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**CPD**

Procurement Guidance Note

**PGN 01/14**

(as amended)

# **Best Practice in the Management of Property Maintenance Contracts**

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## PROCUREMENT GUIDANCE NOTES

[Northern Ireland Public Procurement Policy \(NIPPP\)](#) was approved by the Northern Ireland Executive in 2002. In approving the policy, the Executive took the decision that legislation was not necessary to ensure that Departments, their Agencies, Non-Departmental Public Bodies and Public Corporations complied with the policy. Instead, it considered that compliance could be achieved by means of administrative direction.

Procurement Guidance Notes (PGNs) are the administrative means by which Departments are advised of procurement policy and best practice developments. They apply to those bodies subject to NIPPP and also provide useful guidance for other public sector bodies.

PGNs are developed by the Central Procurement Directorate (CPD), in consultation with the Centres of Procurement Expertise (CoPEs), and are subject to the approval of the Procurement Board.

Once endorsed by the Procurement Board, they are issued to the Departments for implementation and copied to CoPEs to develop, if necessary, underpinning procedures supporting the implementation of this guidance in their particular sector. PGNs are also published on the [Department of Finance \(DoF\) website](#).

**The following PGN was endorsed by the Procurement Board with effect from 11 March 2014 for use by those bodies subject to NIPPP.**

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### **Definition of Terminology**

In the preparation of this guide, the term **contractor/supplier** has been used to denote an organisation that contracts directly with a Department, whether it is a supplier, a service provider or a construction contractor.

The term **Department** has been used to refer to those bodies subject to Northern Ireland Public Procurement Policy including Departments, Non-Departmental Public Bodies and Public Corporations. A full list of such bodies is available in Annex A of the [Northern Ireland Public Procurement Policy \(NIPPP\)](#).

## 1 INTRODUCTION

- 1.1 Contract management is the phase of the procurement cycle in which a contractor delivers the required goods, services or works in accordance with a Department's specification and Terms and Conditions of Contract. The Department's and contractor's approach to managing their relationship is critically important to ensuring successful contract delivery and best value for money for the taxpayer. Departments regard a failure by contractors to deliver contract requirements as a serious matter. It means the public purse is not getting what it is paying for, and if things go wrong the failure can be expensive in financial terms and management time. The reputation of the Department and contractor can be damaged by a poorly managed contract that does not deliver the outcomes required for the people of Northern Ireland.
- 1.2 Good management of the operational phase of the procurement cycle is critical for the successful delivery of a contract. It ensures that all parties fully meet their respective obligations as efficiently and effectively as possible, in order to meet the business and operational objectives required from the contract. It ensures that Best Value for Money (BVFM) is achieved, while recognising that the contractor is entitled to a reasonable profit in delivering the contract. This involves building an effective working relationship between the Department and the contractor that continues throughout the life of a contract, while also maintaining an appropriate degree of commercial tension between the parties. In addition contract management must aim for the achievement of continuous improvement in performance over the life of the contract.
- 1.3 It is important that those involved in contract management adhere to the principles of probity and act in a manner consistent with the [Northern Ireland Public Procurement Policy](#), [The Seven Principles of Public Life](#) and the [NICS Code of Ethics](#), if applicable, or any other ethical standards that apply to CoPEs outside the NICS.
- 1.4 Property maintenance contracts are required by Departments to ensure that the condition of property assets within their estate is preserved at an

acceptable standard. Departments must note that this Guidance Note is specific to the management of property maintenance contracts relating to buildings, as opposed to infrastructure. This is because the maintenance of infrastructure is normally highly specialised, where continuity of service provision is fundamentally important. It can involve working on live services such as gas, electricity, water, or highway and rail networks. This type of maintenance requires different controls that take account of the specific risks to the health and safety of those maintenance staff and contractors operating in these sectors.

1.5 The upkeep of property assets belonging to a Department's estate is important because it:

- protects the value of the asset;
- ensures that it is fit for purpose;
- protects the health and safety of staff; and
- ensures business continuity.

## **2 BACKGROUND**

2.1 The management of property maintenance contracts can be susceptible to fraud, corruption and other irregularities, primarily because such contracts typically consist of a high volume of low value transactions. However, collectively these transactions can amount to significant expenditure. It is estimated that approximately £238 million was spent by the public sector in repair and maintenance contracts in Northern Ireland during 2012<sup>1</sup>.

2.2 The management of property maintenance contracts is distinct from the management of new build property contracts. Property maintenance contracts involve a wide variety of work, often reactive in nature, which is undertaken

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<sup>1</sup> Figures provided by the Northern Ireland Statistics and Research Agency, Northern Ireland Construction Bulletin Output in the Construction Industry - Q4 2012.

simultaneously, and sometimes within short timescales, across a number of different properties. These properties may be spread across a large geographical area. By contrast, the management of new build property contracts normally focuses upon one site, over a longer period. This allows more time to plan, monitor and deliver the work.

2.3 The risks associated with the management of property maintenance contracts have been highlighted by the Northern Ireland Audit Office (NIAO) and the Northern Ireland Assembly Public Accounts Committee (PAC) in the following reports:

- [The Investigation of Suspected Fraud in the Water Service - June 2003 \(NIAO\);](#)
- [Introducing Gas Central Heating in Housing Executive Homes – July 2004 \(NIAO\);](#)
- [The Investigation of Suspected Contract Fraud – April 2009 \(NIAO\);](#)
- [NIHE Management of Response Maintenance Contracts – September 2012 \(NIAO\);](#)
- [Public Accounts Committee Report on the Investigation of a Suspected Contract Fraud – September 2010 \(PAC\);](#) and
- [Northern Ireland Assembly – Report on the Northern Ireland Housing Executive: Management of Response Maintenance Contracts – February 2013 \(PAC\).](#)

2.4 These reports identify how Government and the public sector can become exposed to suspected fraud in the management of property maintenance contracts. The reports also demonstrate the risk to value for money arising from:

- the use of contracts that are not fit for purpose;
- persistent overcharging by the contractor for work undertaken;

- the contractor charging for works that are incomplete or not undertaken;
- inappropriate acceptance of contractor hospitality by Department's staff;
- collusive tendering; and
- invoice slicing.

2.5 The purpose of this Guidance Note is to assist Departments achieve best practice in managing property maintenance contracts. It proposes measures to mitigate the risk of the weaknesses highlighted by the NIAO and PAC reports (listed above) from occurring. When complying with this guidance, Departments must also ensure that they refer to and implement the relevant recommendations contained within these NIAO and PAC reports.

### **3 STANDARD MAINTENANCE DEFINITIONS**

There are various types of maintenance. Traditionally a range of different terminologies have been used to describe similar types of maintenance. In the interests of clarity, the following standard maintenance definitions will be used for the purpose of interpretation of this Guidance Note.

#### **3.1 Planned Maintenance**

Planned Maintenance applies to the maintenance of: building fabric; structural components; plant; furnishings; fixtures and fittings; building engineering services installations and site wide elements. Its aim is to prevent major failure and reduce total maintenance costs over time. The level of Planned Maintenance will be determined by an asset's condition, which will be informed by a condition assessment inspection process.

### **3.2 Unplanned Maintenance**

Unplanned Maintenance is the essential maintenance of assets experiencing breakdown, failure, vandalism or weather damage, or maintenance that is necessary to meet an end user business need. It also applies to maintenance of those assets where no action is undertaken, apart from statutory requirements, until the asset breaks down, or its quality falls below a specified minimum standard.

### **3.3 Cyclical Maintenance**

Cyclical Maintenance is defined as recurrent maintenance work that is carried out on an agreed cycle to ensure compliance with statutory and manufacturer requirements. Cyclical Maintenance includes servicing and inspection.

### **3.4 Backlog Maintenance**

Backlog Maintenance is essential maintenance work that has not been carried out previously but is deemed necessary to bring the condition of a maintainable asset up to a standard or acceptable level of risk. Backlog Maintenance can fall under either the Planned Maintenance or Unplanned Maintenance categories.

### 3.5 Maintenance Classifications

Table A contains examples of the different types of maintenance defined above. This is not an exhaustive list. These classifications are also shown in a graphical format in Annex A.

