



**COMMISSIONING A  
CONSULTANT  
POLICY**

**Date: November 2016**

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### **Appendices**

- Appendix A - Commissioning a Consultant – Request Form
- Appendix B - Frequently Asked Questions

## 1. INTRODUCTION

- 1.1 Middlesbrough Council has been reviewing the use of consultancy and as an outcome has developed this policy to provide guidance to all staff regarding the use of consultants who, from time-to-time, are engaged by the Council in order to undertake specific tasks.
- 1.2 The use of individuals in this capacity can give rise to issues under tax, procurement and employment law which, if not properly considered, could expose the Council to financial risk and the possibility of legal proceedings.
- 1.3 This policy must be referred to before any appointment of an individual consultant is made. Further advice should be sought from Commissioning and Procurement Unit, Human Resources and/or Legal as appropriate, in order to ensure that any appointment complies with internal procedural requirements, together with any statutory provisions relating to tax, procurement or employment law.

## 2. WHAT IS A CONSULTANT?

- 2.1 Middlesbrough Council has defined a 'Consultant' as:

***“An individual or organisation that provides professional technical advice or expertise that is not readily available inside the Council, or is outside the scope of usual service delivery.”***

- 2.2 It is important to note that agency staff covering posts within the Council's structure do not meet the Council's definition for consultants and will not fall under the remit of this policy.
- 2.3 A framework for agency staff is in place and you should contact the Commissioning and Procurement unit in order access the framework.

## 3. HOW TO SECURE A CONSULTANT?

- 3.1 Where a decision has been made that a consultant is required, a proper process shall be followed in order to ensure that the Council is not in breach of its legal and/or constitutional obligations.
- 3.2 A template business case is attached as Appendix A and must be completed and approved by either the Head of Service or Budget Holder as appropriate, e.g. if the budget holder is drafting the business case then the HOS should approve.

- 3.3 The business case will evidence a clear rationale for the appointment of a consultant, as well as identifying the procurement route you will be required to follow.
- 3.4 Procurement of a consultant is no different to the procurement for Goods and Services and therefore Standing Orders needs to be followed.
- 3.5 This means that there are four options available to you which are:
- Direct Award - Up to £15,999
  - Quotation - £16,000 - £53,099
  - Tender - £53,100 - £164,176
  - OJEU Tender - £164,176+
- 3.6 Please ensure that when a consultant is commissioned a notification must be sent to the Commissioning and Procurement unit in order that a central register can be maintained. Please e-mail [contractandcommissioningunit@middlesbrough.gov.uk](mailto:contractandcommissioningunit@middlesbrough.gov.uk).
- 3.7 Please ensure that you work with the Commissioning and Procurement unit as they will be able to assist you with the procurement, even direct award.

#### 4. **MONITORING**

- 4.1 Contract monitoring is an important role for the Council which allows us to:
- Improve performance through early identification of any issue or concerns;
  - Identify potential problems that may require additional scrutiny;
  - Evaluate performance controls to ensure there is a reliable basis for validating service deliverables,
  - To assure that financial documentation is adequate and accurate so that costs will not be questioned later on.
- 4.2 Contract monitoring must be part of your management arrangements when a consultant is procured and as this type of work is over a specific time a project delivery plan (which includes key milestones) must be agreed prior to work commencing. This will form the basis of the contract monitoring throughout the contract period.
- 4.3 The use of Highlight reports provided by the consultant will allow you the opportunity to receive evidence of work undertaken and ensure

milestones are achieved, or if changed provide a valid reason and approval audit.

- 4.4 It will be up to you to set the monitoring timescales at the commencement of the project based on the time available – e.g. monthly reporting, fortnightly or quarterly, etc. Meetings must be followed up in writing especially in relation to identifying tasks to be completed by the next meeting, this will layout a clear and auditable trail about the work being completed.
- 4.5 Please remember that at the commencement of the project a finance order number must be provided to the consultant so that invoices can be submitted in line with the payment profile agreed as part of the procurement.
- 4.6 Quarterly monitoring reports will be produced from our contracts register and finance system by the Commissioning and Procurement Unit which will monitor the Councils use and spend on consultancy. It is therefore important to remember that where the definition of consultancy is met that all costs are coded to the GL code **6145010A**. This GL code **must not** be used for another other spend that is not for consultancy, e.g. agency staff.

