

## APPENDIX 1

# Isle of Wight Council Procurement Compliance Assessment

8 July 2005

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## 1.0 Summary

### 1.1 Introduction

In April 2005, the Isle of Wight Council commissioned QP Group Ltd to undertake a review of procurement processes within the council in order to measure them against best practices and compliance to procurement-related legislation.

The objectives of the review were to identify the effectiveness of the fundamental procurement processes in place; to evaluate compliance to EU and UK procurement law and to recognise areas of good practice or otherwise as appropriate.

This report represents the output of that review and outlines the strengths and weaknesses of the current processes including recommendations for improvement and a proposed action plan.

### 1.2 Approach

QP Group employed a fact-based approach to data gathering, analysis and reporting. The work was carried out over a ten day period and included the following activities:

- Selection of a cross-section of contracts let by the Isle of Wight Council over the last four years.
- Completion of focused interviews across the Council to understand:
  - The contract award process, for the selected contracts
  - The work of the Procurement Department
  - The work of the Legal Services Department with respect to procurement activities
- Analyses of the contracts and their procurement processes for compliance to the Council's rules, as set out in the Contract Standing Orders section of the Constitution as well as EU procurement legislation
- Assessment of the use of established Best Practices in procurement across the Council

The contracts/schemes selected for review were:

#### **Engineering**

Highways – Undercliff Drive Scheme: implementation date 17/11/2004

Coastal Protection – Duver Scheme: implementation date (Works) 09/06/03.

#### **Adult Services**

Home Care - East and South Block Contract, North and West Block Contract : implementation date 01/04/05.

#### **Corporate**

Building Cleaning: implementation date 04/10/04.

Further details on these contracts including value and suppliers can be found in Appendix II at the end of this report.

### 1.3 Executive Summary

Procurement is a mature function within the Isle of Wight Council. The Corporate Procurement Unit is directly responsible for only 5% of the council's spend and proactively influences another 50%. Over recent months it has developed, and published on the intranet, both procurement rules and good practice guidelines: the most recent example of which is the establishment of Contract Standing Orders (CSO) within the Constitution.

The devolved nature of procurement decision-making meant that this review discovered areas of both good and weak practices across the various council departments.

#### Good Practices

Examples of good practice have been identified in areas such as Adult and Corporate Services. These include:

- **Early involvement and utilisation of both Procurement and Legal expertise** – this was demonstrated during the completion of the Home Care contract. Benefits included, process rigour, a high level of market testing and effective risk management.
- **Use of structured and understood process** – The ITT's for the Building Cleaning services contract were evaluated using the council's Most Economically Advantageous Tender (MEAT) evaluation approach. This delivered a transparent process understood by all stakeholders.
- **Decision-making based on agreed and validated data points** – Through evaluation of User requirements and data gathering from incumbent suppliers prior to the Home Care ITT creation. Comprehensive specifications review prior to Building Cleaning ITT creation. This helped to ensure robust contract award and end-user buy-in.

#### Areas for Improvement

There was also significant evidence of non-compliant procurement processes within the council. These included:

- **Non-compliance to CSO and EC procurement rules** – Examples include: the use of uncompetitive processes for the appointment of Consultant Engineers, absence of formal contracts and the initiation of Works before contract issue.
- **Absence of key procedures** – No localised procurement process in place to support CSO usage / compliance, a lack of document control and ownership processes.
- **Absence of Procurement Strategy** – no robust, up to date strategy in place to define the role and objectives of the Procurement Unit within the council.
- **Poor interface between the Procurement Unit and some of its customer departments** – for example, the perception of key stakeholders that certain user-specific requirements within the Coastal Services could not be met through standard procurement processes lead to the creation of bespoke processes.

## Recommendations

While some procurement good practices exist within the Isle of Wight Council there is an opportunity to replicate them across the entire council. Prerequisite to this will be improved communication between the Procurement Unit and the budget holders. Specific recommendations include:

- **Increase the take up of procurement related training** and communication across the entire council
- Put in place **departmental liaison officers** to aid key sourcing and procurement activities
- Create **local procurement procedures** and integrate with departmental procedures throughout the council to support CSO rules
- **Process and communication stream lining** between procuring departments and Legal Services to ensure engagement early in the procurement process, and to ensure contracts are completed before the commencement of Works
- **Improvement to the CSO and other documents used** – to improve processes and address areas of ambiguity
- **Consideration of the appointment of a Procurement Strategic Director** to help provide strategic direction and leadership, with Cabinet Member sponsorship
- **Develop the role of the Procurement Unit** as a proactive council-wide service provider, to ensure ongoing robust compliance to CSO and EC rules. This is illustrated in Appendix I

## 2.0 Detailed Report

### 2.1 Background

#### Population, Economy And Infrastructure

The Isle of Wight covers an area of 147 square miles (38 100 hectares) and its coastline is 57 miles long. The Island is a predominantly rural area with the principal town of Newport at its centre and a number of other towns each playing a role in the economy of the Island. Other towns are Ryde, Cowes, East Cowes, Sandown, Shanklin, Ventnor and Freshwater.

The Island has a population of approximately 133,000 people. The principal sectors of employment on the Isle of Wight are wholesale, retail, hotels and catering (31%); public services, education and health (29%); and manufacturing (17%). Tourism plays an important part in the Island's economy, with a total of about 2.7million visitors each year.

The road network comprises 492 miles (791.8km) of principal roads, 76 miles (122.3km) of other classified roads and 248.5miles (399.9km) of unclassified roads.

#### The Isle Of Wight Council

The Isle of Wight Council is a Unitary Council with 48 elected members. The council is currently embarking upon an agenda of change with the aim of further modernising its governance arrangements and improving the services to the public it serves.

The council's corporate plan is reinforced by the council's 5 key goals:-

- Improving health, housing and the quality of life
- Encouraging job creation and economic prosperity

- Raising education standards and promoting lifelong learning
- Creating safe and crime-free communities
- Improving public transport and the highways infrastructure

In addition, there are a number of common values that are aspired to:-

- "Great Access to Great Services"
- Listening to People
- Working in Partnership
- Being Open and Fair
- Caring for Our Unique Environment

## Procurement

The council's rules for the procurement of goods and services are set out in the Contract Standing Orders (CSO) document, which forms part of the council's constitution.

The document's four main purposes are described as:

- To **obtain Best Value** in the way we spend money, so that we may in turn offer Best Value services to the public
- To **comply with the laws** that govern the spending of public money; and
- To **protect individuals** from undue criticism or allegation of wrongdoing
- To **guide employees**, managers and elected members when they are involved in the tendering and contracting process

The council spends £73 million on goods and services annually. Only 5% of this spend is managed directly by the Procurement Unit using central contracts such as Stationery, Mobile Phones, Building Cleaning and Sanitary Services.

The remaining spend is managed locally by divisional service departments. Major areas of spend are Adult Services, Engineering/ Highways, Waste Management and Property Services.

The Procurement Unit estimates that it only has influence over 50% of the total spend, and believes that it has little or no influence over the remaining 45%.

Approximately 60% (£49m) of the total spend is through 'Period' or ongoing contracts. The remaining 40% (£24m) is made up on one off 'project' contracts, school supplies and non-contract spend.

A number of IT systems are used throughout the council to capture spend data including Wealden, Mayrise, Swift, Technology Forge and SIMS. In addition to this a number of bespoke databases are in use based on Microsoft Excel and Access.

Overall Procurement responsibility is shared between the Procurement Manager and the Compliance Manager. Contractual support is provided by the Council's Legal Services function.

Approximately 300 employees have varying levels of procurement responsibility, as part of their day to day role, across the council, the Procurement Unit estimates that this equates to 60 FTE's.

