Appendix 3

Guidance on Company Financial Health Checks and Profit Warnings

(a) Prior to entering into a contract

For high value procurements (above £181,302) commissioners must use the Standard Selection Questionnaire (SSQ) as part of the tender documents, and require tenderers to provide information to determine whether a Contractor has adequate financial standing prior to any contract being awarded. In this regard:

- Annual Turnover should be at least 2 times larger than the annual estimated contract value (or where appropriate the maximum exposure the Council is prepared to accept).
- The net worth quoted on the latest year of the balance sheet should be positive.
- There should be technical/historical evidence that the organisation has successfully delivered projects of a similar scope and value to the advertised contract.
- Credit safe check is carried out to obtain an independent credit rating of the Contractor (if rating is low then further analysis may be undertaken by the Commercial Team within PACS).

For procurements below the above threshold, any questions around financial viability must be proportionate to the contract value and it may be that financial information will only be required for such procurements in exceptional cases. Commissioners should consult with Procurement & Commercial Services (**PACS**) to determine what may be proportionate on a case by case basis.

If the outcome of these checks is that there are **no financial issues** then the contract can be awarded to the successful bidder.

If the outcome of these checks is that, or any other information is received which suggests that, there may be some **serious financial concerns** or even **medium financial concerns** due consideration should be given as to the appropriateness of awarding a contract to the relevant tenderer.

Commissioners **must** consult with PACS to determine the appropriate approach on a case by case basis prior to any contract award decision being made.

Options may include:

- Not to award the contract to the relevant tenderer (and to either award to the runner-up or re-procure); or
- Award the contract to the relevant tenderer, but put in place appropriate mitigation measures. These may include:
  - Requiring performance or insolvency Bonds to secure payment if there is a default (a prudent approach being to require bonds for all contracts with a value of £10m or higher).
  - Requiring a Parent Company Guarantee, personal guarantee or other guarantee from a party of sufficient financial standing.
  - Requiring Collateral Warranties creating a direct link to sub-contractors, and consideration of the extent to which work is sub-contracted (can the contract be "rescued" by stepping into sub-contracting arrangements).
  - Requiring appropriate insurances to be put in place, with the Council as a named party.
  - Only paying for work satisfactorily completed on site.
  - Only paying for off-site goods in exceptional circumstances and with arrangements in place to ensure that the Council owns the off-site goods it has paid for, and appropriately monitors such arrangements (including appropriate labelling and quantities).

- Enforcing Contract terms and monitoring to ensure that the main contractor pays subcontractors within 30 days (failure to pay sub-contractors on time can be a clear warning of financial distress).

In addition, the Council's suite of standard contracts and standard construction contract amendments (which include a number of mitigations to protect the Council in the instance of financial distress of a contractor) should be used other than in exceptional circumstances.

Commissioners should consult with PACS for advice as to the specific contractual protections that may be put in place, and to consider what the most appropriate approach to mitigating insolvency risk is for a particular contract, on a case by case basis.

(b) During the Contact Period

To mitigate against financial distress of a contractor during the contract period it is the responsibility of contract management staff within the services to monitor the company during the contact period as per Contract Procedure Rule (CPR) 20 and to use appropriate Contract Management Plans. Contract Management Plans will be scaled to provide for appropriate levels of monitoring proportionate to the particular contract. This may include regular financial checks. Commissioners and contract managers should consult with PACS for advice when drafting Contract Management Plans, and refer to the guidance available.

If at any stage during the contract period there are serious concerns around high risk/high value contracts contract managers should immediately consult with PACS.

Additional financial checks can be completed by PACS as and when issues become known or otherwise upon request.

In the event that there are found to be financial concerns over a contractor, contract managers must consult with PACS to consider appropriate mitigation strategies (including enforcing relevant contractual rights, or increasing monitoring/making additional enquiries) and any other mitigation measures which may be appropriate to put in place (including those referred to in section (a), above).