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CONTRACT REGULATIONS

Introduction

These procedures are Standing Orders made pursuant to Section 135 of the Local Government Act 1972 relating to Contracts (the procedures are referred to as "Contract Regulations") ~~and were agreed by the Council on 22nd November 2001 this will need to be changed once we get approval~~ and were agreed by the Council on2003

The Local Government Act 2000 required the Council to draw up a Constitution in order to put in place "Executive Arrangements". Under Executive Arrangements the Council functions are essentially divided between those which are the responsibility of "the Executive" (see below) and those which are the responsibility of the Council or a Committee of the Council. The major functions which remain the responsibility of the Council or a Committee of the Council include Development Control, Licensing Responsibilities, and Employment/Personnel Issues

The responsibility for decision making for almost all other functions rests with the "Executive". The Executive comprises, the Leader plus up to 9 other Councillors. Subject to any constraints contained in the Constitution (of which these Contract Regulations form part) and the Scheme of Delegation to Officers, the Leader determines whether the power to take a particular decision rests with the Leader, the Full Executive, a Committee of the Executive or an individual Executive Member. In practice, insofar as the power to take a decision has not been delegated to an Officer, responsibility for taking decisions in connection with Executive functions has largely been delegated to individual Executive Members. The Scheme of Delegation within the Executive is set out in Part 3 of the Council's Constitution which is on the Council's Intranet.

Included to clarify the distinction between Executive and Non-Executive functions, which impacts on the powers to enter into contracts (see 1.1 below) and single tender actions (see 1.25 below)

Every Contract made by or on behalf of the Council including those entered into by or under the authorisation of:

- The Council
- The Leader
- The Executive or Committee of the Executive or single member of the Executive or Committee or Sub-Committee.
- Responsible Director of the Council pursuant to powers delegated to him
- Consultants employed by Bracknell Forest Borough Council
- Schools operating under statutory delegated powers

shall comply with these Contract Regulations. These regulations apply to Contracts where the Council is purchasing works, goods and services **(including consultancy but not**

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including the instructing of Counsel) or disposing of goods or supplying services, but not to contracts of employment. The regulations apply to land transactions and the advice of the Borough Solicitor should be sought on all contracts involving the acquisition and disposal of land. ~~The regulations also apply to contracts for the purchase of consultancy services (but not including the instructing of Counsel) where specifically stated as being applicable.~~ *Shouldn't we delete this now? yes as you have inserted it earlier!*

Exclusion of employment contracts mentioned for clarity; separate rules apply

~~No exception can be made to these Contract Regulations other than:-~~

- ~~a) in respect of a non-Executive function by a decision of the Council or Responsible Committee, or~~
- ~~b) in respect of an Executive function by the Executive~~

~~A decision by the Executive to make an exception to these contract regulations shall be a decision to which Paragraph 16("call in") of Part IV of the Council's Constitution shall apply.~~

Moved to para 1.1 for clarity

Moved to para 1.1 for clarity

These Contract Regulations should be read in conjunction with Financial Regulations and other relevant parts of the Council's constitution **in particular the Access to Information procedure Rules relating to Key Decisions Procedure**. Schools should also refer to the Scheme for Financing Schools.

Reference to key decision procedure introduced as a reminder

Interpretation

In these Contract Regulations unless the context otherwise requires the following words shall have the following meanings:-

"Council"	means Bracknell Forest Borough Council
"Executive"	means a meeting to which the Leader and all those Members that are serving as Executive Members have been invited.
"Executive Members"	means the Executive, a Committee of the Executive or an individual member of the Executive depending upon the Scheme of Delegation for Executive functions determined by the Leader of the Council.
"Responsible Committee"	means a Committee of the Council to whom the powers to enter into a Contract have been delegated in accordance with the Council's Standing Orders.
"Responsible Director"	means the Director of the Council or such other officer to whom the power or responsibility to enter

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into a Contract has been authorised or delegated in accordance with the Council's Standing Orders. For schools, this means the Head Teacher.

"Value"

There are special rules relating to the valuation of contracts to which the Public Procurement Regulations apply.

For other contracts value means the amount or value of a Contract which shall be calculated (or estimated where calculation is not possible) over the expected term of the Contract. Where a Contract is for the provision of goods and services to more than 2 parties, the Value is that attributable to that part of the Contract relating to value to be received by the Council only. Where the Council receives value which does not relate to money paid by the Council the non-monetary consideration received by the Council over the term of the Contract shall be estimated in order to determine the Value.

For any Contract where the term of the Contract is indeterminate the Contract shall be taken as being for a five year term for the purpose of calculating the Value of it EXCEPT THAT in respect of a Contract for the provision of social care to one individual where the term shall be taken as being for one year for the purpose of calculating the Value.

In all cases, requirements should NOT be split into separate contracts in order to avoid the application of elements of these regulations.

Introduced to clarify and strengthen the Regulations

"Tender"

means a formal sealed offer made in writing, submitted under closed cover in response to an invitation to tender issued by the Responsible Director on behalf of the Council and anticipated to be above £50,000 in Value.

"Quotation"

means the amount stated as the price of goods or services anticipated to be below £50,000 in Value.

"Contract"

means an agreement (whether made orally or in writing) made between the Council and one or more persons which is intended to be enforceable in law, excluding a—greements between the Council and a voluntary organisation relating to grant aid given by the Council and the organisation—

_____ and agreements ~~and agreements~~ for grant aid given to the Council

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“Term Contract”

means a Contract for the regular provision of services, works of periodic maintenance or comprising schedules of rates for use in the provision of goods, works or services.

“Economically Advantageous”

means the best value to the Council as a whole, considering not only price but other criteria which are applied to the tender evaluation process.

~~Agreements between the Council and a voluntary organisation relating to grant aid given by the Council and the organisation will not normally fall within the scope of these Contract Regulations as they are not normally intended to be enforceable in law.~~

Moved into definition of “Contract” above for clarity.

~~I have only just spotted this after all this time! I think this would be much better deleted and inserted as part of the definition of “Contract”~~

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Arrangement of Regulations

Page numbers will need to be revised in final "for publication" version

These Contract Regulations are divided into various sections and annexes as follows:-

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~~This lot will need updating to take into account the new annexes etc.~~

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CONTRACT REGULATIONS – SUMMARY

(Note: This diagram provides a quick overview only – exceptions to these general rules are covered in the written regulations)

Contract value	£0 - £5,000	£5,001 - £50,000	Over £50,000
Quotes/Tenders required (min.)	Value for Money Min 1 Quotation	3 Written Quotations	3 Tenders
Choosing Quotes / Tenderers	Reasonable discretion of Responsible Director	Reasonable discretion of Responsible Director	Public Advertising only, or Approved List only, or combination
Reception of Quotes/Tenders	No formal requirements but maintain written record (See ordering procedure within Financial Management Handbook)	No formal requirements but maintain written record	Formal submission to Dir. of Corp. Services. Opened by Dir. of Corp Services or their approved representative.
Acceptance of Quote / Tender	On any reasonable basis as determined by the Responsible Director	Accept either lowest or most economically advantageous. Using Approved lists, accept lowest only.	Accept lowest or most economically advantageous Using approved lists, accept lowest only.
Evidence & signing	Record in writing Copy kept on file.	Contract in writing signed by Responsible Director. Copy kept on file.	Form approved by Borough Solicitor. Signed by Responsible Director. Entry in register of contracts Original contract kept by BSol.

Above £144,456 Public Procurement regulations may apply – see section 4

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SECTION 1: GENERAL REQUIREMENTS FOR ENTERING INTO CONTRACTS

1.1 Authority for entering into Contracts

No exception can be made to these Contract Regulations other than:

1.1.1 In respect of a contract which relates to an executive function, the Executive or, in the event of urgency, the Executive Member with responsibility for the function to which the contract relates.

1.1.2 Moved from Introduction to draw greater attention to this provision
When a function has been delegated to a committee, the relevant Committee or, in the event of urgency, the Mayor or (if the function has been delegated to a committee) the Chairman of the Committee with the specific approval of the Executive or, in the event of urgency, the Executive Member.

A decision by the Executive to make an exception to these Contract Regulations shall be a decision to which Paragraph 16 ("call-in") of Part IV of the Council's Constitution shall apply.

Moved from Introduction to draw greater attention to this provision and clarified; distinction between Exec and Non-Exec functions clarified.

4.4.1.1.2 No Contract shall be entered into without :

- sufficient budgetary provision for the expenditure to be incurred
- the necessary legal power to do so exists
- appropriate authority (which may be delegated from the Council or the Executive).

No Councillor (including Members of the Executive) shall enter into or purport to enter into a contract on behalf of the Council (see the Protocol on Decision Making under Executive Arrangements).

4.4.2.1.3 It is the duty of the Responsible Director to ensure that any Contract negotiations are conducted by officers possessing the professional skills appropriate to the proposed transaction and to obtain any appropriate legal and financial advice prior to entering into a Contract.

4.4.3.1.4 Every Responsible Director shall make arrangements for the recording of decisions taken by him/her pursuant to these Contract Regulations.

1.2 General procedures for entering into Contracts

Contract Value

NOTE: The procedures in Sections 1.2 and 1.3 apply to all **Up to £5,000** Contracts except:

- Contracts for the acquisition and disposal of estates and interests in land;
- Contracts governed by the Public Procurement Regime

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(Section 4);

~~£5,001 - £50,000~~

Reference should be made to general procedures for selecting Tenderers and Quotations (Section 1.3), single tender action (Annex A), the use of approved lists of Tenderers (Annex B) or use of Framework Agreements (Annex E) and public notice advertising procedures (Annexes C & D).

1.2.1 A Responsible Director may enter into such Contract with such person as he/she considers competent for the purpose provided all reasonable endeavours have been made to achieve value for money.

1.2.2 (a) Subject to 1.2.2 (b) The Responsible Director may enter into such Contract with such person that he/she considers competent for the purpose provided that at least three written Quotations against a formal specification or written statement of requirements have been requested prior to such Contract being entered into.

Contract Value

Up to £5,000

1.2.2 (b) ~~Two written quotations need not be obtained if either the Borough Solicitor or the Borough Finance Officer have, upon a written explanation of the circumstances, confirmed in writing that it is not reasonably practical or appropriate to do so.~~

If it is only reasonably practical or appropriate to obtain two written quotations, the approval of the Monitoring Officer or Section 151 Officer must be obtained. (If only one quote can be obtained, see Single Tender Action below.)

£5,001 - £50,000

Reworded to improve clarity

Over £50,000

1.2.3 A Responsible Director may enter into such Contract with such person as he/she considers competent for the purpose provided that he/she has invited tenders in accordance with these Contract Regulations or is utilising the single tender action procedure.

Exceptions Single Tender Action

1.2.4 ~~In the circumstances detailed in Annex A the Responsible Director can use the single tender action procedure (also detailed in Annex A).~~ **All cases must meet the justification criteria set out in Annex A**

All values
Over £5000

Should 1.2.4 be deleted?

1.2.5 ~~Authority Procedure for approving Single Tender Action is 2~~

Revised single tender provisions aimed at streamlining the procedure to facilitate speedier routine decision making. Members will remain involved in the more significant decisions (>£250k), but are freed from more routine business process. The use of Framework Agreements such as those set up by the OGC (eg the new Banner stationery contracts) including GCAT and SCAT is regularised.

Moved from para 1.3.5 for clarity

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- **£250,001 and above – submissions with full justification must be made in writing for approval**

(a) for Executive functions, by approval must be obtained from the Leader of the Council or a person or persons nominated by the Leader in accordance with his powers of delegation detailed in Part 3 of the Constitution.

