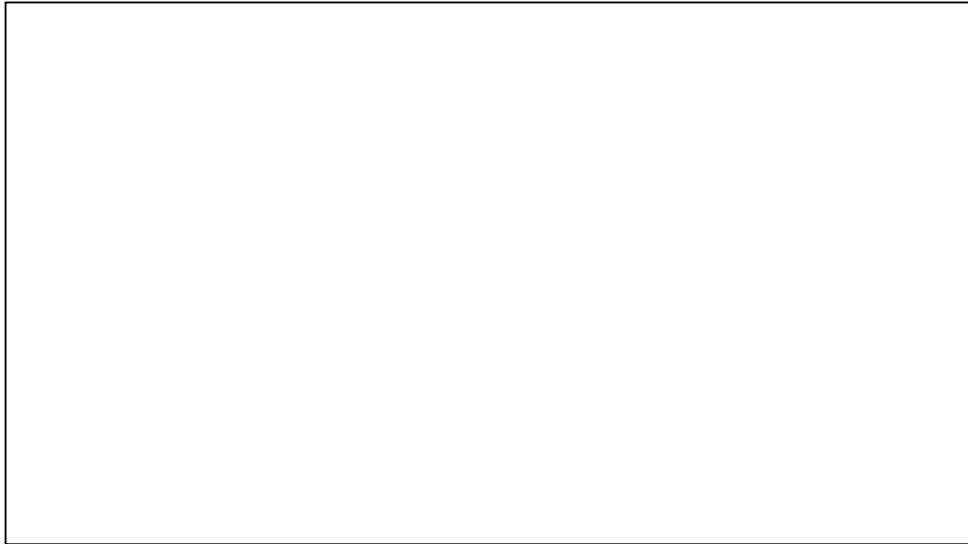


3. ~~Working with other Councils — joint procurement options —~~



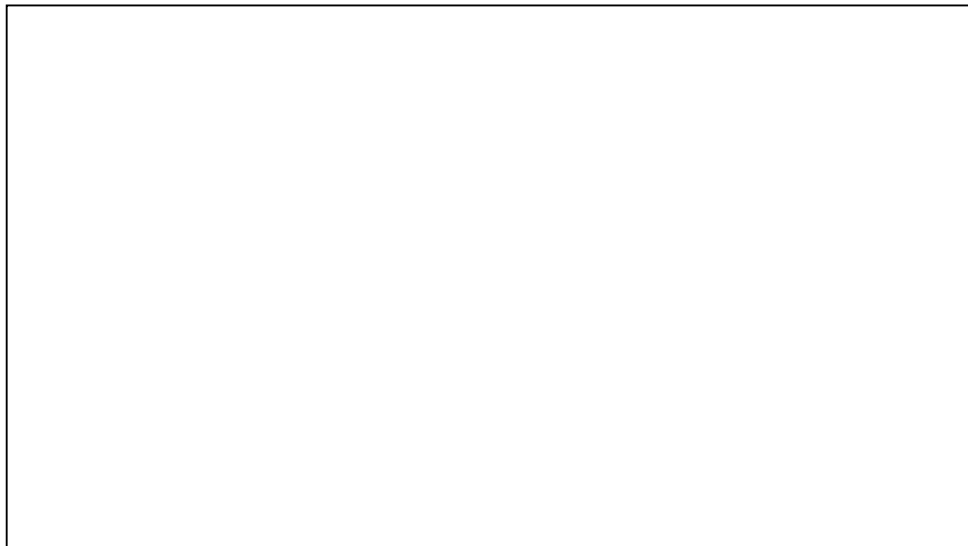
**~~Expected Deliverables~~**

**~~1. Consultants' Expected Output (Consultants' Brief)~~**



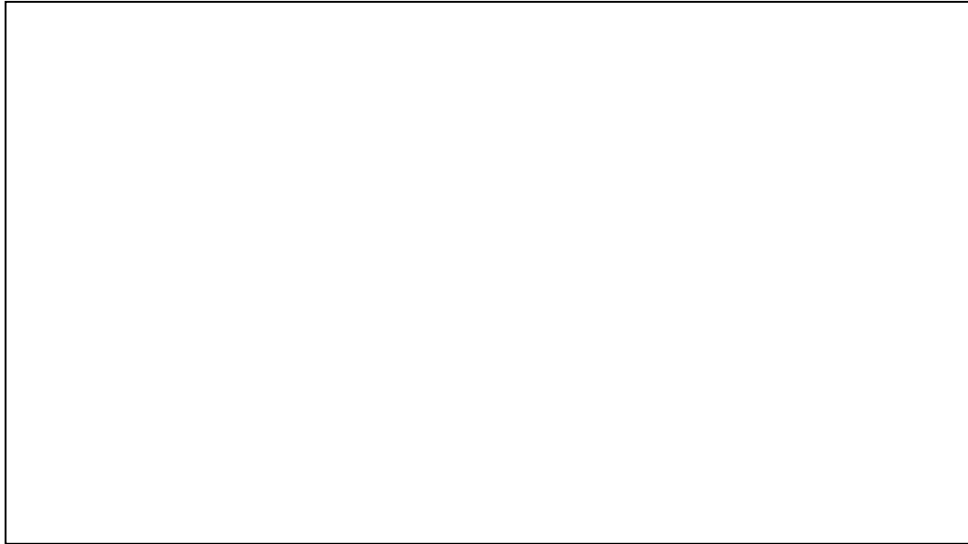
**~~Project Management~~**

**~~1. Project Management Arrangements~~**



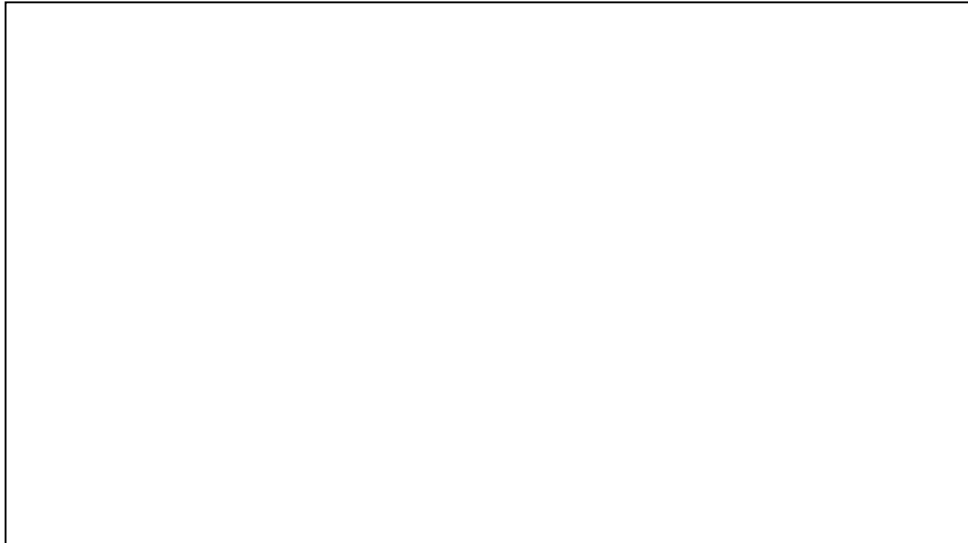
**Proposed Division of Work**

**~~1. Expected Hours of Work (Consultants/In-House Staff)~~**

A large, empty rectangular box with a black border, intended for providing details on the expected hours of work for consultants and in-house staff.

**Expected Costs**

**~~1. Cost of Consultants (include payment profile of fees)~~**

A large, empty rectangular box with a black border, intended for providing details on the expected costs of consultants, including payment profiles of fees.