**Table A: Maintenance Classifications**

Maintenance Classifications		
Category	Sub category	Definition
Planned Maintenance	Refurbishment and adaptation	Maintenance (possibly including some project works) that is planned in advance to modernise or alter a building. This is to prevent the asset from slipping into obsolescence, or becoming obsolete for its required use.
	Redecorations	Work carried out to restore the aesthetic value or weather protection of buildings. This is usually carried out at pre-determined times to ensure that an asset's expected decorative state and protection is maintained.
Unplanned Maintenance	Unscheduled replacement	Maintenance repairs and/or replacements carried out after faults or damage have occurred. Generally, these are reactive in nature and can include emergency work or health and safety related tasks.
	Unscheduled refurbishment and adaptation.	Maintenance work undertaken to modernise or alter a building or its services to meet an urgent end user business or operational need. It may also include unscheduled maintenance resulting from recommendations contained within Fire Risk Assessments.
	Cyclical maintenance remedial work	Maintenance work undertaken based on recommendations contained within cyclical inspection reports.
	Minor replacement/repair	Non-urgent day-to-day works to restore faulty or damaged building components to good working condition.
Cyclical Maintenance	Building fabric and engineering services	Recurrent maintenance work that is carried out to an agreed cycle, to ensure compliance with statutory and manufacturer requirements. This will include inspection, servicing and reporting.
	Grounds maintenance	Maintenance work relating to the upkeep of hard and soft landscaping, which may include some elements of tree surgery, external cleaning, snow clearance and gritting, etc.
Backlog Maintenance	Backlog maintenance	Essential maintenance work that has not been carried out and is deemed necessary to bring the condition of a maintainable asset up to a standard or an acceptable level of risk.

## 4 THE ESTATE STRATEGY

4.1 It is best practice that a Department has an Estate Strategy in place to enable it to properly manage and maintain its estate portfolio. An effective Estate Strategy will ensure that an up to date record of the properties that form the estate, and their condition, is maintained. This is achieved through creating and maintaining a Property Asset Register, that will form part of a Department's overall Asset Management Plan. The Estate Strategy will also prioritise the estate based upon its condition to determine those properties that are to be replaced, maintained, refurbished or disposed of. The objective of the Estate Strategy is to ensure that:

- the estate is fit for purpose;
- that it is as efficient as possible; and
- that it is compliant with all relevant statutory standards.

4.2 Following Executive agreement in January 2011, it is now mandatory for Departments to produce an Asset Management Plan covering the Department's core assets and their respective Arm's Length Body's (ALBs) assets. The objective of the Asset Management Plan is to improve the efficiency of the Department's estate. It is refreshed annually and is based on a five year look ahead.

4.3 The Estate Strategy is underpinned by a cyclical assessment, which accurately records the condition of the estate. A condition survey of an estate, recording the condition of every property within that estate should be undertaken at least every five years.

4.4 It is the responsibility of the Department to set an appropriate standard to which its estate must be maintained. This standard should be applied consistently across the estate for which there is a continuing use. The Department should ensure that a property's condition does not deteriorate below the acceptable standard.

4.5 Where a Department wishes to transfer the management of its estate and/or the maintenance of it to another Department, it must do so via a Service Level

Agreement (SLA). This SLA will set out the roles and responsibilities of both Departments giving specific details of the scope of service that is to be provided.

#### 4.6 Management Information Systems

The information relating to a Department's estate portfolio can be extensive. An Estate Strategy will ensure that a Department has considered and adopted an appropriate Management Information System (MIS) that keeps a live record of the estate portfolio and its condition. The MIS should be updated whenever a condition survey is undertaken and when maintenance of any type is undertaken. It should also record details of properties that have been acquired, developed or disposed of. For those Departments with large estates and multiple sites, using a specialist computer software based MIS system should be considered.

It is best practice that the MIS is able to interface with a Department's financial systems. This will reduce duplication of effort, while also ensuring the prompt and timely payment of approved invoices. The incorporation of a MIS will enable the Department to keep a clear audit trail of maintenance undertaken by it, which in turn will help demonstrate that BVFM has been obtained.

## **5 THE MAINTENANCE PLAN**

- 5.1 Having established the condition of the estate, it is essential that this information is used to formulate a Maintenance Plan. A Maintenance Plan will prioritise the maintenance that must be undertaken, in accordance with the approach set out in the Estate Strategy. For example, work that poses a health and safety risk to staff or members of the public will be given priority to ensure it is addressed immediately. Conversely, prioritisation will also ensure that, where a property is vacated or pending disposal, only essential

maintenance is undertaken. An effective Maintenance Plan will place emphasis on delivering BVFM at all times.

- 5.2 The Maintenance Plan will categorise maintenance into Planned Maintenance, Unplanned Maintenance, Cyclical Maintenance and Backlog Maintenance. All Departments should aim to minimise both Backlog Maintenance and Unplanned Maintenance, so that the majority of maintenance tasks are undertaken as Planned Maintenance and Cyclical Maintenance. This approach, whilst dependent on the level of funding and resources available to the Department, will help mitigate the risk associated with the unpredictable nature and cost of Unplanned Maintenance. It will allow Departments to pre plan maintenance, giving them greater opportunities to determine the extent and cost of the maintenance required. It will also allow more time to procure the work where necessary. This approach will help to minimise disruption to the Department so facilitating business continuity.
- 5.3 A Department that has implemented an effective Estate Strategy and Maintenance Plan will benefit from an informed position. It will be aware and in control of the:
- maintenance that is required within its estate;
  - priority of this maintenance; and
  - potential cost.
- 5.4 Such knowledge will inform and protect the Department when procuring and managing the ensuing maintenance contracts.

## **6 THE PROCUREMENT METHODOLOGY**

### **6.1 Introduction**

- 6.1 Although this Guidance Note focuses on contract management, it recognises that the procurement methodology can directly affect contract management. The success or failure of a contract can often be traced back to how well it was procured.

- 6.2 The Estate Strategy and Maintenance Plan will inform and define the most appropriate Procurement Methodology in respect of any particular contract.
- 6.3 The fundamental objective of all public sector procurement is to ensure the delivery of BVFM. This is defined as the optimum combination of cost, quality and sustainability in order to meet customer requirements.
- 6.4 Departments that procure maintenance contracts must be aware that inappropriate selection of a particular Procurement Methodology could adversely affect that Department's ability to manage the ensuing contracts. Therefore it is imperative that the Procurement Methodology is considered in detail at the outset.
- 6.5 In developing a Procurement Methodology, a Department must consider the:
- nature of the maintenance work that is required;
  - scale of the work, including its geographical spread;
  - anticipated value of work;
  - complexity and urgency of the work;
  - distinct day-to-day operational requirements imposed on the timely delivery of maintenance work (particularly on complex sites);
  - operational constraints placed on accessing and moving around sites;
  - responsibility for coordination of the work; and
  - the resources that are available within the Department to manage the work.
- 6.6 In addition, there are a number of strategic options that a Department must consider in its Procurement Methodology. These relate to how the maintenance provider will be sourced and include:
- internal provision through Directly Labour Organisations (DLO);
  - outsourced provision to external contractors; or

- a combination of internal and outsourced provision.

## **6.2 Internal provision – DLO**

6.1 DLO defines skilled construction operatives that are employed directly by a Department to carry out some core elements of estates and building services maintenance. These staff can be employed in addition to outsourced contractors. DLO staff can be particularly effective where familiarity with an existing estate and ability to deliver an immediate response is required.

## **6.3 Outsourced provision**

6.1 There are number of options for outsourcing maintenance. These include outsourcing:

- to a single contractor;
- to a number of contractors;
- through a joint venture arrangement between different contractors; or
- through a collaborative procurement with other Departments to one or more contractors.

6.2 When a Department decides to use outsourced provision for its maintenance contracts, the Procurement Methodology will normally require the submission of tenders from contractors bidding for the work. The approach to tendering is a key element of the Procurement Methodology. The acceptance of tenders that are not viable or Abnormally Low can have a significant and detrimental impact upon the ability of the winning contractor to deliver the contract.

## **6.4 Abnormally Low Tenders, insolvency during the procurement process and TUPE Regulations**

6.1 Abnormally Low tendering is the submission of tenders equal to or below cost with no allowance for profit. If successful in securing the work, the contractor

may typically try to seek alternative routes to profit. This may include excessive claims for loss and expense in connection with extra work, substituting inferior building products that affect overall quality, and in severe cases non payment to subcontractors.

- 6.2 CPD has published guidance regarding the acceptance of Abnormally Low Tenders. Departments should refer to Procurement Guidance Note [PGN 03/13: Construction Works Procurement Abnormally Low Tenders](#) when developing the Procurement Methodology for maintenance work.
- 6.3 CPD has also published guidance for Departments regarding the procedures to be followed where a tenderer enters an insolvency process prior to the contract being awarded. Departments should refer to Procurement Guidance Note [PGN 04/13: Construction Works Procurement - Insolvency During the Procurement Process](#).
- 6.4 The Procurement Methodology should consider the risk of contractor insolvency following award of the contract. When this occurs, it can cause the Department significant expense and disruption. Departments should consider the appointment of multiple contractors or reserve contractors within its Procurement Methodology that can be appointed should the chosen contractor become unable to deliver the contract at a later time.
- 6.5 In order to enhance contractor capability, the Procurement Methodology should address the handover period between the existing contractor and the new one, scheduling a period of overlap between the end of an existing contract and the start of a new contract. This period will afford the new contractor time to mobilise and time to interface with the existing contractor and the Department. This will facilitate handover of the contract which should help to minimise disruption to the Department.
- 6.6 Within maintenance contracts, staff may transfer between the Department and the contractor, or from an incumbent contractor to a newly appointed one. Where this occurs, it is regulated through the [Transfer of Undertakings \(Protection of Employment\) \(TUPE\) Regulations](#) and Departments must comply with this legislation. The Department's approach in

relation to TUPE staff is important to contractors that tender for the contract. This will directly affect the contractor's pricing of the work and should be clearly established within the Procurement Methodology.