< £5,000

£5,001-£250,000

(b) For non-Executive functions, by the Council or (if the function has been delegated to a committee) the relevant Committee. In cases of urgency, single tender action may be authorised by the Director of Corporate Services or his authorised representative in which event a report shall be submitted to the Council, the Responsible Committee or the Executive (as appropriate). For Schools this should be agreed by the Governing Body and reported to the Director of Education

> £250,000

Revised single tender provisions aimed at streamlining the procedure to facilitate speedier routine decision making. Members will remain involved in the more significant decisions (>£250k), but are freed from more routine business process.

Urgency provisions simply moved from para1.3.5 for clarity

his

1.2.51.2.6 The use of approved Framework Agreements is not regarded as single tender action pursuant to these regulations but is governed by the provisions of – see Annex E. However any order of £400,000 or greater will be subject to the Key Decision process. – see ???

Contract Value

Up to £5,000

Framework Agreements are call-off contracts eg the new Corporate stationery contract with Banner Business Supplies – approved by the Executive on 21 January 2003. Included to avoid need to seek Executive approval for every order issued under any Framework Agreement

£5,001 – £50,000

Over £50,000

~~1.2.6 In cases of urgency, single tender action may be authorised by the Director of Corporate Services or their authorised representative in which event a report shall be submitted to the Council, the Responsible Committee or the Executive (as appropriate). For Schools this should be agreed by the Governing Body and reported to the Director of Education.~~

~~I think this should be inserted as 1.2.6 and then the bit about framework agreements inserted at the end of the section 1.2~~

1.3 Procedures for selecting Tenderers and Quotations

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Once the requirements of section 1.2 (General procedures for entering into Contracts) have been determined the following procedures must be applied when deciding who will be selected to provide a Quotation or invited to tender. **Responsible Directors must maintain records showing who has been selected and why.**

For certain contract types each Responsible Director may hold an approved list of Tenderers who, having already been vetted, would be considered competent for the purpose of letting Contracts. This issue is considered at Annex B (The use of approved lists of tenderers).

1.3.1 The Responsible Director shall decide upon the appropriate procedures.

[Up to £5000](#)

1.3.2 Unless an approved list exists for the Contract type, the Responsible Director may use his/her reasonable discretion (taking into account the technical competence of the proposed supplier and professional advice if appropriate) in deciding who to invite to provide a written Quotation.

[£5001-£50,000](#)

1.3.3 Where the Public Procurement Regulations apply the Responsible Director need not comply with the requirements of this paragraph if the Council has advertised the Contract in the Official Journal of the European Community. The Responsible Director shall select appropriate persons to be invited to tender from;

[Over £50,000+](#)

- Respondents to public advertisements placed in accordance with the requirements for public advertising set out in Annex C or D, and/or
- The approved list held by the Responsible Director in accordance with Annex B.

1.3.4 Save, where the Public Procurement Regulations apply (which have detailed selection criteria which must be used), where the number of respondents to a public advertisement exceeds the desired number of Tenderers, the Responsible Director shall ensure that those invited to tender are selected on the basis of pre-determined, objective measures, including the following factors:

- financial stability
- past performance/likely future performance
- technical resources

- health & safety/quality systems/training policies

Contract Value

All contracts

Part II of the Local Government Act 1988 precludes the Council from taking into account “non-commercial considerations” in deciding to whom an invitation to tender should be extended or to

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whom a contract should be awarded. No such consideration should be taken into account.

Advice: It is recommended that a minimum of three be invited to tender. However there may be circumstance where the total number of tenderers who meet the predetermined criteria is less than three and only these should be invited to tender. Again, the Public Procurement Regulations have different requirements.

Single tender action

~~1.3.5 The circumstances justifying single tender action are set out in Annex A. Save in cases of urgency Authority to apply single tender action should be sought from the Executive or the Responsible Committee (as appropriate). In cases of urgency single tender action may be authorised by the Director of Corporate Services or their authorised representative in which event a report shall be submitted to the Council, the Responsible Committee or the Executive (as appropriate). For Schools this should be agreed~~

Now covered by para 1.2.4

A.

Now covered by para 1.2.4

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SECTION 2: REQUIREMENTS FOR THE RECEPTION AND OPENING AND ACCEPTANCE OF TENDERS AND QUOTATIONS

2.1	Reception and opening of Tenders and Quotations	Contract Value
2.1.1	For procedures on ordering please refer to Financial Regulations and the Financial Management Handbook.	Up to £5,000
2.1.2	Where written Quotations are invited the Responsible Director should specify by when, to whom and where the Quotation is to be addressed. The Responsible Director shall maintain a written record as set out in paragraph 2.1.1 of these Contract Regulations. No correspondence shall be entered into with any individual or organisation submitting a Quotation during the evaluation period, other than to seek clarification on specific details of the individual/organisation's own Quotation.	£5,001 -£50,000
2.1.3	An Invitation to tender should specify to whom and where the Tender is to be addressed and the closing date. Tenders must be submitted in a plain sealed envelope which shall bear the word "tender" followed by the subject to which it relates, but shall not bear any name or mark by which the sender may be identified. All envelopes should be distinguishable to aid identification and to avoid premature opening by staff responsible for receiving and registering post.	Over £50,000
2.1.4	Envelopes containing Tenders shall remain in the custody of the Director of Corporate Services or their authorised representative pending expiry of the Tender period. The Tenders shall be opened at an appointed time in the presence of the Director of Corporate Services or their authorised representative and once opened forwarded to the Responsible Director and other relevant officers where appropriate.	
2.1.5	A schedule shall be prepared at the time of opening any Tender submissions which will clearly indicate the name of each Tenderer, the Value of each submitted Tender, (where this can be assessed) the date and time of the tender opening and the signatures of all persons then present. The appropriate page of the Tender which details the total Tender Value (where it is possible to assess) shall also be signed by all persons then present.	

Late Tenders

- 2.1.6 No late Tenders will normally be eligible for consideration. The Responsible Director shall obtain the written agreement of the Director of Corporate Services if he/she believes that exceptional circumstances justify including a late Tender. In the case of Tenders invited in relation to the disposal of estates and interest in land, the ~~Borough Surveyor~~ **Borough Surveyor Assistant Director Environment (Resources)** shall have discretion to consider late tenders where necessary in his view to discharge the duty under Section 123 of the Local Government Act 1972 to sell at the best

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price reasonably obtainable. The appropriate page of the tender which details the total tender Value shall also be agreed by all persons then present.

[Updated post title](#)

- 2.1.7 Where a late tender has been deemed to be eligible for consideration, a record of the decision and the reason must be reported to the Borough Finance Officer.

2.2 Acceptance of Tenders and Quotations

Note: Specific regulations apply to Contracts governed by the public procurement process. These are covered in sections 4 below.

Those parts of the Council's Constitution setting out Financial Regulations and the Delegation to Officers should also be referred to prior to accepting Tenders and Quotations.

Use of Approved Lists (also see Annex B)

Contract Value

Over £5,000

- 2.2.1 Where Quotations/Tenders have been received and opened using the approved list procedure in Annex B the Responsible Director may only accept the lowest Quotation or Tender. Approval of the Council, the Responsible Committee, or the Executive shall be sought if a Tender or Quotation other than the lowest is found to be the most favourable received.

Contract Value

£5,001 - £50,000

Open Tender Process

- 2.2.2 Where Quotations/Tenders have been received and opened under any process other than the use of Approved Lists as detailed in 2.2.1 above the Responsible Director may accept a Quotation/Tender as follows:-

- On the basis of the lowest price or the most Economically Advantageous, subject to the Responsible Director having made reasonable enquiries of and being satisfied as to the competence and financial standing of the individual/organisation submitting the Quotation. Over £50,000
- On the basis of the lowest price or the most Economically Advantageous, subject to the Responsible Director having made a detailed financial and technical evaluation of the person submitting the Tender. If the Tender accepted is to be other than the lowest, the reason for the decision shall be communicated in advance to the Director of Corporate Services and for Contracts in excess of £250,000 in Value subsequently reported to the Council.

Withdrawal of offer

- ~~2.2.3~~ If the selected tenderer withdraws his offer or fails to enter into a valid Contract within a reasonable period the Responsible Director may, subject to obtaining the prior written approval of the Borough

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Solicitor, accept the next most suitable tender having re-applied the criteria in 2.2.2 above.

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2.3 Post Tender Negotiations

2.3.1 Save in respect of a Contract which is the subject of public procurement requirements (in which case see Section 4) a Responsible Director may, if he/she considers it advantageous to the Council to do so and for reasons communicated in writing to the Borough Solicitor and the Borough Finance Officer prior to the commencement of negotiations, negotiate further with persons submitting a Quotation/Tender, provided that all persons whose quoted/tendered Values are within 20% or £20,000, (whichever is the lower), of the lowest Quotation/Tender must also be given the opportunity to reconsider their Quotation/Tender. Post tender negotiations must, throughout, be conducted by more than one officer and any decisions recorded in writing.

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SECTION 3: CONTRACT EXECUTION PROCEDURES

3.1 Evidence and signing of Contracts

Contract Value

3.1.1 Details of Contracts which are not the subject of a formal order or other documented contractual process shall be recorded in writing and a copy kept on file. The record shall detail the price, the service or goods being contracted for and timeframes for delivery/performance. Up to £5,000

3.1.2 Contract shall be in writing and signed by the Responsible Director. A copy shall be kept on file by a designated officer in each Directorate. £5,001-£150,000

~~3.1.3~~ ~~S~~
~~3.1.4.3.1.3~~ Save as detailed in 3.1.4 below Contracts shall be in a form agreed by the Borough Solicitor and: ~~I think we need to up the limit for this lot...the only thing we might need to give some thought to is this contracts register....at what point should that bite?OK! So I assume for the time being we are happy to up the limit for the contracts register too? I don't have an issue with this.~~ Over ~~£50,000~~150,000

- Signed by the Responsible Director (the person who has authorised the contract shall not also sign the contract); and

- ~~Notified to the Borough Surveyor~~ **Head of Procurement** by the Responsible Director for entry in the Register of Contracts, and

Correction to allow for new Head of Procurement post

- ~~If the Borough Solicitor should so advise, be executed under the common seal.~~

- ~~If the Borough Solicitor should so advise, be executed under the common seal.~~

The original contract should be retained by the Borough Solicitor for safe keeping and reference purposes.

Over £250,000

3.1.4 Regulation 3.1.3 shall not apply to published and commonly used standard forms of Contract appropriate to the particular industry to which the Contract relates provided that such use has been the subject of the prior approval of the Borough Solicitor **in accordance with Section 6. These contracts that are approved by the Borough Solicitor at the date of these regulations are contained in Annex F, any further subsequent approvals are held by the Head of Procurement** Such contracts should be signed by the Responsible Director (the person who has authorised the contract shall not also sign the contract). The original contract should be retained by the Borough Solicitor for safe keeping and

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reference purposes. ~~This needs to link into the form of contracts stuff that you have now inserted. Presumably we are linking this in with the over £150k threshold? See suggestions above~~

3.1.5 Contracts of £250,000 or more shall be executed under the common seal, unless the Borough Solicitor advises otherwise. Such Contracts shall be notified to the ~~Borough Surveyor~~ **Head of Procurement** by the Responsible Director for entry in the Register of Contracts. The original contract should be retained by the Borough Solicitor for safe keeping and reference purposes.

3.1.6 Deeds shall be executed under the common seal of the Council.

3.2 Recording of Contracts

3.2.1 The Borough Solicitor shall maintain a record of all Contracts which are executed under seal of the Council. The Responsible Director shall maintain a record of all Contracts for which he/she is responsible.

