



COMMISSIONING & PROCUREMENT STANDING ORDERS

Draft version

2014

Last updated 22 May 2014

Draft in progress

COMMISSIONING & PROCUREMENT STANDING ORDERS

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COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION ONE INTRODUCTION

Introduction

- 1 The purpose of these Standing Orders is to support the Council's commissioning & procurement strategy by providing a clear governance framework for officers and members to work within when carrying out commissioning and procurement activities on behalf of the Council.
- 2 The Council's approach to commissioning & procurement follows the commercial cycle and is identified in diagram 1 below;

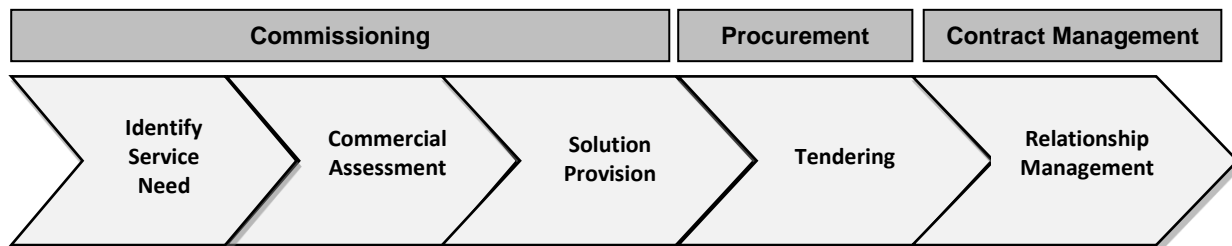


Diagram 1 - Commercial Cycle

3. Definition

- 3.1 The process by which public bodies decide how to spend their money to get the best possible services for people, it involves anticipating future needs and expectations rather reacting to present demand.

Commissioning is the first 3 elements of the commercial cycle and involves **identifying the service need** by reviewing the 'as is' provision and consulting with stakeholders to forecast future demand, undertaking a **commercial assessment** by understanding the different markets and funding provisions that are available and by a carrying out a **solution provision** which involves reviewing skills and risk.

- 3.2 Procurement is the **tendering** element of the cycle and includes

- i) the specific aspects of the commissioning cycle that focus on the process of buying services, from initial advertising through to appropriate contract arrangements;
- ii) The purchase of goods, services or works by publicly funded bodies at the best possible total price, in the right quantity and quality, at the right time generally via a contract.

- 3.3 Contract Management refers to **relationship management** and includes managing the performance of the contract and the contractor and developing the relationship between the contractor and the Council to maximise the return on investment.

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- 4 These Standing Orders apply to the commissioning and procuring in all of the following areas, regardless whether it is funded from revenue or capital expenditure or from grants:
 - a. Supplies
 - b. Services
 - c. Works
 - d. Third Party Contracts (services that are income generating for the provider and/ or zero/low cost for the Council).
 - e. Grants – including strategic partners, annual grants and disabled facility grants etc.

- 5 Standing Orders do not apply to:
 - a. Employment contracts (e.g. the Council's own staff)
 - b. Contracts relating to the purchase or sale of land (advice must always be sought from officers of the procurement team).
 - c. Appointment of legal counsel and the appointment of expert witnesses in legal proceedings

Governance Framework

- 6 These Standing Orders have been drafted in such a way as to simplify the commissioning and procurement process where appropriate, and to provide comprehensive guidance where necessary.

- 7 These Standing Orders form part of the Council's Constitution and are required under Section 135 Local Government Act 1972.

- 8 The objective of these Standing Orders is to enable the Council to be able to demonstrate that it commissions and procures supplies, services and works contracts in a fair, efficient and economical way, using whole life costing where relevant and ensuring that value for money is obtained through competition.

- 9 These Standing Orders intend to promote good practice, transparency, equal treatment, proper accountability, compliance with legislation and deter corruption.

Compliance

- 10 These Standing Orders apply to every officer and member of the Council who is responsible for taking any steps that may lead to a contract being entered into. They have a duty to read, be familiar with, and fully comply with these Standing Orders as they set out the minimum requirements that should be followed when commissioning & procuring on behalf of the Council.

11. In addition, the Standing Orders also contain rules which must be followed by the Council and the Cabinet (including Cabinet Portfolio Holders)

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12. Officers are responsible for ensuring that any agents or consultants acting on the Council's behalf, such as architects, engineers, fully comply with the Standing Orders, Financial Regulations and the Public Contract Regulations where applicable.
13. Failure to comply with the Standing Orders is in direct contravention of the Council's Constitution and is, therefore, a disciplinary offence that could be classed as gross misconduct or breach of contract.
14. Where commissioning and procurement activities are subject to the provisions contained in the Standing Orders, no quotation or tender shall be accepted until all necessary approvals and consents have been obtained and no contract shall be entered into until all documentation has been signed.

Commissioning and Procurement Strategy

15. The Council's commissioning and procurement strategy sets out how commissioning and procurement activities will support the delivery of the Council's vision and priorities as shown in the corporate plan. The commissioning and procurement strategy will shape choices and any subsequent procurement must comply with these Standing Orders and the Financial Regulations.

Amendments

16. These Standing Orders shall be subject to the following amendment protocol:
 - a. Standing Orders

Full Council shall be responsible for the approval of and any major amendment of the principal Standing Orders. The Council's Monitoring Officer may approve amendments due to changes in legislation and any minor amendments or corrections where they are satisfied that it is appropriate to do so.
 - b. Appendices

The Council's Monitoring Officer may approve amendments to the appendices where they are satisfied that it is appropriate to do so.

Advice and guidance

17. If any Officer or Member has any queries or requires advice in relation to these Standing Orders, how they apply to any commissioning or procurement activity, contract or proposed contract, their meaning or how to follow them, then advice must be sought without delay.
18. Sources of advice include:
 - a. Any officer of the commissioning and procurement team
 - b. Monitoring Officer (Assistant Director of Chief Executive's Unit)

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Suspension of the Standing Orders

19. These Standing Orders will always apply unless a suspension is approved. Details of how to suspend these Standing Orders can be requested by contacting any officer of the commissioning and procurement team.
20. An exemption from the requirement to comply with these Standing Orders may only be made by the Council or the Cabinet or the appropriate Cabinet Portfolio Holder responsible for the service affected by the contract and then only subject to the following requirements:
 - 20.1 The special circumstances requiring the suspension must be reported to the Council or the Cabinet or the appropriate Cabinet Portfolio Holder and the Group Manager Commissioning, Procurement & Compliance together with a detailed justification for the proposed action, and
 - 20.2 The suspension and the special circumstances justifying the exception must be noted and recorded in the Full Council or Cabinet minutes or PH decision record.
21. In the event that a suspension to these Standing Orders needs to be considered, advice should be sought from the Group Manager of Commissioning Procurement & Compliance or the Monitoring Officer as to how to proceed.
22. The suspension of these Standing Orders shall not be permitted if the contract value breaches the financial EU thresholds.

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SECTION TWO GENERAL ADVICE AND GUIDANCE

General rules

- 1 Following the rules as set out in these Standing Orders is the best defence against allegations that any commissioning and procurement activity has been concluded incorrectly or fraudulently. Officers and Members undertaking commissioning and procurement activities must comply with these Standing Orders. They lay down minimum requirements and, in some cases, a more thorough procedure may be appropriate for a particular contract.

- 2 Procurements up to £49,999
Before commencing any commissioning and procurement activity, and in the interests of good governance, Officers and Members should:
 - 2.1 Check to ensure that the necessary authority to commence the commissioning and procurement activity is in place (eg. Cabinet resolution, Portfolio Holder decision, operational decision by budget holder).
 - 2.2 Check with the budget holder that there is a budgetary provision or an approved supplementary estimate in place.
 - 2.3 Check with the commissioning & procurement unit to establish the category of expenditure and whether there is an existing contract or category strategy in place which should be used.
 - 2.4 Declare any personal, direct or indirect, financial interests in any commissioning and procurement activity, failure to do so is in direct contravention of the Council's Constitution and is, therefore, a disciplinary offence that could be classed as gross misconduct and could lead to a criminal conviction. (See 4.7 for how to make a declaration)

- 3 Procurements over £50k
Complete the Tender Requisition Form (see Appendix 1) and submit this to an officer from the commissioning and procurement team.

All Council Members and Officers must act in an ethical and professional manner whilst undertaking any commissioning and procurement activity

- 4 Council Members and Officers must seek to uphold and enhance the reputation of the Council by:
 - 4.1 Complying with the relevant Code of Conduct. Officers must comply with the Council's Code of Conduct for Employees. Click on link and select Section 12 – Conduct – Code of Conduct for Employees.
[http://dbcsp/sites/Intranet/Docs/Documents/Employment Handbook/Employment Handbook/Section 12 - Employee Relations](http://dbcsp/sites/Intranet/Docs/Documents/Employment%20Handbook/Employment%20Handbook/Section%2012%20-%20Employee%20Relations)

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Council Members must comply with the Council's Code of Conduct for Members. Click on following link and select Handbook – Code of Conduct.
<http://dbcsp/sites/Intranet/Docs/Documents/Councillors Information and Electronic book/Councillors Ebook>

- 4.2 Maintaining a high standard of integrity in all business and commercial relationships both inside and outside the Council,
- 4.3 Maintaining high professional standards by promoting equal treatment, openness and transparency in all commissioning and procurement activity.
- 4.4 Complying both with the letter and the spirit of:
 - 4.4.1 UK and European Union procurement legislation
 - 4.4.2 Such guidance on professional practice as may be issued from time to time by the Group Manager Commissioning, Procurement & Compliance or any officer from the commissioning and procurement team
- 4.5 Rejecting any business practice which might appear improper to a reasonable observer, e.g. where offers of gifts or hospitality could give the appearance of trying to obtain influence or favour. Any offer whether accepted or not must be declared to your manager.
- 4.6 Taking advice from the Group Manager Commissioning and Procurement, any officer from the commissioning and procurement team and/or the Monitoring Officer when in doubt.
- 4.7 Declaring any personal and/or financial interest and/or conflict of interests using the relevant forms in the Code of Conduct documentation.
- 4.8 Maintaining the confidentiality of information with respect to any quotation or tender submissions.
- 4.9 Ensuring any information given by officers or members in the course of their duties should be true, accurate and fair and never designed to mislead
- 4.10 Bearing in mind the advantages of maintaining a continuing relationship with suppliers, contractors and consultants, Members and Officers should avoid any arrangement which might, in the long term, prevent the effective operation of fair competition

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What is a contract?

- 5 Contracts are legally binding agreements and, in English law, to be binding, contracts need not be in writing (except for contracts for the sale or lease of land). A contract is made when one person offers to undertake or supply something to another person and that offer is accepted unconditionally by the person to whom the offer was made, who in turn, supplies value (which can be money or moneys worth).
- 6 Contracts may be concluded in writing, by word of mouth, over the telephone, or even by performance. For example, the purchase of a newspaper from a shop, even if unaccompanied by a single spoken word, will constitute a legally binding contract from which legal obligations follow (e.g. to deliver the paper, to pay for it).
- 7 It is not the purpose of these Standing Orders to give a definitive guide on UK contract law. The user of these Standing Orders should, however, be aware that in any commercial dealings with a supplier, contractor or consultant, his or her actions may be deemed in law to have constituted a fully binding legal contract on behalf of the Council. In any case of doubt, advice should be taken from the Group Manager Commissioning, Procurement & Compliance or the Monitoring Officer.
- 8 Officers and Members should ensure in all commissioning and procurement activities that the following matters have been complied with:
 - 8.1 The general UK law and, in particular, the provisions of the Public Contracts Regulations. Where the provisions of legislation conflict with these Standing Orders, the legislation will always take precedence.
 - 8.2 E.U. Procurement Directives.
 - 8.3 The Council's Financial Regulations.
 - 8.4 The Commissioning & Procurement Standing Orders.

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SECTION THREE **DETERMINING THE TYPE OF CONTRACT AND ITS VALUE**

Is the Contract for Supplies, Services or Works?

- 1 It is important to determine between the following classifications of contract before you proceed:
 - 1.1 “Supply” contracts are where goods and supplies are purchased or hired, it also includes energy, water and fuel.
 - 1.2 “Service” contracts are where the service provider is providing time, effort and expertise. Service contracts, e.g. cleaning services, consultancy, fees or advice.
 - 1.3 “Works” contracts are contracts for the carrying out construction or building repairs works or building refurbishments.
- 2 A mixed supply/service or supply/works or service/works contract will be classified according to its predominant value. For example with a replacement door contract, if the value of the door is more expensive than the value of the fitting of the door, then this would result in the contract being classified as a supply contract. If the value of the fitting of the door was more expensive than the supply of the door, then this would be classified as a works contract.

Further guidance and advice is available from the commissioning & procurement team with regard to the classification of supplies, services and works.