## 2.2 Findings

### 2.21 Areas of good Practice

#### Good Practice

##### Use of the Council's Intranet

The Procurement Unit has made good use of the council's Intranet system.

All Procurement related documentation and guidelines are available on-line for the use of Purchasers across the council. The site is regularly enhanced and kept up to date by the Procurement Manager.

#### Good Practice

##### Early involvement of Procurement and Legal Services.

The Home Care contract within Adult Services completed on 1<sup>st</sup> April 2005, provides a number of examples of good procurement practice from strategic planning to more tactical risk management.

- 1) The services of both Procurement and Legal Services were invited from the outset of the project. This helped to ensure the appropriate procurement process was selected; provided cross divisional learning by viewing other ITT's produced at the council and ensured that risk coverage was provided throughout the project.
- 2) Time was taken to define user requirements and understand more strategic issues, such as a lack of capacity for this category on the Island. Incumbent supplier's knowledge of the category on the island was also gained through the setting up of a Working Group.
- 3) These Working Groups also enabled effective supplier communication and risk management during the hand over stage and ensured that the levels of service from the incumbent suppliers did not fall.
- 4) The need for a review of the supply market was recognised and the 'Open' Procurement process was used to good effect.

#### Good Practice

##### Robust Tender Evaluation

The Building Cleaning Contract managed by the Procurement Unit provides some good examples of procurement practice.

- 1) A full review of the service specifications was undertaken, rather than just relying on specifications from the previous contract. This review involved gathering user requirement and a review of areas to be covered within the council's buildings.
- 2) Users were involved in the tender evaluation process, This ensured that their knowledge was used for the evaluation and also help to create buy in to the process and the result of the tender.
- 3) The council's MEAT tender evaluation approach was used to provide a robust evaluation of the tenders giving a good qualitative and quantitative assessment.

## 2.22 General Findings

Finding	No. 1
<b>Involvement of Council Members in the Procurement Process</b>	<b>Tactical</b>
<p>Section 2.1 in the council's Contract Standing Orders document states that :</p> <p><i>"For contracts of strategic importance or those which might be politically sensitive that may, for example, involve the transfer of Council employees to a contractor, Directors must:</i></p> <ul style="list-style-type: none"> <li>• <i>seek a decision from the Executive as to whether tenders are to be invited;</i></li> <li>• <i>once tenders have been evaluated, seek a further decision from the Executive as to whether a contract is to be awarded; and</i></li> <li>• <i>seek to involve Members in decisions during the tender process, for example by determining the contract award criteria."</i></li> </ul>	
<b>Risk</b>	
<p>A) The understanding of what is 'of strategic importance' may vary from one Purchaser to the next, and could lead to inconsistencies in when contracts are referred to Members. There is a risk therefore that members may not be informed of strategically important procurement decisions.</p> <p>B) Section 2.1 does not require members to be kept updated on strategically and politically sensitive contracts. There is a risk that Members will not be aware if issues arise with the completion/implementation of the contract and appropriate advice/direction will not be forthcoming.</p>	
<b>Recommendation</b>	
<ol style="list-style-type: none"> <li>1) Section 2.1 should be amended to include a more objective definition of when contracts should be referred to Members. Including a monetary threshold could be one possible solution.</li> <li>2) A definition of what constitutes 'of Strategic Importance' should be developed to help ensure a common understanding of the term by Purchasers.</li> <li>3) Section 2.1 should include a requirement for Members to be kept updated on those contracts that have been referred. It is recommended that a standardised council wide report form is created, with a possible link to, or enhancement of, the current Performance Management or risk Management systems.</li> </ol>	

Finding	No. 2
<b>No currency indication against CSO threshold values.</b>	<b>Administrative</b>
<p>Throughout the Contract Standing Orders document monetary threshold values are stated without any clear indication of relating currency. A single value in Section 2.12 states Pounds, but it is not clear if this relates to all monetary values in the document.</p>	
<b>Risk</b>	
<p>There is a risk that Purchasers could incorrectly assume which currency to use resulting in non-compliance with the Council's rules and EC directives. The risk is increased as the document contains not only EC directive thresholds, in Euros, but also the council's own internal thresholds, in Pounds, for when EC rules do not apply.</p>	
<b>Recommendation</b>	
<p>Ensure that the Contract Standing Orders document clearly states the currency used against all monetary threshold values.</p> <p>(This recommendation is seen to be addressed in the draft version of the New Contract Standing Orders document provided to this review by Bob Streets – Compliance and risk Manager on 26/04/05)</p>	

<b>Finding</b>	<b>No. 3</b>
<b>CSO Threshold level for lowest 'price' tender acceptance</b>	<b>Tactical</b>
<p>Section 2.12 of the Contract Standing Orders document states that :</p> <p><i>"Where written quotations are invited for contracts valued at or below £50,000 (£75,000 for works) then the bidder submitting the lowest price compliant bid should be awarded any resulting contract, unless alternative pre-determined criteria are detailed in the document used to invite bids.</i></p> <p><i>For contracts valued over £50,000 (£75,000 for works) and for all contracts governed by EC Directives, a more complex Best Value tender evaluation procedure based on the identification of the Most Economically Advantageous Tender (MEAT) must be used in preference to a price-only evaluation."</i></p>	
<b>Risk</b>	
<p>There is a risk that contracts with values at or below '50,000 (70,000 for works)' will be selected on price alone resulting in :</p> <ol style="list-style-type: none"> <li>1) User requirements such as Service and Quality not being met.</li> <li>2) The total cost of a contract not being understood resulting in greater than expected costs.</li> <li>3) Not complying with the spirit of the Contract Standing Orders four main purposes, as described in the introduction of the document.</li> <li>4) The use of the term price detracts focus from total cost.</li> </ol>	
<b>Recommendation</b>	
<ol style="list-style-type: none"> <li>1) The use of the term price should be replaced with total cost or cost.</li> <li>2) A lower threshold should be set, below which contracts are allowed to be selected on cost alone.</li> <li>3) An evaluation mechanism should be created for contracts that fall between the 'cost only' threshold and the threshold above which contracts are evaluated using the 'MEAT' evaluation procedure. This intermediate evaluation mechanism should be simpler and quicker than the MEAT evaluation but include a review of contract total cost and evaluation against user requirements.</li> </ol>	

<b>Finding</b>	<b>No. 4</b>
<b>Absence of Localised Procurement Procedures</b>	<b>Tactical</b>
<p>Although procurement procedures and guidelines are detailed in the Contract Standing Orders (CSO) document, there are no localised formal Procurement procedures within the Council's Directorates and Departments that ensure that the CSO document is used/referred to or that Procurement or Legal Services are consulted in a timely manner.</p> <p>Current practice is for Purchasers to seek guidance as and when they feel they need to. This is more often than not after an issue has arisen.</p> <p>The absence of local procedures has contributed to findings 9, 10 and 11.</p>	
<b>Risk</b>	
<p>There is a risk that the requirements within the CSO document and therefore EC Directives may not be followed, because local procedures do not support their use.</p>	
<b>Recommendation</b>	
<ol style="list-style-type: none"> <li>1) Local procurement procedures should be put in place at each council department where there is procurement activity. These procedures should ensure that the CSO document is to be used and complied with, and also ensure the appropriate use of Procurement and Legal Services. (see Appendix I)</li> <li>2) This should be supported by the appointment of 'local champions' or Directorate/ Departmental Liaison Officers to co-ordinate Procurement/Legal Services activity within the Departments.</li> </ol>	