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SECTION 4: PUBLIC PROCUREMENT

4.1 Relationship with Contract Regulations

4.1.1 The public procurement regulations, where they apply, take precedence insofar as there is any conflict with these Contract Regulations. They cover procurement in the public sector with the aim of ensuring competition amongst the European Union service providers. Responsible Directors must seek advice from the Borough Solicitor on the detailed procedures that have to be followed under the regulations. The public procurement regulations comprise three sets of regulations for different types of Contracts, discussed in turn below.

4.2 Public Supply Contract Regulations

4.2.1 These apply to the procurement of goods by purchase, lease, hire or rental where the Contract Value exceeds **249,681,326 euros (£145,477,56 as at 1st January 2002)**. This figure will be revised in the year 2002~~4~~ and every 2 years thereafter.

4.3 Public Works Contract Regulations

4.3.1 These apply to Contracts for the execution of works relating to building or civil engineering activities above the Value of **6,242,028,358,153 euros (£3,866,411,932,395 as at 1st January 2002)**.

4.4 Public Service Contract Regulations

4.4.1 These cover all contracts which are not covered by the Public Supply or Public Works Regulations, (subject to certain defined exceptions) where the Contract Value exceeds **249,681 euros (£154,477 as at 1st January 2002)**~~249,681 euros~~. Services are divided into two categories; Part A services and Part B services. Advice must be sought from the Borough Solicitor as to which category the services the subject of the proposed Contract fall within. Part A services are subject to the full Public Procurement requirements. Part B services are only subject to certain requirements.

[Thresholds updated in line with EC procurement Directives](#)

4.5 Advertisements

4.5.1 Where the public procurement regulations apply the Council must advertise the details of the Contract in the Official Journal of the European Community (OJEC) and request details of interested contractors to be sent to the Council. No advertisement may be placed in any UK trade journal or newspaper prior to despatch of the advertisement to be placed in the OJEC.

4.5.2 The regulations are specific as to the information which must be contained in the advertisement, and advice must be sought

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regarding the content of the advertisement and the appropriate procedure to be followed from the Borough Solicitor. The Responsible Director must keep evidence of the date the advertisement was dispatched to the OJEC.

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SECTION 5: BEST VALUE

5.1 Best Value

5.1.1 In this section, the term “Best Value” means “securing continuous improvements in the way in which the functions of the Council are exercised having regard to a combination of economy, efficiency and effectiveness”.

5.2 Governing Principles

5.2.1 The Responsible Director should consider how any proposed contract may lead to the achievement of Best Value. This applies in particular to contracts with a term of 5 years or more. The Responsible Director should consider whether to seek the advice of the Borough Solicitor on contract clauses or conditions to discharge the Council’s duty to secure Best Value under Section 3 (1) of the Local Government Act 1999. This may especially include the requirements for the contractor to participate in any Best Value Review to be undertaken by the Council and the modification of contractual performance as a result of the outcomes of any such review.

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SECTION 6: CONTENTS OF CONTRACTS

6.1 Categories **Form** of Contract

~~Note: Legal Advice should always be sought before entering into any Contract over £50,000 in Value or any contract of a complex or unusual nature.~~

~~The requirements of this section regarding the contents of Contracts apply only to contracts in excess of £50,000 in value.~~

6.1 — Unless other forms of contract have been specifically approved by the Borough Solicitor, all Contracts or Orders (excluding those involving statutory undertakings) shall be placed on the basis of the Council's standard Conditions of Contract as follows:

- **Up to £5,000 — EITHER:**
 - **Conditions of Contract for the Supply of Minor Goods and/or Services 01-02**
 - **Contract for Small Building and Associated Work**

- **£5,001-£150,000 — EITHER :**
 - **Conditions of Contract for Services 01-02**
 - **Conditions of Contract for Goods 01- 02**
 - **Conditions of Contract for Consultancy 01-02**

- **Over £150,000**
 - **Consult with Borough Solicitor on the form of contract required**

6.2 — No amendments or additions to the Council's standard Conditions of Contract may be made without the approval of the Borough Solicitor, who should in any event be consulted in any case of doubt or where any ~~level~~ complex or unusual

~~This makes mandatory, use of the Council's standard contract conditions (or other approved forms eg JCT for Works) for all contracts and small orders. (previously the only requirement was to consult the Borough Solicitor for contracts above £50k) Between £50k-£150k Depts can prepare their own contracts provided they use the Council's standard forms and consult the Borough Solicitor before making any amendments or additions to these terms. This should strengthen contractual control, reducing risk, whilst also allowing the Borough Solicitor to concentrate resources on the larger, more complex contracts.~~

~~additions to these terms. This should strengthen contractual control, reducing risk, whilst also allowing the Borough Solicitor to concentrate resources on the larger, more complex contracts.~~

~~£150k has been selected as the threshold as it is a close approximation to the limit above which EC procurement Directives apply.~~

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~~6.1.1 For the purposes of this section, categories of Contracts are distinguished as follows:-~~

Category — Description

- A. — Investment
- B. — Building and engineering works
- C. — Supply and disposal of goods or materials
- D. — Supply and disposal of vehicles or plant
- E. — Supply and provision of services
- F. — Repair and maintenance
- G. — Engagement of Consultants or Agents
- H. — Borrowing leasing and comparable financial transactions

~~6.2 Standard contents~~

~~(All Contract categories)~~

~~6.2.1 Every Contract shall specify the work materials matters or things to be furnished, had or done, the price to be paid with a statement of discounts or other deductions and (if applicable) the time or times within which the Contract is to be performed.~~

~~6.3 Health and Safety~~

~~(All Contract categories)~~

~~6.3.1 In every written Contract for all categories a clause shall be inserted covering Health and Safety.~~

~~6.4 Performance bonds, liquidated damages and deeds of guarantee~~

~~(Contract categories B,C,D,E,F)~~

~~6.4.1 The Responsible Director, in consultation with the Borough Finance Officer and the Borough Solicitor, shall consider in all cases whether to include Performance Bonds or Liquidated~~

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~~Damages by comparing the benefits with the cost. Where a Bond is required it shall be of sufficient value to protect the interests of the Council.~~

~~6.4.2 Where the Value of the Contract warrants the same and where the contractor is a subsidiary company, a Deed of Guarantee should be obtained from the parent company. Advice on all bonds/liquidated damages must be obtained from the Borough Solicitor.~~

6.5. Dispute Resolution

~~6.5.1. The Responsible Director should take the advice of the Borough Solicitor as to whether it is appropriate to incorporate an alternative dispute resolution, an expert determination or an arbitration clause into any Contract.~~

6.6 Default

~~(Contract categories C,D,E,H)~~

~~6.6.1 In every written Contract (save where the Borough Solicitor advises otherwise) a clause shall be inserted to secure that, should the contractor fail to deliver the goods, services or materials or any portion thereof in accordance with the requirements specified in the Contract, the Council shall be at liberty, without prejudice to any other remedy for breach of Contract, to determine the Contract either wholly or to the extent of such default.~~

~~6.6.2 The clause should also secure that if the amount by which the cost of purchasing other goods, materials, products or services in place of the contracted goods, material, products or services exceeds the amount which would have been payable to the contractor for them, if they had been delivered in accordance with the Contract, should be recoverable from the contractor.~~

6.7 Data Protection

~~(Contract categories B,C,D,E,F,G)~~

~~6.7.1 In every written Contract for the execution of works the supply of goods or materials or the provision of services there shall be inserted the following clause:-~~

~~6.7.2 "The contractor shall comply in all respects with the provisions of the Data Protection Act 1998 (or any subsequent or amending legislation) and will indemnify the Council against all actions, costs, expenses, claims proceedings and demands which may be made or brought against the Council for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the contractor and his servants and agents."~~

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6.8 — Liability of Contractors for Sub-Contractors

(Contract categories B,C,D,E,F,G)

6.8.1 In the event that the Contract permits the contractor to sub-contract all or part of the works/services the Contract shall unless the Borough Solicitor agrees otherwise contain an additional provision stating that the contractor shall remain and continue to remain liable for the work of the sub-contractor.

6.9 — Standards

(All Contract categories)

6.9.1 Every Contract which specifies compliance with an appropriate British Standard shall also state the European equivalent standard or that the equivalent European union standard will be accepted and shall require that all goods and materials used or supplied and all workmanship shall be of a quality not lower than the standard specified.

6.10 — Cancellation of Contracts

(All Contract categories)

6.10.1 Each written Contract must contain a clause that ensures that the Council is entitled to cancel the Contract and to recover from the contractor the amount of any loss resulting from such cancellation where any of the following circumstances have occurred:-

- If the contractor or any person employed/acting on the contractor's behalf (with or without the contractor's knowledge) shall have given or agreed to give any gift/consideration as an inducement/reward in order to obtain the Contract or any other Contract with the Council,
- Where in relation to any Contract with the Council the contractor or any person employed/acting on the contractor's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 1916 or any amendment of them, or shall have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972,
- Where collusion has taken place between two or more tenderers/parties in fixing or adjusting the bids submitted for the Contract concerned.

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~~6.11 Restrictions on assignment~~

~~(Contract categories A, B, C, D, E, F, G, H)~~

~~6.11.1 Each written Contract must unless the Borough Solicitor agrees otherwise contain a clause which states the following:~~

- ~~• “The contractor shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of the Contract, without written permission given on behalf of the Council by the Responsible Director concerned. Subletting shall be prohibited without the consent of the Council.”~~
- “The contractor shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Contract.”

~~6.12 Final Certificate~~

~~(Contract category B)~~

~~As soon as possible after practical completion and before issuing the final certificate under a Contract the Responsible Director or Consultant concerned shall obtain from the contractor a full and detailed statement of the claim in respect of the whole of the works, materials and things executed and delivered under the Contract, and such receipted vouchers as may be necessary. The Directorate should submit to Internal Audit a list of final accounts paid and settled within the last month for the Directorate as a whole.~~

~~6.13 Contractors or consultants dealing with third parties~~

~~(Contract categories A, B, C, D, E, F, G, H)~~

~~Any contractor or consultant who will be responsible for expenditure of Council funds to a third party shall be required to comply with these Contract Regulations and Financial Regulations under the supervision of the Responsible Director~~

~~6.14 Human Rights (Contract Categories E and G)~~

~~6.14.1 The Responsible Director should take advice from the Borough Solicitor as to whether it is appropriate to incorporate a clause into the Contract which indemnifies the Council from and against all losses, costs, expenses, damages and claims which arise from any act or omission by the Contractor in the performance of his obligations pursuant to the contract and which result from a breach of the Human Rights Act 1998.~~

~~6.15 Clauses specific to Contracts with Consultants~~

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~~{Contract category G}~~

- ~~6.15.1 Unless advised by the Borough Solicitor, a written contract shall require the Consultant to provide evidence to the Council that he/she is maintaining cover for professional indemnity insurance as specified for the work involved to an appropriate value.~~
- ~~6.15.2 A written contract shall require the Consultant at any time during the carrying out of the commission to produce to the Responsible Director or his representative on request all the records maintained by him in relation to his commission. The Responsible Director shall consider, having taken the advice of the Borough Solicitor, whether it is appropriate to incorporate a provision within the Contract requiring the transmission of all such records to the Responsible Director on completion of the commission. Similarly, the Responsible Director, having taken the advice of the Borough Solicitor, should consider incorporating a statement regarding the vesting of copyright in the Council of all records and documentation produced by the Consultant during his commission.~~
- ~~6.15.3 A written contract shall require the consultant to ensure that any works he/she may be responsible for on behalf of the Council comply with health and safety regulations as they apply to the Council.~~

~~6.16 Rights of Third Parties (all Contract categories)~~

- ~~6.16.1 Unless advised to the contrary by the Borough Solicitor all contracts in writing shall include the following provision "The Parties hereby declare that no term of this contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts Rights of Third Parties Act 1999) nor is it intended to be enforceable by any third party. The provisions of the Act are hereby excluded".~~

~~6.17 EMU compliance~~

~~{Contract categories C}~~

- ~~6.17.1 The advice of the Borough IT Services Manager should be sought before entering into a Contract to purchase computer software, to determine whether a Euro compliance statement is required. The Borough Finance Officer or Borough Solicitor should be consulted if the Responsible Director believes that goods or services to be purchased may be affected by the introduction of the Euro currency into the United Kingdom (e.g. coin operated machines).~~

These paras have been omitted as the clauses concerned are either already in the Council's standard Conditions of Contract, or will be inserted by the Borough Solicitor as necessary when consulted for the

These paras have been omitted as the clauses concerned are either already in the Council's standard Conditions of Contract, or will be inserted by the Borough Solicitor as necessary when consulted for the larger and more complex contracts.