## **7 THE CONTRACT TYPE**

The Procurement Methodology and the Contract Type are interdependent. As with the Procurement Methodology, the inappropriate selection of a Contract Type can lead to significant problems during contract management. These can inhibit the contractor's ability to successfully deliver the contract.

It is best practice that an appropriate Contract Type is developed for each contract. This should set out the Department's requirements and be the basis on which the Department's decisions on the form of contract and pricing mechanism to be used have been taken. The following decisions must be made irrespective of the form of contract:

- what Cost Model will be used (that is, will a lump sum price based or reimbursement price based/cost based approach be adopted?);
- what is the duration of the contract?;
- what size is the contract and how many contractors are required to deliver the work?
- will the Department adopt a partnering approach to contract management or a more traditional approach?; and
- what contract administration resources does the Department have?

### **7.1 Contract options**

Four main types of contract are commonly used for maintenance work:

- Project Specific Contracts;
- Term Contracts;

- Framework Agreements; and
- Facilities Management Contracts.

## 7.1 Project Specific Contracts

A Project Specific Contract is a contract arranged with a contractor to carry out a defined element of work. Although the amount of work can vary, the project is defined when the contract is let. In a maintenance context, a Project Specific Contract is generally used to deliver a defined improvement programme for a lump sum price. The contract lasts for as long as is necessary to complete the work.

## 7.2 Term Contracts

A Term Contract is intended for activities carried out on a regular basis over a period of time and are often used in the procurement of maintenance work. They are suitable for use by Departments that have a regular flow of maintenance works and improvements that they require to be carried out over a specified period of time, normally between three and five years. At the outset of the contract it may not be possible to fully define what work is to be executed under it. Term Contracts therefore include an 'order' mechanism, under which the precise activities to be carried out are defined.

Types of Term Contract: There are various forms of Term Contracts including Measured Term Contracts, Specialist Term Contracts and Daywork Term Contracts. These are described in further detail below:

- **Measured Term Contract (MTC)/Term Service Contract (TSC):**  
Under this reimbursement type of contract, work undertaken by the successful contractor is measured on completion, and valued by reference to the tendered rates/prices. An MTC is suitable for lower value maintenance work. When procuring an MTC, Departments must establish and set a pre determined maximum financial limit beyond which an MTC must not be used without prior approval to do so from

the Head of the relevant Centre of Procurement Expertise. This limit will be informed by the nature, complexity, type and urgency of the maintenance work that is to be undertaken. It must also reflect the Department's ability to demonstrate that BVFM has been achieved.

- **Specialist Term Contract (STC):** An STC is comparable to an MTC but is used for specialist tasks such as asbestos removal or lift maintenance or for single trades such as roofing, paving, redecorations, etc.
- **Daywork Term Contract (DTC):** A DTC is a reimbursement type of contract. It is suitable for situations where the work cannot be identified and scheduled in advance, and where a daywork's basis is the fairest way of reimbursing contractors. Caution needs to be exercised by the Department when using such contracts as there is no incentive for a contractor to be economical with resources, particularly labour. This type of contract should be restricted to low value work.

**7.3 Framework Agreements:** A Framework Agreement defines the terms on which work that might be required is to be undertaken. It does not commit the Department to proceeding with that work. Framework Agreements that have a value above the EU Threshold are generally limited to a maximum four year period by European Union procurement law. There are two types of Framework Agreement: single contractor and multiple contractor.

The use of multiple contractor frameworks for maintenance contracts has several benefits. It ensures continuity of service if one contractor becomes insolvent or lacks capacity. It can also encourage competitive supply by facilitating mini competitions within the framework for bespoke works and it can increase the contracting resources available to the employer. However, while there can be advantages to using frameworks, opportunities offered to the market are reduced, and in addition they tend to favour larger enterprises. Departments should, therefore, consider the potential impact of maintenance on the supplier market, and only use these where appropriate. They must also consider splitting the work into Lots, where putting such agreements in place

would otherwise have a detrimental impact on small and medium sized enterprises.

**7.4 Facilities Management contracts:** Facilities Management (FM) contracts typically involve outsourcing the management of a Department's estate to a single supplier for a specified period of time. That supplier becomes responsible for operating, maintaining, improving and adapting the properties and/or infrastructure belonging to that Department. FM contracts can be attractive to organisations that manage a large estate with minimal internal resources.

## **7.2 Contract payment mechanisms**

There are two main payment mechanisms for contracts:

- Price Based; and
- Cost Based.

### **7.1 Price Based Contracts**

In a Price Based Contract, the Department pays the contractor an amount that reflects the prices/rates tendered or offered by the contractor for the proposed work. The risk of incorrect pricing lies with the contractor.

### **7.2 Cost Based Contracts**

With a Cost Based Contract, the Department pays the amount that it costs the contractor to deliver the contract. The costs can be divided into various elements; for example, labour, materials, plant, subcontractor costs, overheads and profit. A possible disadvantage with this type of contract is that the contractor has no incentive to minimise costs. Therefore the Department needs a high degree of control over the costs that the contractor is allowed to incur. In such contracts, it is best practice to include an incentive procedure in

the payment mechanism. This normally involves setting a target cost with a pain/gain mechanism. If the costs are higher than the target, the Department pays only a proportion of these costs; the contractor meets the rest. If the costs are less than the target, the contractor keeps a proportion of the saving. This gives the contractor an incentive to seek savings. Target cost contracts should generally be used only where the Department has:

- robust historical cost data and the expertise to set accurate targets;
- the expertise to analyse and manage the contractor's spend against those targets; and
- the desire to partner actively with the contractor to drive efficiencies and continuous improvement.

### 7.3 Form of contract

The [Construction Procurement Policy Framework](#) has at its centre the ['Achieving Excellence' initiative for Northern Ireland](#). A key principle of *Achieving Excellence* is robust proactive contract management. CoPEs have agreed to adopt the NEC3 suite of contracts for the procurement of construction works and services<sup>2</sup>. It is a flexible, collaborative form of contract intended to reduce the risk of time or cost overruns and poor performance of completed projects. To ensure these objectives are achieved, contract management procedures must be dynamic and in the spirit of the contract.

### 7.4 Sustainability requirements in construction contracts

7.1 The Construction Industry Forum for Northern Ireland (CIFNI) has agreed minimum standards for sustainability, which are to be included in all construction contracts awarded after 1 January 2009. These include social,

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<sup>2</sup> Forms of contract other than NEC3 should only be used for construction works or services if they demonstrably add value in comparison to NEC3 and only following approval by the Head of the relevant CoPE.

economic and environmental requirements that must be delivered through each contract. These requirements must be applied to maintenance contracts and should be considered minimum standards. However, Departments are free to move beyond these should they see scope to do so in relation to individual procurements. Details of these requirements are contained within CPD's guidance: [Sustainability Requirements, Guidance and Model Contract Clauses \(September 2012\)](#).

- 7.2 For Term Contracts, Frameworks and Lots, it is recommended that the requirements for social clauses should apply to the annual expenditure under the Term Contract, Framework or Lot.

## **7.5 Fair Payment practices and Project Bank Accounts**

- 7.1 It is Government policy that the principles of Fair Payment, particularly to subcontractors, are adhered to in construction contracts. Provision should be made within the Contract Type to adopt the Fair Payment provisions identified within Procurement Guidance Note [PGN 06/10: Procurement of Construction Works and Services](#).
- 7.2 Project Bank Accounts (PBAs) will normally not be appropriate for incorporation in maintenance contracts. This is owing to the nature of maintenance contracts, which are normally defined by a high volume of lower value work orders. These can span multiple different properties and contractors, making the implementation of PBAs on such projects unmanageable.
- 7.3 Departments must ensure that the contractor's performance in relation to social clauses and Fair Payment practices is assessed on a monthly and annual basis. Therefore, these should be included as Key Performance Indicators (KPIs) for the contractor within the Department's Contract Type.