<b>Finding</b>	<b>No. 5</b>
<b>Need for procurement training</b>	<b>Tactical</b>
<p>Although training material has been produced, and a ½ day Procurement Awareness training module is included as an option on the council's core training programme, various levels of understanding regarding the content of the CSO document and EC directives was found among Purchasers.</p> <p>No internal training has been received by the Purchasers interviewed. (This finding is also linked to finding No. 6.)</p>	
<b>Risk</b>	
<p>There is a risk that a lack of understanding could result in the CSO document and EC Directives being used incorrectly or not used at all.</p>	
<b>Recommendation</b>	
<p>1) As there are legal implications for non-compliant procurement practices, Procurement training should be made compulsory for all purchasers across the council. Greater priority should be given by Service Heads and Strategic Directors to ensuring that training is taken up.</p> <p>2) A training program should be drawn up and initiated. The training material should be reviewed and updated. The material should include an overview of the process, identification of sources of data, clarification of the roles and services provided by Procurement and Legal Services and key contacts.</p> <p>Note: A proactive training program will also contribute to an increase in the Procurement Units understanding of User requirements, increased communication and also help to breakdown cultural barriers within the council with regard to procurement.</p>	

<b>Finding</b>	<b>No. 6</b>
<b>Need for a structural review and clarification of overall Procurement responsibility and role.</b>	<b>Strategic</b>
<p>Procurement responsibilities are currently shared between the Procurement Manager and The Compliance Manager. Activities up until now have focused on updating guideline documentation on the council's Intranet and managing the central contracts.</p> <p>The Procurement Unit only has direct control over 5% of the council's total spend. The Unit estimates that it only has influence over 50% of the total spend and believes that it has little or no influence over the remaining 45%.</p> <p>Although the council spends approximately £73m on goods and services annually, the budget of the Procurement Unit stands at £109.1K approximately 0.15% of total spend.</p> <p>In general Procurement and Legal Services advice is sought only after an issue has arisen, as such much of the activity tends to be reactive and relatively inefficient. In addition it was found that Procurement and Legal Services are only aware of the standard of procurement activity in those departments that engage their services / seek advice.</p> <p>The council also faces challenges as set out in the Gershon report, the government's e-government and/e-procurement drive and also general compliance issues as set out in this report.</p>	
<b>Risk</b>	
<p>A) There is a risk that an overall procurement strategy with clear objectives and targets will not be forthcoming unless there is clear responsibility for Procurement, with Executive level sponsorship.</p> <p>B) As a significant percentage of the work carried out by Procurement is reactive, there is a risk that problems of non-compliance within council will continue.</p> <p>C) There is a risk that with the current structure and level of investment in the Procurement Unit</p> <ol style="list-style-type: none"> <li>1) The council may not be able to meet the procurement challenges it faces today.</li> <li>2) Savings opportunities are being missed due to the low level of influence of the Unit.</li> </ol>	

Recommendation
<p>1) Roles and responsibilities within both the Procurement Unit and Legal Services should be clarified.</p> <p>2) The council should consider the appointment of a Strategic Director of Procurement to provide clear strategic direction and leadership. The council should also consider assigning a Cabinet Member with cross organisational influence to provide support for the required changes.</p> <p>3) A review of the Procurement Units role and strategy going forward should be undertaken with input from the Strategic Director with a view to moving away from 'policing' and posting information towards becoming a service provider within the council. Activities such as training/coaching/understanding user requirements and improvement of procurement processes to ensure long term compliance should be adopted. (See Appendix I)</p> <p>4) The Procurement Unit to look to influence 100% of the council's spend, typical savings of 2-3% should result as the level of involvement of Procurement increases.</p> <p>5) The Procurement Unit's budget should be reviewed, with a view to increasing the current level of investment. This will act as an enabler for Recommendations 2-4.</p>

## 2.23 Engineering

Finding	No. 7
<b>The use of construction Line for pre-qualification of suppliers.</b>	<b>Tactical</b>
<p>Construction Line is a company which is owned and endorsed by the DTI. The company manages a list of 'pre-qualified' local and national construction suppliers and provides information and contact details for prospective Public Sector customers. The objective being for customers to omit or reduce their own pre-qualification checks as this service is provided by Construction Line.</p> <p>It was found that the use of Construction Line has increased within Engineering in the last few years. Coastal Protection has used this company since 2002. Highways are considering the use of this company for future projects. (Engineering purchasers interviewed, expressed concern over the quality of pre qualification checks carried out by construction Line.)</p>	
Risk	
<p>A) The pre-selection checks and requirements carried out by Construction Line may not meet all council user requirements.</p> <p>B) Companies on the Construction Line database are made up of local and national providers. There is a risk that this pre-select list may be used for tenders that fall above CSO and EC thresholds, where the tendering exercise should be opened up for European providers.</p>	
Recommendation	
<p>1) The council should investigate/understand further the process by which suppliers are Pre-qualified and selected by Construction Line, with a view to assessing/confirming:</p> <p style="margin-left: 20px;">a. Whether the process complies with CSO/EC rules. Construction Line should not be used if their supplier pre-qualification process is not compliant.</p> <p style="margin-left: 20px;">b. The level and type of checks carried out by Construction Line with a view to understanding what additional checks need to be made by the council when tendering.</p> <p>2) As the Construction Line database is made up of local and national providers only, guidelines should be produced to clarify when the Construction Line pre-select list can and can not be used. (ie threshold dependent)</p>	

<b>Finding</b>	<b>No. 8</b>
<b>The management of the tendering process by Consultant Engineers</b>	<b>Tactical</b>
<p>It was found that the Consultant Engineers appointed to the Highways Undercliff Drive scheme and the Coastal Protection Duver scheme, managed the tendering process for Contractors on behalf of the Council. The contracts were then awarded by the council.</p> <p>No delegated authority letter was produced for either of the schemes in question.</p> <p>Although there was some liaison between the council and the Consultant Engineers during the ITT process, there were no checks in place, and therefore it is unknown whether the process complied with the CSO and EC rules.</p> <p>It is likely that this process was a contributory factor in finding No 13. 'Unable to locate Structural Soils Ltd contract for works carried out on the Undercliff Drive scheme.'</p>	
<b>Risk</b>	
There is a risk that CSO and EC rules were not complied with during the tender process for the Construction aspects of the above two schemes.	
<b>Recommendation</b>	
<p>1) If Consultant Engineering firms are to be used to aid the Tender process then they should be made fully aware of CSO and EC rules.</p> <p>A formal delegated authority document should be drawn up and signed before the start of the process ensuring that the Consultant Engineering firm agrees to abide by the terms set out in the CSO and EC directives, and provided indemnity for any failures to comply.</p>	
<b>Finding</b>	<b>No. 9</b>

<b>Initiation of Works before final contract issue.</b>	<b>Tactical</b>
<p>A number of examples were found where Construction Works had started before the issue of a final contract. This was stated as being quite common by the interviewees.</p> <p><b>Coastal Protection – Duver scheme</b></p> <p>Supplier - Van Oord – Works contract received into Legal Services 7/5/03&gt; Works start date 9/6/03&gt;contract issue 19/9/03.</p> <p><b>Highways – Undercliff Drive scheme</b></p> <p>Supplier - Geotechnical Engineering Ltd – Works start date 14/7/04 &gt; ITT received into Legal Services from Highways 27/7/04 &gt; Contract issue &gt; 17/11/04.</p> <p>Some of the causes identified were:</p> <ol style="list-style-type: none"> <li>1) Inconsistency in the quality of paperwork received by Legal Services from Highways. Some paperwork often missing which increases the contract lead time.</li> <li>2) Inadequate resource cover within Legal Services (for example holidays).</li> <li>3) Lack of communication/forward visibility between Engineering and Legal Services with regard to projects in the pipeline.</li> </ol>	
<b>Risk</b>	
Risk that the council is not legally covered if issues arise between work start date and contract signature.	
<b>Recommendation</b>	
<ol style="list-style-type: none"> <li>1) Local procedures within Coastal Protection and Highways should ensure that a formal contract is signed and issued before the commencement of any Works.</li> <li>2) The appointment of a local champion or Divisional Liaison Officer to co-ordinate Procurement and Legal Services administration within each Division. (Also see Findings No.4 and No 11.)</li> <li>3) Assessment of the contract issue process within Legal Services to reduce lead times.</li> <li>4) Earlier and better communication of work load requirements into and within Legal Services to ensure sufficient time and resources are available to process the contracts.</li> </ol>	