Calculating the Value of a Contract

- 3 In determining the value of a potential contract you must calculate:
 - 3.1 The estimated aggregate value of a series of contracts or a renewable contract is entered into for supplies, services and/or works of a similar type, this must take into account both the annual value as well as the number of years it will operate for:

By way of example, a three-year contract to supply financial advice at £50,000 per year will have an aggregated value of £150,000.
- 4 There shall be no artificial splitting of a contract to avoid the application of the provisions of the Public Contract Regulations and/or these Standing Orders.

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SECTION FOUR CATEGORY MANAGEMENT

1. Adoption of a category management approach to spend is an ideal way to focus efforts and organise corporate spend and resources into specific spend categories.
2. It will provide the methodology and best practice approach to ensure a coordinated approach to procurement as well as provide a clear, structured framework for the management of that spend throughout its life cycle.
3. It should also be noted that structuring the Council's spend by category will allow both a supply market view (how the markets supplies the goods and services) and an internal demand view (how the organisation consumes the services).

This approach invariably results in a spend category that goes beyond the traditional internal organisation structure, and leverages what and how the market can supply its services.

The key activities of category management are illustrated in diagram 2 below:

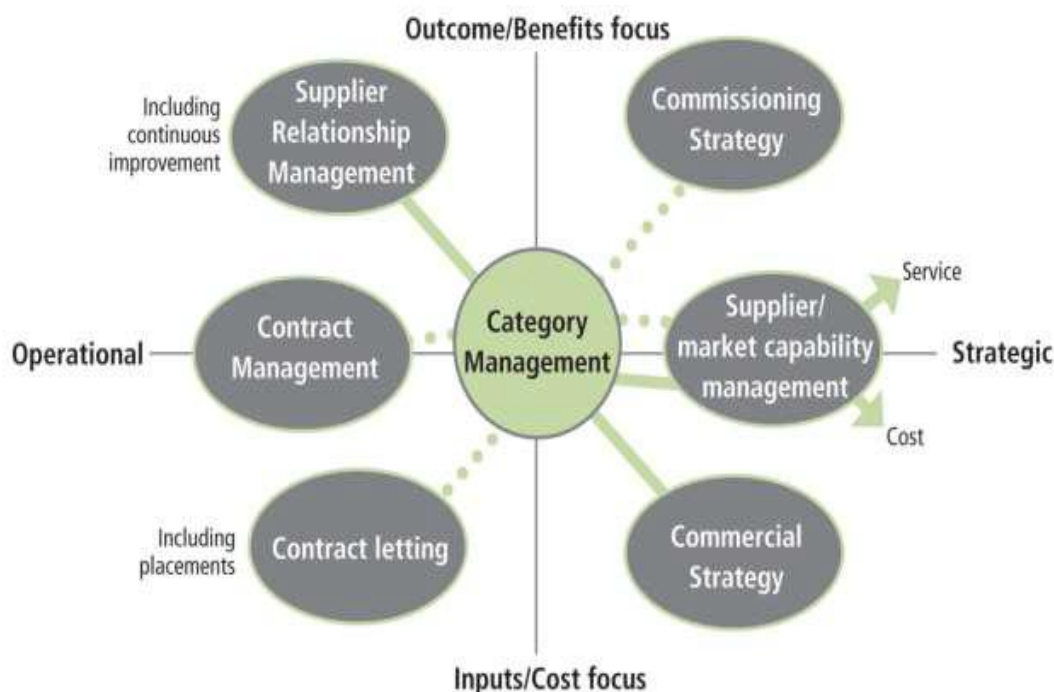


Diagram 2 - Category Management

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4. Our Category Management processes will be developed over the next year, but for your information, please find below some background to our approach.

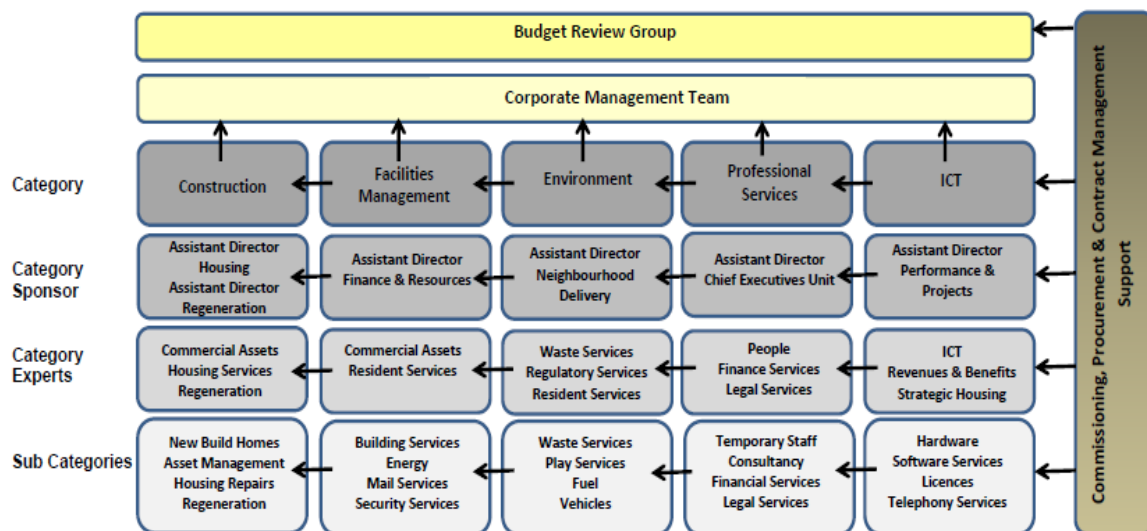


Diagram 3 - DBC Spend Categories

How does Category Management differ from the Council's current procurement process?

The new process differs from the current process in the following ways:

- All spend/requirements of a similar type will be reviewed (and where necessary redesigned) at the same time. Any subsequent tenders will also be planned at the same time. Apart from in exceptional circumstances, all contract end dates in future will be purposely set so as to allow this. There may be times though when services are commissioned outside of the phase cycle, for example if ring-fenced grant funding becomes available which has to be used for a specific purpose.
- Particular officers will be designated as a Category Lead and be supported by a category expert (someone with experience in that field) and a procurement officer
- There will be an increased focus on stakeholder engagement, with more consistency around when and how stakeholders will be involved in evaluating needs and making decisions around how services are delivered.
- There will be more consistency around how services are monitored.

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SECTION FIVE

QUOTATION TABLE FOR CONTRACT VALUES OF £49,999 AND BELOW

For Contract values and purchases up to £49,999 quotations should be obtained in accordance with the table below:

Value	Requirements	Approval Process
Up to £4,999	<ul style="list-style-type: none"> ▪ A minimum of one quotation should be obtained from a local supplier where available. 	<ul style="list-style-type: none"> ▪ Team Leader or above, is under a duty to seek value for money and take up quotations as appropriate for the supplies, services or works to be delivered. ▪ A purchase order must be raised through the Agresso finance system for the services, supplies or works.
£5,000 - £9,999	<ul style="list-style-type: none"> ▪ A minimum of three written quotations should be obtained. ▪ At least one of the quotations should be from a local supplier where available. ▪ Details of contracts must be entered on to the contract register. ▪ Quotation documents and purchase order/contract records must be retained (see Section 6 for details) 	<ul style="list-style-type: none"> ▪ Team Leader or above, is under a duty to seek value for money and take up quotations as appropriate for the supplies, services or works to be delivered. ▪ A purchase order must be raised through the Agresso finance system for the services, supplies or works
£10,000 - £49,999	<ul style="list-style-type: none"> ▪ A detailed written specification must be made available for suppliers to quote against. ▪ The request for quotation requirement must be advertised on Contracts Finder & the Council's e-tendering portal. ▪ A minimum of three written quotations should be obtained. (If it is not possible to get 3 quotes then this should be documented and approved by the Group Manager – Commissioning, Procurement & Compliance ▪ Quotations evaluated against award criteria (see Section 6 for further information). 	<ul style="list-style-type: none"> ▪ Group Manager or above, is under a duty to seek value for money and take up quotations as appropriate for the supplies, services or works to be delivered. ▪ Group Manager or above to approve award of contract by signing contract award certificate. ▪ A purchase order must be raised through the Agresso finance system for the services, supplies or works

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	<ul style="list-style-type: none">▪ A contract award certificate must be obtained from the procurement team.▪ Details of the contract must be put on contract register.▪ Quotation documents and purchase order/contract must be retained (see Section Six for details)	
Framework contracts (any value)	<ul style="list-style-type: none">▪ As a rule framework contracts normally require an additional tendering process - even for lower values. You must contact the commissioning & procurement Team for advice	<ul style="list-style-type: none">▪ Approval process to be the same as non-framework values

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SECTION SIX OBTAINING QUOTATIONS

The process for obtaining quotations shall be as follows:

- As indicated in Section 5, quotations can be sought up to £49,999.
- If the value is expected to be below £10,000, use the Request for Quotation (RFQ) template (see appendix 10) to invite your chosen suppliers to quote via email.
- If the value is expected to be over £10,000, use the RFQ template, however your quotation must be advertised on the Council's e-tendering portal and Contracts Finder.
- Include a detailed written specification of your requirements whenever possible (compulsory for values over £10,000).
- Where appropriate invite at least one local supplier to submit a quotation, if expected value is above £10,000, you should inform suppliers that requirement has been advertised and can be found on the Council's e-tendering portal and Contracts Finder.
- Decide on the evaluation criteria you will use. If price is not the only criteria to be considered, then state the other criteria in the RFQ (e.g. delivery timescales and/or quality) in the RFQ documents.
- Evaluate all quotations received and keep all scoring and evaluation notes.
- Obtain necessary authorisation to award the contract (see Section 7).
- Inform all bidders in writing of the contract award decision.
- Raise a purchase order and produce contract documentation if necessary.
- If monitoring of the contract is required, then ensure arrangements are in place (see Section 14).
- Where the value exceeds £10,000 then the Officer will need to contact an officer from the commissioning and procurement team to produce a contract award certificate to be authorised by the relevant Officer, details of the contract will also need to be entered on to the contract register
- No contract shall commence until all documentation is in place.

Records to be maintained where quotations are taken up

- 1 The Group Manager of the procuring service must ensure that all written documentation for quotations are retained for record retention purposes and made available for inspection by the Section 151 Officer, Monitoring Officer or Audit for the greater period of:
 - 1.1 Such timescale that is prescribed by law, or
 - 1.2 A minimum period of six years plus the current financial year, or
 - 1.3 Such period as is prescribed by the Council's Document Retention Procedure. Click on the following link and select DBC 400IM Policy – Retention Schedule Policy version 2.5 (or latest version)
<http://dbcsp/sites/Intranet/Docs/Documents/Information Management and Security/Policies/Records Management>

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- 2 The records that need to be kept will include:
 - 2.1.1 invitation to quote (including the Council's written specification) and all quotations received from suppliers.
 - 2.1.2 a record of any exemptions or rejections and the reasons for them
 - 2.1.3 the reason if the lowest price is not accepted
 - 2.1.4 if price is not the only criteria taken into consideration, then the value for money evaluation process must be clearly set out.
 - 2.1.5 the contract documents
 - 2.1.6 post-contract monitoring
 - 2.1.7 written/electronic records of communications with suppliers submitting quotations and with the successful contractor throughout the period of the contract.

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SECTION SEVEN

WHO HAS THE AUTHORITY TO AWARD A CONTRACT?