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SECTION 7: ANCILLARY MATTERS

7.1 Disposal of assets (except Land & Buildings)

7.1.1 The Responsible Director shall determine the market value of any equipment, furniture, fittings or plant under his/her control which he/she considers is beyond economic repair, of no further use or obsolete and which is not leased by, loaned or hired to the Council or subject to any similar arrangement. The method of disposal of such items shall be determined in accordance with the following provisions:

- Where an item is believed by the Responsible Director to be of nil value, this shall be confirmed by the Borough Finance Officer. Such items shall be disposed of in the most cost effective manner available.
- Items with an estimated value of £2,000 or less shall be advertised for sale in such a manner as the Responsible Director judges to be most appropriate. This may include advertising for sale to Council employees.
- Items valued at more than £2,000 but less than £10,000 shall be advertised for sale at the estimated value in local newspapers and specialist publications, to include public auctions, as determined by the Responsible Director. Oral offers may be accepted subject to a written record being maintained to include the following details:
 - The officer reviving the quotations
 - The person making the quotation
 - The date the quotation was received
 - The value of the quotation
 - Whether the quotation was accepted or rejected.
- Items valued at £10,000 or above shall be advertised for sale at the estimated value in local newspapers and specialist publications, to include auctions, as determined by the Responsible Director. Offers should be requested in writing only, save at public auction.

7.1.2 It shall be at the discretion of the Responsible Director to determine whether items to be disposed of are to be sold jointly if he/she considers the net income would be maximised from so doing.

7.2 Contract variations

7.2.1 Variations in the price, quality or quantity of a Contract which cause the total cost to exceed the estimated Contract Value by less than £25,000 and which do not cause the approved Service budgets (as amended by Financial Regulations) to be overspent, may be authorised by the Responsible Director.

All variations between £25,000 and £50,000 above the estimate

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must be approved by Executive Members or Responsible Committee (as appropriate).

All variations in excess of £50,000 shall be referred to the Executive or Responsible Committee (as appropriate).

- 7.2.2 Extensions to the Contract duration shall be permitted at the discretion of the Responsible Director in cases where the Contract includes a clause providing for an extension. In all other instances the Responsible Director may extend the contract; extensions in excess of six months shall require the approval of the Council's, the Executive, or the Responsible Committee (as appropriate).

7.3 Contracts over 5 years in duration

- 7.3.1 The Director of Corporate Services shall be informed in advance when a Responsible Director intends to enter into a contract lasting in excess of five years. In situations where the length of contract cannot be determined (e.g. Social Services spot contracts) the Director of Corporate Services shall be informed if the Responsible Director is of the opinion that the contract could last in excess of five years.

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ANNEX A: CIRCUMSTANCES JUSTIFYING SINGLE TENDER ACTION

A.1 Where only one company or contractor is considered to be suitable by the Responsible Director for any of the following reasons: The circumstances justifying single tender action comprise:-

- Where the Contract can only be performed by one contractor,
- ~~Where only one company or contractor is considered to be suitable by the Responsible Director,~~
- ~~Where market conditions make genuine competition impossible and the Contract is for a service or goods which the market provides at fixed cost, *In practice such circumstances do not exist; goods or services can always be differentiated on qualitative criteria, if not on price.*~~
- Where there is genuine urgency in the sense of time constraints for the letting of the Contract,
- Where the proposed contractor is already on site and there is a financial benefit in negotiating an extension for further work,
- Where demonstrable benefits in service or value for money or price are likely to be obtainable by way of direct negotiation with a potential supplier,
- Where a scheme is wholly externally funded and the funding is dependant on a specific contractor being used,
- Such comparable circumstances as the Executive or the Responsible Committee (as appropriate) shall deem to justify a single tender action.

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Exceptions to The Requirements in paragraph 1.33.5

Use of Consultants

~~A.2 Where only one Consultant is considered most suitable by the Responsible Director single tender action may be applied to Contracts for consultancy services up to the Value of £50,000 without following the procedures outlined. Contracts of over £50,000 in Value shall be subject to the full procedures outlined. Consultancies should be subject to the same justification process as outlined above for other service contracts~~

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~~A.3~~ **A.2**

~~A.2 Where only one Consultant is considered most suitable by the Responsible Director single tender action may be applied to Contracts for consultancy services up to the Value of £50,000 without following the procedures outlined. Contracts of over £50,000 in Value shall be subject to the full procedures outlined. I think we had agreed that this could now come out Reb~~

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~~A.3A~~ **A** Responsible Director may automatically apply single tender action, without prior approval or subsequent reporting to the Executive, in respect of care packages for

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individually named clients or in respect of the provision of education to pupils with special educational needs where the cost per annum is under £50,000. Where the annual cost exceeds £50,000 per annum, three written quotations should be requested. In the event that there are less than three viable suppliers the Responsible Director shall obtain the maximum number of quotations reasonably practicable to obtain.

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ANNEX B: THE USE OF APPROVED LISTS OF TENDERERS

- B.1 This Annex gives guidance where the Executive, Responsible—Committee or Responsible Director has determined that a list shall be kept of persons to be invited to tender for Contracts of specified categories, values or amounts. This will normally be for regularly let contracts, where scope will exist for reducing advertising costs and expediently selecting contractors.

Compilation and maintenance of lists

- B.2 Before a list is first compiled notices inviting applications for inclusion in the list shall be published in one or more local newspapers circulating in the Borough and in one or more newspapers or journals circulating amongst such persons who undertake such Contracts of specified categories Values or amounts. On receipt of the application or re-application, references shall be taken up and such investigations into technical ability and financial security made as may be practical. Following analysis of these results a list in each category shall be finalised and the successful and unsuccessful persons notified. The number of organisations or individuals included on an approved list shall be at the reasonable discretion of the Responsible Director, but shall normally be no greater than 25.
- B.3 Such a list shall be compiled, operated and maintained by the Responsible Director. The approved list of tenderers can be updated or amended at any time, to take account of poor performance, new products arriving on the market, etc. Every four years (or more frequently if the Responsible Director feels it is appropriate) the list shall be re-compiled, following the procedure set out in paragraph B2. Those included in the existing list shall be circulated with copies of the advertisement.
- B.4 Where lists of approved tenderers are provided and maintained by recognised national bodies, these may be adopted by the Responsible Director.

Use of approved lists

- B.5 The selection of people being invited to provide a Quotation or invited to Tender shall follow a documented procedure agreed by the Responsible Director. Normally this procedure will provide for the previous lowest tenderer plus at least two other persons to be invited to provide a Quotation/Tender. This shall ensure that requests to provide a Quotation/Tender are rotated in a fair and just manner, while securing value for money to the Council. For each Contract, the Responsible Director shall ensure that written details are kept of those organisations or individuals being invited to provide a Quotation/Tender, whether the invitation was accepted or rejected, the Quotations/Tenders submitted and the result of the competitive bidding process.

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ANNEX C: PUBLIC ADVERTISING REQUIREMENTS

Note: This Annex does not apply to Contracts being placed under the public procurement regulations, where different timescales and procedures must be applied in accordance with the guidance. This annex will apply to any situation where public advertising is considered appropriate in conjunction with the procedure in Annex A, or for obtaining possible candidates for the provision of Quotations.

C.1 The requirements for public advertising, where it is to be used along with an approved list of tenderers to invite tenders, are that:-

- 10 days public notice are given in advance of the closing date for expressions of interest in one or more newspapers or journals circulating amongst such persons as undertake such Contracts and also in one or more local newspapers, where the Responsible Director is of the opinion that a market exists within the Borough.
- The public notice expresses the nature and purpose of the proposed Contract and invites interested potential contractors to contact the Responsible Director by a date specified in the advertisement.

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ANNEX D: PROCEDURE WHERE PUBLIC ADVERTISING ONLY IS USED

Note: It is also possible for public advertising to be combined with **the use of approved lists (see Annex B)** This section applies where only public advertising will be used. This procedure is, therefore, a stand alone procedure and cannot be used in conjunction with the procedure in Annex A. This procedure applies where there are no approved lists and the contract greater than £50,000 in value.

- D.1 This procedure shall apply where the Responsible Director (having obtained the approval of the Executive or Responsible Committee shall decide that an invitation to tender for a Contract should be limited to persons who responded to a public notice.
- D.2 The Responsible Director shall ensure that public notice is given in:-
- At least one local newspaper where the Responsible Director is of the opinion that a market exists within the Borough,
 - At least one newspaper or journal circulating amongst such persons or bodies who undertake such Contracts.
- D.3 The Responsible Director shall ensure that the public notice:-
- Specifies details of the Contract into which the Council wishes to enter
 - Invites persons or bodies interested to apply for permission to tender; and
 - Specifies the time limit save in the case of urgency (which shall be recorded), being not less than 14 days, within which such applications are to be submitted to the Council
- D.4 In cases where a decision is made which requires that only a selection of persons or bodies expressing an interest are to be invited to tender the Responsible Director shall:-
- After the expiry of the period specified in the public advertisement make such enquiries as he/she may consider necessary as to the competence and financial standing of those persons or bodies expressing an interest in the tendering using the latest published accounts and credit ratings as provided by the Borough Finance Officer,
 - Send tender documents to at least 3 of those persons who meet the criteria for inclusion on the tender list (save where less than 3 persons meet the criteria or respond, in which case all shall be included in the tender list), and
 - In the event that the Contract exceeds £250,000 submit the final tender list to the Executive, or Responsible Committee as a confidential item for approval save where the responsibility for drawing up the final tender list has been delegated by the Executive or Responsible Committee to the Responsible Director.

