

Procurement update report: Contracts, Terms & Conditions and Contract Monitoring

Date: 20th June 2022

Report of: Director of Resources

Report to: Scrutiny Board (Strategy and Resources)

Will the decision be open for call in? Yes No

Does the report contain confidential or exempt information? Yes No

What is this report about?

- Following a request by the Scrutiny Board (Strategy and Resources), this report provides information on the procurement processes to be followed when the Council procures contracts for goods, works or services; the terms and conditions upon which those contracts are entered into; and the Council's approach to contract management and performance monitoring (including the tools available to address under-performance).
- The Council's procurement function supports the Council's Best City ambition of "Strong Economy and a Compassionate City". The goods, works and services we choose to buy and commission, the suppliers we select, the influential relationships we maintain with those suppliers, and the commercial opportunities we offer can strengthen the local economy and improve the wellbeing of local people. They also help the Council to be an efficient and enterprising organisation, and ensure we make the best use of our resources. Further, the terms and conditions upon which contracts are entered into support the Council's Best Council ambitions by seeking to deliver effective partnership working and commissioning through robust contract management, resulting in high quality and locally integrated public services, supporting those most in need, engaging with communities and individuals, and making the best use of our resources.

Recommendations

Members are recommended to note the contents of this report.

Why is the proposal being put forward?

- 1 This report provides an overview of the procurement processes to be followed when procuring goods, works or services, and specifically addresses the processes followed for establishing terms and conditions within contracts, contract management and performance monitoring and the tools available to address under-performance.
- 2 Members are asked to consider the ongoing work to maintain effective contracts tools and guidance, and note the contents of this report.

What impact will this proposal have?

Wards affected:

Have ward members been consulted? Yes No

- 3 The Council is required by law to have Contract Procedure Rules (**CPRs**) in relation to contracts entered into by it for the supply of goods, works or services. Every contract entered into by the Council, or any extension/variation to a contract, must be in accordance with the Council's constitution (including the CPRs, the Council's Financial Procedure Rules, decision making rules and schemes of delegation).
- 4 The CPRs (and wider related constitutional controls) promote good purchasing practice, provide public accountability and deter corruption. They lay down minimum requirements which, if followed by officers, provide the best defence against allegations that a procurement exercise has been carried out incorrectly or fraudulently.
- 5 Each directorate is accountable for the procurements that they need in order to secure the outcomes they are responsible for. Procurement and Commercial Services (**PACS**) is responsible for setting, supporting and monitoring the Council's policies and procedures for procurement and purchasing, and provides direct professional support to complex procurement activity.
- 6 Depending on how much is being spent (total contract value) there are different rules that must be followed and the basic steps to be taken at each threshold are set out at Appendix 1 (attached).

Contract terms and conditions

- 7 Under the CPRs tenders must be invited, and contracts entered into, on the Council's standard terms and conditions, although:
 - a) industry standard terms and conditions are permitted for particular contracts (e.g. PFI, IT and construction (JCT or NEC)), as the Council's terms and conditions are not suitable. PACS must be consulted as to the most appropriate standard form agreement to use;
 - b) Third Party Framework Agreement terms and conditions may be utilised where approved in writing by PACS (a list of pre-agreed frameworks is retained); or
 - c) On an exception basis, bespoke terms and conditions may be agreed, subject to approval in writing from PACS.

Contract Levers

- 8 This section focuses on levers to incentivise proper performance of the contract throughout its term and identifies key remedies for under-performance contained within the Council's standard terms and conditions. Broadly equivalent provisions will be contained in other forms of third party contract, such industry standard contracts (e.g. NEC/JCT construction contracts) and framework agreements set up by other public bodies (e.g. Crown Commercial Services, Yorkshire Purchasing Organisation etc). On an exceptional basis, it may be necessary to enter into arrangements that do not contain protections such as these however that should be identified at the time and be a matter for consideration as part of the decision-making process.

- 9 The Council's standard terms and conditions contain (in particular) the following provisions:
- Indemnities – These oblige the contractor to pay the council an identified loss as a result of a specific breach of contract (e.g. breach of third party copyright, human rights, data protection, anti-slavery/human trafficking etc).
 - Performance management – These provisions require the contractor to (amongst other things) deliver the contract:
 - in accordance with the Council's requirements as set out in the Specification;
 - using the best applicable techniques and standards, and reasonable care, skill and diligence;
 - in accordance with the law;
 - in accordance with good industry practice;
 - in accordance with any quality standards set out in the contract;
 - Liquidated Damages – under certain contracts, the Council will be able to establish a genuine pre-estimate of the Council's losses should there be late or non-delivery by the contractor (**Liquidated Damages**). Where Liquidated Damages can be assessed, provisions may be applied which allow for the recovery by the Council of the specified sum should the contractor delay/fail to deliver.

The Liquidated Damages regime is used in particular where there is a failure to deliver Social Value commitments. In the first instance, if the contractor does not achieve its Social Value commitments, the Council will work with the contractor to determine whether alternative acceptable Social Value can be delivered or an equivalent value. If not, the Council may impose Liquidated Damages as set out in the contract (equivalent to proxy values ascribed to the Social Value commitments during the bid evaluation).
 - Remedies in the event of inadequate performance – If the Council reasonably believes that performance of any part of the contract does not meet the requirements of the contract or differs in any way from those requirements, the contractor is obliged at its own expense to re-schedule and perform the contract within such reasonable time as may be specified by the Council. The Council may recover cost/expenses arising as a consequence of the supply or late supply by the contractor, and also expenses, wasted costs, or additional costs of procurement arising from a default. In addition, if the contractor commits a material default the council is at liberty to terminate the contract or terminate it in respect of the particular breach only. The Council may also exercise "self help" provisions, by procuring the services elsewhere. There is also an option for contracts to include break provisions allowing for termination within fixed time periods, exercisable at the Council's discretion and further mitigating risk of poor performance.
 - Insurance – In order to ensure that contractors are able to stand behind their contractual commitments, checks as to their financial viability are undertaken during the procurement stage and also on an ad hoc basis during the term of the contract. However, as further assurance, contractors are obliged to maintain specific insurances to fixed minimal cover values (e.g. public liability insurance, employers liability insurance, (if relevant) professional indemnity insurance, and (if relevant) construction related insurances).
 - Limitation of liability – No limits may be placed on liability for death, personal injury, fraud, warranties/representations or in respect of various indemnities (see above). However, from a value for money perspective, contractors are permitted to limit other potential liabilities to pre-agreed values set out in the contract. Each contract is assessed on a case-by-case basis to determine what the appropriate level should be, and PACS have produced the guidance attached at Appendix 2 to assist the procuring officer in such regard. Please note the levels of liability incorporated into these clauses are for illustrative purposes only.
 - Dispute Resolution – Disputes may be escalated by either party through the dispute resolution procedure (initially escalation to senior officers, and then to for third party mediation/adjudication or to the courts).