Finding	No. 10
<b>Absence of formal contracts for <u>Consultant Engineering work carried out within Engineering.</u></b>	
<p>Within the time scale of the review, it was not possible to locate the contract between the Council and Posford Haskoning for the consultancy work carried out on the Duver scheme. Value (£363K).</p> <p>No contract was created between the council and High Point Rendel for the consultancy work carried out on the Undercliff Drive scheme. Value (£894,260)</p>	
<b>Risk</b>	
<ol style="list-style-type: none"> <li>1) By not working to a contract the rules within the CSO were not complied with.</li> <li>2) The council did not have adequate legal cover during the course of the work. Covering for aspects such as scoping of work to be undertaken/issue resolution and cost control.</li> <li>3) There is a risk that the council does not currently have adequate legal cover for the work that has been undertaken by the supplier should issues arise.</li> </ol>	
<b>Recommendation</b>	
<ol style="list-style-type: none"> <li>1) The recommendations described in Finding's. 12 and 14 provide corrective actions for this finding. Other recommendations, such as those described in Finding No's 4 and 5 are also applicable.</li> <li>2) Efforts should be made to locate the Contract for the Consultant Engineering work for the Duver scheme. <ol style="list-style-type: none"> <li>a. If the contract does not exist then recommendations in 1) apply.</li> <li>b. If the contract is located, then document control procedures need to be reviewed to ensure that the location of such key documentation is clearly tracked and identified.</li> </ol> </li> </ol>	

Finding	No. 11
<b>The use of Chartered Institute terms and conditions</b>	
<b>Tactical</b>	
<p>A number of issues were found with the process used to form Terms and Conditions for use within Engineering ITT's and contracts.</p> <p>Within this Division It is common practice to use standard Terms and Conditions drafted by various bodies such at The Institute of Civil Engineers (ICE) ; The Association of Consultant Engineers (ACE).</p> <p>Legal Services approve the use of the standard terms and conditions used by the above bodies as long as an additional 'Amendments' document is also used, in conjunction, to capture any additional requirements from the Councils own CSO Document.</p> <p><b>A) Use of outdated Terms and Conditions document</b>  An out of date edition of the ICE's terms and conditions document is being used within Highways. The current edition is the 7<sup>th</sup> edition 1999. However, according to Legal Services the most widely used document is the 5<sup>th</sup> edition June 1973 (1986 reprint).</p> <p>Two examples where the 5<sup>th</sup> edition has been used are :  Sandown Road Longland Shot Carriageway Improvements 10/05/2005 Value £353k ;  Hale Common Carriageway Improvements 8/11/04 value £273k</p> <p>The 6<sup>th</sup> edition 1991 was used for the Undercliff Drive Scheme.</p> <p><b>B) Use of the Amendments Document</b>  The ownership of the Amendments Document is unclear and there is no robust process in place to keep the document updated and posted.</p> <p>Although the Highways contract with Geotechnical Engineering Ltd contained the amendment document the Coastal Protection contract with Vann Oord did not contain the Amendments</p>	

document which resulted in required clauses relating to 'Protection Against Corruption' and 'Recovery of Sums Due' not being included.

**C) Ineffective use of legal Services**

Legal Services are not involved before the ITT is issued to suppliers. Legal Services involvement in the process is limited to bringing together the returned ITT and Supplier Acceptance letter to form a contract.

As a result no changes can be made to the terms and conditions once it is received by Legal Services. The expertise of Legal services is not used; contract creation at this stage is reduced to an administrative task.

**Risk**

The above findings could risk contracts being drawn up with suppliers that include inappropriate clauses and / or omit key clauses and requirements.

**Recommendation**

- 1) The processes for updating and using the Amendments document need to be made robust with clear ownership and communication of its use. It is suggested that the council's intranet is used as a tool for communication and version control.
- 2) The process for updating and using various publications of chartered Institute terms and conditions need to be made robust with a clear ownership and communication of their use. The setting up of local Procurement and legal Services 'Champions' or Divisional Liaison Officers may help with this (Also See finding No. 9)
- 3) Local process should be put into place to ensure that Legal Services are involved during the production of the ITT's, in order to appropriately utilise the department's expertise. (Also See finding No. 4)
- 4) All outdated versions of Institute terms and conditions, both hard and electronic copies, should be removed from within Engineering.

Finding	No. 12
<b>Joint development of a compliant procurement process within Coastal Protection (expanded to wider Engineering community where required)</b>	<b>Strategic/ Tactical</b>
<p>A number of serious deficiencies were found in the application of CSO and EC Directives within Coastal Protection. Coastal Protection has in effect developed its own tendering and procurement process which is not in line with the Council's CSO document.</p> <p>One underlying cause for this is described below:</p> <ol style="list-style-type: none"> <li>A) Due to the specialist nature of the works there is a requirement for specialist, experienced suppliers.</li> <li>B) There is a perception that by undertaking a competitive tendering process, in line with the rules, this would place and over emphasis on price and thus increase the risks and total costs associated with any project.</li> <li>C) This has resulted in the creation of a bespoke process due to the perception that true competition is not possible in the Coastal Protection supply market.</li> </ol>	
<b>Risk</b>	
<ol style="list-style-type: none"> <li>1) There is a risk that CSO and EC Directives are not complied with and therefore the council could face action by the EU or Suppliers.</li> <li>2) There is a risk that the council is not attaining value for money for Coastal Protection Consultancy and Works.</li> <li>3) The above perception will perpetuate the use of non-compliant process.</li> </ol>	

Recommendation
<p>Procurement , Compliance and Legal Services should undertake a joint project to</p> <ol style="list-style-type: none"> <li>1) Fully understand Coastal Protection user requirements.</li> <li>2) Using their expertise and knowledge of the process, work with Coastal Protection to develop a process that will satisfy User requirements, but also ensure competition and therefore compliance to CSO rules and EC directives. Any new process should include the recommendations set out in Finding No's 4,5,7,8,9,11 and particularly 14.</li> <li>3) Expansion in/implementation of the MEAT ITT evaluation process to allow factors such as quality service to be taken into account by Coastal Protection as well as price.</li> <li>4) This exercise should be expanded to other areas of Engineering where similar perceived specialist requirements and bespoke procurement processes exist. The underlying principle should be for Procurement, Compliance and Legal Services to understand user requirements and use their expertise to help users develop acceptable processes.</li> </ol>