## **7.6 Open Book Accounting**

Open Book Accounting mechanisms are normally used in cost based contracts. They ensure that any increase in the target cost of the contract is supported and defined by transparency of the costs incurred by the contractor. These costs assist the Department in demonstrating that BVFM is being achieved. The incorporation of Open Book Accounting should be included within the Contract Type if a cost based contract has been chosen.

## **7.7 Cost Benchmarking**

- 7.1 Cost Benchmarking enables Departments to compare the cost of their maintenance both internally, between the contractors and any DLO that they may employ, and externally against other UK Departments. In order to benchmark effectively, Departments must maintain accurate records of their maintenance costs. It is important that where a Department employs DLO, this cost is regularly benchmarked against external contractors employed to deliver maintenance. Cost Benchmarking will assist a Department in demonstrating that it has achieved BVFM in its maintenance contracts.
- 7.2 Cost Benchmarking can also help Departments identify suspected fraud. By comparing the value and number of invoices paid to each contractor over a set period of time, Departments may be able to identify charging that appears excessive or irregular. In such circumstances the Department should further investigate those charges. This approach will also enable Departments to assess patterns in maintenance costs incurred and the properties these are attributed to.

## **7.8 Construction Contract Monitor**

- 7.1 The Department should satisfy itself that a contractor's systems and procedures are robust in terms of governance and accountability. One way of achieving this is by appointing a Construction Contract Monitor (CCM), and a Department should state in all its maintenance contracts that it reserves the

right to appoint a CCM. A CCM monitors and audits a contractor's activities and those of its suppliers to limit opportunities for criminals or paramilitary organisations to target any work being carried out under a contract. It also encourages fair competition and equal opportunities for all, and promotes sustainability through monitoring compliance with appropriate legislation and tax regimes, including those concerning aggregate exploitation, waste disposal and landfill.

- 7.2 The CCM will examine the existing procedures and systems used by the contractor and present a report to the Department, the Project Manager (if applicable) and the contractor. This report will detail the areas targeted for investigation, any appropriate findings or observations, and any recommendations that the contractor must address. This approach will provide independent assurance to the Department and enable the contractor to demonstrate, and where necessary improve, governance within its existing procedures and systems.

## **8 CONTRACT MANAGEMENT**

Departments must ensure that all maintenance contracts are delivered to the required specification and Terms and Conditions of Contract. However, contract management should be proportionate to the value, risk and complexity of the contract. Simple low value maintenance contracts may only require inspection on receipt to ensure the order has been accurately supplied and the invoice paid. For complex or high value maintenance contracts, it may be necessary to appoint a full time Project Manager or project management team, to develop and deliver a contract management plan in line with the Terms and Conditions of Contract.

The essential aspects of contract management are:

- all contract managers should hold a contract management initiation meeting at the start of the management process to ensure there is a clear understanding of contract requirements;

- ensuring the specifications are met – this will involve formal monitoring against the KPIs, setting the performance targets to be achieved by the contractor and providing feedback to the contractor. Regular review meetings should be held;
- managing/supervising delivery of the contract – this will include regular routine monitoring of contract delivery (as above) in association with the contractor and client audits;
- establishing a benefits' realisation plan, if appropriate, to clearly detail what the contractor has offered;
- monitoring payments – checking invoices, times, rates, workload and paying for the goods/works/services within the agreed timeframe;
- assessing service credits, if applicable;
- keeping appropriate records for audit purposes;
- managing a change control regime to ensure continued compliance with the original scope to ensure no new contract is formed;
- managing any extensions and price increases allowed under the Terms and Conditions of Contract;
- certifying that the works/services have been completed/delivered to the required standards and within the contracted timescales; and
- managing the exit strategy and risk mitigation in the event of contractor failure/default.

Note: In addition to terminating the contract because of contractor default, a Department has the right (if the contract contains a specific clause) to terminate a contract in all or part at any time by giving sufficient written notice to the contractor (usually at least six months). Procurement and legal advice must be sought before taking this action.

In managing any maintenance contract, a Department must ensure that:

- subcontracts are only accepted where the payment terms are no less favourable than those in the main contract;
- the programme is reviewed regularly with the contractor;
- costs are monitored and 'early warnings' and 'compensation events' are processed within defined timescales;
- a robust process is in place to monitor design quality and conformity with the specification and works information (for works contracts) and the scope (for professional service contracts);
- risks are identified, reviewed and managed throughout the process;
- the contractor's performance is measured against pre determined KPIs and recorded for benchmarking purposes; and
- the agendas for monthly project meetings include a review of:
  - Health and Safety;
  - subcontractor payments (in line with the Fair Payment Charter); and
  - progress on sustainability requirements.

## **8.1 Requisition of works – Planned Maintenance**

8.1 Planned Maintenance can be procured through either project contracts or term contracts. With a project contract, the work to be done is set out in the contract. The contractor can start work once:

- any pre conditions have been satisfied;
- the date for the work to start has been reached; and,
- where applicable, the site has been handed over to the contractor.

8.2 In repair and maintenance contracts, it is common that the work takes place while the property is occupied, and in such circumstances a formal handover is not required.

## **8.2 Requisition of works – Unplanned Maintenance**

8.1 In a Term Contract, the Department will be required to issue a Works Order before a contractor can commence any Unplanned Maintenance. A separate order can be raised for each repair request, or an order can be issued to carry out a programme of work over a specified period. For Unplanned Maintenance, it is best practice that a centralised call handling system, such as a call centre, is in place. This system will:

- record and prioritise the repair;
- schedule the work to be carried out; and
- issue the order for the work.

8.2 A call centre is fundamental to a Department in successfully managing Unplanned Maintenance tasks. Therefore, a Department should consider in its Procurement Methodology whether this facility will be provided by it, by the contractor, or jointly by the Department and the contractor. Where a large number of calls are anticipated, jointly run call centres can be highly effective. This provides the Department with control over the call centre, particularly in the authorisation of work, but shares the administrative burden of running the call centre with the contractor.

8.3 Where a call handling system is provided by the contractor, it is important that this system is fully transparent and permits access for the Department should it wish to verify details of work undertaken. The call handling system should record details of when the repair has been completed, the work undertaken and if possible photographic evidence of completion. This system should interface with the Department's Maintenance Plan, updating it when maintenance has been executed.

- 8.4 It is important that controls are in place to govern staff who are authorised to initiate a repair. In large estates, it is recommended that a Premises Officer is appointed at each property. It is desirable that the Premises Officer has experience of building maintenance. It is important that Premises Officers receive appropriate training so that their expectations and understanding of a contractor's obligations under a contract are clear. Any member of staff can and should be encouraged to identify a repair; however, requisition of a repair order should be raised solely by the Premises Officer, or those maintenance staff who are delegated by the Department to do so.
- 8.5 However, the appointment of a Premises Officer may not be suitable for all sectors. For example, in the housing sector the role of Premises Officer will transfer to the tenant/home owner. It will be their responsibility to identify repairs via the call handling system.
- 8.6 A repair that is required could also be identified by a contractor. This benefits the Department in that early identification and execution of a repair may prevent premature and costly failure of other building services or building components. However, controls must be in place to govern this; for example, the value of a repair that a contractor can execute, without prior approval from a Department, could be limited to an appropriate threshold. This threshold should be restricted to low value repairs. In emergency circumstances where there is a risk to the health and safety of building occupants, or to the security of the premises, a contractor could be permitted to execute repairs above this threshold.

### **8.3 Requisition of works – Cyclical Maintenance**

Cyclical Maintenance must be carried out by a contractor in accordance with the technical specifications contained within the contract documentation, which should stipulate the cyclical frequencies of each maintenance inspection, per service and per property. Consequently, a contractor should not require further instructions from the Department to requisition Cyclical Maintenance, unless remedial works are identified. However, the Department

must satisfy itself through periodic inspection that the contractor is adhering to the schedule and scope of work required at each maintenance cycle. Where remedial works are recommended by the cyclical inspection and reporting regime, this work should be reviewed and authorised by the Department. If approved, an instruction should then be issued to the contractor granting permission to execute this work.

## 8.4 Delegated levels of authority

8.1 The scope of a repair can vary significantly in terms of value. This can range from minor repairs of building fabric to the complex replacement of building services. Consequently each Department must set delegated levels of authority for staff who can requisition repairs and approve works orders. High risk, costly repairs should require the prior approval of senior management and/or the Accounting Officer prior to initiation.

8.2 Table C below provides an example hierarchy of delegated levels of authority that has been used within the public sector. It shows the approval that is required to initiate work and authorise payment of work orders, by value. It will be the responsibility of each Department to establish its own delegated levels of authority, taking a risk based approach that reflects the value and quantity of work orders received on an annual basis.