## 5. **EMPLOYMENT LAW**

- 5.1 The Council's policy is that it does not enter into arrangements with individuals simply to avoid liability for tax, and this position is clearly set out within our Pay Policy Statement which is published annually as required by the Localism Act 2011.
- 5.2 The issue in terms of consultants is their employment status (or lack of it), and whether they would, regardless of the basis on which they are purported to be working, be deemed to be an employee by HMRC or an Employment Tribunal.
- 5.3 It is important that we acknowledge that any consultant commissioned by the Council is not delivering in the capacity of a paid employee, which is exactly what our definition states and will be used where there is either a skills gap or there is a need for a professional specialism.
- 5.4 In the event that the Council requires a post to be covered then that will either be done so via the Council's formal recruitment process or via the procurement of an agency staff member which is not defined as a consultant. Contact HR or Commissioning & Procurement in order to secure this type of resource.
- 5.5 Please note that if a consultant is engaged and was then found to be an employee, there would be various implications for the council. The most significant risk is that the consultant will not have been

appropriately taxed (i.e. under PAYE arrangements) and they would potentially have employment rights which could include taking us to an Employment Tribunal. Careful consideration is required when determining that it is a consultant we need.

## **6. BASELINE PERSONNEL SECURITY STANDARDS (BPSS)**

- 6.1 In addition the Council are required to ensure that any personnel employed/contracted by them, including consultants, to work in their offices or on their systems comply with the Baseline Personnel Security Standard (BPSS) before commencing the relevant services.
- 6.2 To comply consultants must submit an application via Disclosure Scotland <https://www.disclosurescotland.co.uk> and to submit the BPSS certificate to the Council along with verification of their identity, their employment history (for a minimum of past 3 years), nationality and immigration status, and criminal record (unspent convictions only).

## **7. REENGAGEMENT OF FORMER EMPLOYEES**

- 7.1 The Council's pay policy statement provides that the Council will not generally reengage staff who have left with severance packages, either as employees or on a self-employed basis. However, there is an exception to this rule where it is in the interest of the Council to do so.
- 7.2 The reengagement or reemployment of staff that have previously left with severance packages is frequently the subject of Freedom of Information Act requests and the source of potential reputational damage to the Council. It should only be considered in exceptional circumstances and where there is a pressing and genuine need to use such individuals. Director approval (in consultation with the Head of HR) should be sought before any process to appoint the individual is commenced.

**COMMISSIONING A CONSULTANT – REQUEST FORM**

Please state which outcome area:

- Outcome Area 1 – Economic Development  
 Outcome Area 3 – Improving Public Health  
 Outcome Area 5 – Safeguarding Children  
 Outcome Area 7 – Environment, Property & Commercial

- Outcome Area 2 – Supporting Communities  
 Outcome Area 4 – Learning & Skills  
 Outcome Area 6 – Social Care  
 Outcome Area 8 – Finance, Governance & Support

**Please detail the business case showing the need and benefits of commissioning a consultant:**

(This should include, but not be limited to:

- That this is a specialist piece of work where the knowledge is not available in the Council and that it would not be cost effective to employ a staff member compared to securing a consultant short term
- Confirmation that this a short term or project specific piece of work
- An estimate of the cost for the consultant – please do not undertake any dialogue with any potential consultants you may have identified other than a basic request for day rates – this could disadvantage us at procurement stage around value for money
- A milestone plan showing the project length and desired outcomes, including any financial benefits or added value that will be delivered
- Confirmation that a budget is available to cover the cost of the consultant’s procurement
- Risk associated if a consultant is not procured – e.g. work not completed, grant funding lost, saving not achieved, etc

***PLEASE DELETE BEFORE COMPLETING***)

**Savings or efficiencies to be achieved from this project:**

[Please detail in here any cashable savings that are expected to be achieved or any other efficiencies that are expected – e.g. this project will support the delivery of £100k saving or non-cashable efficiencies to be achieved through streamlined process through online development – we need to understand the benefit that will be delivered – **PLEASE DELETE BEFORE COMPLETING**]

<p><b>Specification of works:</b></p>			
<p><b>Start Date:</b></p>		<p><b>End Date:</b></p>	
<p><b>Estimated Cost or Budget Available if not known and indicate what type of funding:</b></p>			<p>Revenue Funding <input type="checkbox"/>    Capital Funding <input type="checkbox"/>                  Grant Funding <input type="checkbox"/></p>
<p><b>Payment Terms Required:</b></p>	<p>Please note here if you would like to stipulate a payment term for this project – e.g. % of payments on achieving milestones. If not then please remember the Council’s payment terms are payment in arrears and 20 days following receipt of a valid invoice.</p>		
<p><b>Confirm which procurement route is required</b></p>	<p>Up to £15,999 – Direct Award (ensuring VFM)</p>		
	<p>£16,000 - £53,099 – Quotation</p>		
	<p>£53,100 - £164,176 – Tender</p>		
	<p>Above £164,176 – Tender OJEU</p>		
<p><b>Confirm Budget Code:</b></p>		<p><b>Please ensure the following GL Code is used:</b></p>	<p><b>6145010A</b></p>