## 2.24 Contract Specific Findings

### Engineering - Highways – Undercliff Drive

Finding	No. 13
<b>Unable to locate Structural Soils Ltd contract for <u>Works</u> carried out on the Undercliff Drive scheme.</b>	<b>Tactical</b>
<p>Structural Soils Ltd carried out ground investigation work on behalf of the council in 2002, to the value of (£114K)</p> <p>Whilst there is evidence that Structural Soils Ltd had been selected by consultants High Point Rendel (HRR), neither the lead officer for the scheme, nor the Legal department were able to locate a formal contract.</p>	
Risk	
<p>If the above finding is due to no contract having been drawn up between the council and the supplier then :</p> <ol style="list-style-type: none"> <li>a) By not working to a contract the rules within the CSO were not complied with.</li> <li>b) The council did not have adequate legal cover during the course of the work. Covering for aspects such as scoping of work to be undertaken / issue resolution and cost control.</li> <li>c) There is a risk that the council does not currently have adequate legal cover for the work that has been undertaken by the supplier should issues arise with the work.</li> </ol> <p>If the above finding is due to poor document management and control then:</p> <ol style="list-style-type: none"> <li>d) There is a risk that by not controlling such important documents the council is unable to review the suppliers work against the contract.</li> <li>e) The council may face delays or be put at a disadvantage if disputes occur or legal action becomes necessary with the supplier.</li> </ol>	
Recommendation	
<ol style="list-style-type: none"> <li>1) The council should ascertain whether the contract is missing or does not exist.</li> <li>2) If the contract does not exist then the recommendations described in Findings 8 and 12 provide corrective actions for this finding. Other recommendations, such as those described in Finding No's 4 and 5, are also applicable.</li> <li>3) If the contract exists but is missing, document control procedures need to be reviewed or created.</li> </ol>	

## Engineering – Coastal Protection – Duver Scheme

Finding	No. 14
<p><b>Non –compliance to CSO and EC Directives for the appointment of Consultant Engineers for the Duver scheme.</b></p>	<p><b>Strategic / Tactical</b></p>
<p>Although the value of the Consultant Engineering work carried out by Posford Haskoning for the Duver scheme was above the EC threshold, the requirements of the CSO document and EC directives were not complied with. Non- compliance was found in the areas of supplier selection and attaining Value For Money.</p> <p>A number of causes for this non- compliance were found:</p> <p><b>A) Total cost of the contract not being considered</b></p> <p>The Consulting work was made up of 4 stages</p> <ol style="list-style-type: none"> <li>1) Preliminary Scoping report &gt; value £120K</li> <li>2) Options Report</li> <li>3) Design</li> <li>4) Re-Design</li> </ol> <p>Only stage one costs were considered when assessing whether the contract value was over the EC threshold. Even though this was only £33k less then the threshold the cost of stages 2 and 3 were not considered. Stage 4 was dependent on approval by DEFRA.</p> <p><b>B) The use of a ‘Select List’</b></p> <p>The supplier was selected from a ‘Select List’ of suppliers that was created in 1995, with no updates since that point. In addition the select list contains 7 Consultant Engineering suppliers each with their own area of specialisation. This effectively makes a supplier an automatic choice once a project falling under its area of specialisation is required.</p> <p>As such the process used for the appointment of Consultant Engineers is not competitive, and effectively creates a monopoly for Consultant Engineering suppliers in the Island.</p> <p><b>C) Long standing relationship with current supplier</b></p> <p>Posford Haskoning have been used as Consultant Engineers on the Island since 1947, under various company names during this time. The supplier seems to be considered as the default supplier for this type of work by the council and thus a competitive process has not been exercised.</p> <p><b>D) Inadequate Testing of Market price</b></p> <p>It was found that a pricing booklet produced by the Association of Consulting Engineers (ACE) was used to determine the value of the work. The pricing provided by the ACE should not necessarily be seen as a true market test price.</p>	
<p><b>Risk</b></p>	
<p>CSO rules and EC directives are not being complied with, and the Council could risk action from suppliers who have not had an opportunity to bid for the scheme and/ or the EU.</p> <p>There is a risk that findings A to D mean that true value for money may not have been attained for the Council and therefore for the tax payers.</p>	

Recommendations
<p>1) Unless subject to separate tender exercises, the total cost of planned work needs to be taken into account when assessing whether a project falls above or below the EC procurement threshold regardless of whether or not it is executed in stages. (For example the total value of stages 1-3 should have been taken as the value of the order for the consulting work in the Duver scheme.)</p> <p>2) A market review should be undertaken with a view to identifying and / or developing alternative suppliers to Posford Haskoning to ensure that future work of this type can be sourced competitively.</p> <p>3) Recognising that the type of work carried out by Coastal Protection is specialised the 'Select List' should contain a minimum of 3 suppliers for each specialist area of Coastal Protection. Suppliers from across the EU should be given the opportunity to qualify to be on the Select List.</p> <p>4) The Select List should be reviewed a least every 3 years.</p> <p>5) The price list produced by the ACE should not be used to determine the value of a contract. The competitive process should be used to determine the cost, with the CACE pricing used as a possible check at the end of the process.</p>

### Corporate – Building Cleaning

Finding	No. 15
<b>The use of the Articles of Agreement and Form of Tender documents in lieu of a single contract</b>	<b>Administrative</b>
<p>No single contract document exists for Building Cleaning services. Instead the ITT, which contains both general and specific terms and conditions, together with the Form of Tender document (offer confirmation letter from the supplier) and the signed Articles of Agreement have been used in lieu of a single document.</p> <p>A) The Articles of Agreement document makes reference to 'The Contract' through out and not the ITT. As such it is not 100% clear that the supplier is agreeing to the requirements set out in the ITT due to the interchangeable use of terminology</p> <p>B) The 'Form Of Tender' document completed by the supplier and returned to the council states that <i>"Until a formal Agreement is prepared and executed, this Tender, together with your written acceptance thereof, shall constitute a binding Contract between us."</i></p> <p>This statement implies that a formal agreement is required to follow. This single contract document is outstanding for the Building Cleaning contract.</p>	
Risk	
<p>Ref point A &gt; The interchangeable terminology used, could result in misunderstanding between the Council and the supplier.</p> <p>Ref point B&gt; There is a risk that the supplier may consider the agreement as temporary until a single contract document is received.</p>	
Recommendation	
<p>1) The wording used in the Articles of Agreement should be changed so that clear reference is made to the terms and conditions in the ITT.</p> <p>2) Either a single contract document should be drawn up as set out in the current wording of the form of Tender Document or the wording in the Form of Tender document should be clarified to state that the terms and conditions in the ITT represent the final contract. Advice should be taken from Legal Services as to the better option.</p>	

## 2.3 Action Plan

The following plan describes the actions required going forward, and is based on the recommendations in this report.

Actions 1, 3 and 4 are critical steps in ensuring the buy-in of key council stakeholders. Action 2 will to provide for immediate 'quick win' benefits by addressing the required administrative changes.

No timings have been provided as this will be resource dependent.