Contract Management

- 10 Contract management and procurement work hand in hand throughout the lifecycle of a contract. Contract management arrangements should be considered during the procurement of a contract to ensure that the Council's requirements are clear and deliverable. In order to assist directorates in such consideration and the future management of their contracts, a template Contract Management Plan attached (see Appendix 3) is required to be used for all contracts (though a single Contract Management Plan may be used for more than one contract – e.g. where a directorate has a number of similar relatively low value contracts).
- 11 Following award, contract management ought to ensure adherence to these requirements and delivery of the expected outputs, regularly review whether contractual obligations are continuing to respond to the Council's changing requirements, and also inform the requirements of a future procurement. Good contract management can provide many benefits, including:
- the identification and realisation of financial savings, continually ensuring that contracts respond to the Council's changing requirements;
 - the delivery of desired outputs including the provision of quality services to the Council and community;
 - the development of service specifications by identifying and encouraging innovation and industry best practice;
 - the avoidance of costs and other issues which might otherwise have arisen;
 - ensuring that actual spend accords with budgets, or any over/underspend is monitored and managed.
- 12 On the other hand, research by the International Association for Contract and Commercial Management shows that poor contract management can cost as much as 9% p.a. In short - without appropriate contract management the Council may not get what is being paid for, and opportunities to realise greater efficiencies/outputs are being missed.
- 13 Under CPRs, responsibility for contract management rests with the relevant directorates, though support is provided from PACS and legal services as and when required. However, one of the recommendations of the recent LGA Peer Review of procurement in the Council was: "Ensure there is a Leeds-wide approach to contract management and commercial, leveraging the good skills which exist in areas like the PFI team."

Contract Management Best Practice - What is being done

- 14 There are currently two main initiatives under development in response to the LGA Peer Review recommendation which relate directly to improving contract management across the Council in the medium term. These are:
- a) Contract Management System – A Contract Management module will shortly be made available on YORTender3 that will be compulsory to complete and use for new contracts being awarded via YORTender3 (i.e. all contracts valued above £10,000), and applied to existing contracts in accordance with a prioritisation path. The Contract Management module will act as a basic Contract Management Plan - requiring consideration of how the contract will operate in practice in order to ensure that our requirements are deliverable, and identifying key contract information (though for contracts valued over £100k a more detailed Contract Management Plan will still be required). It will also act as a high level contract management tool, for example scheduling dates for review and providing high-level contract information to support management reporting (including identifying under-performance, reviewing any changes to requirements/opportunities for efficiency, and comparison of actual spend v budget).

As part of the wider CBT programme, contract management systems to support delivery of more complex contracts will be assessed for suitability, with the objective of

identifying a system which can gather and provide access to useful data whilst linking in with other Council systems (YORtender, FMS, PM Lite etc).

- b) Contract Management Best Practice Ambition - This initiative is currently under development within PACS, and its purpose is to review existing best practice in contract management across the Council, and elsewhere (for example Local Government: Making savings from contract management), and look at how this can be replicated across all contracts.

It includes:

- a) reviewing the Councils scheme of delegation to expressly delegate responsibility for setting, supporting and monitoring contract management to the Director of Resources;
- b) developing and embedding: i) a contract management skills framework (identifying the competencies needed to manage contracts of varying levels of complexity); ii) proportionate training; iii) best practice guidance/documents; and
- c) delivering additional corporate resource to support development of commercial skills and contract management in directorates.

What consultation and engagement has taken place?

15 CPRs are reviewed annually and this involves wide consultation involving commissioners, Internal Audit and Corporate Governance. This year's review is currently underway. In addition, the standard terms and conditions and tender documents are updated as and when required to reflect legislation and current procurement practices, most notably following the publication of a Public Procurement Policy note issued by the government from time to time.

16 Regular consultation and engagement with the Executive Member takes place, and an annual procurement assurance report is provided to Corporate Governance and Audit Committee.

What are the resource implications?

17 The procurement systems and processes in place, along with the adoption of appropriate terms and conditions and robust contract management activity represent an appropriate use of resources and achieve good value for money. However, the CBT programme presents an opportunity to consider more efficient use of technology and to ensure processes are also efficient. As regards contract management, additional corporate resource will be required to support directorates and ensure that best practice is being applied across the Council, however this will be subject to provision of a business case in such regard in due course.

18 Note comments at paragraph 25 in respect of the additional resource likely to be required in order to implement new procurement regulations anticipated to be operational in 2023.

What are the legal implications?

19 The annual review and refresh of the council's CPRs and procurement processes ensures that they are fit for purpose with a view to improving compliance as well as efficiency. Similarly, having robust terms and conditions of contract and improving contract management arrangements across the Council will also deliver benefits from a governance and compliance perspective.

20 This report is not eligible for call-in.

What are the key risks and how are they being managed?

21 The systems and processes that form part of the Council's procurement framework (including the creation of robust terms and conditions) are currently functioning well, however the CBT programme presents an opportunity to review them to ensure that they are operating most efficiently.