<b>Requested by:</b>	
<b>Signed:</b>	<b>Dated:</b>
<b>Print Name:</b>	<b>Job Title:</b>

**APPROVAL**

**I confirm that I am fully aware of the request to commission a consultant for this project and am duly authorised to approve this request on behalf of the service area and budget:**

<b>Signed:</b>	<b>Dated:</b>
<b>Print Name:</b>	
<b>Job Title</b>	

**ONCE COMPLETED AND APPROVED PLEASE E-MAIL TO [CONTRACTANDCOMMISSIONINGUNIT@MIDDLESBROUGH.GOV.UK](mailto:CONTRACTANDCOMMISSIONINGUNIT@MIDDLESBROUGH.GOV.UK) AND THE COMMISSIONING & PROCUREMENT UNIT WILL BE IN TOUCH TO PROGRESS THE PROCUREMENT.**

## FREQUENTLY ASKED QUESTIONS

1. When should I be considering commissioning a consultant?

**In line with the Council's definition a consultant is used where professional technical advice or expertise is required but is not readily available inside the Council, or is outside the scope of usual service delivery.**

**A consultant is not commissioned to cover a vacant post or cover a temporary post, that is where an agency staff member is require or a fixed term recruitment is required.**

2. How can I commission a consultant?

**Please read the Commissioning a Consultant Policy and then fill in the Commissioning a Consultant – Request Form (both available on the intranet). There must be a business case to support the request and approved by HOS.**

3. Is there a standard contract I can use?

**The Commissioning and Procurement Unit will be happy to support anyone in the commissioning of a consultant and can provide a range of documentation and advice to support you.**

**This will range from advice and guidance for direct award, which includes a standard contract, to carrying out formal procurements or utilising Frameworks available to us where appropriate.**

**Please make sure that you do not enter into any negotiations or discussions with potential consultants prior to speaking with the Commissioning and Procurement unit as this could jeopardise the achievement of best value when procurement is undertaken.**

4. What should I be looking for in relation to price?

**You will find that consultants generally work on a daily rate, however, it is important to ensure that when a quotation is obtained that you ensure the rate provided is fully inclusive of all expenses.**

**Sometime consultants will provide a daily rate but it will be exclusive of expenses, it is recommended that this is avoided and only fully inclusive costs are agreed.**

5. What do I do if I don't know of any consultants that can deliver what I want?

**Again the Commissioning and Procurement unit can assist and do have access to a Framework where the supplier has access to a number of consultants from a range of specialist areas, so even in the event that we don't have any knowledge there is still an opportunity to test the market.**

**The Commissioning and Procurement unit can also utilise networks from across the Tees Valley and North East Local Authorities as well.**

6. How do I accommodate a consultant in the work place?

**Once awarded a contract you will need to meet with the consultant in order to understand and agree the work plan for the project, this should include detail about location and access required to systems, etc and will likely mean a few jobs for you to do prior to their start date.**

**It is recommended that before the procurement is commenced that some thought is given to the access the consultant will require and then contact is made with HR, IT, Finance, etc in order to understand what you may need to do in order to ensure the work can commence as quickly as possible.**

7. What checks should be undertaken prior to commencement of work?

**It is recommended that before the procurement is commenced that some thought is given to the access the consultant will require and then contact is made with HR in order to understand if any checks or certificates will be required and if they could be submitted as part of their submission for the work or if time needs to be factored into the mobilisation period.**

8. What if the consultant isn't performing?

**Underperformance would be picked up via the monitoring arrangements put in place, but in the event that this happens please utilise the support offered by the Commissioning and Procurement unit.**

9. How do I pay a consultant?

**Please make sure that you raise a financial order and provide the order number to the consultant once appointed and confirm that this must be quoted on all invoices submitted. Please remember that payments should be in arrears unless authorisation from the Section 151 Officer is obtained. It would be useful to set up a payment profile either as part of the submission for the work or once appointed which will assist both you as budget manager and the consultant for cash flow purposes.**

10. How will the Council monitor the use of consultancy?

**Quarterly reports will be produced and shared by the Commissioning and Procurement Unit in order to ensure we are closely monitoring our use of consultancy. These reports will also offer an opportunity to evidence the benefits achieved from utilising a consultant for specific projects or areas.**

**For reporting purposes a specific GL Code has been created which is 6145010A and must be used only for spend on defined consultancy commissioned in line with this policy.**

**This code must not be used for any other spends, e.g. Agency Staff.**