**Table C: Sample Delegated Levels of Authority**

Sample Delegated Levels of Authority Required to Initiate Work and Authorise Payments	
Value of Work Order	Final Approval Required by
Less than £100	Contractor
£100 - £750	Maintenance Officer
£750 - £5,000	District Maintenance Manager
£5,000 - £8,750	Area Manager
£8,750 - £50,000	Regional Manager
Greater than £50,000	Chief Executive

## **8.5 Invoice Slicing**

Invoice Slicing is used as a mechanism to circumvent delegated levels of authority. Work orders of higher value are broken down into multiple smaller orders and invoices, in order to prevent the requirement for approval by senior staff. Departments must guard against this practice by randomly sampling and cross referencing invoices attributed to individual properties over a set period of time.

## **8.6 Determination and specification of works required**

- 8.1 When determining the works that are required it is essential that a pre-inspection is carried out. This is particularly important where Unplanned Maintenance is to be undertaken. It may not be possible for maintenance staff to pre-inspect all Unplanned Maintenance required, in which case it is recommended that a description of the work required should be provided by the Premises Officer. This is to ensure that the extent of the work is verified and accurately recorded before repair. Where possible, photographs of any faults should also be taken before work is undertaken. These measures act as key controls, which will discourage a contractor from carrying out and charging for repairs beyond those required.
- 8.2 There may be instances when the repair that is required is not apparent. This is common in the case of a building services installation, where a specialist investigation is required. In such cases, the contractor and/or specialist subcontractors may be called upon to identify the fault and extent of repair. When this occurs, the Premises Officer or maintenance staff must be informed, by the contractor, of the cause of the fault and the extent of the repair required. This information must be recorded by the Premises Officer or maintenance staff.

## 8.7 Prior appointment

8.1 The contractor should be required to make an appointment with the Premises Officer or equivalent personnel in order to inspect the works prior to undertaking any repair. This will allow the contractor to agree, in advance, any restrictions that may be applicable. This includes restrictions on:

- working time;
- access;
- noise;
- dust;
- security; and
- any Permit to Work systems that may be in operation.

8.2 Adherence to the principle of prior appointment will:

- facilitate good working relationships between the contractor and the Department;
- prevent disruption to the Department's business, staff and tenants; and
- ensure that the contractor is able to undertake work in a controlled environment and within agreed timescales.

8.3 It is recommended that a contractor's adherence to this principle should be assessed as a Key Performance Indicator.

8.4 Where a contractor engages supply chain partners (for example, subcontractors) to execute the works, an agreed corporate identity regime must be maintained by that contractor. This will enable the Premises Officer to establish security clearance (where applicable) for the contractor's staff and those of its supply chain partners. This approach will enhance security and repair response times by minimising delays in the contractor gaining access to the property.

8.5 When emergency maintenance works are required, a contractor may be required to make good the repair on first inspection, and there may not always be time to arrange and undertake a prior appointment. In such cases, the Department should ensure that appropriate protocols are in place to enable the contractor to comply with the key restrictions identified previously.

### **8.8 Execution of works – Unplanned Maintenance**

Once the extent of work has been established it is important that the work required is accurately detailed, recorded and, where possible, measured. For all types of maintenance, there should be a record against which the contractor delivers the works. This approach will ensure that:

- the appropriate materials are used by the contractor in the repair;
- only that work which is required is carried out, and
- the quality of the repair is consistent with the Department's standards and expectations.

### **8.9 Execution of works – Planned Maintenance**

The nature of Planned Maintenance allows the Department time in advance to identify and specify the work that is to be undertaken. While this reduces some of the risk associated with Unplanned Maintenance, the principles of prior inspection, accurate measurement, detailed specification and agreement on working restrictions are equally applicable. These must be followed in order to ensure that work is executed on time, within budget and to the required levels of quality.

### **8.10 Execution of works – Cyclical Maintenance**

Cyclical Maintenance is undertaken at pre determined frequencies each year on the basis of inspections, reporting and servicing. It must be carried out in

strict accordance with the Department’s specification for each cyclical service. Regular monitoring of a contractor’s adherence to contractual inspection regimes and the quality of submitted inspection reports will ensure that the Department’s standards and expectations are being achieved. Where remedial works are recommended following a contractor’s cyclical inspection and/or in its service reports, these should be addressed as either Planned Maintenance or Unplanned Maintenance work as appropriate.

### 8.11 Repair Protocols

8.1 In maintenance contracts it is important that a Repair Protocol is established within the Contract Type. This establishes a hierarchy of repairs, prioritised by importance, with timescales within which they must be made good. The table below gives an example Repair Protocol.

**Table D – Sample Repair Protocol**

SAMPLE REPAIR PROTOCOL		
Repair Category	Description	Repair Timescale
Immediate	Repairs that require immediate attention. This will include repairs that pose a risk to the health and safety of building occupants or to the security of the property.	Within 1 hour
Urgent	Repairs that are of high importance and that, if not addressed promptly, can lead to further damage to other building components.	Within 24 hours
Routine	Repairs that, although important, do not pose an immediate risk to health and safety of occupants, or the security of the building, and which will not lead to damage to other building services or fabric.	Within 14 days

8.2 Performance by a contractor against the Repair Protocol timescales should be assessed as part of the Key Performance Indicators. Persistent failure by a contractor to respond to maintenance call outs within the timescales specified should be identified as poor performance.

## **8.12 Changes, variations, and extensions within the contract - minor contract variations**

- 8.1 In managing any maintenance contract there may be instances that extend the original scope of the works. The nature of maintenance contracts is such that after work has commenced to make good a defect, further repairs are often identified that could not have been foreseen. When this occurs, it is acceptable that a variation to the contract is required to include the additional works to be undertaken. However, in such instances it is essential that the Department agrees the extent and cost of the additional works with the contractor prior to work commencing.
- 8.2 Conversely, there may be occasions when the extent and cost of the maintenance originally specified is reduced. This may occur when the contracting authority decides to omit work that was specified originally. In such instances the reduction in cost in respect of the work omitted must be agreed with the contractor, based upon the tendered schedule of rates. A variation to the contract should also be issued to reflect the agreed omissions.
- 8.3 It is accepted that variations may arise of relatively low value and, for which, prior approval may unnecessarily disrupt completion or progress of work on site. In such instances, it is prudent for the Department to set variation thresholds that permit the contractor to continue working without prior approval. In setting these thresholds the Department must balance the potential savings derived from minimising disruption by allowing work to progress on site, against the likely cost of the variation.
- 8.4 It is recommended that Departments monitor the number and value of variations across its maintenance contracts. A high number of variations may indicate that repair pre inspections are inaccurate, or that a contractor is replacing items rather than repairing them. Comparing the cost of variations between different contractors can help a Department when assessing contractor performance. Departments should be extra vigilant in monitoring those contractors who consistently submit large numbers of variations.

### **8.13 Changes, variations, and extensions within the contract - material contract variations**

- 8.1 Departments must be aware that legal issues may arise if the value or scope of the contract is either reduced or increased significantly. For increases, Departments should consider carefully whether a change is likely to significantly affect the scope of the original contract; as this could be viewed as constituting a new contract that has been awarded, effectively, without holding a competition. Moreover, the changes made to UK Procurement Regulations as a result of the implementation of the Remedies Directive, could result in the revised contract being declared ineffective (that is, cancelled) if it is found to have been varied to the point of being materially different from the original contract. Managing the change control regime will help ensure continued compliance with the original scope of the contract and ensure a new contract is not formed. Before amending or varying an existing contract to the point where the amendment could constitute a new contract, procurement advice should be sought from CPD or the relevant CoPE. Legal advice should also be sought if appropriate. Uncontrolled contract variations are one of the most significant risks to BVFM and have, in the past, attracted criticism from the Northern Ireland Audit Office and the Public Accounts Committee.
- 8.2 Guidance on the award of contracts without a competition (also known as single tender action) can be found in Procurement Guidance Note [PGN 03/11: Award of Contracts Without a Competition](#).

## **9 THE INSPECTION REGIME**

- 9.1 Inspection by a Department's maintenance staff during the course of a repair and after its completion is extremely important. For Unplanned Maintenance, it may not be possible to undertake inspection during the repair as the work, particularly if low value, can be executed within very short timescales. This is not necessarily the case for Planned Maintenance, which can be of higher

value, or more technically complex, and which may require several weeks on site. Where this is the case it is recommended that the Department's staff undertake periodic inspection of the work as it is executed. Details of the inspection should be recorded (including photographic records where appropriate). If workmanship or materials used are not in compliance with that specified, this should be brought to the attention of the contractor, so it can be remedied as soon as possible.