Taking the formal decision to award the contract

- 1 The formal Contracting Decision to award a contract will be based upon the following circumstances:

Decision maker	Authority	Process
An Officer	<ul style="list-style-type: none"> ▪ Authority to award a contract is required on all contracts valued at £10,000 and above. ▪ A written delegated authority exists under the Council's Constitution to all Team Leaders for contracts up to £10,000, Group Managers for contracts up to £50,000, all Assistant Directors for contracts up to £250,000 and all Corporate Directors for contracts up to £500,000. ▪ Other delegated authority for specific supplies, services or works for other values may be listed within the Council's Financial Regulations under the 'Scheme of Delegation' - schedules 2 & 3 or by delegated authority granted by Cabinet or Portfolio Holder. 	<ul style="list-style-type: none"> ▪ The raising of a requisition/purchase order for contracts valued at £4,999 and below on Agresso will be deemed to have the authority to award. ▪ Where delegated authority exists, the Procurement team will, upon request, prepare a written contract award certificate with accompanying tender evaluation report and pass to the Section 151 Officer and the Monitoring Officer for comments; ▪ Once statutory comments have been received, the contract award certificate must be signed and dated by the officer who has the delegated authority and returned to the commissioning and procurement team.
Portfolio Holder	<ul style="list-style-type: none"> ▪ The Council's scheme of delegation enables Portfolio Holders to award contracts above £500,000 in value in relation to their Portfolio ▪ Where Cabinet has delegated a specific decision to a Portfolio Holder for determination 	<ul style="list-style-type: none"> ▪ A Portfolio Holder decision will be required in accordance with the Council's Constitution. ▪ The procurement team will prepare a PH decision sheet together with a tender evaluation report detailing the procurement process, the reason to award the contract and any relevant implications. ▪ The PH Decision process includes an internal approval process before the public consultation – 28 days. Allow a minimum of 6 weeks extra time in your tender timescales for this process. Click on the following link and select PH Decision – Officer Guidance and PH Decision – Timeline. http://dbcsp/sites/Intranet/Docs/Documents/Templates and Forms

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Cabinet	<ul style="list-style-type: none"> ▪ The Council's Constitution deems that the decision is a "key decision" and, therefore, it should be taken by the Cabinet. 	<ul style="list-style-type: none"> ▪ A resolution of Cabinet <p>NB – It is anticipated that High Risk or High Impact contracts will be considered by Cabinet where there is a cross-cutting benefit and/or implication of the award of the contract that could affect more than one portfolio.</p>
Council	<ul style="list-style-type: none"> ▪ The Council's Constitution reserves the power to full Council. 	<ul style="list-style-type: none"> ▪ A resolution of Council <p>NB – Council is only likely to be required to approve to award contracts where there are far-reaching benefits and/or implications to making a decision (e.g. redevelopment agreements etc.)</p>

- 2 In accordance with the Council's Constitution, where there is any doubt as to who is the appropriate decision maker, the advice should be sought of any officer from the commissioning and procurement team or the Monitoring Officer.

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SECTION EIGHT **CONSULTANTS**

The engagement of a consultant is classified as the commissioning and procurement of a service and should follow that process, there is some additional guidance below that should also be followed when commissioning and procuring consultants.

Consultancy brief

- 1 The engagement of a Consultant shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a contract of appointment.
- 2 No consultant shall be engaged unless:
 - 2.1 specialist expertise is not available from in-house sources;
 - 2.2 there is a lack of in-house capacity to undertake the project;
 - 2.3 the in-house proposal is not competitive; or
 - 2.4 an independent opinion is required.

Where the Council uses a consultant to provide temporary staff, the terms of the engagement with the consultant must not allow the consultant to claim commission (finder's fee) if somebody so provided subsequently applies for and obtains a post with the Council.

The selection and appointment of consultants to provide services

- 3 Consultant architects, engineers, surveyors, project managers and other professional consultants shall be commissioned and procured in accordance with the procedures detailed within these Standing Orders and as outlined below.
- 4 The number of quotations or tenders required in respect of consultancy contracts shall be as detailed in Section 5 – Quotation Table for Contract Values of £49,999 and below; or Section 9 – Tendering Table for Contract Values £50,000 and above.
- 5 Officers must always, before seeking quotations or tenders, prepare a detailed brief or specification with the contract terms. The specification must include:
 - a. The outcomes to be achieved by the consultants including significant stages, milestones, reports, etc.
 - b. The basis on which the consultant can charge (e.g. payment when a particular stage is completed).
 - c. When payments are due.
 - d. If expenses or additional disbursements may be charged or if these must be included in tendered/quoted charges.
 - e. If there is an option to extend the contract after the initial period, (this must be taken into consideration when determining the contract value).

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- f. Agreed process and charges for variations to the contract. This is particularly important where the appointment is likely to be for a long period of time.
 - g. A request to provide evidence of the required insurances.
- 6 Officers must not permit consultants to:
- a. Prepare their own brief (or be invited to quote or tender on terms so vague that this is in effect what is happening)
 - b. Produce their own contract terms (unless these are standard terms prescribed by a professional body and agreed with by any officer of the commissioning and procurement team);
 - c. Be engaged on a payment by time basis; unless:
 - i. it is the custom in the profession for payment for that kind of work to be on a time basis, or;
 - ii. a quotation for the work cannot be obtained in any other way;

In these cases, an upper financial limit should always be set on the sum payable and there should be arrangements in place to manage and control amounts spent and the commissioning of additional work.

- 7 Officers must make sound arrangements to monitor performance, control costs and ensure that any changes in instructions are properly agreed and recorded in writing (see Section 14). This is particularly important where the appointment is likely to be for a long period of time or to develop a project, rather than to deliver a single goal to a predetermined programme. If extra work is to be agreed, this is an extension and the agreement must comply with the Financial Regulations and these Standing Orders regarding extensions and EU procurement rules relating to aggregation.

Application of Financial Regulations and Procurement Standing Orders to consultant's who act on the Council's behalf

- 8 If the Council engages anyone who is not a Council officer to procure or to supervise a contract on its behalf, the contract with that person must require them to comply with these Standing Orders and the Council's Financial Regulations as if they were an officer of the Council.

Insurances

- 9 A consultant must be required to produce evidence of satisfactory employers and public liability insurance.
- 10 The consultant must produce satisfactory evidence of professional indemnity insurance unless;
- 10.1 such insurance is not available in the insurance market;
 - 10.2 the consultant will already have been required to demonstrate such cover as part of their annual or periodic certification process with their professional organisation;
 - 10.3 the nature of the appointment is such that there is no risk to which the Council will be exposed;

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- 10.4 the consultant will be covered by the Council's own insurance arrangements (as may be the case for some locum and similar appointments) and this has been cleared in writing by Section 151 Officer.
- 11 The amount and terms of the consultant's insurance covers shall be to the satisfaction of the Section 151 Officer. The consultant must not be allowed to recharge the cost of his or her professional indemnity insurance to the Council.

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SECTION NINE

TENDERING TABLE FOR CONTRACT VALUES OF £50,000 ABOVE

Value	Requirements	Process
Supplies, Services or Works £50,000 – up to EU threshold	<ul style="list-style-type: none"> ▪ Tendering process to be complied with (see section ten onwards) ▪ A contract award certificate must be obtained from Procurement. ▪ Details of contracts must be entered on to the contract register. 	<ul style="list-style-type: none"> ▪ Assistant Director to approve award of contract up to £250,000 by signing contract award certificate. ▪ Chief Officer to approve award of contract up to £500,000 by signing contract award certificate. ▪ All contract values above £500,000 will require a PH Decision (unless delegated authority has been given by Cabinet or via a PH Decision). ▪ A purchase order must be raised through the Agresso finance system for the services, supplies or works
EU threshold and above	<ul style="list-style-type: none"> ▪ Tendering process to be complied with (see section ten onwards) ▪ A contract award certificate must be obtained from Procurement. ▪ Details of contracts must be entered on to the contract register. 	<ul style="list-style-type: none"> ▪ Assistant Director to approve award of contract up to £250,000 by signing contract award certificate. ▪ Chief Officer to approve award of contract up to £500,000 by signing contract award certificate. ▪ All contract values above £500,000 will require a PH Decision (unless delegated authority has been given by Cabinet or via a PH Decision). ▪ A purchase order must be raised through the Agresso finance system for the services, supplies or works
Using framework agreements	<ul style="list-style-type: none"> ▪ Tendering process to be complied with (see section ten onwards) 	Approval process to be same as non-framework contract values.
Collaborative Procurements	<ul style="list-style-type: none"> ▪ Approval to collaborate on procurements to be approved by any officer of the procurement team ▪ Tenders must be advertised in accordance with the rules of the lead authority. 	Approval process for each authority to be as per the rules for that authority.

COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION TEN **OUTCOME BASED COMMISSIONING**

1. Commissioning is the first 3 elements of the commercial cycle that is used to:
 - assess the needs of the service and the people it will impact upon,
 - design the services to meet those needs,
 - procuring the service by competitive tendering
 - monitor the service after contract award; and review

2. An outcome based approach aims to shift the emphasis from what services a provider will offer to what outcomes they will achieve. It should also be able to clearly demonstrate the link to the Council's Corporate Plan. Click on following link for a copy of the 2012-15 Corporate Plan.
http://www.dacorum.gov.uk/docs/default-source/council-democracy/dacorum_corporateplan_web.pdf?sfvrsn=2

3. The following should be considered in your commissioning process:
 - 3.1 Allow sufficient time to plan and run the tender process.
 - 3.2 All necessary legal, financial and professional advice should be taken, and any information from this (e.g. market research or consultants reports) made available in value for money reviews or business cases.
 - 3.3 Use any research or consultants reports to build social value into the process early on. Any necessary value for money reviews or business cases should be conducted and appraise the purchasing needs prior to commencing a procurement exercise.
 - 3.4 Consideration should be made as to how the proposed procurement will be monitored, quality assessed and performance measured when in operation and a contract manager should be appointed who is responsible for ensuring the contract delivers as intended,
 - 3.5 Consider an options appraisal – find out if there are alternative and better ways to deliver the service.
 - 3.6 Any proposed procurement exercise must take into account the Council's risk management strategies, guidance and procedures; the consideration of risks and their subsequent documentation in risk registers with suitable control measures. Where there are High Risk, High Value or High Profile services at stake, the risk factors must be reported to Cabinet, the Portfolio Holder or the Director or Chief Executive as appropriate
 - 3.7 A written detailed specification of the goods, services or works to be procured should be in place before the tender process starts. All relevant

COMMISSIONING & PROCUREMENT STANDING ORDERS

strategies of the Council e.g. Sustainability, Safeguarding, etc. should be incorporated into the written specification (See Appendix 2).

COMMISSIONING & PROCUREMENT STANDING ORDERS

The key elements of the commercial cycle are illustrated in the diagram below.

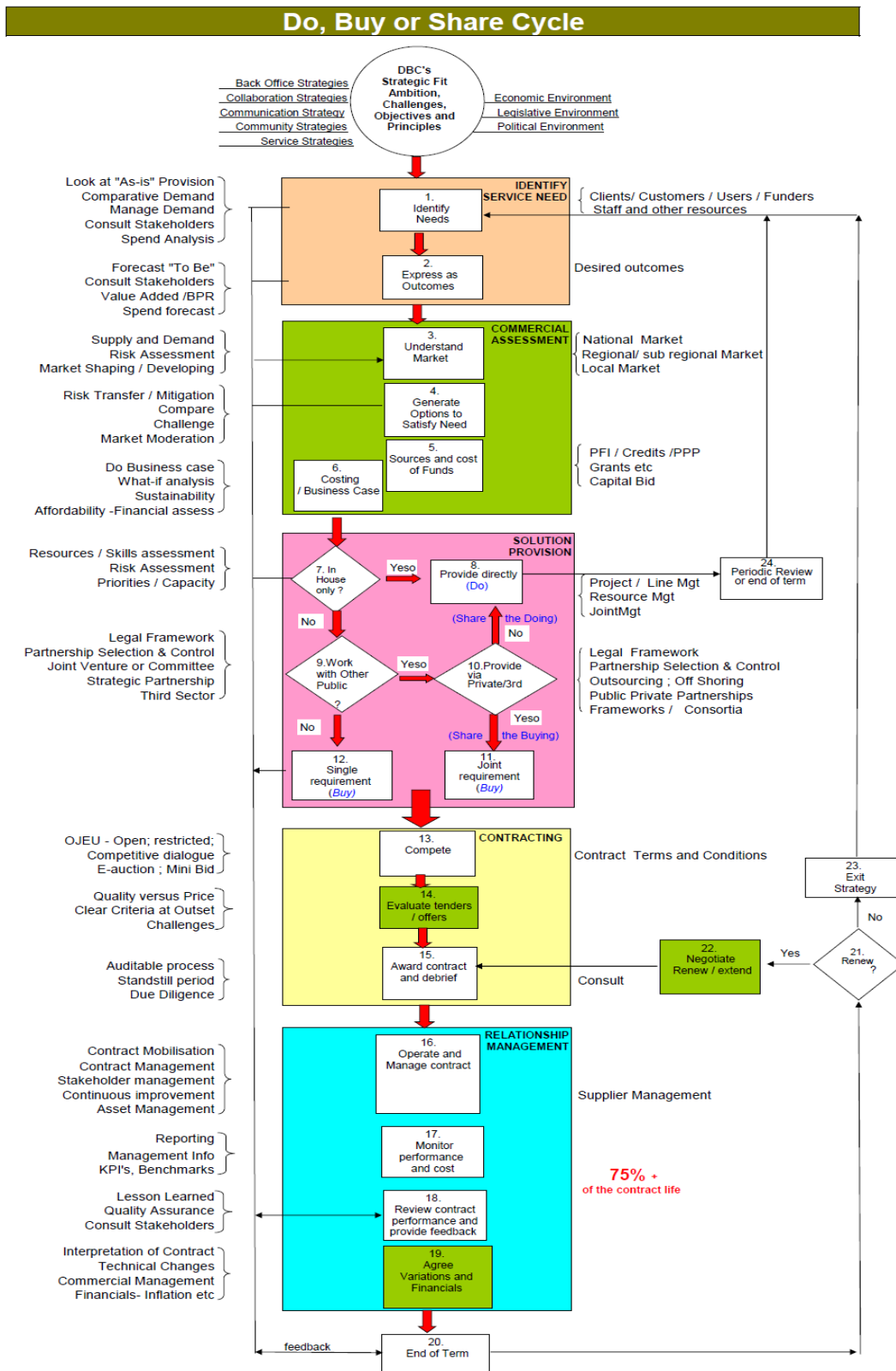


Diagram 4 – Detailed Commercial Cycle

COMMISSIONING & PROCUREMENT STANDING ORDERS

Writing the Specification:

1. The specification is a document that contains your description of your requirements. It needs to give the provider a clear understanding of what you will want them to do.
2. When writing the specification you will need to consider the following:
 - Writing an outcome based specification – telling providers what you want to achieve and link to the corporate plan.
 - Use the information you have gathered in your research to shape your requirements.
 - Be aware of any legislation that will apply to the contract
 - Incorporate any Council policies or strategies that apply, e.g. sustainability, safeguarding, etc. (see Appendix 2).
 - Be realistic about what your budget can afford.
 - Consider the range of providers, both large and small, who could provide the service.
3. Where appropriate, a tender specification must specify:
 - Concise and precise details of the services, supplies or work required.
 - That all materials must comply with British/EU standards or any other technical requirements.
 - The completion/delivery/installation requirements.
 - The insurance requirements.
 - The bonding requirements.
4. The price to be paid and where appropriate the whole life cost expectation, with a statement of any discounts or other deductions (priced bills or specification to be completed if applicable).
5. The form of contract/agreement to be entered into. Whether the contract is to be on a firm price basis for the whole contract or if a price review will be allowed during the contract and how this will be controlled.
6. The Award Criteria / Evaluation and weighting matrix
7. The tender specification must clearly state that the Council will not guarantee estimated quantities, if stated (i.e. if a contract is placed on a measurement basis).
 - If an external company is already providing this service then TUPE may apply and you will need to seek further advice from legal services
 - Include the time period of the contract and if required the option to extend the contract by a set timescale.

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8. When is it appropriate to issue a Prior Information Notice (PIN)
 - 8.1 A PIN can be issued by the Council for the following situations:
 - Issued at the beginning of a financial year, it can detail all the tenders (over EU threshold) to be commenced over the financial year.
 - Following the decision to authorise a programme of public works
 - It may be useful in creating market interest for particular tender requirements.
 - 8.2 The following rules will apply when a PIN is used:
 - A standard PIN form must be completed – you should contact the Procurement Team who will be able to guide you through the process.
 - Using a PIN will reduce some of the minimum timescales.
9. When is a bond required?
 - 9.1 If a Contractor is required to provide a bond or other security as detailed above, the Contractor must never start work before the bond is in place and has been lodged with the Council.
 - 9.2 All officers must comply with such advice and/or directions that the Section 151 Officer or Assistant Director of Finance & Resources may, from time to time issue, as to what contracts and which Contractors shall be bonded.
 - 9.3 Invitations to tender shall state that any bond must be obtained from an approved bondsman and be in the Council's standard form of bond.

Further guidance can be found in the appendices:

Writing a Business Case – Appendix 7

Conducting an Options Appraisal – Appendix 9

COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION ELEVEN. COMMISSIONING & PROCUREMENT PROCESS & TIMESCALES

The following diagram shows an indicative timescale

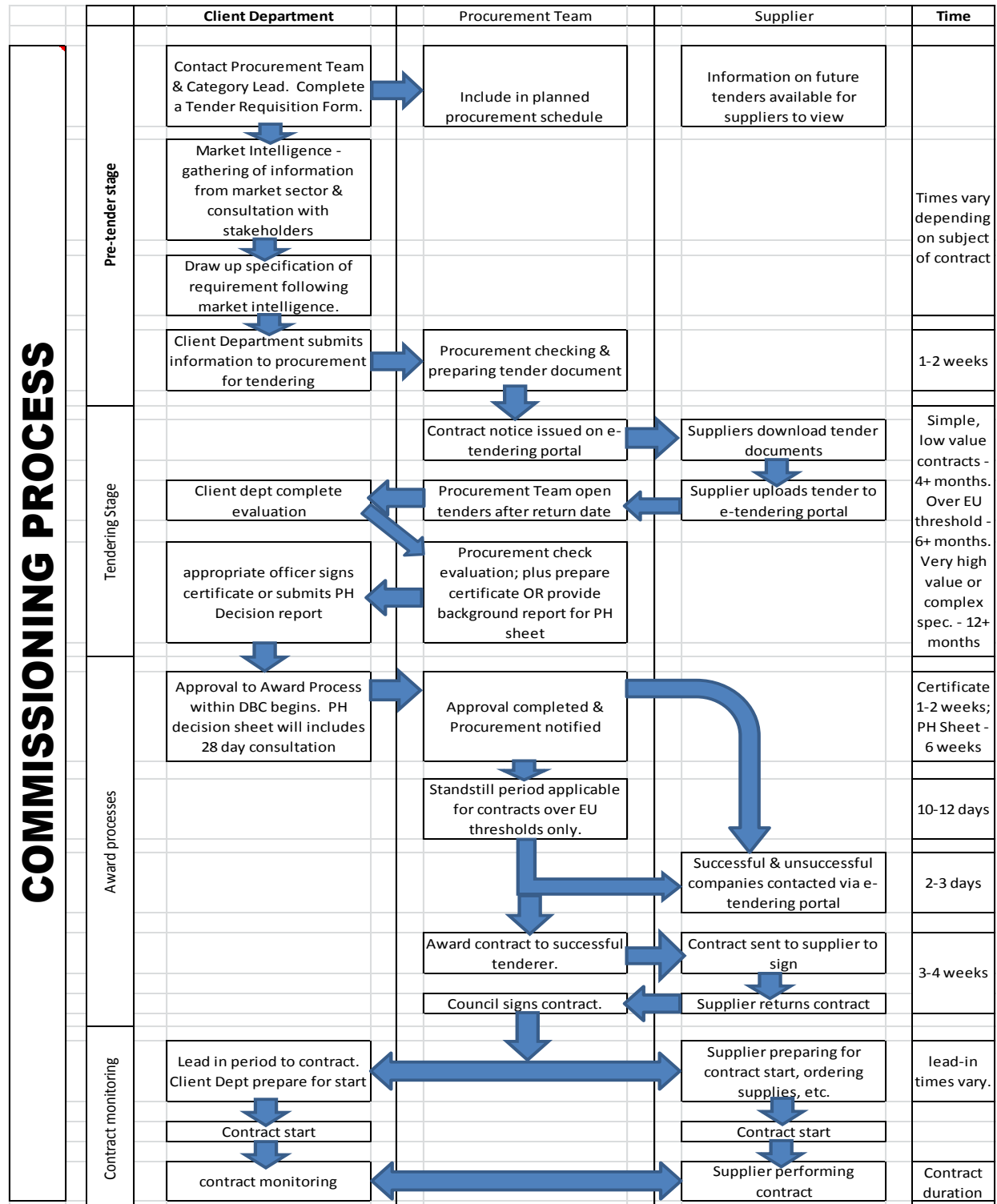


Diagram 3 – Example commissioning and procurement timescale

COMMISSIONING & PROCUREMENT STANDING ORDERS

The timescale example shown does not show every transaction in the tendering process, but is designed to give you an overview of the general processes included and the responsibilities of each party. Timescales will vary depending on the type of contract, the tendering process used and the supplier, however a minimum timescale is given as a guide only.

The commissioning and procurement team will produce a project plan for each tender process based on the information provided by the client department.

COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION TWELVE TENDERING RULES

1. The way the Council conducts its procurement activities will depend on both the value and the legislation that applies.
Although tenders that are below the OJEU thresholds need not comply with the Public Contracts Regulations, the principles of the Regulations with regards to openness, transparency and equal treatment still apply to all tendering activities of the Council, regardless of the value. In all circumstances officers are required to consult the commissioning and procurement team before any activity has commenced. The commissioning and procurement team will advise on the most appropriate route for the supplies, services or works to be tendered and on the timescales required.

Where supplies, services or works are included under a corporate contract then under no circumstances shall other arrangements be entered into without the prior consent of the commissioning and procurement team.

The commissioning and procurement team will carry out all procurement activities for contracts valued above £50,000, unless the Group Manager Commissioning, Procurement & Compliance has agreed in writing to the tender being undertaken as a collaborative arrangement with another organisation undertaking the lead authority role.

2. **Completion of a Tender Requisition Form**

Client officers will be required to fully complete a Tender Requisition Form (TRF) before the commissioning process commences using the standard form that is maintained by the Corporate Procurement Team (see Appendix 1).

The TRF shall set out:

- 2.1 the requirement and award criteria
- 2.2 the rationale which may include a business case or options appraisals
- 2.3 details of any legal or workforce considerations, such as TUPE that need to be taken into account
- 2.4 for complex procurements (those which are very high value or have legal or workforce implications), the TRF must be signed by the proposed contract decision maker prior to commencing any tendering procedures.
- 2.5 Where material issues identified in the TRF impact upon the procurement (eg. difficulties with the current service provision, etc.) then these matters shall be reflected in the tender documentation and tenderers will be required to address such matters in their tender submissions.

COMMISSIONING & PROCUREMENT STANDING ORDERS

3. **Contract Notice / Public Notice**

All tender notice requirements can be accessed via the Council's e-tendering portal.

The following conditions will apply to each tender notice:

- The tender notice must be advertised via the Council's e-tendering portal
- All tender opportunities that are below the OJEU threshold must also be advertised on the Contracts Finder website.
- Where the contract value exceeds the OJEU threshold, the tender notice must be advertised in the Official Journal of the European Union and comply with the requirements of EU legislation

It is the responsibility of potential bidders to register on the Council's e-tendering portal, however officers can inform potential bidders where the portal is located.

4. **Tendering Procedures**

The two most common methods of tendering are the open and the restricted procedures. Timescales will depend on the requirements of the tender. Tenders subject to EU legislation are subject to strict rules and minimum timescales.

5. **Open Tender**

This is a single stage tender process:

Following the issue of a contract notice, Invitation To Tender (ITT) documentation will be made available on the e-tendering portal for any interested supplier to view and download.

Any minimum requirements for tenderers must be stated in the contract notice and the ITT documentation. All bids must be submitted back to the Council via the e-tendering portal.

All tenders received must be evaluated unless they do not satisfy the minimum criteria, in which case they will be rejected and not scored.

6. **Restricted Tender**

This is a two stage tender process.

Stage one – following the issue of a contract notice a Pre-Qualification Questionnaire (PQQ) will be made available on the e-tendering portal for any interested supplier to view and download. The purpose of a PQQ is to assess the resources and capability of suppliers to identify those who are most capable of performing the contract. There are restrictions as to the questions you can ask (and evaluate) in the PQQ – see section below on Selection Criteria.

Completed PQQs will be evaluated against selection criteria and a number of the most capable suppliers will be selected to be included in the next stage.

Stage Two – Invitation to Tender (ITT) the selected suppliers (from stage one) will be sent an ITT.

All bids must be submitted back to the Council via the e-tendering portal.

All tenders must be evaluated in accordance with the Award Criteria stated in the ITT documents

COMMISSIONING & PROCUREMENT STANDING ORDERS

- 7. Other Procedures for tenders subject to EU legislation.**
Other tendering procedures can be used for tenders subject to EU legislation. These should only be used with the approval of the Group Manager – Commissioning, Procurement & Compliance or the Monitoring Officer. These include the negotiated procedure and competitive dialogue.
- 8. Instructions to Tenderers**
All persons who request the tender documents must be provided with the same information and be subject to the same conditions. Any supplementary information must be given on the same basis.
- 9. Timescales for tender returns**
Where tender values are at EU thresholds or above, then the timescales specified in the Public Contract Regulations will apply.
For below EU threshold tenders, a minimum of three weeks should be allowed for the submission on tenders. Shorter timescales can only be permitted with the written approval of the Group Manager – Commissioning, Procurement & Compliance.
Tenderers must be given an adequate period of time to prepare a tender submission and the timescales for tender returns must be appropriate to the complexity of the tender requirements
Tender return dates may be extended (subject to the advice from an officer from commissioning and procurement) provided all tenderers are notified of the new return date and time.
- 10. Receipt of tenders (including Pre-Qualification Questionnaires)**
All tenders must be submitted through the Council's e-tendering portal by the return date and time specified on the e-tendering portal.
Any tenders sent by e-mail or fax will not be accepted.
Any tender sent after the return date and time will automatically be rejected by the e-tendering portal.
It will be the responsibility of the tenderers to allow sufficient time to upload their tender submissions
- 11. Selection Criteria and Award Criteria.**
The commissioning and procurement team will be able to advise on suitable criteria and the rules surrounding these, however a brief explanation of each is given below.
- 12. Selection Criteria.**
Selection criteria is used at the PQQ stage. The criteria and how it will be scored must be stated clearly in the PQQ documentation. Any questions asked (and included in the scoring) must be in relation to their:
- economic & financial standing – see Financial vetting below
 - technical & professional ability
 - criteria for rejection

COMMISSIONING & PROCUREMENT STANDING ORDERS

13. Award Evaluation Criteria

The majority of tenders are evaluated on the Most Economically Advantageous Tender (MEAT). This is a mixture of the criteria which can include: price, quality, technical merit, aesthetic & functional characteristics, environmental characteristics, running costs, cost effectiveness, after sales service, technical assistance, delivery date, delivery period and period of completion.