2. **In-House Support Costs**

3. **Other Financial Considerations (budget streams, potential savings etc.)**

**Total Cost =**

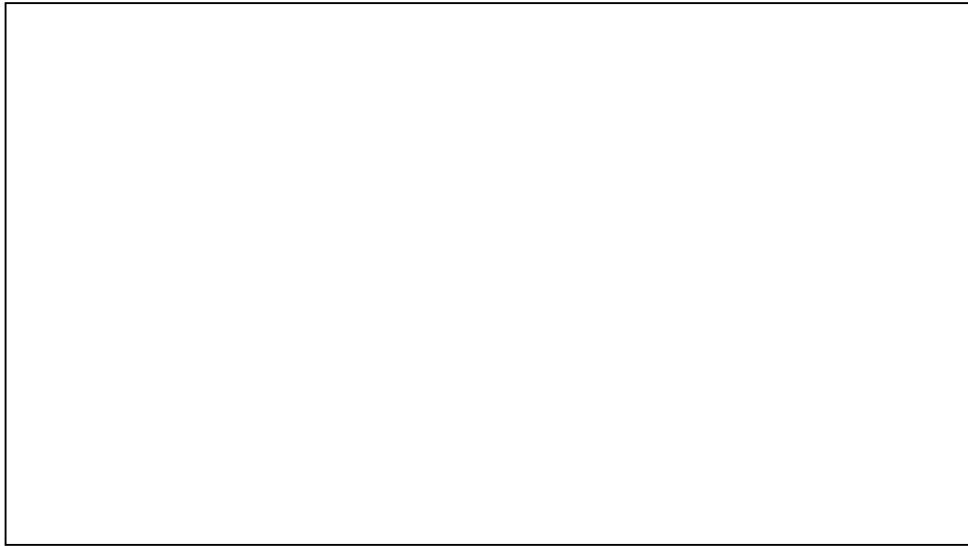
£

**Performance Review Arrangements**

1. **Monitoring Responsibility**



2. **Measuring Performance of Consultant (KPIs etc)**

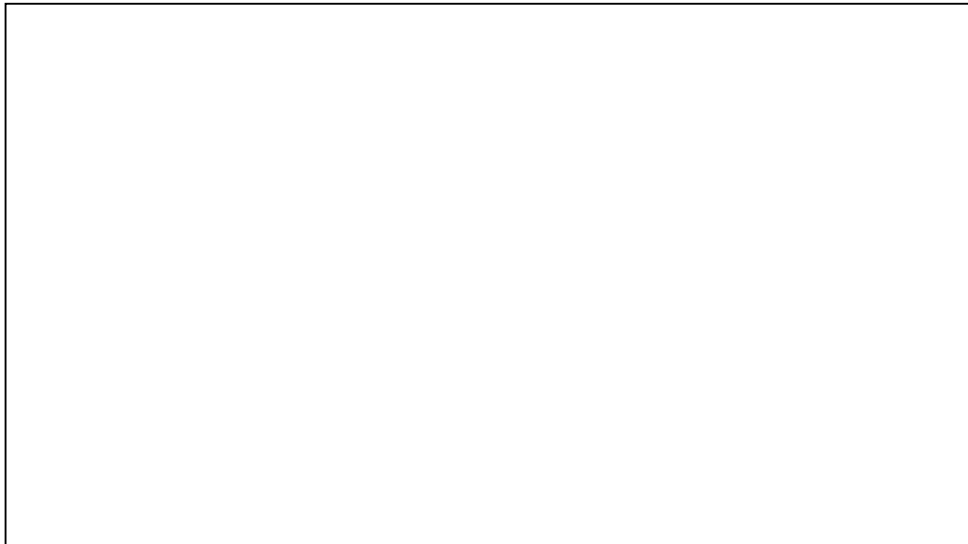


**~~Implementation & Evaluation Plan (to be updated once project is completed)~~**

**~~1. Application of Consultant's output~~**



**~~2. Post Project Evaluation~~**



Part 4  
Rules of Procedure -  
Contract Procedure Rules

**Agenda Item No:** 5  
**Report To:** SELECTION AND CONSTITUTIONAL  
REVIEW COMMITTEE  
**Date:** 12<sup>TH</sup> APRIL 2012  
**Report Title:** Appointments to Outside  
Bodies/Organisations – The River Stour  
(Kent) Internal Drainage Board  
**Report Author:** Senior Member Services & Scrutiny Support Officer