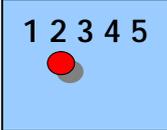
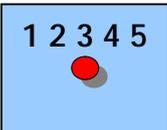
Task Ref	Task	Finding Ref	Status R A G	Who	Due Date
	<b>Project Initiation and ' Quick Wins'</b>				
1	Procurement approval Of QP Group Ltd report and recommendations			Bob Streets / JL / SM	
2	Implementation of 'administrative' recommendations	2 /15		JS /MB	
3	Internal stakeholder report communication			BS	
4	Internal Stakeholder recommendations agreement and project sign-of			BS / JL	
	<b>Implementation of 'Tactical' recommendations</b>				
5	Ascertain whether Structural Soils Ltd works contract, for the Undercliff Drive scheme, exists or is missing and implement recommendations accordingly.	13		JS /Nick Gallin	
6	Create a standardised reporting format that tracks and reports on good practice and also highlights where interventions become necessary.			BS/JS / JL	
7	Agree objective definition for Member involvement and ongoing communication	1		BS / JL	
8	Reduce CSO lowest cost acceptance tender threshold and develop intermediate evaluation process	3		BS /JS	
9	Develop and implement local procurement procedures to support CSO rules	4/9/11		Heads of Service / JS	
10	Appoint local procurement process 'champions/coordinators'	4/9/11		Heads of Service	
11	Update procurement training material for users and deliver compulsory training programme.	5		John Spencer (JS)	
12	Organise and deliver training program	5		JS	
13	Undertake a review of use of Construction Line for the pre-qualification of suppliers within Engineering, and produce guidelines.	7		Steve Matthews	
14	Communicate CSO/EC rules to Consultant Engineers ref Construction tendering process. Create formal delegated authority letter.	8		Steve Matthews / MB	
15	Undertake a review of and reduction in contract issue lead time within Legal Services	9		Matthew Bridger (MB)	

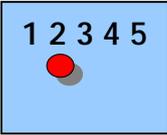
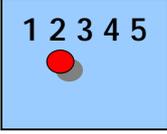
16	Remove old versions of Institute terms and conditions documents from within Engineering. Develop robust process, utilising the intranet, for the use of the Amendments document.	11		Steve Matthews / MB	
	<b>Implementation of 'Strategic' recommendations</b>				
17	Clarification of Procurement/Compliance Manager roles and responsibilities.	6		CFO	
18	Assess need, Identify and appoint a Strategic Director of Procurement including a Cabinet Member Sponsor.	6		Leader / Chief Executive	
19	Undertake review of Procurement's role/ Strategy going forward	6		Strategic Director / BS	
20	Initiate a project for the joint development of a compliant procurement process within Coastal Protection (see report for required steps)	12 / 14		SM/JS/RM	
21	Re-engineer process used to appoint Consultant Engineers within Coastal Protection	14 / 12		SM/ Robin McInnes (RM) / JS	

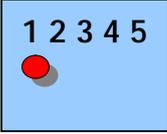
### 3.0 Health Check Against Procurement Best Practice

The following table provides a brief assessment of the Council's procurement activities against recognised Procurement best practice.

The first two columns identify and characterise each of 5 best practice areas and provide a brief explanation of their importance. The remaining columns assess the Council's implementation of the best practice and provide evidence in support of the evaluation

Area of Best Practice	Importance	1-5 Score (5 = best practice)	Evidence
<p><b>Strategy</b></p> <p>An appropriate and visible procurement strategy exists, comprehensively supported by the wider organisation.</p> <p>Procurement staff are responsible for the implementation of the strategy.</p> <p>KPI's have been developed to link to the Council's targets and objectives.</p>	<p>A Procurement strategy is required to provide medium and long term direction and focus to the activities of the Procurement Department.</p> <p>A strategy is essential in ensuring that there is clear linkage between the strategic requirement of the Council and other external stakeholders and the operations/activities of Purchasers across the council</p>		<p>An outline Procurement strategy was created by the council in October 2002.</p> <p>However, there was no evidence of an up to date, robust procurement strategy</p> <ol style="list-style-type: none"> <li>1) Being used and referred to.</li> <li>2) With Clear strategic objectives and targets.</li> <li>3) Adequate assessment of The council's needs / government requirements Vs current capability (e.g. SWOT analysis)</li> <li>4) Identification and integration of KPI's.</li> </ol> <p>Other evidence is described in Finding No. 6.</p>
<p><b>People</b></p> <p>The procurement staff are held in high regard within the organisation and are involved in all significant procurement-related activities.</p> <p>Procurement staff appreciate who their customers are within the organisation and measure the level of service they</p>	<p>The quality and performance of Procurement activity is directly related to the skills and knowledge of the staff responsible for the implementation of the strategy and Purchasing activities across the Council.</p> <p>Their ability to work effectively is also</p>		<p>The majority of the procurement skills reside within the Procurement department which controls 5% of the Council's spend, and influences a further 50%.</p> <p>45% of the Council's procurement is</p>

<p>provide.</p> <p>A high proportion of the procurement staff are members of CIPS.</p> <p>Procurement staff receive focused training each year.</p>	<p>dependent upon their customers' perception of procurement's contribution to the success of the organisation. This requires good understanding of user requirements and the ability to work collaboratively with internal stakeholders.</p>		<p>undertaken without the involvement of procurement professionals.</p> <p>Also see finding No. 5</p>
<p><b>Organisation</b></p> <p>There is executive level sponsorship of the procurement function.</p> <p>The organisation formally endorses the value that professional procurement can deliver.</p> <p>Early involvement of procurement in commercial decision making is mandated.</p> <p>Opportunities to leverage external expenditure are exploited.</p> <p>Roles and responsibilities are clearly identified within the procurement function</p>	<p>The successful management of strategic stakeholders and cross functional relationships is the key to a successful procurement organisation.</p> <p>Without this understanding of user requirements, the ability to influence and effect change throughout an organisation is severely reduced.</p> <p>As such, for an organisation to fully utilise the strategic advantages Procurement can provide, the function be must be given a mandate to influence all external expenditure.</p>		<p>There is no direct senior management sponsorship of the Procurement function.</p> <p>Only 5% of expenditure is currently contracted through procurement.</p> <p>Also see finding No. 6</p>
<p><b>Processes and Compliance</b></p> <p>UK and EC Directives are understood and complied with.</p> <p>Procurement procedures are well documented and are implemented efficiently through out the organisation.</p> <p>A rigorous supplier selection process is in use and is open to review.</p>	<p>The effectiveness and compliance to procurement procedures determine the Council's</p> <ol style="list-style-type: none"> <li>1) Risk exposure related to non-compliance to UK and EU law in the form of costs associated with EU fines and potential supplier legal action but also</li> <li>2) Ability to achieve Best Value as laid out in the CSO</li> </ol>		<p>Processes have been well documented within the CSO document and posted on the Intranet.</p> <p>However, there is no formal integration with local processes.</p> <p>A number of areas of non-compliance to CSO were found.</p> <p>See finding No's 1,3,4,8,10,11,12,13,14.</p>

<p style="text-align: center;"><b>Systems</b></p> <p>Procurement processes are fully supported from requisition creation through to purchase order to goods receiving and invoice.</p> <p>The procurement application is integrated with other systems.</p> <p>The procurement system provides access to accurate and comprehensive procurement information.</p>	<p>Effective Procurement decision making requires a comprehensive understanding of:</p> <ul style="list-style-type: none"> <li>• How much is spent</li> <li>• By whom</li> <li>• On which categories</li> <li>• With which suppliers</li> </ul> <p>With out a clear, timely understanding of the above an organisation risks, at best, missing cost saving opportunities and, at worst, incorrect decision making.</p>		<p>A number of different bespoke system are used within the Division's to capture spend data.</p> <p>No single comprehensive source of spend data is available within the Council.</p>
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## Appendix I

The following two pages describe pictorially some of the findings and recommendations in this report.