Price should always be evaluated on a whole life cost basis

The criteria must be linked to the subject matter of the contract and the weighting should be proportionate and must be stated in the tender documents with the corresponding scoring

14. Financial vetting

14.1 In accordance with Financial Regulations, the Section 151 Officer's procedures in relation to Financial Vetting shall apply to procurement contracts where appropriate.

14.2 Where an assessment has been carried out in accordance with the Financial Vetting Procedure, proper advice shall be taken from the Section 151 Officer or Assistant Director Finance & Resources as to the level and scale of securities such as:

14.2.1 Bonds

14.2.2 Parent company guarantees

14.2.3 Deposits

14.2.4 Guarantees

15. Insurances

All potential contractors should be required to produce evidence of insurance cover at the Invitation to Tender stage in respect of:

15.1 Employers liability,

15.2 Public liability,

15.3 Professional Indemnity (professional negligence)

15.4 Bonds etc

15.5 Products cover

to such standards as may be prescribed the Section 151 Officer or Insurance & Risk Manager and the required values are set out in Appendix Eleven.

16. Opening of Tenders

The e-tendering portal will only allow for tender returns to be opened once the tender has closed for bidders.

17. Acceptance and evaluation of tenders

17.1 Where the minimum number of tenders to be invited have not been received written agreement to proceed to the evaluation of the tenders must be obtained by any officer of the procurement team.

17.2 All arithmetic in compliant Tenders must be checked. If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their Tender.

COMMISSIONING & PROCUREMENT STANDING ORDERS

- 17.3 In the event that post tender submission clarifications or negotiations are required, advice should be obtained by any officer from the procurement team prior to providing any clarifications or entering into negotiations.
- 17.4 Tenders must be evaluated and awarded in accordance with the award criteria. During this process, Officers shall ensure that submitted Tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.
- 18. Notifying tenderers on the outcome of the tender exercise and De-brief on the tender scoring.**
- 18.1 Written approval in the form of a signed 'Award Certificate' or a signed 'PH Decision Sheet' must be in place before notifying tenderers on the outcome of a tender exercise.
- 18.2 Both successful and unsuccessful tenderers must be notified simultaneously via the e-tendering portal, as soon as possible after the decision to accept the winning tender has been approved. Contract award notification template letters are available from the commissioning and procurement team.
- 18.3 If the tender is subject to Public Contract Regulations - a 'standstill' period' (also known as the Alcatel period) will apply, during which unsuccessful tenderers may challenge the decision. The standstill period timescale will be a minimum of ten consecutive days which will commence on the next working date after the tenderers are notified and will end ten days later unless the tenth day is not a working day in which case the last standstill day will be the next working day.
- 18.4 If a decision is challenged by an unsuccessful tenderer during the standstill period then the contract must not be entered into and the Officer must immediately seek the advice of the Group Manager - Commissioning, Procurement & Compliance.
- 18.5 The de-brief letter sent to each unsuccessful bidder must show for each of the award criteria the score of the winning bid, the score of the unsuccessful tenderer and notes on how the unsuccessful tender submission compared to the characteristics and relative advantages of the winning bid. No other information should be given without the advice of the Group Manager Commissioning Procurement & Compliance.
- 19. Award Notice for:
Contracts over EU thresholds**
- As soon as the contract has been signed it is a mandatory requirement to submit an award notice which will appear in the Official Journal of the European Union (OJEU) and the e-tendering portal. The award notice must be completed through the e-tendering portal.

COMMISSIONING & PROCUREMENT STANDING ORDERS

20. Under EU thresholds

For below EU threshold contracts, the submission of an award notice must be undertaken on the e-tendering portal and published on Contracts Finder.

21. Records to be maintained

21.1 Pre-tender information including: market research and any consultation information, business cases, options appraisals and reports including reports obtained from any external organisations e.g. consultants.

21.2 The Tender Requisition Form

21.3 All tenders projects must be archived on the e-tendering portal and all tender communications and decisions records maintained by the commissioning and procurement team and made available for inspection by the Section 151 and Monitoring Officers for the greater of:

21.3.1 Such timescale that is prescribed by law, or

21.3.2 A minimum period of six years plus the current financial year, or

21.3.3 Such period as is prescribed by the Council's Document Retention Procedure.

21.4 Records to be maintained for all tenders:

21.4.1 All pre-qualification questionnaire documentation and all tender documentation made available to the tenderers

21.4.2 All communications regarding clarification on PQQ and tender documentation from the potential tenderers.

21.4.3 All tender submissions

21.4.4 Evaluation documentation which must include the award criteria, the evaluation matrix, scores awarded to each tenderers against each criteria and the corresponding reasons for each score.

21.4.5 Award Decision (e.g. the contract award certificate or the PH Decision Sheet) and the reasons for it

21.4.6 Any tendering exceptions together with the reasons for it

21.4.7 All tender clarification communications

21.4.8 The signed contract documents

21.4.9 All contract monitoring documentation during the contract period.

22. Framework Agreements

A framework agreement is an arrangement with suppliers that sets out the terms and conditions (particularly price and quality) of contracts to be awarded during a specified period. Specific call-offs can be made for supplies or services or works throughout the duration of the agreement.

COMMISSIONING & PROCUREMENT STANDING ORDERS

23. Using another organisations framework agreement

A framework agreement can only be used providing the following criteria is satisfied:

- The Council is legally entitled to use the framework contract.
- The goods, services or works to be procured must properly fall within the framework contract.
- The framework contract must comply with EU legislation (where these apply) and meet these Standing Orders
- Unless a direct award is permitted under the framework; a further tender process must be run which must include inviting all the suppliers on the framework for the goods, services or works required. This is sometimes referred to as a 'mini-tender' competition
- The terms and conditions of the framework will apply.
- The award criteria stated in the framework contract must be used to evaluate any tender submissions.

24. Tendering for a framework agreement

- The term of a framework must not exceed four years except in exceptional circumstances.
- The framework must comply with the Public Contract Regulations and these Standing Orders.
- A framework agreement may be awarded to one provider, however when it is decided to award to more than one provider this must be a minimum of three.
- The tender advert must clearly state all of the public sector organisations which will be able to access the framework contract.

25. Collaborative Contracts

These are contracts involving procurement with one or more public sector bodies.

25.1 In order to secure value for money, the Council may enter into collaborative procurement arrangements. The Officer must take advice from the Group Manager Commissioning, Procurement & Compliance where a procurement is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

25.2 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation will be deemed to comply with these Standing Orders and no exemption is required. However, where such a situation occurs, the written advice of the Group Manager Commissioning, Procurement & Compliance must have been taken prior to letting a contract or granting an extension.

COMMISSIONING & PROCUREMENT STANDING ORDERS

26. Extensions to Existing Contracts

A contract can only be extended if the option to extend has been allowed for within the terms of the existing contract, for the period specified, and where it is in the Council's interests to extend the arrangement.

26.1 Any extension must be:

26.1.1 fully documented

26.1.2 subject to a written report to be submitted to the Group Manager Commissioning, Procurement & Compliance; which shall include reasons for the extension

26.1.3 subject to approval by the Officer with the relevant authority who shall record that they have considered the reasons for the extension and that they are satisfied that the circumstances justifying the extension are in the interests of the Council.

26.1.4 subject to the EU procurement rules and, in particular, the maximum duration of framework agreements and the aggregations rules. A contract extension cannot operate in breach of EU law.

In the event that the Officer with the relevant authority believes that the proposed extension is a "key decision", then full consideration must be given to whether the decision to extend the contract needs to be referred to the Portfolio Holder or Cabinet as may be appropriate under the circumstances.

27. Starting work

27.1 the Supplier/Contractor must not be allowed to start on a contract until all the contract documentation is in place and the Supplier/Contractor and the Council has signed it or the contract has been executed if under seal.

COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION THIRTEEN **TENDERING EXCEPTIONS**

These tendering exceptions do not apply to contract values of EU threshold and above unless it is specifically stated. A contract award certificate will need to be produced for any contract awarded using a tendering exception. Only members of the commissioning and procurement team can authorise the use of these exceptions.

- 1 Framework agreements that have already been awarded by other public sector bodies can be used by the Council provided such use is permitted by that Contract's terms and conditions and subject to the approval of any officer from the procurement team. Provided that the tendering of the framework has complied with EU legislation, then this exception can be used for values over the EU threshold
- 2 Tenders may also be dispensed with where the proposed contract genuinely falls within one of the following exceptions:
 - 2.1 Quotations up to £49,999 in respect of supplies, services or works. Quotation procedures must comply with Sections 5 & 6 of the Procurement Standing orders. In any event, the placing of an order must be carried out in accordance with the Council's Financial Regulations.
 - 2.2 Urgent supplies, services or works as necessary for the protection of life or property or to maintain the functioning of a public service for which the Council is responsible (or if there are a number of public service implications that also include any responsibility of Hertfordshire County Council). A record of the supplies, services or works together with the nature of the urgency must be passed to the Group Manager – Commissioning, Procurement & Compliance within five working days of the decision being taken.
 - 2.3 Where supplies, services or works are available from Hertfordshire County Council or other public sector authorities under collaborative procurement arrangements. Provided that the tendering of the arrangement has complied with EU legislation, then this exception can be used for values over the EU threshold
 - 2.4 Supplies, services or works for the repair or enhancement of existing proprietary machinery, plant or equipment where there is no other reasonable alternative supplier.
 - 2.5 Cabinet Portfolio Holder (or officer approval if there is a delegated authority in place) approval has been obtained to extend an existing contract (subject to the existing Contract being capable of such an extension). If the original contract was tendered in accordance with EU legislation, then this exception can be used for values over the EU threshold

COMMISSIONING & PROCUREMENT STANDING ORDERS

SECTION FOURTEEN **CONTRACT MANAGEMENT**

Our Contract Management processes are being developed over the next year, but for information, please find below our current approach.

1. Managing contracts

- 1.1 It is the responsibility of Corporate Directors to ensure that any non-corporate contracts that are awarded from within their Directorates budgets have appropriate management arrangements in place for monitoring performance, cost control and compliance with the contract.
- 1.2 Corporate Directors, Assistant Directors or Group Managers shall provide the name of the contract manager for contracts and this shall be documented in the Council's Contract Register.

2. Contract Officer Responsibilities

2.1 Contract Officers must

- Understand the content, processes and deliverables of the contract.
- Ensure that good communication exists between the contractor and DBC.
- Ensure that the supplier delivers the service according to the contract.
- Ensure that the suppliers maintains all insurances and policies required by the contract
- Monitor supplier performance and standards of delivery of the service.
- Undertake regular reviews of performance with stakeholders.
- Monitor the financial stability of the contractor or supplier and that, if required, suitable bonds or PCG are in place.
- Manage negotiations regarding changes to the contract to deliver further savings and value for money.
- Ensure risks are identified and contingency plans are in place.
- Ensure payments are made according to the contract and delivery of service.
- Prepare an exit strategy for contract end.

3. Contract Register

- 3.1 All contracts that are valued at £10,000 and above shall be recorded in the Council's Contract Register which shall be maintained by the procurement team.

COMMISSIONING & PROCUREMENT STANDING ORDERS

4. Risk registers

- 4.1 For all key Council contracts and contracts with a value above the EU threshold, contract managers must:
- 4.2 Maintain a risk register during the contract period
- 4.3 Undertake appropriate risk assessments
- 4.4 For identified risks ensure contingency measures are in place.
- 4.5 The threshold set out in clause 4.1 may be reduced by the Group Manager Commissioning, Procurement & Compliance to any other contract where he considers that risk registers should be in place.