<b>Summary:</b>	To advise the Committee of the need to make a nomination to a position on an outside body/organisation, namely the River Stour (Kent) Internal Drainage Board
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**Key Decision:** NO

**Affected Wards:** N/A

**Recommendations :** **The Committee is asked to make a nomination for the appointment of a Member representative to sit on the River Stour (Kent) Internal Drainage Board**

**Policy Overview:** The appointment of Members to outside bodies/organisations assists Councillors in their community engagement role.

**Financial Implications:** N/A

**Other Material Implications:** N/A

**Exemption Clauses:** None

**Background Papers:** Letter from the River Stour (Kent) Internal Drainage Board dated 30<sup>th</sup> January 2012

**Contacts:** danny.sheppard@ashford.gov.uk – Tel: 01233 330349



**Report Title: Representatives on Outside Bodies/Organisations – The River Stour (Kent) Internal Drainage Board**

**Purpose of the Report**

1. To advise the Committee of the need to make a nomination for the appointment of a Member representative to sit on the River Stour (Kent) Internal Drainage Board

**Issues to be Decided**

2. There is a vacancy for a Council appointed representative on the River Stour Internal Drainage Board following the resignation of Mr I Cooling. The Council has five seats on the Board and has historically appointed three Elected Members and two local landowners or interested people from the River Stour catchment area. At least one has always been identified with the assistance of the National Farmers Union (NFU) (currently Mr P Howard). Currently the three Elected Members are Councillors Mrs Martin, Sims and Smith along with Mr Howard. Therefore the Committee is asked to consider suggesting another local interested person to replace Mr Cooling on the Board, or nominating another Elected Member.
3. The purpose of the Board is to operate and work under the authority of DEFRA with the Environment Agency, Natural England and Local Authorities to reduce the likelihood of flooding from rivers and ordinary watercourses. The Board also has a duty to conserve and enhance the natural beauty of the flora and fauna within its drainage district whilst carrying out its works. The Board seek an individual with a good knowledge of the Ashford Borough Council area, and if possible, an interest in flood prevention, water level management or environmental protection as well as an awareness of Council planning procedures. The representative would be a voting member of the Board and represent the interests of Ashford Borough Council and its ratepayers. Meetings are normally held quarterly, during the months of January, April, July and November, on Thursday afternoons at 2.30pm at the Board's offices at Gordon Road, Canterbury.

**Recommendation**

4. **The Committee is asked to make a nomination for the appointment of a Member representative to sit on the River Stour (Kent) Internal Drainage Board.**

Contact: Email:	<a href="mailto:danny.sheppard@ashford.gov.uk">danny.sheppard@ashford.gov.uk</a> - Tel 01233 330349
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## **SELECTION & CONSTITUTIONAL REVIEW COMMITTEE**

**12<sup>th</sup> APRIL 2012**

### **PROPER OFFICER FOR INFECTIOUS DISEASES REGULATIONS**

Dr M Chandrakumar has retired as Director for Kent Health Protection Unit and has been replaced on an interim basis by Dr James Sedgwick.

Within the Council's current Constitution Dr Chandrakumar is authorised as Proper Officer for Infectious Diseases Regulations and this authorisation needs to be passed to Dr Sedgwick.

The references are contained within Part 3, Appendix 5 of the Constitution under Paragraph 14 of Section A – "Proper and Authorised Officers and Designated Posts". This will need to be amended accordingly.

#### **Recommended:**

**That Dr James Sedgwick be authorised as the Proper Officer for Infectious Diseases Regulations and the Constitution be amended accordingly to reflect this.**