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ANNEX E: FRAMEWORK AGREEMENTS

E1 ~~_____~~ ~~FF~~ Framework Agreements are standing arrangements or call-off contracts established to facilitate the easy repeat ordering of goods and services over several years. The following third party-established Framework Agreements are currently approved for use by the Council:

- All Office of Government Commerce ~~C~~ Buying Solutions contracts (including GCAT and SCAT).
- All Central Buying Consortium contracts

~~T~~ ~~_____~~ The list of contracts will be held by the Head of Procurement who will advise on their use. And amendments or additions to the list may only be made with the approval of the ~~Section 151 Officer~~ Head of Procurement, in consultation with the Borough Solicitor

~~Rob, it just occurred to me that you might want to put in here something about the use of some framework agreements being obligatory? How about the Banner thing...I assume that we are saying that that is an obligatory first point of call? Also do you want to make reference to yourself as the contact who can detail what sort of things can be purchased under these various framework agreements or I can see the uninitiated reading this lot and thinking "ehh???" OK to this!~~

~~Finally do we need to insert something that explains that the ordering procedure if you want to use the framework agreement is dealt with under the conditions that apply to the framework agreement itself and that details of this can be found....now here I am not sure if we should just refer to the internet address or what. I think this needs a bit of thought....and you do know I assume that we as a council as a whole need to enter into a blanket agreement with the person who set up each agreement to allow the staff to make orders under them (I am sure this is grandmother and eggs....but I only recently found that out and it doesn't seem obvious to me!!!) OK we will worry about this lot later~~

~~These represent arrangements currently available for use by the Council without the need for further competition. They have all been set up in full compliance with EC Procurement Directives.~~

~~Setting out an "approved list" of existing acceptable Framework Agreements will avoid the need to seek Executive approval in principle before using each contract. It also regularises the current occasional use of Consortium contracts.~~

~~These represent arrangements currently available for use by the Council without the need for further competition. They have all been set up in full compliance with EC Procurement Directives.~~

~~Setting out an "approved list" of existing acceptable Framework Agreements will avoid the need to seek Executive approval in principle before using each contract. It also regularises the current occasional use of Consortium contracts.~~

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ANNEX F: STANDARD CONDITIONS OF CONTRACT

F 1 ~~The following forms of contract are approved for use by the Council: by the Borough Solicitor.....Rob this then ties up with the mention of that illustrious person earlier! We also need to make sure that whatever we put in the earlier bit also allows for him to approve additional ones at any time and that you will keep the up to date list of any additional ones that have been approved since the last version of contract regs I have now included a reference to this in the body of the regs.~~

- JCT all forms
- ICE all forms
- PPC2000 – ACA Standard Form for Partnering
- Others to be added – awaiting advice from Environment and SS&H

F2 ~~The Council's standard Contract Conditions are attached as follows: (section 6.1 of these regulations requires these conditions to be used in the circumstances described in that section) I think you need to cross reference the bit in the text that requires these to be used~~

- Conditions of Contract for the Supply of Minor Goods and/or Services 01-02
- Contract for Small Building and Associated Works 01-02
- Conditions of Contract for Services 01-02
- Conditions of Contract for Goods 01- 02
- Conditions of Contract for Consultancy 01-02

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Bracknell Forest Borough Council Conditions of Contract for the Supply of Minor Goods and/or Services

1.DEFINITIONS

COUNCIL means Bracknell Forest Borough Council or successors and assigns.
COUNCIL EQUIPMENT means all plant, tools, equipment or other items belonging to the COUNCIL.
CONTRACT means the ORDER together with these conditions and any documents attached or referred to therein.
CONTRACTOR means the person, firm, company or corporation with whom the COUNCIL places an ORDER.
GOODS means the items specified in the ORDER (or amendment thereof) to be supplied by the CONTRACTOR in accordance with the CONTRACT.
LEGISLATION means all applicable statutes, codes of practice, regulations of any local, statutory, public or lawfully constituted body having authority, whether in force or subsequently enacted.
ORDER means the COUNCIL'S official numbered ORDER.
SERVICES means the services specified in the ORDER (or amendment thereof) to be carried out by the CONTRACTOR in accordance with the CONTRACT.

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2.ASSIGNMENT & SUBCONTRACTING

The CONTRACTOR shall not assign or subcontract the whole or part of the benefits or burdens under the CONTRACT without the prior written consent of the COUNCIL.

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4.PERFORMANCE

In the performance of the CONTRACT, the CONTRACTOR shall at all times comply with LEGISLATION. No term of the CONTRACT is intended by either party to confer a benefit on any third party as defined by the Contracts (Rights of Third Parties) Act 1999 nor is intended to be enforceable by any third party as defined in said Act.

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1.1THE GOODS SUPPLIED UNDER THE CONTRACT SHALL:

- a)be of good and sound design, materials and workmanship;
- b)Be of suitable quality and fit for the purpose(s) for which they are supplied under the CONTRACT;
- c)Conform as to description, specification and quality with the particulars stated in the CONTRACT;
- d)Be free from any defect in title.

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1.2THE SERVICES EXCUTED UNDER THE CONTRACT SHALL:

- a)be carried out with reasonable care and skill;
- b)be carried out with due expedition and within the time (if any) specified in the CONTRACT;

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5.DELIVERY OF GOODS / COMPLETION OF THE SERVICES

- a)Delivery shall be deemed to be made upon receipt of the GOODS by the COUNCIL in accordance with the CONTRACT.
- b)The SERVICES shall be considered complete when the COUNCIL is satisfied that the SERVICES have been completed in accordance with the CONTRACT.

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6.MAINTENANCE

The CONTRACTOR shall for 12 months following delivery of the GOODS/completion of the SERVICES promptly remedy any defects arising from faulty design materials or workmanship.

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7.RISK AND PROPERTY IN GOODS

Without prejudice to the rights and obligations of the parties under the CONTRACT, Property in the GOODS or any part thereof shall pass to the COUNCIL on delivery or on payment by the COUNCIL (whichever is earlier) but the risk shall not pass to the COUNCIL until the GOODS have been delivered in accordance with the CONTRACT.

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8.REPAIRS TO COUNCIL EQUIPMENT

8.1Where any COUNCIL'S EQUIPMENT is to be modified, reconditioned or repaired by the CONTRACTOR the property therein shall remain with the COUNCIL at all times. The risk shall remain with the CONTRACTOR whilst the COUNCIL'S EQUIPMENT is under the CONTRACTOR'S care and control.

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1.2The CONTRACTOR shall clearly identify and mark COUNCIL'S EQUIPMENT as "the property of Bracknell Forest Borough Council" or in such manner as the COUNCIL may require and shall separately store, safeguard, maintain it in good order and keep appropriate records thereof.

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1.3Damage to or loss of COUNCIL'S EQUIPMENT arising from bad workmanship or from the CONTRACTOR'S failure to comply with the previous of sub-clause 7.2 shall be made good at the CONTRACTOR'S expense either by the CONTRACTOR or as the COUNCIL otherwise instructs or by replacement equipment of at least the equivalent quality.

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1.4 COUNCIL'S EQUIPMENT shall not be disposed of by the CONTRACTOR to any third party nor used except for the purposes of the CONTRACT.

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9.PAYMENT

9.1The price(s) detailed in the CONTRACT shall remain firm and fixed for the duration of the CONTRACT.

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1.2The CONTRACTOR shall send to the COUNCIL a detailed priced invoice(s) as instructed on the ORDER, clearly stating the order number, item numbers and all information required to be stated on a tax invoice for VAT purposes.

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1.3Payment of the agreed fixed price(s) shall be made within thirty (30) days from receipt of invoice unless otherwise specified in writing.

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1.4Payment shall not operate as a waiver of any rights of the COUNCIL under the CONTRACT or at law.

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10.INSURANCE AND INDEMNITIES

10.1The CONTRACTOR shall effect and maintain general third party and where applicable, product liability insurance with a combined bodily injury and property damage limit of not less than two million pounds (£2,000,000) per occurrence or series of occurrences arising from the one event and unlimited in any period of insurance (aggregate for product liability). The CONTRACTOR shall at the COUNCIL'S request furnish the COUNCIL with a current certificate of insurance as prescribed by the COUNCIL

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1.2The CONTRACTOR shall be liable for, indemnify, defend and hold the COUNCIL harmless from and against all losses, costs, damage and expenses of every kind and nature, including legal expenses, in respect of:

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- a)injury, sickness, disease or death of any person, including the COUNCIL'S employees, or
- b)loss of or damage to any property, including the COUNCIL'S property.

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11.TERMINATION

11.1Without prejudice to the other parties rights and remedies under the CONTRACT or at law, if either party is in breach of any of its obligations hereunder the other party may after giving the party in breach not less than 2 days written notice to rectify such breach and if such breach is not rectified within such period terminate the CONTRACT or any part thereof. In the event of termination by the COUNCIL under this sub-clause 10.1 the COUNCIL may retain out of any amount due to the CONTRACTOR under the CONTRACT an amount equal to any bona fide claim the COUNCIL may have against the CONTRACTOR arising out of such breach.

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1.2In addition the COUNCIL may at its convenience terminate the CONTRACT or any part thereof at any time by notice to the CONTRACTOR. In this event the COUNCIL shall, subject to any other provisions of the CONTRACT, pay the CONTRACTOR for all GOODS and SERVICES supplied in accordance with the CONTRACT up to the time of termination and such other compensations as may be agreed between the parties.

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1.3Upon termination of the CONTRACT the CONTRACTOR shall immediately return to the COUNCIL all COUNCIL'S EQUIPMENT which the CONTRACTOR may have in its possession.

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12.CONFIDENTIALITY

The CONTRACTOR shall keep confidential any information data or process connected with the business of the COUNCIL.

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13.APPLICABLE LAW

The construction and performance of the CONTRACT shall be governed by the laws of England.

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14. ENTIRETY

The CONTRACT comprises the entire agreement between the parties and no other terms and conditions unless agreed in writing between the parties shall apply.

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BRACKNELL FOREST BOROUGH COUNCIL

CONDITIONS OF CONTRACT: SERVICES

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CONDITIONS OF CONTRACT: SERVICES

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Contractor shall form any part of the Contract.

1 Definitions

— In these conditions:-

“Council” means Bracknell Forest Borough Council

“Contractor” means the person firm or company detailed in the Schedule to whom this contract is issued

“Services” means the services to be provided as specified in the Schedule and shall, where the context so admits, include any materials articles and goods to be supplied thereunder

“Premises” means the location where the Services are to be performed as specified in the Schedule

“Price” means the price for the Services detailed on the Schedule

“Contract” means the Contract between the Council and the Contractor consisting of the Schedule, these conditions and any other documents or parts thereof specified in the Schedule

2 Variations of the Services

The Council reserves the right by notice to the Contractor to modify the quality or quantity of the Services and any alteration to the Price or the completion date arising by reason of such modification shall be agreed between the parties

3 Inspection of Premises and nature of Services

3.1 The Contractor is deemed to have inspected the Premises before tendering so as to have understood the nature and extent of the Services to be carried out and satisfied himself in relation to all matters connected with the Services and Premises

3.2 The Council shall at the request of the Contractor grant such access as may be reasonable for this purpose

4 Contractor status

4.1 In carrying out the Services the Contractor shall be acting as principal and not as the agent of the Council. Accordingly:-

(a) the Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the Council; and

(b) nothing in this Contract shall impose any liability on the Council in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Council to the Contractor that may arise by virtue of either a breach of this Contract or any negligence on the part of the Council its staff or agents

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5 Contractors personnel

5.1 The Contractor shall take the steps reasonably required by the Council to prevent unauthorised persons being admitted to the Premises. If the Council gives the Contractor notice that any person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from the involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and, if required by the Council, the Contractor shall replace any person moved under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered

5.2 If and when instructed by the Council the Contractor shall give to the Council a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the Council may reasonably require

5.3 The decision of the Council as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Contractor has furnished the information or taken the steps required by him under this condition shall be final and conclusive

5.4 The Contractor shall bear the cost of any notice instruction or decision of the Council under this condition

6 Manner of carrying out the Services

6.1 The Contractor shall make no delivery of materials plant or other things nor commence any work on the Premises without obtaining the Council's prior consent

6.2 Access to the Premises shall not be exclusive to the Contractor but only such as shall enable him to carry out the Services concurrently with the execution of work by others. The Contractor shall co-operate with such others as the Council may reasonably require

6.3 The Council shall have the power at any time during the progress of the Services to order in writing:-

(a) the removal from the Premises of any materials which in the opinion of the Council are either hazardous noxious or not in accordance with the Contract, and/or