- 22 One of the Resources directorate risks relates to risk of procurement challenge. However, it must be noted that there have been no formal challenges to procurement activity in the year to date, and work is continually undertaken to ensure the tender evaluation guidance is embedded through training and monitoring. Risks in relation to the procurement and operation of specific contracts are reported monthly to the City Solicitor, and are also subject to escalation within relevant directorates.
- 23 The major current risk is in relation to price inflation. The Council's policy is for the vast majority of fixed term contracts to be subject to a firm fixed price. Suppliers are increasingly seeking to challenge this by asking for price increases during the term or in the more extreme cases intimating they will terminate their service.
- 24 The Council will need to stay alert to new legislation introduced by the Government (the **Procurement Bill**) to implement a reformed public procurement regime that is anticipated to come into effect in 2023. The procurement law reform outlined in the Procurement Bill will apply to all public bodies, including local authorities. While aspects of the Procurement Bill seek to provide greater procurement flexibility, the Procurement Bill also looks to introduce significant additional obligations on many aspects of public procurement, including enhanced transparency requirements. The Council will need to manage this risk by ensuring it has adequate resources to fulfil the new transparency requirements, and training and upskilling officers responsible for procurement.

Does this proposal support the council's three Key Pillars?

- Inclusive Growth Health and Wellbeing Climate Emergency

- 25 The Council's procurement function ensures that the Council is able to deliver the council's three Key Pillars.
- 26 Effective procurement activity supports the Council's ambitions of a strong economy and a compassionate city, and individual procurements support most/all of the Council's priorities and breakthrough projects.

Options, timescales and measuring success

What other options were considered?

- 27 No other options have been considered.

How will success be measured?

- 28 Success will be measured against "best practice", and the number of procurement challenges and contract disputes received. In addition, the new Contract Management module will for the first time allow for monitoring of key aspects of contract performance across all contracts valued above £10,000. Having robust contract terms and conditions and contract management processes in place will contribute to the Council's financial challenge savings

What is the timetable for implementation?

- 29 The processes referred to in this report are already in place.

Appendices

- 30 Appendix 1 - Procurement process followed based on contract value
- 31 Appendix 2 – Guidance to setting liability limits
- 32 Appendix 3 – Contract Management Plan

Background papers

33 None

Appendix 1

Procurement process followed based on contract value

The Process

Prior to undertaking any procurement activity there is a requirement to assess the actual need and the procuring officer must go through a number of stages including consultation with users and establishing a business case etc. Each Directorate should have a process to address this. The decision to procure goods, works or services will be based on a number of factors including the best means of satisfying the need and the course of action that represents best value for money to the council and part of that consideration should be the use of in-house providers.

Where an officer determines that they wish to procure (buy) something they should work their way through the following steps.

Step 1

There is a requirement to consult with any Internal Service Provider (**ISP**) before seeking competition for goods, works or services (CPR 3.1.4). A list of all ISPs is available on InSite and the council's Financial Management System (**FMS**) which should always be checked by the procuring officer prior to undertaking any procurement activity to see if there is an ISP available. This is also a requirement before the procuring officer places an order via any feeder system (such as Orchard) to ensure that use of the ISP is always considered.

Only following consultation with an ISP may a decision be taken to procure an external provider rather than use an ISP. If the procuring officer and ISP disagree over a proposal not to use the ISP, this shall be escalated to senior officers with the final decision being with the director of the procuring directorate (in conjunction with the Director of Resources). This decision must be recorded in writing, along with the reasons for the decision in accordance with CPR 3.1.4 and sent to the Chief Officer - Financial Services for monitoring purposes

Step 2

If there is no ISP (or a decision has been taken not to use the ISP) the procuring officer must determine whether the procurement is subject to existing provider arrangements (i.e. an existing Council contract or third party framework agreement that the Council is entitled to access) and will use such arrangements if so.

A list of all available existing provider arrangements is available on the Council's FMS and the procuring officer should always check FMS prior to undertaking any procurement

Step 3

Where steps 1 and 2 have not produced any result and competition is sought for goods, works or services the procurement must be carried out in accordance with the following:

Total Contract Value	Procurement Options	Where we will Advertise
£0 - £25,000	<ul style="list-style-type: none">• Competition requirement - 3 tenders, including 2 local suppliers/3rd sector organisations if available.	<ul style="list-style-type: none">• Council department invites quotations from suppliers with all tenders in writing. Details of all expenditure above £5,000 will be published to Data Mill North

Total Contract Value	Procurement Options	Where we will Advertise
	<ul style="list-style-type: none"> • Can use Chief Officer discretion to contract with single supplier provided it demonstrates value for money or where considered genuinely no competition. A written record must be kept. • Use purchasing card for low value, low risk purchases wherever possible*. • Must consider opportunities for social value. 	<p>in order to comply with our transparency obligations.</p> <ul style="list-style-type: none"> • All invitations to tender over £10,000 will be placed on the Council's E-tendering System website and the Government's Contracts Finder website prior to the procurement exercise commencing. • Contract awards over £10K must be published on Council's E-tendering System and Contracts Finder websites.
£25,000 - £100,000	<ul style="list-style-type: none"> • Competition requirement - 3 tenders, including 2 local suppliers/3rd sector organisations if available. • Can use Chief Officer discretion to contract with single supplier where considered genuinely no competition. A written record must be kept. • Must consider opportunities for social value. 	<ul style="list-style-type: none"> • Council department invites tender from suppliers with all tenders in writing • All invitations to tender will be placed on the Council's E-tendering System website and the Contracts Finder website. • Contract awards to be published on the Council's E-tendering System website and the Contracts Finder website.
Over £100,000	<ul style="list-style-type: none"> • Competition requirement - 4 tenders, including 2 local suppliers/3rd sector organisations if available. • Can use Chief Officer discretion to contract with single supplier where considered genuinely no competition. A written record must be kept. • Must consider opportunities for social value via Social Value Portal. • Where appropriate thresholds met, must comply with Public Contracts Regulations 2015 (see below). • PACS advice and consultation must be sought. 	<p>All invitations to tender will be placed on the Council's E-tendering System website and the Contracts Finder website</p> <p>Adverts may also be placed on Find a Tender (over £118k).</p> <p>Contract awards to be published on the Council's E-tendering System website and the Contracts Finder website.</p>

Total Contract Value	Procurement Options	Where we will Advertise
Above relevant threshold set out in the Public Contracts Regulations 2015 (see table below)	<ul style="list-style-type: none"> • Full above threshold tender process in line with the Public Contracts Regulations 2015 with advert published on Find a Tender. • PACS advice and consultation must be sought. 	<p>All invitations to tender will be placed on the Council's E-tendering System website and the Contracts Finder website.</p> <p>Formal notice published on Find a Tender.</p> <p>Contract awards to be published on the Council's E-tendering System website, the Contracts Finder website and on Find a Tender where appropriate.</p>

The Public Contracts Regulations 2015

As the Council is a public sector body we have to comply with the Public Contracts Regulations 2015. The overriding principles are to ensure openness, transparency, fairness and equality of treatment.