5. Contract monitoring and review

- 5.1 All key Council contracts or contracts which have a value above the EU threshold are to be subject to monthly formal review meeting between the contract manager and the contractor. The review may be conducted quarterly if permitted by the Group Manager Commissioning, Procurement & Compliance.
- 5.2 For all key Council contracts or contracts with a value above the EU threshold, a quarterly report (or more frequent if desired) must be submitted to the Group Manager Commissioning, Procurement & Compliance for reporting to the Performance Board.
- 5.3 During the life of any contract, the contract manager must monitor in respect of:
 - 5.3.1 Performance
 - 5.3.2 Compliance with specification and contract cost
 - 5.3.3 Any Value for Money requirements
 - 5.3.4 User satisfaction and risk management.

6. Contract variation and negotiation

- 6.1 Negotiation and managing change over the life of a contract is integral to the contract manager's role however,
 - 6.1.1 Negotiation is prohibited on price between award and mobilisation of a contract of OJEU threshold level and above.
- 6.2 The Group Manager Commissioning, Procurement & Compliance must be consulted where the proposed changes to an existing contract
 - Add to or expand the scope of the contract to include services not originally covered.
 - Introduces criteria that would have allowed another supplier to bid and win the work.
 - It changes the economic balance of the contract in favour of the contractor in a manner which was not provided for in the terms of the initial contract.

COMMISSIONING & PROCUREMENT STANDING ORDERS

7. Breach and protection against the consequences of failure by the contractor

Please note that this is not intended to be a comprehensive legal summary and any contractual action needs to be considered carefully with appropriate advice

- 7.1 In general all contracts will contain various clauses and methods for tackling poor performance with the contractor depending on value and strategic importance to the authority, including a formal dispute resolution process
- 7.2 Contract managers must work closely with Suppliers to ensure that the specified services are delivered and any problems are resolved as quickly as possible.
- 7.3 On a day to day basis the contract manager should alert the supplier to any failures of service and monitor changes put in place to ensure that there is a satisfactory resolution and processes put in place to prevent reoccurrence. If the failure continues then a more formal approach may be required as provided for in the contract.
- 7.4 If a contract manager considers that poor performance by the supplier can only be resolved through a formal contractual action they must first consult the Group Manager Commissioning, Procurement & Compliance for advice and support.
- 7.5 If the supplier has committed a default as defined in the contract and the default is capable of remediation then the Council may not cancel the contract without first operating a Remediation Plan process.
- 7.6 The Remediation Plan process requires the supplier to submit a plan on how it is going to tackle the issues and rectify the situation. It must include how it is to be implemented and the timescales for the actions to be undertaken. After this process if the default continues or the supplier declines to submit a remediation plan the authority may terminate the contract.
- 7.7 The authority also can exercise Step in Rights if the situation constitutes an emergency. This action may only be taken after consultation with the Group Manager Commissioning, Procurement & Compliance
- 7.8 The contract will also provide for termination of the contract without default however costs will be payable to the supplier that cover the difference between the charges and costs of delivery of the services for the remainder of the term of the contract.

COMMISSIONING & PROCUREMENT STANDING ORDERS

8. Contract Payment & Variation

8.1 Services and supplies contracts

8.1.1 The appropriate Corporate Director, or an employee duly authorised, should check that the goods have been received and that the prices charged and any additions in respect of VAT are correct whereupon the invoice should be marked as checked and certified for payment by an employee duly authorised in that behalf.

8.2 Works contracts up to £100,000

8.2.1 Payment may be made on production of invoices certified by an employee authorised by the appropriate Corporate Director. The names of employees so authorised must be sent to the Section 151 Officer together with specimen signatures and level of the authority of the employees so authorised. A contract manager may at his or her discretion require payment to be made only on certificate in accordance with clause 8.3.1 to 8.3.4 inclusive.

8.3 Works contracts over £100,000

8.3.1 Payment may only be made on the appropriate contract manager's certificate in accordance with the terms and conditions of the contract.

8.3.2 Each certificate shall state the value of the work executed to date, retention monies, amount paid to date, the amount now certified and any VAT applicable thereto.

8.3.3 Each certificate shall be signed by the contract manager and, where such officer is not an employee of the Council, countersigned by the appropriate Corporate Director or an employee duly authorised in accordance with clause 8.2 above.

8.3.4 Each duly signed payment certificate shall be despatched to Financial Services in sufficient time to enable payment to be made in accordance with the contract.

8.4 Variation orders / architect's instructions

8.4.1 Every variation on a works contract shall be authorised in writing by the contract manager.

8.4.2 The contract manager shall enter an estimate of the increase or reduction in cost arising out of the variation.

8.4.3 Variations on contracts where the original contract sum or approved budgetary expenditure was £10,000 or more must be reported to the appropriate contract decision maker if the variation

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necessitates an increase of £5,000 or 2% above the approved budget/contract sum whichever is the greater.

8.5 Construction Industry Scheme

8.5.1 Under the Income and Corporation Taxes Act 1988 as amended, any contractor working for the Council is deemed to be a sub-contractor and payments to him or her must be made after deduction of tax unless exempt. A schedule of exempt contractors is maintained by the Section 151 Officer who must be notified of any additions.

8.5.2 The contractor should be asked for production of a current exemption certificate or certifying document as appropriate showing that payments may be made without tax deduction.

8.5.3 The invoice or payment certificate must be marked to show:

8.5.3.1 The date of expiry of the exemption.

8.5.3.2 A split showing the value of labour and materials included in the payment.

8.5.4 The duly certified invoice or payment certificate should then be forwarded to Financial Services in sufficient time to enable payment to be made in accordance with the contract, and any tax to be deducted as appropriate.

8.6 Final certificates

8.6.1 Subject to the conditions of contract, the Section 151 Officer has the right to review a statement/final account, together with any supporting documentation relating to prime costs, provisional sums, additions, deletions and variations, before the final certificate is authorised for payment.

8.6.2 Statements/final accounts for all other contracts must be retained by the Group Manager of the procuring service and made available for inspection by the Section 151 Officer for a period of six years plus the current financial year.

8.6.3 The final ascertained cost of all building and construction works contracts shall be reported by the Section 151 Officer to the appropriate contract decision maker.

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APPENDICES

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APPENDIX ONE TENDER REQUISITION FORM

Question	Response	
Part A to be completed for all tenders		
Tender name		
Procurement reference		
Client officer name / title		
Department / Team		
Type of requirement <i>(delete as appropriate)</i>	Supplies/ Services/ Works/Services & Supply/Supply & Works /Services & Works	
Proposed contract term		
Estimated contract value		(e.g. annual value x years of contract)
OJEU or non-OJEU		
Tendering Procedure <i>(delete as appropriate)</i>	Open / Restricted / Negotiated / Competitive dialogue / require advice	
Budget & cost centres	Annual budget	Cost Centre(s)
	Checked & approved by Finance	
Is contract: <i>(delete as appropriate)</i>	Re-tendering of existing contract; or; A new requirement	End date of existing contract (if applicable)
Description of the contract requirement		
Authority required <i>(delete as appropriate)</i>	Council / Cabinet / Portfolio Holder Decision/ Officer Delegation to Assistant Director	
Which priorities in the corporate plan best fits with this contract? <i>(delete as appropriate)</i>	Safe & Clean Environment / Community Capacity / Regeneration / Dacorum Delivers / Affordable Housing	
If an existing contract – what is the condition of its performance	Performing excellently / Performing well / Average / Has Difficulties / Poorly performing / Requires fundamental change	
If contract performance is 'average', 'has difficulties', 'poorly performing' or 'requires fundamental change', what key factors need to be taken into account when tendering this requirement		
If existing service or works contract, please confirm if you have asked present supplier if TUPE will apply	YES / NO	If NO please state reason why it does not apply:

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Do the current insurance thresholds apply to this contract? Public Liability - £5 million Employers Liability - £5 million	YES / NO .	If NO give the thresholds required
Is Profession Indemnity Insurance required? Current threshold of £2 million?	YES / NO	If a higher/lower value required – state value here.
Is any additional cover required? E.g. warranties, guarantees, liquidated damages, specialist insurance.	YES / NO	If YES, state here or include in specification.
Are there any health & safety implications arising from this procurement?	YES / NO. If YES, please state how these will be addressed	
Is this a complex procurement? E.g. includes one or more of the following: significant value, staffing implications, high impact in the event of failure, requires significant client function	YES / NO If YES then you will also need to complete Part B of tender requisition form.	
Is there any other relevant information you would like to make procurement aware of?		
Client Officers approval to proceed		
Date sent to procurement		
Attach your specification or draft tender documents and send to Procurement		

Procurement use only		

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Part B to be completed for complex procurements.		
When reviewing the requirement please state if the following has been taken into account:		
Have option appraisal categories as set out in the Standing Orders been completed?		
(If this is a service contract) has consideration been given to the proposed requirements of the specification and how improvements can be made to the economic, social and environmental well-being of the DBC area (i.e. Social Value)	Please give brief details of your decision:	
(If this is a service contract), has consultation with stakeholders and other public sector organisations been completed to assess the Social Value requirements of the DBC area in connection with the service?	Please give brief details of your decision:	
Is the service provider for the current contract	In-house / Outsourced / New requirement	
Who will manage the contract after it has been awarded?		
Is a dedicated client unit needed? Are costs for this already included in revenues budget?	YES / NO If YES, are costs for this already included in revenues budget?	
Do any human resources implications arise from the proposed procurement?		
Do any legal implications arise from the proposed procurement?		
Do any financial implications arise from the proposed procurement?		
Has an equalities impact assessment been completed?		
What environmental considerations need to be taken?		
Are there any sustainability implications?		
Has a Project Initiation Document (PID) been produced?	YES / NO	
Has a Business Case been produced for this requirement?	YES / NO	
Attach a copy of your Business Case & PID to the tender requisition and send to Procurement.		

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APPENDIX TWO **POLICIES, STRATEGIES & LEGISLATION.**

The following strategies, policies, legislation and documents must be considered during the commissioning process.

Public Services Social Value Act 2012

https://www.google.co.uk/url?q=http://www.legislation.gov.uk/ukpga/2012/3/enacted&sa=U&ei=CxB2U6_IM8fjPKGbgeAL&ved=0CB4QFjAA&usg=AFQjCNHzhaRK6bRIWmMmMsTeF4KmbGlup5A

Children & Young People Safeguarding Policy & Procedures 2011-2014

<http://www.dacorum.gov.uk/docs/default-source/council-democracy/ejia---public-protection---childrens-services.pdf>

Corporate Plan

http://www.dacorum.gov.uk/docs/default-source/council-democracy/dacorum_corporateplan_web.pdf?sfvrsn=2

Equality & Diversity Policy

<http://www.dacorum.gov.uk/docs/default-source/council-democracy/equal-opportunities-policy-statement-.pdf?Status=Master&sfvrsn=0>

Sustainability

<http://www.dacorum.gov.uk/home/environment-street-care/sustainability>

Bribery Act 2010

<https://www.google.co.uk/url?q=http://www.legislation.gov.uk/ukpga/2010/23/contents&sa=U&ei=vRN2U8DsNIfB7AexIHgDQ&ved=0CCUQFjAB&usg=AFQjCNGGoHqPVibWHIG442rpFnINAqdt6g>

TUPE

http://www.acas.org.uk/media/pdf/l/1/9908-2901767-TSO-ACAS-TUPE_is_changing-ACCESSIBLE.pdf

Health and Safety at Work

https://www.google.co.uk/url?q=http://www.hse.gov.uk/legislation/hswa.htm&sa=U&ei=_BR2U_X1EoWJPfDXgGA&ved=0CC8QFjAA&usg=AFQjCNFewZ6PtdAc4afYxTBIY8YTqbt_A

Construction and Design Regulations

<https://www.google.co.uk/url?q=http://www.hse.gov.uk/construction/cdm.htm&sa=U&ei=qRR2U-DsLMaeO5vOgPAJ&ved=0CB4QFjAA&usg=AFQjCNGaIT6ZOZqiFmugQ1H9do6NKrklkA>

Financial Regulations

<http://www.dacorum.gov.uk/docs/default-source/council-democracy/dbc-financial-regulations-291111.pdf>

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Freedom of Information Act

<http://www.dacorum.gov.uk/home/open-data/freedom-of-information>

This is not an exhaustable list and other documents not listed here may be relevant to the particular service, supply or works you require.

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APPENDIX THREE **EUROPEAN UNION PROCUREMENT THRESHOLDS**

The E.U. procurement rules apply where the value of the contract exceeds the relevant thresholds. The thresholds change on a regular basis and so it is important to check the current values with the commissioning & procurement team.

The thresholds as at 1 January 2014 are:

Category	£ Sterling	Euro
Services	£172,514	€207,000
Supplies	£172,514	€207,000
Works	£4,332,012	€5,186,000

Please note that the thresholds are reviewed every two years and can go up as well as down: the next review is due in January 2016.

The 2014 EU Procurement Directives have been adopted by the EU institutions and were published in the Official Journal of the EU on 28 March 2014. They came into force on 17 April 2014. EU member states now have 2 years to implement them in national legislation.