9.2 In order to manage Unplanned Maintenance, it is essential that a Department has a clear and proportionate inspection regime in place that must be adhered to by its staff. While ideally all Unplanned Maintenance work should be inspected prior to payment, it is accepted that Departments may not always have the resources to do this.

9.3 Consequently, Departments may permit a contractor to self measure and invoice work that it has completed. However, it is recommended that when a Department employs this approach the following controls should be implemented:

- the Department must verify that all work that has been invoiced has been completed. This will require verification (not detailed inspection) by the Premises Officer where inspection by the Department's maintenance staff has not been possible;
- all invoices submitted for payment must be checked against the original specification and measurement of the repair as recorded by the Premises Officer;
- distinction must be made between those staff who raise a works order and those staff who authorise payment of the invoice;
- a percentage of work orders that are self measured by the contractor must be subject to random post inspection by the Department's maintenance staff; and
- where a post inspection identifies substandard work, or over measurement by the contractor, this must be addressed at the next

monthly performance review meeting with that contractor. Where an overpayment has been identified this must be recouped from the next payment(s) to the contractor.

- 9.4 It will be the responsibility of each Department to establish an appropriate level of inspection across its maintenance contracts. This should be based upon the value and type of work, the number of work orders received, the geographical spread of the estate and the level of risk associated with the maintenance undertaken.
- 9.5 Where a random inspection identifies work that is substandard, incomplete or over measured, further inspections of that contractor's work should be instigated. If this identifies consistent poor performance then action must be taken immediately by the Department to:
- recover all sums that have been overcharged in accordance with contractual provisions;
  - ensure that the contractor makes good any work that is substandard or incomplete; and
  - the Protocol for Managing Poor Contractor Performance described in Procurement Guidance Note [PGN 01/12: Contract Management Procedures and Principles](#) is initiated.
- 9.6 Disputes as to whether work completed is to the required standard or is defective can be minimised by clear drafting in the contract documentation. The technical and qualitative requirements should be measured against explicit standards and specifications. It is important that the Department seeks to ensure consistency in the interpretation of the standard of quality acceptable across its maintenance staff. Training for both the Department's maintenance staff and the contractor at the outset of the contract will help to ensure that a consistent standard is applied. It is best practice that the contract documentation sets out explicit acceptance requirements, which both the contractor and the Department's maintenance staff can refer to.

## 10 PERFORMANCE MONITORING AND INCENTIVISATION

The assessment of a contractor's performance is necessary to:

- ensure performance meets the Department's requirements as specified;
- identify poor or unsatisfactory performance at the earliest opportunity, and to implement immediate corrective action. Failure to improve could eventually result in a contractor's exclusion from future contracts;
- protect the Department's investment in the supply or service relationship, and to ensure BVFM is provided through the contractual arrangement, thereby protecting the public purse; and
- provide a historical record of the contractor's performance for future reference. This is particularly necessary where continued unsatisfactory performance could lead to termination of the contract and/or legal proceedings. In such cases documentary evidence is essential.

### 10.1 Key Performance Indicators (KPIs)

10.1 The most effective means of assessing the performance of a contractor is by using KPIs. As it can be onerous to collect and monitor performance data for KPIs, it is important to set the correct KPIs. If KPIs are to be employed, they must be identified within the tender documentation issued to all contractors. This should also include details of any potential consequences should the contractor fail to meet these performance targets.

10.2 A sample contractor performance assessment pro forma is attached at Annex B. This includes a list of suggested KPIs that can be used or adapted for use by Departments.

10.3 Departments should, however, develop their own KPIs that reflect the specific nature of the maintenance required in their estate. Contractor performance,

based upon the KPIs, must be reviewed and recorded at monthly meetings with the contractor(s), followed by an annual review.

- 10.4 Departments must ensure that DLO staff are subject to monthly and annual assessments of their performance against the same KPIs that are used to assess contractor performance. This enables the Department to accurately compare the performance of DLO staff with that of the contractor. Departments must put measures in place to address poor performance of DLO staff.
- 10.5 It is essential that prompt action is taken to address poor contractor performance. Departments should refer to Procurement Guidance Note [PGN 01/12: Contract Management Procedures and Principles](#).

## **10.2 Performance incentivisation**

Performance incentivisation is an important aspect of partnering between the Department and the contractor. Contractor performance can be incentivised by financial reward if KPIs are exceeded, provided this approach is provided for in the contract documentation. This encourages the contractor to perform to a consistently high level. However, it is recommended that Departments incentivise contractor performance based upon efficiency savings generated. This encourages the contractor to work in closer partnership with a Department to identify savings through innovation and collaboration, leading to continuous improvement. In this approach the contractor may benefit from a percentage of the total savings generated, typically 50%.

## **10.3 Performance Damages**

- 10.1 Maintenance contracts normally include provisions wherein a breach of the contract that causes a loss to one party, is recoverable. Such provisions are commonly known as 'damages'. These are determined at the outset of the contract and must be a genuine pre estimate of the likely losses that a party may incur as a result of a breach of contract. If these estimates are not

justifiable in terms of actual expense, they may be deemed to be penalties that are unenforceable under the contract.

- 10.2 Consequently, if Departments propose to implement damages for poor contractor performance measured against KPIs, they must ensure that the 'damages' to be deducted are accurate and justifiable. If 'damages' are set at an excessive level, it is likely that the contractor will challenge the sums payable. This can lead to the creation of an adversarial relationship that not only deters partnering, but also has the potential to cause significant disruption to a Department in delivering its maintenance programme.

## **11 STAFF TRAINING**

- 11.1 It is crucial that staff who will manage the maintenance contract(s), on behalf of the Department, understand the Procurement Methodology and more importantly the Contract Type. Training is essential where a contract is new to the Department or its staff who will manage it, or where the contract management staff change. Effective management of the maintenance contract requires a detailed knowledge of the requirements of the contract, both for the Department and the contractor. Departments must ensure that staff who manage maintenance contracts, or have regular interaction with the contractor, have undertaken training that explains their obligations and that of the contractor under the contract. For partnering contracts, training can be undertaken jointly with the successful contractor(s).
- 11.2 It is equally important to establish a consistent approach by all maintenance staff employed by a Department to manage its maintenance contracts. This will facilitate greater accuracy when comparing the performance of different contractors against KPIs. It is recommended that quarterly reviews are held with the Department's maintenance staff; at which common issues should be discussed, and any lessons learnt gathered and disseminated.

## 12 RESOURCES

Additional resources are often required when administering a new contract. This is particularly true for partnering contracts. Partnering contracts involve more client resources than traditional contracts. The risks to Departments who do not sufficiently resource their maintenance contracts are significant. The costs incurred by a Department in dealing with claims or premature contract termination can substantially exceed the initial cost savings on contract administration.

It is the responsibility of a Department to establish the level of human, information technology and financial resources that it requires to effectively manage its maintenance contracts. This will be informed by the scope, complexity, value and geographical spread of the maintenance work that is to be undertaken. A Department must be aware that a shortfall in resources can potentially increase its exposure to the risk of fraud in managing its maintenance contracts.

### 12.1 Managed Professional Services

12.1 A Department may require the services of external construction professionals to supplement its existing human resources when managing its property maintenance contracts. Typically, such construction professionals may include Architects, Engineers and Quantity Surveyors. These construction professionals may be employed by the Department to:

- manage discrete elements of maintenance work;
- check measurements on invoices submitted by the contractor;
- carry out inspections on site; and
- provide design input to the specification of maintenance that is required.

12.2 It is imperative that defined parameters are established regarding the activities that such construction professionals are permitted to undertake.

Departments will be required to ensure that external construction professionals are:

- not permitted to manage maintenance contracts. This duty must be performed by the Department's staff;
- not permitted to initiate works or authorise payment to any contractor, subcontractor or supplier without the prior approval of the Department;
- required to complete an annual declaration of interest and submit this to the Department prior to involvement in any maintenance contract;
- informed of the Department's policy regarding acceptance of hospitality. This should also be described within the Department's contract with the construction professional; and
- assessed on their performance throughout the course of their contract.

12.3 It is imperative that the Department recognises that external construction professionals employed by it may have previously been employed by the contractor(s). While this should not be a deterrent to the employment of that construction professional, the Department must be aware of such instances and the individual and/or firm must declare any interests that it may have.

12.4 It is also appropriate that a Department audits a construction professional's work. For example, a Department may employ a Quantity Surveyor to verify measurements that a contractor has claimed for as part of a monthly invoice. The Department should periodically verify, through random sampling, that the consultant's measurement is accurate. Where this is found not to be the case, the Department should instigate further checking of that construction professional's work and take corrective action.

## **13 PARTNERING**

The adoption of a partnering approach with a contractor is viewed as best practice in managing maintenance contracts. Partnering facilitates teamworking, encourages trust, removes adversarial barriers and creates

efficiency through innovation. In maintenance contracts, partnering should be used to deliver the following two key objectives:

- to make good repairs upon first visit (that is, to get it right first time);  
and
- to demonstrate BVFM.