We apply the above principles to all our buying and must follow the Public Contracts Regulations 2015 when the amount to be spent is above the thresholds set out below (latest thresholds from 1 January 2022 (inclusive of VAT¹)):

Works	Supplies & Services	Light Touch Regime Services
£5,336,937	£213,477	£663,540

Extensions/Variations

Once a Contract has expired it cannot be extended. A decision to extend a contract may only be taken if it is considered Best Value and this must be recorded in writing. PACS must be consulted if the extension is valued over £100k. The decision to extend must accord with normal decision making processes however a decision to extend a contract which exceeds the threshold of a Key Decision may be treated as a direct consequence of the initial decision to procure (and therefore a SOD) if it was in the contemplation of the decision maker at the time the initial decision to procure was taken.

Variations that materially affect or change the scope of the original contract are not allowed. PACS must be consulted if the variation relates to a high value Contract (over £100K), if it involves a change to the terms and conditions of the Contract, or if there is a material change to the contract.

¹ PPN 10/21 suggests, but is not prescriptive, that the default position for calculating VAT is to add an equal amount to the standard rate of VAT (currently 20%) to the contract estimation net amount. This would remove any problems of underestimating the contract value.

Appendix 2

Guidance to Setting Contractor Liability Limits

Introduction

Every commercial transaction carries a risk of liability.

Performance of the contract can give rise to a range of legal liabilities, including for example breach of contract, negligence, misrepresentation, infringement of intellectual property rights, breach of statutory duty, regulatory offences and defamation. In the absence of a limitation of liability clause, there is no financial limit on the damages a counter party can recover. Consequently, contractors will typically require that commercial contracts include some form of limitation, and that these limitations are both effective and enforceable. This document identifies the issues that should be considered to assist you in setting the right levels of liability and insurance in order provide appropriate protection for contractors to make sure contracts with the Council are commercially attractive/deliver value for money for the Council, while ensuring that adequate remedies for the Council in the event of contractor default.

You should seek appropriate advice from the Council's legal and insurance professionals who will assist you in reaching your decision. However, please note that whilst the solicitors in PACS and the Council's insurance manager will be happy to work with you in setting appropriate caps on liability and levels of insurance, these officers are not the authority on acceptability of caps on liability, it is a risk management matter for the service.

Issues to consider

Identifying the risks

In order to limit liability effectively you need to be aware of all of the possible risks associated with the particular scheme. As such, it is essential that the client undertakes a written risk assessment to ensure that appropriate levels of liability and insurance are set.

It is important to recognise that minimum levels of insurance and contractual limits of liability are distinct and need to be considered separately. When we set a minimum requirement of, for example, £5m for public liability insurance, that is definitely not a cap on liability, it is simply the amount of insurance we require a contractor to have before we will enter into a contract with them. The risk assessment undertaken may well establish limits on liability that are more, or less, than the required levels of insurance.

Commercial organisations should only be expected to take on levels of liability that are reasonable and proportionate to the risks and potential financial returns of the contract. Setting liabilities that are disproportionate to the relevant risks and rewards of the contract could lead to unintentional and excessive risk-taking, overly favour bidders with larger balance sheets and eventually reduce value for money. However, even with liability proportionate to the contract returns, the potential claims might cause financial failure for the contractor. Using insurance mitigates the issue of claims causing financial failure and provides the council certainty that at least the insurable risks have been transferred to, and are covered by, the contractor's insurer

A useful risk Identification template is included in the [Model Services Contract Guidance](#) (at page 76) developed by the Cabinet Office and the Government Legal Department, which is designed to provoke conversation about the risks specific to the client's requirement. There is also guidance on managing risk in the [Outsourcing Playbook](#) which may be useful.

Discuss these in detail with the client in respect of each particular contract. Questions to ask include:

- What could realistically go wrong?
- How much might it cost?
- How likely is it to happen?

- How will the client deal with the risk if it arises?
- Is the risk acceptable for this deal?

Common risks to consider include:

- Insolvency. How financially robust is the contractor?
- Breach of contract. How likely is a failure of performance by the contractor?
- Misrepresentation. How reliable is the information exchanged in any contract negotiation? Can claims made by representatives be substantiated or verified?
- Claims by third parties. Will this contract expose a party to claims by third parties such as end users, visitors, contractors, sub-contractors, the public? Is there a risk of liability for defective products, negligence, nuisance, occupiers' liability or infringement of intellectual property rights?
- Vicarious liability. What actions or omissions of other people (staff, agents, sub-contractors) might a party be liable for?
- Economic risk. What changes in prices, exchange rates, wages or other factors might affect the profitability of the contract?
- Regulatory risk. Is there a risk that a default might put either party in breach of regulations, leading to regulatory action and penalties?
- Potential loss of income (where the parties agree it is foreseeable). Be mindful that if the contractor does get matters wrong the council might have to repay any grant funding received.
- Tax. Is there a risk that the contract may create unforeseen tax consequences?

Exclude, cap or accept?

Our current standard terms and conditions include clauses which set out:

- The risks the parties wholly **exclude**. These include loss of profits, loss of sales or business, loss of contracts, loss of anticipated savings and loss of goodwill.
- The limits the parties place on other risks. These include an overall **cap** on liability, or different caps for different types of loss. The values current included are set as a "default" position and must be considered on a case by case basis
- The risks each party **accepts** without limit and cannot be capped. These are liabilities a party cannot limit, such as fraud or death and injury caused by negligence, or failing to give good title to goods.

Appendix A sets out our standard clauses in relation to liability and insurance levels.