The UK Government is aiming to transpose (implement) these directives quickly so that the UK can benefit as soon as possible from the improved flexibilities they offer.

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APPENDIX FOUR **TRANSPARENCY REQUIREMENTS**

The Local government transparency code 2014 can be found by clicking on the following link.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/308185/Local_Government_Transparency_Code_2014_Final.pdf

All local authorities will be required to publish as minimum:

1. Details of all invitation to tenders for contracts to require good and services valued over £5,000 on a quarterly basis.

The following details must be published:

- 1.1. title;
- 1.2. description of goods/services sought;
- 1.3. start, end & review dates);
- 1.4. the local authority department responsible.

2. Details of all contracts over the value of £5,000 on a quarterly basis, including for example purchase orders, framework agreements and legally enforceable agreements.

For each contract the following details must be published:

- 2.1. Reference number;
- 2.2. Title of agreement;
- 2.3. The local authority department responsible;
- 2.4. Description of the goods and/or services provided;
- 2.5. Supplier name & details;
- 2.6. The sum to be paid over the length of the contract;
- 2.7. The start, end & review dates;
- 2.8. Whether contract was result of quotation or tendered publicly;
- 2.9. Whether supplier is SME or Voluntary or Community sector organisation.

3. Tenders and/or Invitations to Quote;

Recommendation to place on Contracts Finder, as well as any other local portal every ITT or ITQ for goods and /or services over £10,000.

4. There is some flexibility on how the above information can be published and it can be:

- a) Published on a contract register; or
- b) The requirements can be met by publication of documents; e.g. contracts purchase orders, etc. that will include all the details required

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5. The following are discretionary recommendations:

Local authorities are encouraged to:

- 5.1. Publish information on contracts (in their entirety or a summary or sections that would be most useful to local people) over £5000;
- 5.2. Update all information on a monthly basis rather than quarterly.
- 5.3. Advertise **award** on Contracts finder
- 5.4. Publish a list of contracts expected to be let over the following year
- 5.5. Publish information disaggregated by voluntary & community sector category
- 5.6. Provide registration numbers for voluntary/community sector.

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APPENDIX FIVE

TERMS & CONDITIONS TO BE USED IN TENDER DOCUMENTATION.

Supplies: Please refer to the commissioning & procurement team for latest version of the terms & conditions for a supplies contract

Services: Please refer to the commissioning & procurement team for latest version of the terms & conditions for a services contract

Works: In accordance with the relevant JCT or NEC contract terms & conditions

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APPENDIX SIX

GLOSSARY OF TERMS

Agent

A person or organisation acting on behalf of the Council or on behalf of another organisation.

Award criteria

The criteria by which the successful Quotation or Tender is to be scored

Award procedure

The approval procedure for awarding a contract.

Bond

An insurance policy: if the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (sometimes 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.

Cabinet

The Council's Cabinet as defined in the Constitution.

Category Management

An ideal way to focus efforts and organise corporate spend and resources into specific spend categories in order to fully leverage purchasing decisions.

Section 151 Officer

The Director of Finance & Corporate Services or such other Officer as may be designated the Section 151 Officer by the Council.

Chief Officer

The Officers defined as such in the Constitution. A Chief Officer is also known as a Director and, for the purposes of these Standing Orders, the Chief Executive is also a Chief Officer.

Codes of Conduct

The codes regulating the conduct of officers and Members.

Committee

A committee which has power to make decisions for the Council, for example a joint committee with another local authority, but not an Overview & Scrutiny Committee.

Complex Procurement

Tendering exercises that:

- Have a strategic impact upon the delivery of services,
- Are critical to the Council's reputation,

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- Involve outsourcing significant functions where there are a number of disciplines involved, transfers of staffing, large annual payments and complexities that arise from the type of work or the condition the service is in when it is outsourced,
- Utilise the competitive dialogue or negotiated procedures.

Constitution

The constitutional document approved by the Council which:

- allocates powers and responsibility within the Council and between it and others
- delegate's authority to act to the Cabinet, Committees, Portfolio Holders and Officers
- regulates the behaviour of individuals and groups through
- rules of procedure, codes and protocols.

Consultant

Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.

Contract

The legally binding agreement to purchase or deliver services, supplies and works.

Contract or Client Officer

The Officer designated by the Chief Officer to deal with the contract in question.

Delegated Authority

Where authority to make a decision is granted to a specific officer.

Contracting Decision

Any of the following decisions:

- withdrawal of Invitation to Tender
- whom to invite to submit a Quotation or Tender Shortlisting
- award of contract
- any decision to terminate a contract.

Corporate Contract

A contract let by the Corporate Procurement Team to support the council's aim of achieving value for money as further defined in Appendix Two.

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EU procedures

The tendering procedures required by the EU procurement rules where the Total Value of the contract exceeds the EU threshold.

EU threshold

The contract value at which the EU procurement rules apply.

European Economic Area

The member states of the European Union and Norway, Iceland and Liechtenstein.

Financial Regulations

The Financial Regulations outlining officer responsibilities for financial matters issued by the Section 151 Officer in accordance with the Constitution.

Framework agreement

An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.

High profile

A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.

High risk

A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.

High value

A high-value purchase is where the value exceeds the EU threshold values.

Invitation to tender

Invitation to tender documents in the form required by these commissioning and procurement standing orders.

Key decision

Decisions that are defined as key decisions in the Constitution.

Line Manager

The Officer's immediate superior or the officer designated by the Chief Officer to exercise the role reserved to the line manager by these Standing Orders.

Most Economically Advantageous Tender (MEAT)

Award criteria that takes account of other criteria other than just price.

Monitoring Officer

The Head of Legal Services or such other Officer as may be designated the Monitoring Officer by the Council.

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Nominated suppliers and sub-contractors

Those persons specified in a main contract for the discharge of any part of that contract.

Non-commercial considerations

- The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').
- Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.
- Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.
- The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').
- The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.
- Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.
- Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support.
- Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959.
- Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.

Parent company guarantee

A contract which binds the parent of a subsidiary company as follows: if the subsidiary company fails to do what it has promised under a contract with the council, the council can require the parent company to do so instead.

Portfolio Holder

A member of the Cabinet to whom political responsibility is allocated in respect of specified functions.

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PH Decision Sheet

A report that must be produced for decisions that require a Portfolio Holder decision.

Pre-Qualification Questionnaire

Documentation that is used to request evidence of bidders capabilities.

Priority services

Those services required to be tendered as defined in the EU public procurement directives.

Procurement Strategy

The document setting out the Council's approach to procurement and key priorities for the next few years.

Quotation

A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender).

Relevant contract

Contracts to which Procurement Standing Orders apply

Selection Criteria

Criteria that is used to determine the scoring of a PQQ based upon the capability & financial assessment.

Selling to the Council Guide

The guidance note that supports the implementation of Procurement Standing Orders.

Short listing

The process of selecting Tenderers who are to be invited to quote or bid or to proceed to final evaluation.

Supervising officer

The Line Manager's immediate superior.

Tender

A Tenderer's proposal submitted in response to an Invitation to Tender.

Tenderer

Any person who asks or is invited to submit a Quotation or Tender.

Tender record log

The log kept by the Corporate Procurement Team to record details of Tenders.

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Total value

The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows:

- Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period
- Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months
- Where the contract is for an uncertain duration, by multiplying the monthly payment by 48
- For feasibility studies, the value of the scheme or contracts which may be awarded as a result
- For Nominated Suppliers and Sub-contractors, the total value shall be the value of that part of the main contract to be fulfilled by the Nominated Supplier or Sub-contractor.

Whole Life Costs

The total cost of ownership over the life of an asset or contract period.

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APPENDIX SEVEN **WRITING A BUSINESS CASE**

Please complete this template, including the Commercial Impact Assessment.

Business Case

Contract Name	
Contracting Officer	
Chief Officer	
Start Date of Contract	
Date Business Case Prepared	
Date Contract to be Advertised	

A. The Strategic Fit

Explain how the scope of the proposed project fits within the existing business and other strategies (where relevant e.g. IT, Evidence Based Decision Making etc.) of the Council;

Identify the service need and a compelling case for change, look at the existing (as-is) and forecast the future (to be) operational need of the organisation / Department/ service.

Minimum content needed for this section:

1. Description of the business need expressed as an outcome or output
2. The contribution to the DBC's business strategy
3. Objectives, why it is needed now
4. Key benefits to be realised
5. Key risks
6. Critical success factors and how they will be measured;
7. Main stakeholders.

Questions you should address:

- How well does the desired outcome support DBC's objectives and current priorities?
- If it is a poor fit, can the scope be changed?
- Is the project needed at all?
- Have the stakeholders made a commitment to the project?

2. Commercial Assessment

Outline the potential commercial arrangement.

Minimum content required for this section:

1. Proposed sourcing option, with rationale for its selection;
2. Key features of proposed commercial arrangements (e.g. contract terms, contract length, payment mechanisms and performance incentives);
3. The procurement approach/strategy with supporting rationale.
4. Completion of Appendix 1 (Commercial Impact Assessment).

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Questions you should address:

- What can the market provide (national, regionally, locally)
- Can funds be raised from grants, PFI etc
- Can value for money be obtained from the proposed sources (e.g. partners, suppliers)?
- If not, can the project be made attractive to a wider market?

3. Solution Provision

Documents the range of options that you have considered within the broad scope identified in response to DBC's existing and future business needs. You should aim to arrive at the optimum balance of cost, benefit and risk.

Minimum content needed for this section:

1. High level cost/benefit analysis of at least three options for meeting the business need;
2. Analysis of 'soft' benefits that cannot be quantified in financial terms; identify preferred option and any trade-offs.
3. Review resources required

Note that options appraisal should be carried out before selecting a preferred option.

Questions you should address:

- Has a wide range of options been explored?
- Have innovative approaches been considered and/or collaboration with others?
- If not, why not?
- Has the optimum balance of cost, benefit and risk been identified?
If not, what trade-offs need to be made e.g. foregoing some of the benefits
In order to keep costs within budget or taking considered risks to achieve more

4. The financial case

Assess the affordability and available funding.

Link proposed expenditure to available budget and existing commitments.

Minimum content for this section:

1. Statement of available funding
2. Broad estimates of projected whole-life cost of project, including dept. costs

Questions you should address:

- Can the required budget be obtained to deliver the whole project?
- If not, can the scope be reduced or delivered over a longer period?
- Could funding be sought from other sources?

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5. Project Management

Set out the project organisation and actions, which will be needed to support the achievement of the intended outcomes including procurement activity or the detailed study with existing providers.

Minimum content for this section:

1. high level plan for achieving the desired outcome, with key milestones and major dependencies (e.g. interface with other projects);
2. key roles, with named individual as the project's owner; outline contingency plans e.g. addressing failure to deliver service on time;
3. major risks identified and outline plan for addressing them; provider's plans for the same, as applicable, skills and experience required.

Questions you should address:

- Can this project be achieved within DBC's current capability and capacity?
- If not, how can the required capability be acquired?
- Can the risks be managed – e.g. scale, complexity, uncertainty?
- Does the scope or timescale need to change?

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Appendix 1 - Commercial Impact Assessment

Proposed Contract budget:

Proposed contract length:

New contract/ Renewal /Variation:

Contracting officers to enter the relevant answer

	Y(es)	N(o)	FTE's ¹
Q1. Does the budget exist for this procurement?			
Q2. Is there an overall net benefit to the Council?			
Q3. Will any "one-time costs" be recovered in 24-36 months?			
Q4. If a variation is it more than 10% of original value?			
Q5. If Q4=Y was this variation foreseen in the original OJEU ²			
Q6. Please estimate what resources Finance; HR; legal and Procurement will be require for the duration of the procurement			
a Finance staff be required			
b Legal staff be required			
c Procurement staff be required			
Q7. If Q1=N please say how funds will be secured {E.g. a capital bid will be made.}			

Agreed by

Name	
Signature	
Date	

¹ FTE = Full Time Equivalent number of staff.

² OJEU= Official Journal of the European Union.

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APPENDIX EIGHT MINIMUM INSURANCE THRESHOLDS

Supplies, services and works

Public liability	£5 million
Employers liability	£10 million
Professional indemnity	If required, £2 million
Products cover	If required - seek advice
Bonds etc	If required - seek advice

“If required - seek advice”

The “if required – seek advice” comment means that the extent of cover should relate to the specific contract and appropriate advice should be taken from:

- Insurance & Risk Manager
- Group Manager – Financial Services
- Assistant Director of Finance & Resources

Review

These thresholds are subject to change and may be updated from time to time.

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APPENDIX NINE SERVICE DELIVERY - OPTIONS APPRAISAL

When considering how services should be delivered, there are seven approaches that can be adopted. These are:

Withdraw from the activity

This is not likely to be possible for those services which the Council has a duty to provide (the majority of Council services fall into this category), although it may be possible to withdraw from aspects of these 'mandatory' services. It is clearly legally possible to withdraw from an activity where the service area is 'discretionary' rather than being required under a legal duty.