(b) the substitution of proper and suitable materials, and/or

(c) the removal and proper re-execution of any work which in respect of material or workmanship is not in the opinion of the Council in accordance with the Contract

6.4 On completion of the Services the Contractor shall remove his plant equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Services and leave the Premises in a neat and tidy condition

7 Time of performance

7.1 The Contractor shall begin performing the Services on the date stated in the Schedule and shall complete them by the date stated in the Schedule or continue to perform them for the period stated in the Schedule (whichever is applicable). Time is of the essence of the Contract. The Council may by written notice require the Contractor to execute the Services in such order as the Council may decide. In the absence of such notice the Contractor shall submit any detailed programs of work and progress reports as the Council may from time to time require

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8—Payment

8.1 Unless otherwise stated in the Schedule payment will be made within 30 days of receipt and agreement of invoices, submitted monthly in arrears, for work completed to the satisfaction of the Council

8.2 Value Added Tax where applicable will be shown separately on all invoices as a net extra charge

9—Free issue materials

9.1 Where the Council for the purposes of the Contract issues materials free of charge to the Contractor such materials shall be and remain the property of the Council. The Contractor shall maintain all such materials in good order and condition and shall use such materials solely in connection with the Contract. The Contractor shall notify the Council of any surplus materials remaining after the completion of the Services and shall dispose of them as the Council may direct. Waste of such materials arising from bad workmanship or negligence of the Contractor or any of his servants agents or sub-contractors shall be made good at the Contractor's expense. Without prejudice to any other of the rights of the Council the Contractor shall deliver up such materials whether processed or not to the Council on demand

10—Audit

10.1 The Contractor shall keep and maintain until 2 years after the Contract has been completed records to the satisfaction of the Council of all expenditures which are reimbursable by the Council and of the hours worked and costs incurred in connection with any employees of the Contract paid for by the Council on a time charged basis. The Contractor shall on request afford to the Council or his representatives such access to those records as may be required by the Council in connection with the Contract

11—Patents and information

11.1 It shall be a condition of this Contract that, except to the extent that the Services incorporate designs furnished by the Council, the Services will not infringe any patent trademark registered design copyright or other right of the nature of industrial property of any third party and the Contractor shall indemnify the Council against all actions claims demands costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition

11.2 All rights (including ownership and copyright) in any specifications instructions plans drawings patents models designs or other materials:-
(a) furnished to or made available to the Contractor by the Council are hereby assigned to and shall vest in the Council absolutely

(b) prepared by or for the Contractor for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Council absolutely and the Contractor shall not and shall procure that his servants and agents shall not (except to the extent necessary for the implementation of this Contract) without prior written consent of the Council use or disclose any such specifications instructions plans drawings patents models designs or other materials as aforesaid or any other information (whether or not relevant to this Contract) which the Contractor may obtain pursuant to or by reason of the Contract except information which is in the public domain otherwise than by reason a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Contractor shall not refer to the Council or the Contract of any advertisement without the Council's prior written consent

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11.3 The provisions of this condition 11 shall apply during the continuance of this Contract and after its termination howsoever arising

12 Indemnity and insurance

12.1 The Contractor shall indemnify the Council its servants and agents against all actions claims demands costs and expenses incurred or made against the Council its servants or agents in respect of any loss or damage or personal injury (including death) which arises out of or in connection with this Contract

12.2 Except in the case of loss damage or personal injury (including death) suffered by an employee of the Contractor (in respect of which the indemnity in condition 12.1 shall apply) whether or not the loss, damage or personal injury was caused by the negligent or wilful act or omission of the Council or any servant or agent of the Council (the indemnity contained in condition 12.1 shall not apply) to the extent that the loss damage or injury is caused by the negligent or wilful act or omission of the Council or any servant or agent of the Council

12.3 The Contractor shall have in force and shall require any sub-contractor to have in force:-

(a) employers liability insurance in accordance with any legal requirements for the time being in force and

(b) public liability insurance for such sum and range of cover as the Contractor deems to be appropriate but covering at least all matters which are the subject of indemnities or compensation obligations under these conditions in the sum of not less than £2 million for any one instant and unlimited in total, unless otherwise agreed by the Council in writing

12.4 The policy or policies of insurance referred to in paragraph 12.3 shall be shown to the Council whenever it requests together with satisfactory evidence of payment of premiums

13 Racial discrimination

13.1 The Contractor shall not unlawfully discriminate within the meaning of scope of the provision of the Race Relations Act 1978 or any statutory modification or re-enactment thereof relating to the discrimination in employment. The Contractor shall take all reasonable steps to secure the observance of these provisions by all servants employees or agents of the Contractor and all sub-contractors employed in the execution of the Contract

14 Termination

14.1 The Contractor shall notify the Council in writing immediately upon the occurrence of any of the following events:-

(a) where the Contractor is an individual and if a petition is presented for the Contractor's bankruptcy or a criminal bankruptcy order is made against the Contractor or he makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs; or

(b) where the Contractor is not an individual but is a firm or a number of persons acting together in any capacity if any event in (a) or (c) of this condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Contractor to be wound up as an unregistered company; or

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(c) where the Contractor is a company, if the company passes a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction) or the Court makes an administration order or a winding up order, or the company makes a composition or arrangement with its creditors or an administrative receiver, receiver or manager is appointed by a creditor or by the Court, or possession is taken of any of its property under the terms of a floating charge

14.2 On the occurrence of any of the events described in paragraph 14.1 or if the Contractor shall have committed a material breach of this Contract and (if such breach is capable of remedy) shall have failed to remedy such breach within 30 days of being required by the Council in writing to do so, or where the Contractor is an individual if he shall die or be adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983 the Council shall be entitled to terminate this Contract by notice to the Contractor with immediate effect. Thereupon without prejudice to any of its rights, the Council may itself complete the Services or have them completed by a third party using for that purpose (making a fair and proper allowance therefore in any payment subsequently made to the Contractor) all materials plant and equipment on the Premises belonging to the Contractor and the Council shall not be liable to make any further payment to the Contractor until the Services have been completed in accordance with the requirements of the Contract and shall be entitled to deduct from any amount due to the Contractor the costs thereof incurred by the Council (including the Council's own costs). If the total cost to the Council exceeds the amount (if any) due to the Contractor the difference shall be recoverable by the Council from the Contractor

14.3 In addition to its rights of termination under paragraph 14.2 the Council shall be entitled to terminate this Contract by giving to the Contractor not less than 30 days notice to that effect

14.4 Termination under paragraph 14.2 or 14.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereupon accrue to the Council

15 Recovery of sums due

15.1 Wherever under this Contract any sum of money is recoverable from or payable by the Contractor that sum may be deducted from any sum then due or which at any later time may become due to the Contractor under this Contract or under any other agreement or contract with the Council

16 Notices

16.1 Any notice given under or pursuant to the Contract may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex telemessage facsimile transmission or other means of telecommunication resulting in the receipt of a written communication in permanent form and if so sent or transmitted to the address of the party shown in these conditions and in the Schedule or to such other address as the party may by notice to the other have substituted therefore shall be deemed effectively to be given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours

17 Assignment and sub-contracting

17.1 The Contractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of the Contract without written permission given on behalf of the Council by the Council's responsible director. Sub-letting is prohibited without the consent of the Council

17.2 The Contractor shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Contract

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18 Data Protection

The Contractor shall comply in all respects with the provisions of the Data Protection Act 1998 and all subsequent and supporting legislation made pursuant thereto and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be brought or made against the Council for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the Contractor and his servants and agents

19 Liability for Sub-contractors

In the event that the Council permits the Contractor to sub-contract all or part of the provision of the Services the Contractor shall remain and continue to remain liable for the work of the sub-contractor

20 Standards

In the event that the Services require compliance with an appropriate British Standard then the Council shall accept any equivalent European Standard

21 Bribery and corruption

The Council shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination if:-

- (a) the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Contract or any other contract with the Council; or
- (b) the like acts shall have been done by any person employed by the Contractor or acting on his behalf (whether with or without the knowledge of the Contractor); or
- (c) in relation to any contract with the Council the Contractor or any person employed by him or acting on his behalf shall:-
 - (i) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or
 - (ii) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or
 - (iii) where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for the Contract

22 Human Rights

22.1 The Contractor confirms that he will perform his obligations pursuant to the Contract in all respects in conformance with the Human Rights Act 1998

22.2 The Contractor hereby indemnifies the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Contractor his servants or agents to duly perform his obligations pursuant to sub condition 22.1 above and arising further from any act or omission of the Contractor his servants or agents in respect of the non performance of the said obligations

22.3 The Contractor ensures the compliance of any sub-contractor of his in the performance of the Contract with the provisions of this condition and shall indemnify the Council accordingly in respect of any breach of the same by the sub-contractor

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23 No rights of third parties

The parties hereby declare that no term of the Contract is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

24 Waiver

24.1 The failure of either party to insist upon the strict performance of any provision of the Contract or the failure of either party to exercise any right or remedy to which it is entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Contract

24.2 A waiver of any breach of contract shall not constitute a waiver of any such subsequent breaches

24.3 No waiver of any of the provisions of the Contract shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing

25 Headings

The headings to these conditions shall not affect their interpretation

26 Governing Law

These conditions shall be governed by and construed in accordance with English Law and the Contractor hereby irrevocably submits to the jurisdiction of the English Courts

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THE SCHEDULE

The Contractor
[detail name and address of the Contractor]

The Services
[include a description of the services with reference to a detailed specification if required]

The Price
[include details of payment terms if different from condition 8.1 and include the price to be paid for the services]

Delivery of Services
[include details of the timing for the delivery of the services including the start and end date]

Premises
[detail the premises where the services are to be performed]

Order Number
[if applicable]

Signed by.....
The duly authorised officer of the Council

Signed by.....
Authorised to sign on behalf of the Contractor

Dated.....

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BRACKNELL FOREST BOROUGH COUNCIL

CONDITIONS OF CONTRACT: GOODS

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CONDITIONS OF PURCHASE: GOODS

These conditions may only be varied with the written agreement of the Council. No terms or conditions put forward at any time by the Suppliers shall form any part of the Contract.