### **13.1 Partnering mechanisms**

13.1 There are various mechanisms that a Department can adopt to facilitate effective partnering. The following measures are recognised as best practice and should be considered by a Department before commencing procurement:

- the use of Term Contracts, which enables efficiency through lessons learned on a year on year basis;
- the adoption of shared IT systems with the contractor;
- regular payment cycles, which support contractor cashflow and stimulate economic growth amongst the supply chain;
- the standardisation of components used within the estate where possible and the retention of adequate stocks of repair components by the contractor; and
- effective two-way communication channels, which enable assessment of performance on a monthly basis.

13.2 It is important that, at the outset of the contract, the Department engages with the contractor to develop the contractor's capability. This will include partnering with the contractor to develop its understanding of the contract and to develop joint systems of working including shared IT systems. The Department may also afford the contractor a period of grace at the start of the contract to develop this understanding. In the case of Term Contracts and Frameworks, this period should not extend beyond three months. During this period, contractor assessment against the KPIs should be undertaken but not

acted upon. This will enable the contractor to gain an awareness of its initial performance and any improvement that is required.

13.3 It is important that a Department recognises inappropriate mechanisms. To support this it is essential that:

- the contractor is not permitted to undertake inspections of its own work - outside the agreed contract parameters - to alleviate the work load of the Department's staff;
- the contractor is only permitted to initiate repair work without prior approval to do so when it is within agreed contract parameters, or there is a risk to the health and safety of building occupants or the public, or to the security of the property;
- preference is not given to one contractor in the award of contracts by the Department ,or its staff, within a multiple provider maintenance framework;
- offers of hospitality from the contractor are not permitted;
- all conflicts of interests are declared by the contractor and Department's staff; and
- action is taken where the relationship with the contractor has been abused by either party.

### **13.2 Feedback on performance**

It is best practice that the Department supports two-way feedback. This allows the contractor the opportunity to provide feedback to the Department on its management of the contract. This may include discussions regarding the processing of invoices, prompt payment and the effectiveness of existing processes. However, the contractor must not be permitted to provide feedback or target the performance of a Department's individual staff.

### 13.3 Conflicts of interest

It is a Department's responsibility to ensure that there are no conflicts of interest or the perception of bias at any stage. Any connections between a member of staff and a contractor must be formally disclosed and documented at the earliest possible opportunity. The Department should then take (and record) action deemed appropriate in each particular circumstance, having regard to contractual provisions, if any, relating to conflicts of interest.

### 13.4 Acceptance of hospitality

Acceptance of offers of hospitality by the Department's staff can compromise professional separation, affect judgement and distort the impartiality of those staff managing the contract. It is best practice that a contract clearly states that a contractor must not make such offers to Departments' staff. Staff should not accept gifts or hospitality from contractors and must comply with [DAO \(DFP\) 10/06 – Revised Guidance on Acceptance of Gifts and Hospitality \(September 2009\)](#).

## 14 WHISTLEBLOWING

A Department must ensure that it creates a culture where staff are encouraged to identify malpractice that could lead to financial irregularity in managing maintenance contracts or to identify inappropriate behaviour by the Department's staff or the contractor. In either case, the Department must have clear guidance in place for staff regarding whistleblowing procedures.

The Department should also refer its staff to the guidance produced by the Department of Finance entitled: [Managing the Risk of Fraud \(NI\): A Guide for Managers \(December 2011\)](#). Further guidance regarding bid rigging and collusive tendering is also available from The Office of Fair Trading's [Cartels and the Competition Act 1998: A Guide for Purchasers](#).

## 15 DISPUTE RESOLUTION

- 15.1 There may be disagreements over aspects of a contract. It is unlikely that even the best drafted contracts will cater for every possible eventuality. However, not every difference of opinion needs to trigger a dispute between a Department and a contractor.
- 15.2 Good communication is key to maintaining relationships with contractors and fixing problems. It is imperative that both parties agree there is an issue and work through the problem. How the message is communicated sets the tone for how the dispute will be resolved.
- 15.3 Departments must never terminate a contract, or threaten to do so, without carefully considering what the contract provides for in the event of termination, and in all cases should take procurement and legal advice. To do otherwise risks breaching a contract, that could result in litigation and a claim for damages.
- 15.4 The Terms and Conditions of Contract should have provision for dispute resolution; for example, arbitration, adjudication (for construction contracts) or mediation. Procurement and legal advice on the process to be followed should be sought in all cases.

## 16 FURTHER INFORMATION

Any queries on this guide should be addressed to:

Construction Procurement Policy Branch

Central Procurement Directorate

2<sup>nd</sup> Floor East

Clare House

303 Airport Road West

Belfast, BT3 9ED

Phone: 028 9081 6871

Email: [ConstructionProcurementPolicy@finance-ni.gov.uk](mailto:ConstructionProcurementPolicy@finance-ni.gov.uk)

## 17 MEMBERSHIP OF THE TASK AND FINISH GROUP

The Task and Finish Group, which was established to produce this Procurement Guidance Note, consisted of a Steering Group and a Review Team. Membership of the Steering Group and Review Team included the following individuals.

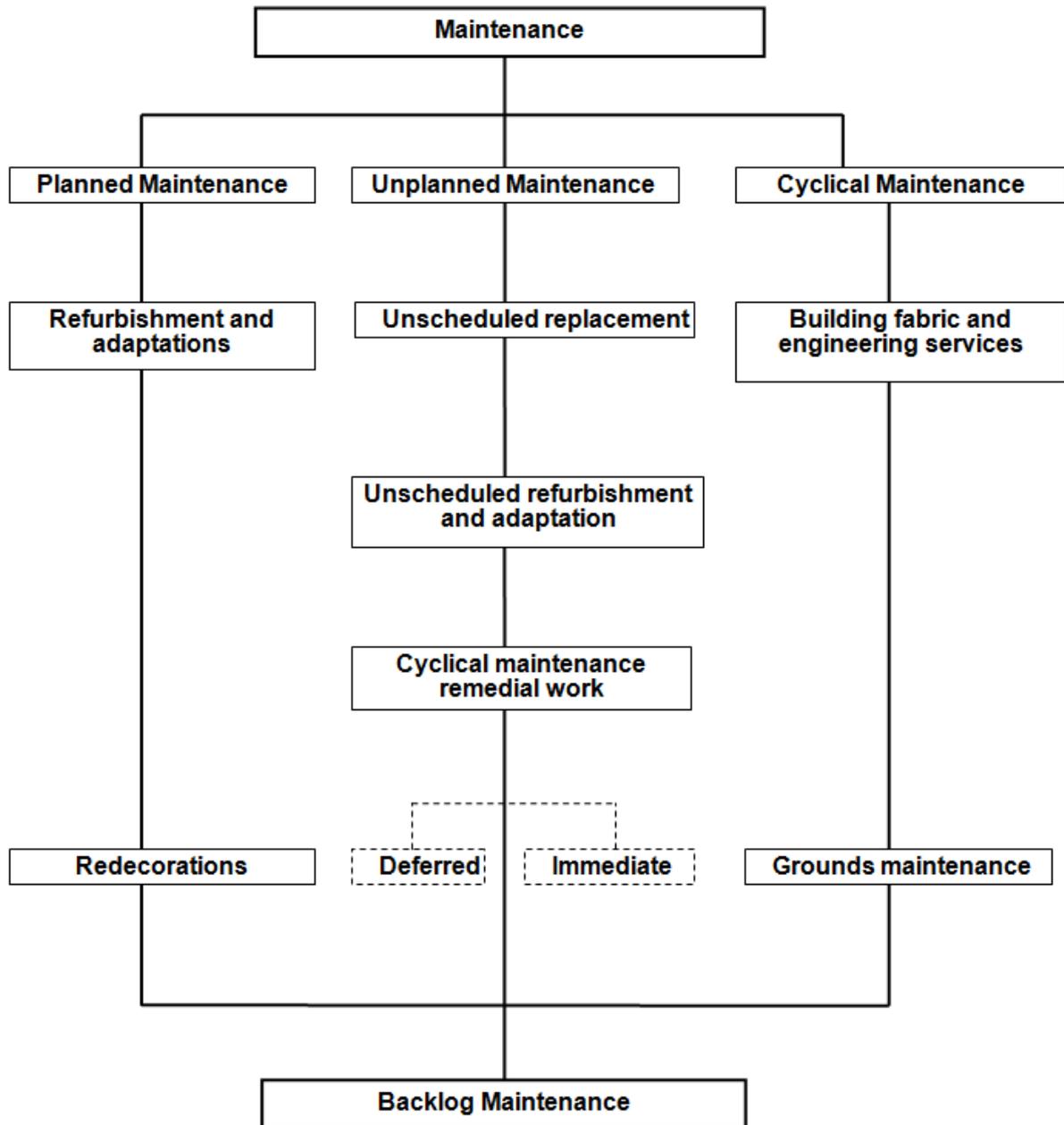
### Steering Group Membership

Des Armstrong	–	Central Procurement Directorate (CPD)
David Carson	–	CPD
Ambrose Tohill	–	CPD
Seamus McCrystal	–	Department of Finance and Personnel (DFP) Properties Division
Michael Sands	–	Department for Social Development