Two systemic factors contributed to several of the findings, these were:

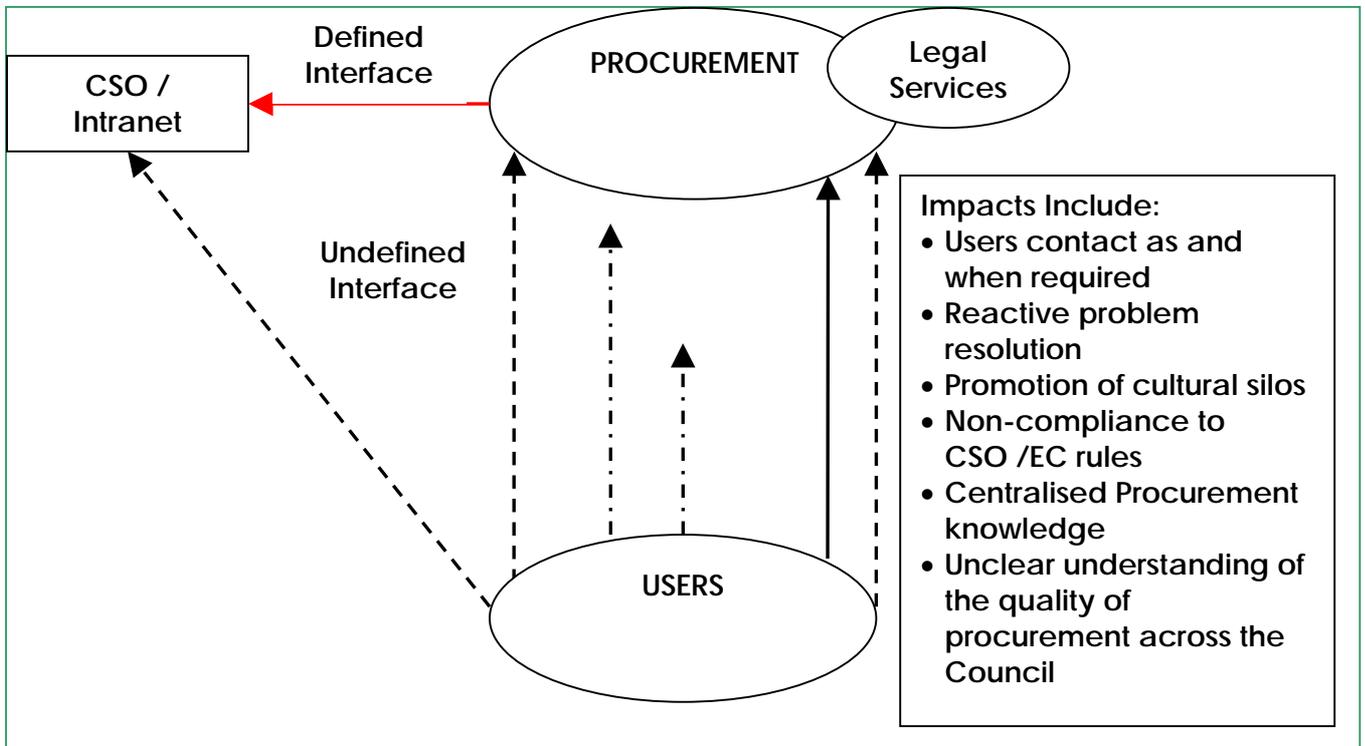
- 1) The level and type of interaction or 'interface' between the Procurement function and Departments across the Council.
- 2) The level of understanding and compliance to CSO procedures, and hence UK and EU procurement law.

On the first page, the current state and potential future state interfaces between Procurement and the Council Departments are described.

On the second page, the current state and potential future state for managing the communication of, and compliance with, CSO and procurement laws are described.