1 Definitions

In these conditions:-

“Council” means Bracknell Forest Borough Council

“Supplier” means the person firm or company detailed in the Schedule to whom this contract is issued

“the Goods” means any such goods as are to be supplied by the Supplier (or by any of the Supplier’s sub-contractors) pursuant or in connection with the Order

“Price” means the price for the Goods detailed on the Schedule

“Order” means the Contract between the Council and the Contractor consisting of the Schedule, these conditions and any other documents or parts thereof specified in the Schedule

2 The Goods

2.1 The Goods shall be to the reasonable satisfaction of the Council and shall conform in all respects with any particulars described in the Schedule or any agreed variations thereto confirmed in writing between the parties

2.2 The Goods shall conform in all respects with the requirements of any statutes, orders, regulations or bylaws from time to time in force

2.3 The Goods shall be suitable and sufficient for the purpose for which such Goods are ordinarily used and for any particular purpose made known to the Supplier by the Council and the Council relies on the skill and judgment of the Supplier in the supply of the Goods and the execution of the Order

3 The Price

3.1 The price of the Goods shall be as stated on the Schedule and no increase will be accepted by the Council unless agreed by the Council in writing before the execution of the Order

3.2 If the Goods are to be delivered in consignments then unless otherwise agreed in writing by the Council the Supplier shall render a separate invoice in respect of each consignment delivered under this Order. Payment shall be due 30 days after receipt of the Goods or the correct invoice therefore, whichever is the later

4 Delivery

4.1 The Goods shall be delivered to the place named on the Schedule. Any access to premises and any labour and equipment that may be provided by the Council in connection with the delivery shall be provided without acceptance by the Council of any liability whatsoever and the Supplier shall indemnify the Council in respect of any actions claims demands charges losses costs and expenses which the Council may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of his sub-contractors

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4.2 Where any access to the Council's premises is necessary in connection with delivery or installation the Supplier and his sub-contractors shall at all times comply with the reasonable security requirements of the Council

4.3 The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Council (at its option) to release itself from any obligation to accept and pay for the Goods and/or to cancel all or part of the Order therefore, in either case without prejudice to its rights and remedies

5 – Property and risk

Property and risk in the Goods shall without prejudice to any of the rights or remedies of the Council (including the Council's rights and remedies under condition 7 hereof) pass to the Council at the time of delivery

6 – Damage in transit

On despatch of any consignment of the Goods the Supplier shall send to the Council at the address for delivery of the Goods an advice note specifying the means of transport, a place and date of despatch, the number of packages and their weight and volume. The Supplier shall, free of charge and as quickly as possible, either replace or repair (as the Council shall elect) such of the Goods as may either be damaged in transit or having been placed in transit fail to be delivered to the Council provided that:-

(a) in the case of damage to such Goods in transit the Council shall within 30 days of delivery give notice to the Supplier that the Goods have been damaged

(b) in the case of non delivery the Council shall (provided that the Council has been advised of the despatch of the Goods) within 10 days of the notified date of delivery give notice to the Supplier that the Goods have not been delivered

7 – Inspection rejection and guarantee

7.1 The Supplier shall permit the Council or its duly authorised officer to make any inspections or tests it may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or test and no approval given during or after such tests or inspections shall constitute a waiver by the Council of any rights or remedies in respect of the Goods

7.2 The Council may by written notice to the Supplier reject any of the Goods which fail to meet the requirements specified herein. Such notice shall be given within a reasonable time after delivery to the Council of the Goods concerned. If the Council shall reject any of the Goods pursuant to this condition the Council shall be entitled (without prejudice to its other rights and remedies) either:-

(a) to have the Goods concerned as quickly as possible either repaired by the Supplier or (as the Council shall elect) replaced by the Supplier with Goods which comply in all respects with the requirements specified herein; or

(b) to obtain a refund from the Supplier in respect of the Goods concerned

7.3 The guarantee period applicable to the Goods shall be 12 months from putting into service or 16 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Council and the Supplier or detailed on the Schedule). If the Council shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use the

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Supplier shall (without prejudice to any other rights and remedies which the Council may have) as quickly as possible remedy such defects (whether by repair or replacement as the Council shall elect) without cost to the Council

7.4 Any Goods rejected or returned by the Council as described in condition 7.2 or 7.3 shall be returned to the Supplier at the Supplier's risk and expense

8 – Labelling and packaging

8.1 The Goods shall be packed and marked in a proper manner and in accordance with the Council's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with any Order number detailed on the Schedule (if applicable), the net gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings. The Supplier shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition

8.2 All packaging materials will be considered non-returnable and will be destroyed unless the Supplier's advice note states that such materials will be charged for unless returned. The Council accepts no liability in respect of the non-arrival at the Supplier's premises of empty packages returned by the Council unless the Supplier shall within 10 days of receiving notice from the Council that the packages have not been despatched notify the Council of such non-arrival

9 – Patents and information

9.1 It shall be a condition of this Order that, except to the extent that the Goods are made up in accordance with designs furnished by the Council, none of the Goods will infringe any patent trademark registered design copyright or other right in the nature of industrial property of any third party and the Supplier shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of written connection with any breach of this condition

9.2 All rights (including ownership and copyright) in any specifications instructions plans drawings patterns models designs or other material furnished to or made available to the Supplier by the Council pursuant to this Order shall remain vested solely in the Council and the Supplier shall not (except to the extent necessary for the implementation of this Order) without prior written consent of the Council use or disclose any such specifications plans drawings patterns models or designs or any information (whether or not relevant to this Order) which the Supplier may obtain pursuant to this Order and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to the Council or the Order in any advertisement without the Council's prior written agreement

10 Health and Safety

10.1 The Supplier represents and warrants to the Council that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to the delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same and that he has made available to the Council adequate information about the use for which the Goods have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify the Council against all actions claims demands

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losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any breach of this condition

11 Indemnity insurance

11.1 Without prejudice to any rights or remedies of the Council (including the Council's rights and indemnities under condition 7) the Supplier shall indemnify the Council against all actions claims demands losses charges costs and expenses which the Council may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods or the negligent or wrongful act or omission of the Supplier

11.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these conditions and shall at the request of the Council produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder

12 Termination on Supplier's insolvency

12.1 Without prejudice to any other rights or remedies of the Council under this Order the Council shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) liquidator or administrator if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs

13 Recovery of sums due

13.1 Wherever under this Order any sum of money is recoverable from or payable by the Supplier that sum may be deducted from any sum then due, or which at any later time may become due, to the Supplier under this Order or under any other agreement or contract with the Council

14 Assignment and sub-contracting

14.1 The Supplier is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of the Order without written permission given on behalf of the Council by the Council's responsible director. Subletting is prohibited without the consent of the Council.

14.2 The Supplier shall be responsible for the observance of this requirement by sub-contractors employed in the execution of the Order

15 Default

15.1 If the value of the Order exceeds £50,000, then should the Supplier fail to deliver the Goods or materials or any portion thereof within the time specified in the Order the Council shall be at liberty, without prejudice to any other remedy for breach of contract, and without prejudice to any further conditions detailed herein, to determine the Order either wholly or to the extent of such default and to purchase other goods materials or products as the case may be of the same or similar description to make good:-

(a) such default; or

(b) in the event of the Order being wholly determined the Goods materials or products remaining to be delivered

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15.2 If the amount by which the costs of purchasing such other goods materials or products exceeds the amount which would have been payable to the Supplier for them, if they had been delivered in accordance with the Order, will be recoverable from the Supplier

16 Data Protection

16.1 The Supplier shall comply in all respects with the provisions of the Data Protection Act 1998 (or subsequent legislation) and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be made or brought against the Council for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the Supplier and his servants and agents

17 Liability for sub-contractors

17.1 In the event that the Council permits the Supplier to sub-contract all or part of the provision of the Goods the Supplier shall remain and continue to remain liable for the work of the sub-contractor

17.2 In the event that the Order requires compliance with an appropriate British Standard then the Council shall accept any equivalent European Standard.

18 Bribery and corruption

18.1 The Council shall be entitled to terminate the Order forthwith and to recover from the Supplier the amount of any loss resulting from such termination if:-

(a) the Supplier shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Order or any other order with the Council; -or

(b) the like acts shall have been done by any person employed by the Supplier or acting on its behalf (whether with or without the knowledge of the Supplier); -or

(c) in relation to any order with the Council the Supplier or any person employed by it or acting on its behalf shall:-

(i) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or

(ii) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972

(iii) where collusion has taken place between two or more tenderers or parties in fixing or adjusting any bids submitted for this Order

19 Year 2000 warranty

The Supplier warrants that neither the performance nor the functionality of Goods will be affected by the advent of the year 2000. In particular this warranty shall cover the British Standards Institute definition of year 2000 conformance requirements as defined in disc pd 2000 - 1 which is reproduced in full below:-

(a) no value for current date will cause any interruption in operation

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(b) date based functionality must behave consistently for dates prior to during and after year 2000

(c) in all interfaces and data storage the century in any date must be specified either explicitly or by unambiguous algorithms or interfering rules

(d) year 2000 must be recognised as a leap year

20 EMU continuity

20.1. The parties confirm that the occurrence or non-occurrence of an event associated with economic and monetary union in the European Community will not have the effect of altering any term of, or discharging or excusing performance under this Order or give a party the right unilaterally to alter or terminate this Order

20.2. "an event associated with economic and monetary unit in the European Community" includes, without limitation, each and every combination of the following:-

(i) the introduction of, changeover to or operation of a single or unified European currency, whether known as the Euro or otherwise

(ii) the fixing of conversion rates between a member state's currency and the new currency or between the currency of member states

(iii) the substitution of that new currency for the ECU as the unit of account of the European community

(iv) the introduction of that new currency as lawful currency in a member state

(v) the withdrawal from legal tender of any currency that, before the introduction of the new currency, in one of the member states

21 Human Rights

21.1 The Supplier confirms that it will perform its obligations pursuant to the Order in all respects in conformance with the Human Rights Act 1998

21.2 The Supplier hereby indemnifies the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Supplier its servants or agents to duly perform its obligations pursuant to sub condition 21.1 above and arising further from any act or omission of the Supplier its servants or agents in respect of the non performance of the said obligations

21.3 The Supplier ensures the compliance of any sub contractor of it in the performance of the Order with the provisions of this condition and shall indemnify the Council accordingly in respect of any breach of the same by the sub contractor

22 No rights of third parties

The parties hereby declare that no term of the Order is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded

23 Waiver

23.1 The failure of either party to insist upon the strict performance of any provision of the Order or the failure of either party to exercise any right or remedy to which it is

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entitled hereunder shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by the Order

23.2 A waiver of any breach of contract shall not constitute a waiver of any such subsequent breaches

23.3 No waiver of any of the provisions of the Order shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing

24 Notices

Any notice given under or pursuant to the Order may be sent by hand or post or by registered post by the recorded delivery service or transmitted by telex telemessage facsimile transmission or other means of telecommunications resulting in receipt of a written communication in permanent form and if so sent or transmitted to the address of the parties detailed in the Order and the Schedule, or to such other address as the party may by notice to the other have substituted therefore, shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours

25 Headings

The headings to conditions shall not affect their interpretation

26 Governing Law

These conditions shall be governed by and construed in accordance with English Law and the Supplier hereby irrevocably submits to the jurisdiction of the English Courts

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THE SCHEDULE

The Supplier

[complete name and address]

The Goods

[include full description of the Goods cross referencing detailed specification if appropriate]

The Price

[detail price to be paid including instalments agreed if appropriate. State whether VAT is payable]

Delivery Details

[Include place of delivery, including time and if consignments required]

Guarantees

[only if at variance with condition 7.3]

Order number

[if applicable]

Signed by.....

The duly authorised officer of the Council

Signed by.....

Duly authorised to sign on behalf of the Contractor

Date.....