Capping liability

For risks that are not wholly excluded it is sensible to introduce a financial cap on liability, or different caps for different types of loss. It is important to ensure that the cap is appropriate for the value of the contract.

At the very least liability caps should mirror our insurance requirements (if would be inappropriate for a cap which is lower than the level of insurance that we are paying for). Note that the courts will consider the extent to which insurance cover was available to cover a liability set when assessing the reasonableness of the cap (section 11.4 Unfair Contract Terms Act 1977).

A useful starting-point for negotiations is the contract price, if there is one, or an estimate of the total contract value, or a percentage of the contract value (typically these may range from 25% to 150% - mainly in IT contracts). However, the cap need not be a fixed sum or a formula, as long as it will be clear how to calculate it. A cap could also limit losses to the proceeds of an insurance policy.

Caps can be structured in a variety of ways:

- A single figure which applies for the duration of the contract.
- An annual cap which renews each year.
- An amount linked to the sums paid under the contract.
- The higher of a fixed sum and a percentage of the sums paid under the contract.

Combinations of the above can be used. E.g. an annual cap could be a percentage (which could exceed 100%) of the sums paid in a year.

A cap may apply to each claim (or series of connected claims) or it may be an overall cap. Alternatively there can be a combination, such as a cap of £X per claim or series of connected claims, subject to an overall cap. Caps for property damage and other liabilities may be different to reflect the relevant insurance policies.

General things to consider

Don't forget it may also be appropriate to reduce requirements in particular circumstances (e.g. a sole trader delivering a low value contract would not need £10m employers liability insurance); are there other insurances that it may be advisable to obtain – property damage/business interruption, etc?

Remember, the liability caps and the insurance levels may not be the same because the former covers liability arising under the contract whereas the insurances are wider and intended to protect both the Council and potentially the wider public in relation to other claims. For example, employer's liability insurance covers claims that may be made against the contractor by its own employees and would not be made under the contract. Its inclusion in the terms reflects the Council's policy of not contracting with organisations who do not maintain employer's liability insurance at £10m.

A low value contract does not necessarily mean low risk. A low value contract for painting and decorating in the Civic Hall which involved using blowtorches could result in a fire which destroys the building.

From a commercial point of view, the contractor would want to keep its liability within proportionate levels to the value of the contract, even if it has insurance at a higher level. As such, think about offering up front to reduce a private sector contractor's liability for their negligence as opposed to being willing to consider a request to do so. This is reasonable as if the authority insists on, for example, excessive liability, it is likely to pay a premium on the service to cover that risk. It is normally essential that a contractor checks with its insurers that the terms of the insurance clause do not invalidate its insurance cover.

When assessing the risks remember it is not about trying to transfer all risk away from the council to the contractor as this could greatly distort the contract price that the works could be delivered for. You should be prepared to accept and manage risks if the Council is the correct owner of that risk.

You should also be aware that requiring the contractor to insure against a certain risk does not mean that the contractor is liable for any losses associated with that risk. If you wish to reallocate its risk in connection with particular events, you should consider taking an indemnity from the contractor or excluding the contractor's liability under the limitation of liability clause.

Do not use JCT contract wordings on any contract other than construction. We are aware of some contractors who are not in the construction industry seek to use JCT wordings because they are somewhat favourable to the contractor as opposed to the employer. Insurers are aware of this and accept it, but for building contracts only.

Finally, if you choose not to cap liability you should carefully consider the reasons for this along with the effect it may have on a contractors' willingness to bid and the pricing levels it may submit as a result of a failure to cap liability.

Appendix A

As stated above the limits of liability set in the standard clauses below are our “default” position only and, in discussion with legal and insurance professionals, you **MUST** consider what is appropriate for each procurement taking into account liability and insurance provisions with regards to the nature of the particular risks involved.

In particular, you must consider whether they are appropriate in the circumstances for the particular goods/works/services contemplated? Consider the likely costs involved should a “worst case scenario” event occur and the likely cost consequences to the Council for breach of contract, negligence etc. Also consider if the parties liability should be further restricted (for example to the value of the contract).

Insurance Requirements may be amended depending on the risks and value of the Contract. This **MUST** be considered for each procurement taking into account the duration that any insurance needs to be maintained and the appropriate levels of insurance given the subject matter of the Contract.

Standard levels of insurance cover have been set out in clause 7.2.3 below but please consider whether these are appropriate. Seek advice from the insurance section if unsure

Goods, Services and Goods and Services Terms and Conditions –

Liability

“7.1.3the liability of either Party for Defaults shall be subject to the following financial limits:

- (a) the aggregate liability of either Party for all Defaults resulting in direct loss of or damage to the property of the other shall in no event exceed the sum of **ten million Great British Pounds (£10,000,000.00)**; and
- (b) the annual aggregate liability under this Contract of either Party for all other Defaults shall in no event exceed the sum of **five million Great British Pounds (£5,000,000.00).**”

Insurance

“7.2.2 The Contractor shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.

7.2.3 Without prejudice to the generality of Clause G1.8 and G1.9, the Contractor shall hold:

- (a) public liability insurance with a minimum limit of indemnity of **five million pounds (£5,000,000)** to cover all risks in the performance of the Services under this Contract; and
- (b) employers liability insurance in respect of Staff in accordance with any legal requirement from time to time in force, with a minimum limit of indemnity of **ten million pounds (£10,000,000).**”

Specific Insurance

“7.3 Professional Indemnity

The Contractor shall effect and maintain a professional indemnity insurance policy during the Contract Period and shall ensure that all agents, professional consultants, contractors and sub-contractors involved in the supply of the Services effect and maintain appropriate professional indemnity insurance during the Contract Period. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than the sum of **two million Great British Pounds (£2,000,000.00)** for each individual claim or such higher limit as the Council may reasonably require (and as required by law)

from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiry or earlier termination of this Contract”.

For Consultancy Contracts – consider the limit of professional indemnity insurance required.

For Services and Goods & Services contracts, consider if professional indemnity insurance is required (it should generally only be required where the Services include professional advice or design) and if so the appropriate level.