Improved in-house service

Where an improved in-house service is desired, there will need to be a plan setting out improvements and targets so that the service aspirations are achieved.

Joint commissioning

This involves joining with other local authorities or public bodies to jointly provide or purchase services. It can include delegation of powers to another authority, pooling of budgets, working with other government agencies or arrangements with non-profit organisations.

Market testing

This is where the Council subjects an in-house service to open competition with the market place.

Externalisation

This is where the Council subjects an in-house service to competitive tendering and does not allow an in-house bid, thereby securing future delivery by a third party.

Transfer

This includes circumstances where the Council's client role is passed to another organisation. This may be a not-for-profit organisation, such as a housing or community association or a public/private partnership such as joint venture company. In such cases, the Council sometimes retains a residual interest, eg. rights to nominate people to use the service, a seat on the board etc. Examples of transfers include: housing stock transfers, leisure centres etc.

Hybrid options

In reviewing a service or function, the Council must consider whether to break up activities currently treated as a single service or delivered through a single contract and, equally, to consider whether to amalgamate services currently delivered separately. Where a service includes a variety of different types of activity, the option most likely to deliver value for money may well be different for each of the activities.

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Options Appraisal

Options appraisals are the key to effectively evaluating and determining how services should be delivered. Each option will be appropriate in particular circumstances and some of the options can manifest themselves in different ways. The following tables set out when each option may be more, or less, appropriate. The bullet points are alternative reasons why the option may be more or less suitable; they are not checklists of conditions that must be met.

Withdrawal	
The Council decides that it should withdraw from providing a service or taking part in an activity.	
More suitable	<ul style="list-style-type: none"> ▪ Evidence of no need or demand for the service; ▪ Other providers can continue without intervention or support from the local authority; ▪ Costs of the service or activity considerably outweigh benefits; ▪ Service or activity makes no contribution to corporate objectives.
Less suitable	<ul style="list-style-type: none"> ▪ Doubts about the evidence; ▪ Uncertainty about whether the alternative providers do meet existing needs or demands; ▪ Potential for future service development.

Improved internal service management	
This is where the service is provided in-house. Management may be through traditional hierarchy, internal trading arrangements or service level agreements. The authority may involve or consult users in decisions about overall objectives and in monitoring service quality.	
More suitable	<ul style="list-style-type: none"> ▪ The existing internal service is, or is close to, meeting local targets and national standards; ▪ There is no supply market; ▪ Costs of externalisation are likely to be high; ▪ High impact if service fails.
Less suitable	<ul style="list-style-type: none"> ▪ Poor existing internal services; ▪ Need for external investment; ▪ Active, competitive, market with established suppliers; ▪ Service is easy to specify and monitor.

Joint commissioning	
This is where two or more public service organisations agree to commission or provide services together. There is no "client" or "contractor" and the organisations are jointly involved in management.	
More suitable	<ul style="list-style-type: none"> ▪ Services are provided from a single point; ▪ Participating organisations are willing to agree mutual objectives in the interests of the joint service; ▪ Financial and other risks can be shared on an equitable basis; ▪ Participating organisations do not have the wide range of expertise or sufficient resources to deal with all requests for service, but the volume of requests does not justify investment by each authority; ▪ Sharing resources, staff, etc. will produce significant economies and improve quality; ▪ All participating organisations require the same, or very similar service; ▪ Clear lines of responsibility and accountability can be established.
Less suitable	<ul style="list-style-type: none"> ▪ Organisational identities and imperatives are more important than a seamless service; ▪ There are no obvious and willing partners; ▪ Legal constraints cannot be overcome.

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Market testing	
The in-house organisation competes with external service providers to win the work. This is the same as "voluntary competitive tendering".	
More suitable	<ul style="list-style-type: none"> ▪ The pressure of competition is necessary to ensure improvements or clarity of definition in in-house performance; ▪ There is an active and competitive supply market; ▪ The service is easy to specify and monitor; ▪ A new service area is being developed where there is the possibility of both in-house provision and the use of external provision; ▪ In-house performance can be benchmarked against competition.
Less suitable	<ul style="list-style-type: none"> ▪ Potential suppliers likely to suspect the authority is "going through the motions" and not bid; ▪ In-house team are unlikely to be able to make the improvements necessary; ▪ The costs of preparing for competition (both client and contractor) outweigh benefits; ▪ The authority's service objectives go beyond a simple cost calculation; ▪ The in-house team has no real chance of winning; ▪ Market testing is suggested as a last ditch effort to avoid externalisation.

Externalisation - Third party contractor	
Service is provided by external organisations that compete to do the work. Management is conducted through the specification, which sets out the work to be done, and the contract conditions that form the basis of the relationship between client and service provider.	
More suitable	<ul style="list-style-type: none"> ▪ Poor existing internal services, or new services where internal supply is thought inappropriate; ▪ There will be a clear client / contractor relationship; ▪ There is an active, competitive market with established suppliers; ▪ Benefits of using the market outweigh the costs; ▪ Service is easy to specify and monitor.
Less suitable	<ul style="list-style-type: none"> ▪ Internal service management is demonstrably delivering value for money; ▪ Opportunists or monopolists dominate the market; ▪ The authority's service objectives go beyond a simple cost calculation; ▪ Service is difficult to specify and monitor; ▪ Other methods of provision offer better value.

Externalisation - Partnership	
This is where there is a contract which is supplemented by a formal 'partnership' arrangement. The services are supplied through a contract that places greater emphasis on shared objectives and on the relationship with the supplier. These arrangements are also referred to as 'partnering arrangements'.	
More suitable	<ul style="list-style-type: none"> ▪ The service is difficult to specify and monitor; ▪ The authority wants to work with an organisation it can 'do business with' rather than one that just 'does the business'; ▪ It is possible to agree on a programme of future innovation; ▪ There is a high level of mutual trust between authority and suppliers; ▪ External suppliers can offer savings, innovation, or other benefits that cannot be found in-house.
Less suitable	<ul style="list-style-type: none"> ▪ Opportunists dominate the market; ▪ The service is easy to specify and monitor; ▪ In-house supply is more likely to deliver best value; ▪ The authority's main objective is to achieve savings.

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Transfer	
<p>This is where the Council ceases to be the 'client'. That role is taken over by another organisation. This may be a residents' association, community group, charity, co-operative or trust. The authority may still have a residual role, for example, a seat on the board, nominating people for services; grant aid or by subsidising service delivery to the public.</p>	
More suitable	<ul style="list-style-type: none"> ▪ The activities of, or services provided by, the organisation fit with the council's overall objectives; ▪ The local authority and other organisations agree on the level of accountability required; ▪ Community groups already exist or are being formed; ▪ Services are provided to the community or the community and individuals make a contribution to the service; ▪ Community groups have, or can be trained in, necessary management skills; ▪ The authority has a commitment to community development and the involvement of communities in service management; ▪ Organisational independence is necessary to ensure users' trust or 'ownership' of the service or activity. ▪ Where transfer offers advantages financially or in other ways by means of the legal standing of another organisation, for example, a trust.
Less suitable	<ul style="list-style-type: none"> ▪ The Council has clear service objectives that it wants to achieve; ▪ The service is significant (in financial or operational terms) and needs close management, specification, and monitoring; ▪ Personal or highly regulated services; ▪ It would be more appropriate (in line with Value for Money and the Council's policies) to make contracts, or partnering arrangements, with local or community businesses; ▪ There is little, or no, community interest in service management and delivery; ▪ There is an active supply market and no policy gain can be made by transfer

Hybrid options	
<p>This is where the Council decides that no single option is appropriate. The service includes a variety of different types of activity, or the "Value for Money" tests applied to different parts of the service come up with different answers.</p>	
More suitable	<ul style="list-style-type: none"> ▪ A 'service' is made of discrete aspects that have different Value for Money tests applied to them; ▪ Areas of excellence exist side-by-side with services that need considerable improvement; ▪ Different elements make clearly different contributions to overall service delivery and value for money; ▪ There is a wide range of user needs which are best met in different ways; ▪ External resources can most effectively be used to support in-house services rather than competing with them; ▪ Evidence from the review is equivocal.
Less suitable	<ul style="list-style-type: none"> ▪ The service is easy to specify and monitor; ▪ The service is a clearly definable single service; ▪ The service is made up of so many separate elements that a hybrid approach could lead to an unmanageable complexity of contracts, agreements, and inter-dependencies; ▪ Economy and effectiveness are served best by a single service delivery organisation.

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Making the decision	
The following questions should be asked.	
What is the gap between:	<ul style="list-style-type: none"> ▪ what we want to achieve and what we are achieving? ▪ what we want to achieve and users' needs? ▪ our performance and national standards? ▪ our performance and both local and national targets? ▪ our performance and that of others? ▪ how we do things and how stakeholders want us to do them? ▪ how we do things and how others do them? ▪ our competitiveness and that of others?
What are the trends?	<ul style="list-style-type: none"> ▪ Are we getting better or worse? ▪ Where will we be in five years time if we continue with current service management and delivery methods? ▪ Are failures in current performance due to trade-offs in longer-term plans?
What kind of gap is it?	<ul style="list-style-type: none"> ▪ Is it significant or insignificant? ▪ What do stakeholders think about the gap? ▪ Are we doing the right thing (specification)? ▪ Are we doing things right (management and delivery)? ▪ Can we measure the gap in terms of efficiency, economy, or effectiveness?

What other organisations have to offer	
There are a number of issues that need to be taken into account when considering an alternative provider. These include:	
Economies of scale	<ul style="list-style-type: none"> ▪ Where an organisation can spread overhead costs through a wider customer base to produce as good (or better) levels of service at a lower unit cost.
Economies of scope	<ul style="list-style-type: none"> ▪ Where an organisation has specialist skills and expertise that the existing supplier cannot afford. This dedicated expertise can be used more effectively to deliver a high standard of service at an economical cost.
Innovation	<ul style="list-style-type: none"> ▪ Where an organisation has a way of doing things that is now a prerequisite for a service and which the existing supplier cannot duplicate within an acceptable time-scale.
Access to capital	<ul style="list-style-type: none"> ▪ Where an organisation can provide the necessary investment in capital assets in order to ensure the delivery of best value services. Within the legal context of local government, restrictions on borrowing may suggest this option.

Managing uncertainty

A degree of uncertainty always exists between objectives and the service delivery mechanisms used to deliver them. It is important that the contractor does what they are supposed to do. However, where there is uncertainty because of the nature of the requirement, environment or otherwise, the more likely that in-house service provision or a modified contractual relationship may sustain better value for money.

The following grid is an example of how uncertainty in the service can lead to conclusions about the appropriate approach to service delivery.

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	Certainty	Mixed	Uncertainty
Service	<ul style="list-style-type: none"> ▪ Service is easy to specify ▪ Service delivery is easy to monitor ▪ Continuous or regular monitoring ▪ Unambiguous tests of success or failure 	<ul style="list-style-type: none"> ▪ Some elements easy to specify ▪ Some elements easy to monitor 	<ul style="list-style-type: none"> ▪ Service is difficult to specify ▪ Service is difficult to monitor ▪ Ad-hoc or partial monitoring ▪ Subjective tests of success or failure
Relationship	<ul style="list-style-type: none"> ▪ Contract with outside supplier ▪ Competition to find the cheapest supplier ▪ Focus on the supplier's efficiency ▪ Contractors involvement limited to the contracted service 	<ul style="list-style-type: none"> ▪ Modified contract relationships: ▪ Partnerships or relational contracts: ▪ Competition takes account of both cost and quality ▪ Open-book approaches to information ▪ Authority puts policy objectives alongside service objectives 	<ul style="list-style-type: none"> ▪ Hierarchy, rules and instructions ▪ Competition is based on individual competence ▪ Management through a mixture of control and co-ordination ▪ Employer and employee are inter-dependent

Selecting the correct option

The process of selecting the correct option for service delivery is key to the successful delivery of the Council's aims and objectives. Whatever solution is considered, the rationale shall be set out in the Tender Requisition Form which is a requirement within Procurement Standing Orders for all procurements that exceed £10,000 in value and be reviewed in the context of the Council's:

Policy Framework

- Corporate Plan
- Sustainable Community Strategy
- Medium Term Financial Strategy
- Capital Strategy
- Asset Management Plan
- Commissioning & Procurement Strategy

Governance framework

- The Constitution (including delegated authorities)
- Financial Regulations
- Commissioning & Procurement Standing Orders

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APPENDIX TEN REQUEST FOR QUOTATION

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APPENDIX ELEVEN CHANGE CONTROL OF AMENDMENTS

Changes		Cabinet review	Council resolution
1	Adoption		
2			
3			
4			
5			