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BRACKNELL FOREST BOROUGH COUNCIL

to

:-

CONSULTANCY AGREEMENT

nn/(f)/ag/Consultancy Agreement

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THIS AGREEMENT is made the _____ day of _____ BETWEEN BRACKNELL FOREST BOROUGH COUNCIL of Easthampstead House Town Square Bracknell Berkshire (hereinafter referred to as "BFBC") of the one part and _____ whose registered office is situate at _____ (hereinafter referred to as "the Consultants") of the other part

WHEREAS:-

(1) The Consultants have agreed to provide certain consultancy services to BFBC

NOW IT IS AGREED AS FOLLOWS:-

1. Definitions

In this Agreement the following words shall have the following meanings assigned to them:-

"the Services" means the consultancy services to be provided by the Consultants to BFBC in accordance with the Specification and the terms of this Agreement

"the Specification" means the specification attached hereto

"Commencement Date" means the commencement of this Agreement which shall be [_____]

"Term" means the term of this Agreement commencing on the Commencement Date and terminating upon [_____]

"the Payment" means the consideration for the Services which is detailed in clause 3.1 hereto

"Confidential Information" means BFBC's secrets or confidential information and extends to all knowledge and information relating to BFBC's business organisation finances processes specifications clients services and technology

"the Employee" means the employee of the Consultants namely [_____]

2. The Services

2.1 The Services will be provided by the Consultants to BFBC in accordance with the Specification for the Term

2.2 It is intended that the Services shall be provided by the Consultants in close consultation with BFBC and accordingly BFBC and the Consultants shall agree during the Term the manner and timing of the provision of the Services. The Consultants will use their reasonable endeavours to provide the Services in the manner so directed

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~~2.3 It is a condition of the Agreement that the Services will be provided by an employee of the Consultants who shall be the Employee and that any proposed replacement employee must be approved in writing in advance by BFBC~~

~~2.4 The Services will consist of a maximum of [] weeks (a week is deemed to consist of 37 hours excluding public holidays) which shall be allocated during the Term in accordance with directions given by BFBC pursuant to clause 2.2 hereof provided always that any week shall consist of no less than [] days and no more than [] days~~

~~3. Payment Provisions~~

~~3.1 In consideration of the provision of the Services BFBC agrees to pay the Consultants a sum of £[] per day [including/excluding] VAT ("the Payment") No additional expenses will be payable of whatever nature or however incurred save travelling accommodation and subsistence agreed by BFBC in advance~~

~~3.2 The Payment will be paid monthly in arrears by BFBC to the Consultants upon correct invoice from the Consultants. The invoice shall contain the following information relating to the month to which the invoice relates:-~~

~~3.2.1 The dates worked and number of man-days provided and the daily rate charged~~

~~3.2.2 Copies of agreed time sheets~~

~~3.2.3 Details of approved expenses invoiced~~

~~3.3 All correct invoices will be paid by BFBC within 30 days of receipt~~

~~4. Liability of BFBC~~

~~BFBC shall not be liable for any economic loss including loss of profit suffered by the Consultant and arising from any breach of the obligations of BFBC in the Agreement~~

~~5. Notices~~

~~5.1 No notice served on BFBC pursuant to this Agreement shall be valid and effective unless it is sent by recorded delivery to BFBC at the address above and marked for the attention of []~~

~~5.2 No notice served on the Consultants shall be valid and effective unless it is sent by recorded delivery to the Consultants at the registered address detailed above~~

~~5.3 Any notice to be served shall be deemed to be given on the date when it would be delivered in the ordinary course of post~~

~~6. Variations~~

~~Any variations to this Agreement must be made in writing and signed by the duly authorised representatives of both parties~~

~~7. Professional Expertise~~

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~~It is a condition of this Agreement that the Services to be provided shall be provided by a person of sufficient expertise and in accordance with the good working practices of the relevant profession~~

~~8. Assignment~~

~~8.1 The Consultants are prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever this Agreement in whole or part and are prohibited from sub-letting this Agreement without the prior written consent of BFBC~~

~~8.2 BFBC may assign this Agreement in whole or part to a statutory or public body or any successor authority or authorities of BFBC~~

~~9. Termination~~

~~9.1 BFBC may terminate this Agreement upon 7 days notice in writing to the Consultants in the following events:-~~

- ~~(a) if the Consultants shall become bankrupt or have a receiving order made against them or shall present their petition in bankruptcy or shall make an arrangement with or assignment in favour of their creditors or shall agree to carry out this Agreement under the committee of inspection of its creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Consultants without the consent in writing of BFBC first obtained or shall have an execution levied on their goods; or~~
- ~~(b) if the Consultants have failed to comply with Clause 10 relating to Bribery and Corruption; or~~
- ~~(c) if the Consultants are in breach of the terms of Clause 8 hereof (assignment or subletting); or~~
- ~~(d) if the Consultants have failed to comply with the terms of this Agreement; or~~
- ~~(e) if the Consultants are in breach of Clause 2.3~~

~~9.2 BFBC may terminate this Agreement after 14 days written notice to the Consultants (during which period such breach has not been remedied to the reasonable satisfaction of BFBC) if the Consultants:-~~

- ~~(a) have abandoned this Agreement; or~~
- ~~(b) without reasonable excuse have failed to commence the performance of the Services; or~~
- ~~(c) despite previous warning from BFBC in writing are failing to perform the Services with due diligence or are otherwise persistently or materially in breach of their obligations under this Agreement~~
- ~~(d) are in breach of Clause 7~~

~~9.3 The Consultants may but not unreasonably or vexatiously give 28 days notice to BFBC to terminate this Agreement if:-~~

- ~~(a) BFBC has failed to make any due payment in accordance with this Agreement;~~
- ~~or~~
- ~~(b) BFBC or any person for whom BFBC is responsible interferes with or obstructs the progress of the Services~~

~~The notice shall be withdrawn if BFBC within the 28 days notice:-~~

- ~~(i) makes any due payment; or~~
- ~~(ii) to the reasonable satisfaction of the Consultants BFBC or any person for whom BFBC is responsible ceases to interfere with or obstruct the progress of the Services~~

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~~9.4 The above Clauses 9.1 to 9.3 are provided always that the right to terminate shall be without prejudice to any other rights or remedies which either party may possess~~

~~10. Bribery and Corruption~~

~~BFBC shall be entitled to terminate this Agreement forthwith and to recover from the Consultants the amount of any loss resulting from such termination if:~~

- ~~(a) the Consultants shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the Agreement or any other contract with BFBC; or~~
- ~~(b) the like acts shall have been done by any person employed by the Consultants or acting on his behalf (whether with or without the knowledge of the Consultants); or~~
- ~~(c) in relation to any contract with BFBC the Consultants or any person employed by them or acting on their behalf shall:~~
 - ~~(i) have committed any offence under the Prevention of Corruption Acts 1889 to 1916, or~~
 - ~~(ii) have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972, or~~
 - ~~(iii) where collusion has taken place between two or more tenderers or parties in fixing or adjusting the bids submitted for this Agreement~~

~~11. Data Protection~~

~~The Consultants shall comply in all respects with the provisions of the Data Protection Act 1998 (and subsequent and subordinate legislation) and will indemnify BFBC against all actions costs expenses claims proceedings and demands which may be made or brought against BFBC for breach of statutory duty under the Act which arises from the use disclosure or transfer of personal data by the Consultants and its servants and agents~~

~~12. No Waiver~~

~~No delay neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Agreement~~

~~13. Insurance~~

~~13.1 The Consultants shall at all times maintain in force such policies of insurance with reputable Insurers or underwriters as shall fully insure and indemnify the Consultants and BFBC against all sums which shall become legally liable to be paid by way of compensation for accidental bodily injury (including death or otherwise) or accidental damage to property:~~

- ~~(i) to BFBC and to any employee of BFBC; and~~
- ~~(ii) to the employees of the Consultants; and~~
- ~~(iii) to any other person~~

~~The insurance cover shall be in the sum of at least £[2 million] for any one occurrence or series of occurrences arising out of any one event. The insurance cover may be reasonably increased from time to time at the reasonable request of the Borough Finance Officer~~

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~~13.2 The Consultants shall maintain in force professional indemnity insurance in the sum of £[1,000,000] during the Term and shall continue to maintain the same in force for a period of [3] years following the termination hereof. This provision and Clause 13.3 hereof shall survive the termination of this Agreement and remain in full force and effect for [3] years following the termination hereof~~

~~13.3 The Consultants shall if requested supply BFBC with copies of all insurance policies cover notes premium receipts and other documents necessary to comply with Clause 13 hereof~~

~~13.4 The insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Consultants and arising out of and in the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any Statutory Orders made thereunder or any amendment or re-enactment thereof~~

~~13.5 The Consultants shall immediately notify BFBC and the Consultants Insurers of any happening or event which may give rise to a claim demand preceeding damage costs or charge whatsoever arising out of this Agreement and the Consultants shall indemnify BFBC against any loss whatsoever which may be occasioned to BFBC by the Consultants failure to give such notification~~

~~14. The Employee~~

~~The Consultants acknowledge that the Employee is an employee of the Consultants. The Consultants indemnify BFBC from and against all expenses costs losses liabilities and claims arising from any claim whether successful or not by the Inland Revenue that the Employee is an employee of BFBC~~

~~15. Records~~

~~At any time upon the request of BFBC the Consultants shall produce all records maintained by the Consultants in relation to the Services. All such records shall be transferred to BFBC forthwith upon the termination of this Agreement~~

~~In this clause the term "records" means all records in any medium (whether written, computer readable or otherwise) including accounts, documents, drawings and private notes about BFBC and all copies and extracts of them made or required by the Consultant in the course of this consultancy.~~

~~16. Health & Safety~~

~~The Consultants shall ensure that the Services comply with the requirements of the Health and Safety at Work (etc) Act 1974 the Management of Health and Safety Regulations 1992 Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988 and any other Acts Regulations Order or European Directive pertaining to the health and safety of employed persons together with the BFBC's own health and safety policies from time to time in force~~

~~17. Expenditure of BFBC Funds~~

~~In the event that the Consultants shall be responsible for expenditure of the funds of BFBC to a third party in the performance of the Services then that expenditure shall only be effected under the supervision of the Chief Officer of~~

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the appropriate department of BFBC and in accordance in all respects with the Standing Orders of BFBC and in particular BFBC's Contract Regulations

18. Indemnity

The Consultants indemnify BFBC and keep BFBC harmless against all claims expenses injury loss or damage to or by any person whatsoever including BFBC arising out of the performance of the Services and the Consultants obligations in this Agreement

19. Intellectual Property

Intellectual property rights in any work produced by the Consultants and/or the Employee and as a result of the performance of the Services shall vest in BFBC

20. Confidentiality

Both parties shall during this Agreement and after its termination keep confidential and not (save for the purposes of this Agreement) use or disclose or attempt to use or disclose to any person any confidential information This shall not apply to confidential information which is in the public domain otherwise than as a breach of this clause

21. Default

Should the Consultant fail to deliver the goods or materials or any proportion thereof within the time specified in this Agreement BFBC shall be at liberty without prejudice to any other remedy for breach of contract to determine this Agreement either wholly or to the extent of such default and to the purchase of the same or similar description to make good

(i) such default or

(ii) in the event of the Agreement being wholly determined the services remaining be delivered

The cost of purchasing such services, so far as they exceed the amount which would have been payable to the Consultant for them if they had been delivered in accordance with the Agreement shall be recoverable from the Consultant

22. Consultants Status

22.1 The Consultant shall be an independent contractor and not the servant of BFBC.

22.2 In such capacity the Consultant shall bear exclusive responsibility of payment of National Insurance Contributions in respect of the Employee and for the discharge of any Income Tax and VAT liability arising out of the remuneration for the work of the Consultant performed pursuant to this Agreement

23. Rights of Third Parties

The parties hereby declare that no term of this Agreement is intended by the parties to confer benefit on any third party (as defined by the Contracts Rights of Third Parties Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are excluded.

24. Human Rights

The Consultant confirms that he will perform his obligations pursuant to this Agreement in all respects in conformance with the Human Rights Act 1998. The Consultant hereby indemnifies BFBC from and against all losses costs expenses

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~~liabilities damages and claims arising from the failure of the Consultant or the Employee to duly perform his obligations pursuant to this clause and arising further from any act or omission of the Consultant or the Employee in respect of the non performance of the said obligations;~~

25.Survival of Rights on Termination

~~Termination of this Agreement shall not affect the rights of the parties accrued up to the date of termination.~~

~~Signed as a Deed _____ Signed as a Deed
By _____ by
the duly authorised officer of _____ on behalf of
BRACKNELL FOREST BOROUGH _____ in the presence of:-
COUNCIL in the presence of:-~~

~~Date _____ Date~~

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