Works

For works, out starting position regarding public and employers liability insurance is £10m). You should also consider whether professional indemnity insurance is required to cover design (if appropriate) or replacing faulty elements etc. and sense check each insurance requirement (i.e. is £10m public liability required for a low value contract where someone is building a flower bed; should public liability cover/professional indemnity cover be higher than normal for example where ; are there other insurances that it may be advisable to obtain – property damage/business interruption?;

Appendix 3

Contract Management Plan

Contract name:	
Contract reference number:	<i>From YORtender</i>
Timemaster reference:	
Contract start date:	
Mobilisation period:	
Contract end date:	
Other key dates:	
Value of contract:	
Annual review date of contract management plan:	

Service directorate and service directorate contact:	
Procurement and Commercial Services (PACS) lead contact:	
Provider name:	
Provider address, phone number, email:	
Location of contractual documents:	<i>LINK to where contract documents are stored. Are these: LCC standard <input type="checkbox"/> LCC amended <input type="checkbox"/> Other (specify) <input type="checkbox"/></i>
Document date / version:	<i>Draft / Final (delete as appropriate)</i>

Purpose:

This contract management plan has been designed for use by the Contract Manger. As Contract Manager you are expected to know, and fully understand, the requirements of the contract and the outcomes to be achieved. Completing the contract management plan will provide you with the key information required in order to manage the contract effectively. It confirms systems and processes to ensure that the provider complies with the terms and conditions of the contract, that performance is effectively managed, that

communications are managed, and that issues are appropriately escalated. This may include specific actions and obligations for the service directorate team.

The Contract Manager should note that the contract management plan is a management tool and does not replace the contract. As such, Contract Managers should continue to have full regard to the contract and its contents when managing the contractor. The content of the contract management plan should be proportionate to the value, risk and complexity of the contract. All headings in **bold** should be addressed. The text below each heading is to provide prompts for issues that you may wish to address.

1. Contract Overview

Briefly outline:

- *what goods / works / services will be provided and what high level outputs will be delivered through the contract*
- *contract length*

2. Objectives

List objectives and desired outcomes here. Consider:

- *value for money*
- *savings*
- *quality*
- *outcomes to be delivered*
- *reduced impact on climate emergency and biodiversity loss*

3. Transitional arrangements and mobilisation

Briefly outline:

- *when and how the existing service will exit and any handover or interfaces*
- *any staff training that needs to be undertaken prior to the commencement of the contract*
- *whether there are any outstanding licences to be obtained and if this is the responsibility of Leeds City Council (LCC) or the provider*
- *is there anything that needs to be carried beyond the transition period, for example, refresher training*
- *ensure all relevant parties are aware of their roles and responsibilities in the immediate implementation and transition process*

For medium or major contracts, or where transition and mobilisation may be complex or time consuming, you may prefer to develop a separate mobilisation plan in addition to the contract management plan.

4. Performance management

Ensure the service is provided in line with the contract by briefly outlining;

- *the quality criteria or other standards and expectations set out in the council's specification, provider method statements, and contract terms and conditions - or provide appropriate links or cross-references*
- *how you will measure and report on performance and use KPIs and data efficiently to incentivise good performance and reduced impact on the climate emergency and biodiversity loss; administer contracts proactively and efficiently, making maximum use of benchmarking and performance measurement data. Use a balanced scorecard to measure 'hard' data such as KPI performance alongside 'soft' measures e.g. customer satisfaction and relationship management, with a focus on achievement of outcomes. React quickly to issues when they arise. Ensure KPIs and incentives are appropriate and proportionate to the contract. Challenge KPIs and incentives regularly and ensure a mechanism to change and evolve them through the life of the contract*
- *how service users, elected members and other stakeholders will be involved in performance monitoring / reporting?*
- *what regular and routine feedback is given to suppliers on their performance.*
- *how you will ensure there are clear contact points for service users both within the supplier organisation and with the contract manager. Users understand what the contract is intended to deliver, and are involved in the assessment of supplier performance where relevant. Users understand escalation routes where issues arise.*
- *how you will deal with any changes in user requirements so that these are captured and considered as part of formal change and contract management processes.*
- *ensure that there are formal performance reviews with suppliers, with documented improvement plans agreed where necessary, covering both operational issues and adherence to key contractual requirements, for example, on data security and environmental impact*
- *how poor performance and disputes will be managed*

(The following provisions are contained in the standard terms and conditions and you should be aware of them. [Please note that depending on which standard terms you are using the clause numbers may differ] -

2.1 The Services

2.1.1 *The Contractor shall perform the Services during the Contract Period in accordance with:*

- the Council's requirements as set out in the Specification;*
- the obligations implied by Sections 13 to 15 of the Supply of Goods and Services Act 1982 (where applicable);*
- using the best applicable techniques and standards, and reasonable care, skill and diligence;*
- the Tender;*
- the Law;*
- Good Industry Practice; and*
- the provisions of this Contract.*

2.1.2 The Contractor shall:

- (a) at all times comply with the Quality Standards;*
- (b) where applicable, maintain accreditation with the relevant Quality Standards authorisation body;*
- (c) where applicable, comply with the registration and regulatory compliance guidance of any relevant Regulatory Body; and*
- (d) where applicable, respond to all requirements and enforcement actions issued from time to time by any relevant Regulatory Body.*

2.1.3 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

2.1.4 The Council may inspect and examine the manner in which the Contractor performs the Services during normal business hours on reasonable notice at any location at which the Services are performed.

2.1.5 If the Council informs the Contractor in writing that the Council reasonably believes that performance of any part of the Services does not meet the requirements of this Contract or differs in any way from those requirements, and this is other than as a result of a Default by the Council, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of this Contract within such reasonable time as may be specified by the Council

6.9 Monitoring of Contract Performance

Ensure the Contractor is complying with the monitoring arrangements set out in the contract including, but not limited to, providing the data set out at 7 below (Communication with provider).