Figure 1. Procurement / User Interface Schematic

**Current State** – No defined direct interface between Procurement and Users.



**Potential Future State** – Multiple defined areas for interfacing with Users

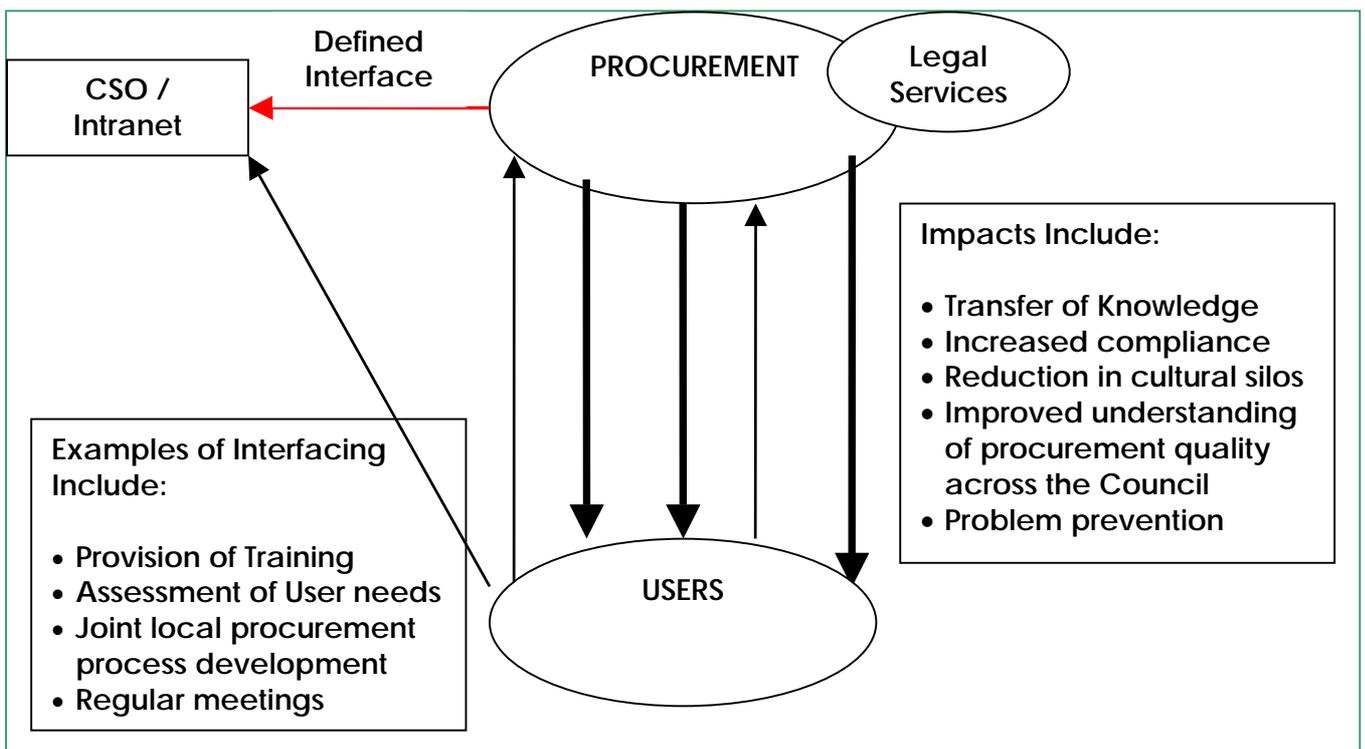
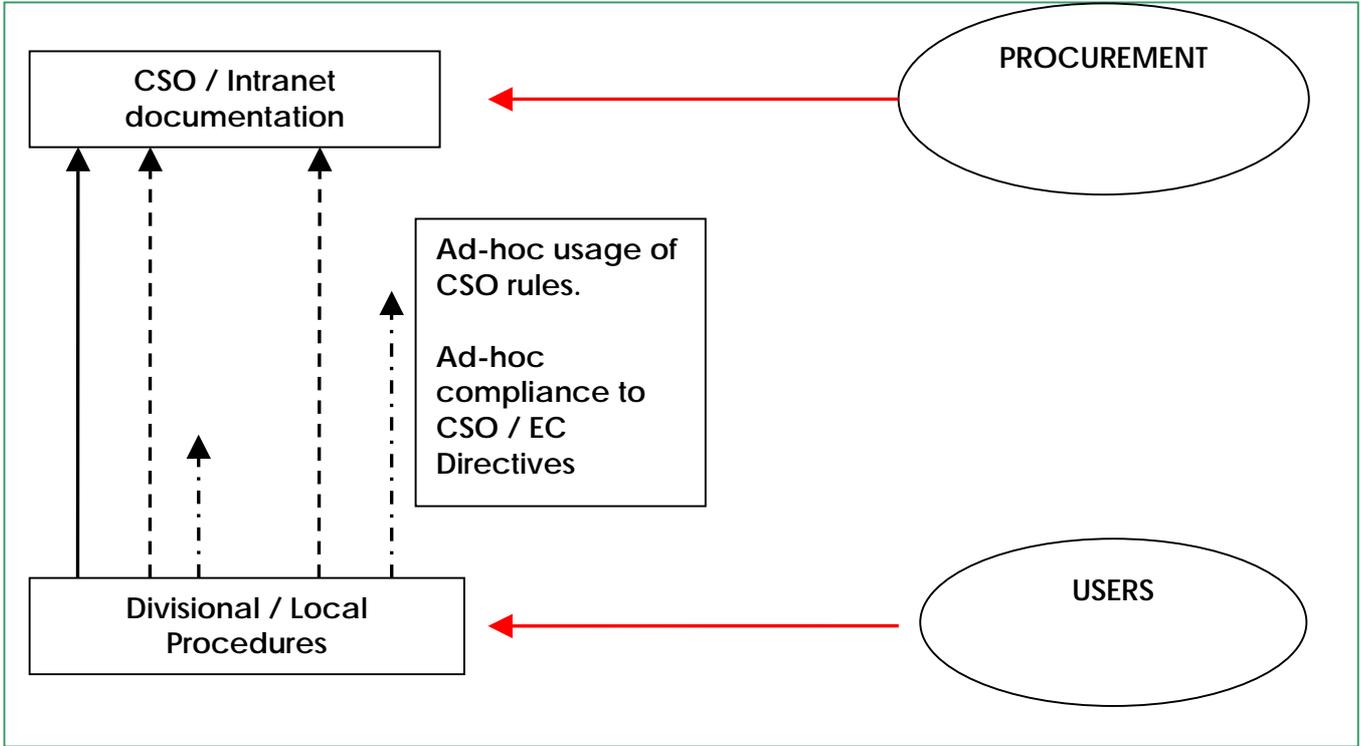
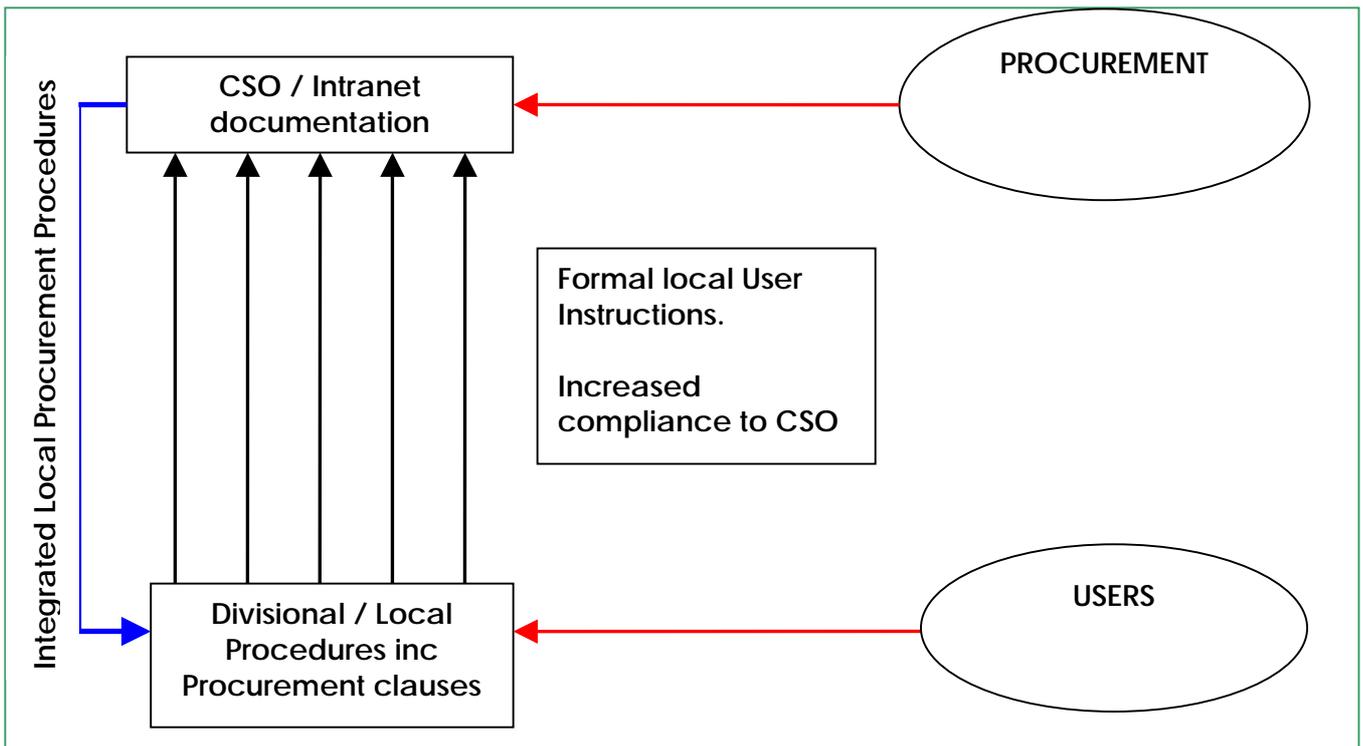


Figure 2. Procedural Schematic

Current State – No integration between CSO and Local Procedures



Potential Future State – Local Procurement Procedures Integrated with CSO



## Appendix II - Details On Contracts Assessed During The Review

### Engineering - Highways – Undercliff Drive; Coastal Protection – Duver Scheme

Contract Information	
Contract Number/ Reference	Highways - Undercliff Drive
Supplier Name	High Point Rendel (Geotechnical Consultants) ; Geotechnical Engineering Ltd (works contractor appointed by High Point Rendel)
Implementation Date	17/11/2004 for a period of 21 weeks (correction period 52 weeks)
Product / Service	Geotechnical consultancy (HPR) ; Construction (GE Ltd) classified as service as it is ground investigation work value at 31/01/05 stands at £175,345
Value:	HPR (£894,260.18) current value at £1.45m as at 30/04/05; GE Ltd (contract quote \$182,152.87 actual 218,712.69 = + 19.77%)

Contract Information	
Contract Number/ Reference	Duver - Coastal protection scheme
Supplier Name	Van Oord ( Contractor); Posford Haskoning (Consultants)
Implementation Date	
Product / Service	Coastal Protection - Consultancy and Contract Works
Value:	Contractor contract quote 2,295,800 (actual 3,312,000 + 44%) ; Consultants £363, 000 ('03-'04 £309K ; '04-'05 £54K)

### Adult Services – Home Care

Contract Information	
Contract Number/ Reference	East and South Block Contract
Supplier Name	Two Counties Comm Care Ltd
Start / End Date	1 April 05 to 31 March 2010 poss. ext to 31 March 2012
Product / Service	Adult Services - Home Care Contract
Value:	£1,410,000
Contract Information	
Contract Number/ Reference	North and West Block Contract
Supplier Name	White Home Care Ltd
Start / End Date	1 April 05 to 31 March 2010 poss. ext to 31 March 2012
Product / Service	Adult Services - Home Care Contract
Value:	£2,370,000

## Corporate - Building Cleaning

Contract Information	
Contract Number/ Reference	No contract in place
Supplier Name	Carlisle Facilities
Start / End Date	4 Oct 2004 to 3 Oct 2007
Product / Service	Internal Cleaning of Buildings Contract
Value:	£ 230,000