8.2 Termination on Contractor Default

8.2.1 The Council may terminate the whole of this Contract or terminate this Contract in respect of the affected part of the Services only, by giving written notice to the Contractor with immediate effect:

- (a) if the Contractor commits a Default and if:
 - (1) the Contractor has not remedied the Default to the reasonable satisfaction of the Council within fifteen (15) Working Days, or such other period as may be specified by the Council, after issue of a written notice specifying the Default and requesting it to be remedied; or
 - (2) the Default is not, in the reasonable opinion of the Council, capable of remedy; or
 - (3) the Default is a material breach of this Contract;
- (b) if the provisions of any of clauses **Error! Reference source not found.**(Prevention of Corruption), 4.2 (Prevention of Fraud), clause **Error! Reference source not found.**(Compliance with Anti-

Slavery and Human Trafficking Laws and Policies) or E7.13 (Intellectual Property) apply;

- (c) if the Contractor is in breach of clause **Error! Reference source not found.** (Disclosure and Barring Service);
- (d) if the Contractor is in breach of clause **Error! Reference source not found.** (Safeguarding);
- (e) if the Contractor materially breaches its obligations in clause **Error! Reference source not found.** (Health and Safety) resulting in a serious risk to life or safety of any person;
- (f) if the Contractor materially breaches its obligations in clause **Error! Reference source not found.** (Data Protection);
- (g) if the Contractor breaches the terms of clause **Error! Reference source not found.** (Transfer and Sub-Contracting); or
- (h) following a breach by the Contractor of its obligations to take out and maintain any of the insurances required by clause **Error! Reference source not found..**

In the event that through any Default of the Contractor, data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Council in respect of any charge levied for its transmission and any other costs charged in connection with such Default of the Contractor

Contract Managers should note that, in accordance with Contract Procedure Rule 22, all termination letters must be drafted by the solicitors within PACS. In addition Contract Managers must seek advice from PACS before issuing any default notice under the contract.

5. Finance

Briefly outline:

- *how the invoice is calculated, for example price per unit x number of units, or flat rate monthly fee*
- *how the total spend on the contract will be monitored*
- *how income relating to the contract will be monitored*
- *what the expenditure should be coded to*
- *how indexation is applied*
- *whether there are any price reviews included for in the contract*
- *how you will ensure payment mechanisms are documented and are clear and well understood by all parties (including incentives, penalties, and non standard charges).*
- *the payment processes set out in the contract; ensure that appropriate checks and authorisation processes are in place for paying invoices.*

- what action the contract manager needs to take in order to avoid the organisation being 'locked in' to onerous commercial terms throughout the contract period, such as price escalation or 'compulsory' maintenance payments.

(The following provisions are contained in the terms and conditions and you should be aware of them. *[Please note that depending on which standard terms you are using the clause numbers may differ]* -

3. PAYMENT AND CONTRACT PRICE

3.2 Payment and VAT

The Council shall pay all sums due to the Contractor in cleared funds within thirty (30) days of receipt of a valid invoice, **submitted monthly in arrears***.

Each invoice must contain all appropriate references and a detailed breakdown of the Services provided. **Each invoice shall be presented in A4 format on a white background, and, in the event it is hardcopy, printed on white paper.***

Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding thirty (30) days from the receipt of a valid invoice.

7 Price adjustment on extension of the Initial Contract Period

The Contract Price shall apply for the Initial Contract Period. In the event that the Contract can be extended, at least 2 months prior to the expiry of the Initial Contract Period, the parties will need to enter into good faith negotiations to agree any necessary variation in the Contract Price. Any such price increase shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule).

If the Parties are unable to agree a Contract Price the Contract shall terminate at the end of the Initial Contract Period.

Financial Distress 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. This may include regular financial checks.

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 should 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.

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).*
- *amend as appropriate)*

6. Governance arrangements

Briefly outline:

- *the contract management team, decision making levels and escalation*
- *how contract management processes are aligned with, among others, wider organisational governance processes, operational boards, and risk structures.*
- *how contract management issues and performance are reported through the governance structure with senior level engagement.*

7. Communication with provider

Briefly outline:

- *the communication mechanisms that will be in place between the council and the provider in order to maintain effective communications*
- *the escalation routes and procedures within the terms and conditions to be followed in the event of dispute*
- *what compliments and complaints procedures are in place?*
- *under the contract all notices and other communication in relation to the contract must be in writing in order to be valid.*
- *ensure that review meetings will take place every **quarter/6 months/annually*** on the first (insert day) of each quarter/(insert day) of April/October/(insert day) of April each year throughout the life of the contract.*

The Agenda shall include the following items as a minimum –

- *Conflicts of Interest (17);*
- *Key Personnel (2.3);*

- *Safeguarding (2.5);*
- *Payment of sub-contractors within 30 days (3.2.5);*
- *Anti-bribery policy (4.1.5);*
- *Fraud (4.2);*
- *Discrimination (4.3);*
- *Health & Safety (4.7);*
- *Modern Slavery (4.9);*
- *Data Protection and GDPR (5.1);*
- *Exit Plan (in particular you should discuss the issue of "living wills" with the contractor so that a plan is in place to deal with the practical steps to protect the council in event of company failure) (5.8.2)*
- *Sub-contracting to SMEs (6.2);*
- *SME management information reports (6.2.7);*
- *Contract Performance (6.9);*
- *Disputes (8.2.1);*
- *Social value that the supplier has committed to delivering via either the Social Value Portal or as required under the specification (These may include Employment and Skills, environment including climate emergency and biodiversity loss, single use plastic etc - using the climate impact assessment tool as a prompt);*
- *Consider and implement proportionate measures to ensure implementation of good practices for effective stock control;*
- *Risks and how they are managed.*

** these items can be added to/deleted depending on what you are procuring. For example, Safeguarding is not likely to be a matter for discussion in most supplies contracts and you may prefer your meetings to focus more on performance management, improvements, cost and price and added value.*

8. Risk management

Briefly outline:

- *very high risks related to the contract and how they are to be managed with clear responsibilities and processes, identification of who is best placed to manage risk, and supplier involvement where appropriate.*
- *how you will ensure a regular review of the risks related to the contract .Consider creating a risk register which formally identifies risks and ensures they are monitored regularly, with mitigating actions developed and implemented where possible, and 'obsolete' risks removed from consideration where appropriate.*
- *how you will ensure a regular review of risks to the climate emergency and biodiversity loss. Consider using the climate emergency impact assessment to assess risks and create a climate action plan.*
- *what contingency planning will the provider undertake, and what contingency planning are you putting in place, to handle supplier failure (temporary or long-term failure/default); exit strategies are developed and updated through the life of the contract.*
- *the escalation and reporting routes that are in place for risk governance such as monitoring the supplier's financial health and business performance (including through the use of credit rating agencies).*

9. Change

Briefly outline:

- *how changes to the contract will be managed between LCC and the provider and who at LCC will authorise change to ensure compliance with Contract Procedure Rules*
- *all variations to the contract must be in writing and agreed by both parties*
- *how continuous improvement and innovation will be explored and managed*

(Changes to the contract will be dealt with in accordance with 6.4 of the contract terms and conditions and you should be aware of the following. [Please note that depending on which standard terms you are using the clause number may differ])

The Council may request a Variation by notifying the Contractor in writing of the Variation and giving the Contractor sufficient information for the Contractor to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. Any such change to the Contract Price must be reasonable having regard in particular to the prices and/or rates tendered by the Contractor and contained in Schedule 2 (Pricing Schedule).

The Contractor shall only be entitled to reject a Variation proposed by the Council if it can demonstrate that it will result in:

- (a) a material change to the nature of the Services; or
- (b) a material and adverse impact on the Contractor's ability to provide the Services; or
- (c) a material and adverse impact on the Contractor's organisation which is not compensated for by the proposed change in pricing.

The Council may specify a time limit within which it requires the Contractor to respond to the request for a Variation. Such time limit shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

In the event that the Contractor rejects the Variation or otherwise refuses to implement it, or if the Parties are unable to agree upon any consequential change to the Contract Price, the Council may:

- (a) withdraw the proposed Variation; or
- (b) refer to the dispute resolution procedure detailed at clause **Error! Reference source not found.** the question of (as appropriate):
 - (i) whether the Contractor is entitled to reject or refuse to implement the proposed Variation under the terms of this Contract; or
 - (ii) the reasonableness of the change to the Contract Price proposed by the Contractor having regard in particular to the prices and/or rates tendered by the Contractor and contained in Schedule 2 the (Pricing Schedule).

If the Parties agree the Variation and any variation in the Contract Price, or the same are determined following referral to the dispute resolution procedure, the Contractor shall carry out such Variation and the provisions of this Contract shall apply in respect of such Variation.

10. Expiry arrangements

- Briefly outline thoughts given to arrangements for when the contract expires. For example, inventories, equipment, TUPE, data, licences, recording of milestone dates, market analysis and testing prior to undertaking new procurement exercise etc.
 - Don't underestimate the importance of post contract reviews to assess the benefits/lessons learnt (whether these involve things like better planning for expiration / mobilisation, or factoring in additional consideration of contract users / quality and performance measures within future arrangements) - from carrying out the procurement.
 - Consider how those benefits may be further enhanced and lessons learnt/risks reduced and how any losses can be turned to benefits.
 - The review should include the views of all stakeholders and the report should relate to the costs and benefits set out in the original business case.
 - Contract managers should capture and feedback relevant data/lessons learned to Procurement and Commercial Services via the relevant category Manager so that this can be incorporated within the future development and revision of contract management guidance and procurement
- (The following provisions are contained in the terms and conditions and you should be aware of them. *[Please note that depending on which standard terms you are using the clause numbers may differ]*)-

8.8 On the expiry or termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Council all Confidential Information, Personal Data and Council's Pre-Existing IPR's and the Project Specific IPR's in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which was obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Council all Assets (including materials, documents, information and access keys) provided to the Contractor by the Council. Such Assets shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Council to ensure an orderly transition of the provision of the Services to the Replacement Contractor (including in relation to TUPE) and/or the completion of any work in progress; and
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Council for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Council or the Replacement Contractor to conduct due diligence.

8.8.3 On termination or expiry of the Contract the Contractor shall comply with:

- (i) any confidentiality requirements; and

- (ii) any information governance requirements (which without limitation may include requirements relating to the management of information and records relating to the Services) which –
- (a) are set out in the Specification;
 - (b) Specification or otherwise); and
 - (c) which the Council reasonably requires the Contractor to comply with

8.8.4 In the event of any termination of this Contract pursuant to clause 8 (Termination on insolvency, change in financial standing and change of control) or 8.2 (Termination on Contractor Default), the Council shall be entitled without prejudice to the Council's other rights and remedies, to obtain a refund of any of the Contract Price paid by the Council in respect of Services which have not been performed or delivered by the Contractor in accordance with the terms of this Contract.

8.8.5 At the end of the Contract Period (howsoever arising) the licence granted pursuant to clause 5.7.7 shall automatically terminate without the need to serve notice

11. Other considerations

Briefly outline any issues not covered above. This may include:

- *Brexit implications.*
- *The impact of the COVID-19 pandemic and any government containment measures in place.*
- *data security and also data publishing - if the Contractor is a data processor or a data controller under the Data Protection Act 2018 and the General Data Protection Regulations, the plan should cover i) how compliance generally with the Act will be monitored, ii) how, if the Contractor is a data processor on behalf of the Council, the organisational and technical measures implemented by the Contractor to comply with the Act will be monitored, iii) how any specific measures listed in the specification/contract will be monitored*
- *Social Value will generally be measured and reported to PACS throughout the life of the contract via the Social Value Portal. This can be fed back to members.*
- *consider how to reduce impacts on the climate emergency and biodiversity loss*
- *are processes in place that clearly set out how supplier development activities will be planned, managed and governed with a focus on continuous improvement and achieving value for the council?*
- *think about supply chain development activities (for example, the development of second/third tier supplier performance). How will you ensure the supply chain is effectively maintained?*
- *are processes in place to evaluate and review options around delivering services in-house or outsourcing?*

- ensure market intelligence is used to maintain an understanding of the market and of alternative suppliers (to inform benchmarking, contingency planning and re-competition strategies).

Key contacts (delete where not applicable)

<i>Service 1 internal</i>	
<i>Service 2 internal</i>	
<i>Legal</i>	
<i>Finance</i>	
<i>Technical</i>	
<i>Health and safety</i>	
<i>Safeguarding</i>	
<i>Data protection</i>	