### Review Team Membership

Declan Allen	–	Northern Ireland Housing Executive
Mark Atkinson	–	Translink
Billy Black	–	CPD
Adrian Kennedy	–	Department of Education
David McClean	–	NI Water
David McCullough	–	CPD
Tony McDonnell	–	Department of Justice
Damien McQuillan	–	Department for Regional Development
Colin Ogilby	–	DFP Properties Division
Timothy Sheehan	–	South Eastern Health and Social Care Trust
Denise Stockman	–	Strategic Investment Board
Ambrose Tohill	–	CPD
Fred Walker	–	Health Estates Investment Group

## ANNEX A: MAINTENANCE CLASSIFICATION DIAGRAM



## ANNEX B: SAMPLE OF CONTRACTOR ASSESSMENT KEY PERFORMANCE INDICATORS

Date of previous poor performance marking (if applicable).....  
**A competent representative of the Department should complete the assessment.**

### CONTRACTOR'S PERFORMANCE ASSESSMENT

**Scale of Satisfaction:**  
 9 or 10 = outstanding contractor  
 7 or 8 = more than satisfactory to good (minor mistakes but not serious)  
 5 or 6 = acceptable (some problems may need resolved)  
 3 or 4 = poor (needs increased monitoring) (Contractor informed verbally) – must keep record of the verbal warning to date, time etc.  
 0, 1 or 2 = unsatisfactory (Contractor informed in writing)

Contract title.....

Contract Ref.....

Monitoring Period (3/9/12/18/24/30 months).....

Contractor.....

Ref.	Key Performance Indicator	Weighting	Scale of Satisfaction	Weighted Score	COMMENTS as appropriate <i>(Please Note: All comments could become discoverable under FOI and for legal discovery therefore care and due consideration is needed when commenting)</i>
<b>COMPLETION</b>					
1	Adherence to prior appointment	10			
1	Adherence to response times	10			
2	Work completed on first visit	10			
3	Ease of contact/resolution of Queries	10			
<b>SERVICE PROVIDED</b>					
4	Quality on initial completion	10			
5	Quality of work or service on final completion	10			
6	Competency/skills of workforce & suitability of plant	10			
7	Health & Safety - equipment/procedures/working method	10			
<b>FINANCE and ADMINISTRATION</b>					
8	Accuracy of invoices/standard of documentation	10			
9	Costs in line with tendered rates	10			
10	Fair and prompt payment to Subcontractors	10			
<b>CIFNI SUSTAINABILITY REQUIREMENTS</b>					
11	Delivery of economic targets	10			
12	Delivery of environmental targets	10			
13	Delivery of social targets	10			
<b>Total Score out of 130</b>					

Name of Person Completing Assessment..... Signature..... Date: .....

Countersigned by (Name)..... Signature..... Date.....

## **ANNEX C: SAMPLE OF AGENDA FOR MONTHLY CONTRACTOR PERFORMANCE REVIEW MEETING**

**DATE:**

**NAME OF ATTENDEES**

**ORGANISATION**

**AGENDA ITEM**

- Introductions/Apologies.
- Minutes of previous meeting and actions.
- Contractor progress to date.
- Contractor performance (Key Performance Indicator assessment.)
- Contractor feedback on Department's performance.
- Partnering and team working.
- Contract variations and early warnings.
- Information required.
- Contractor Health & Safety Report.
- Contractor Sustainability Report (CIFNI requirements.)
- Progress against efficiency targets.
- Any other business.
- Date of next meeting.

## ANNEX D: CASE STUDIES

### Case Study 1 – Procurement Methodology

Health Estates Investment Group<sup>3</sup> was the construction Centre of Procurement Expertise for the Department of Health, Social Services and Public Safety (DHSSPS). It developed a range of maintenance Procurement Methodologies, for use in its sector, which considers alternative options for the appointment of contractors using Frameworks and Measured Term Contracts (MTC). This is described as follows:

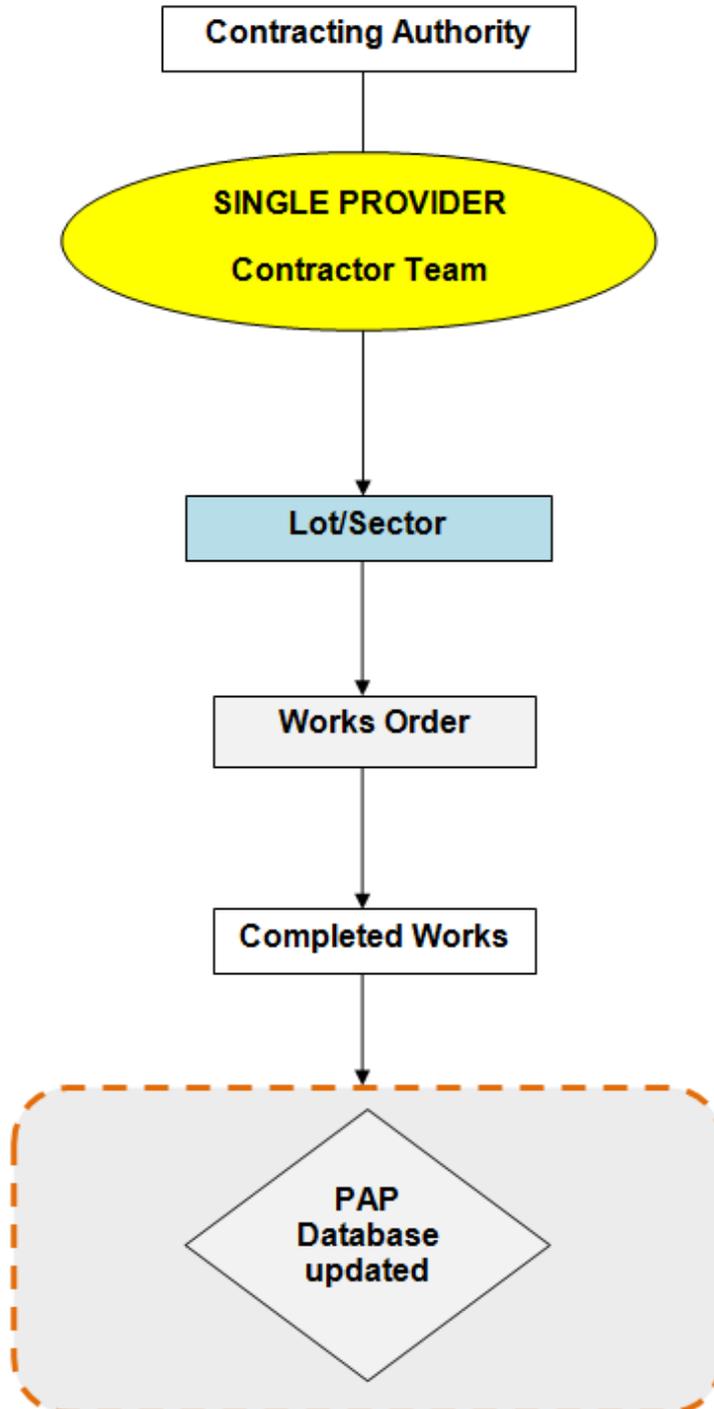
- MTC Model - Diagram1A (below) shows an example of an arrangement whereby DHSSPS wishes to establish Single Provider frameworks based on defined sectors/lots in a geographical region.
- each single provider (Contractor Team) may be responsible for the provision of Building, Mechanical and Electrical Maintenance Works.
- MTC Model – Diagram 1B (below) indicates how the frameworks may be applied across a geographical region; for example, four Single Providers are appointed to four sectors with a fifth Single Provider appointed as a Reserve. Such an arrangement provides multiple framework opportunities for SMEs.
- the two-way arrows illustrate that, at the absolute discretion of DHSSPS, a Single Provider may be awarded commissions in other sectors/lots.
- the Reserve appointment and facility to award jobs in other sectors/lots encourages incentivisation to perform on the part of the Single Providers, and mitigates the impact of any insolvency or lack of capacity.

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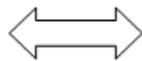
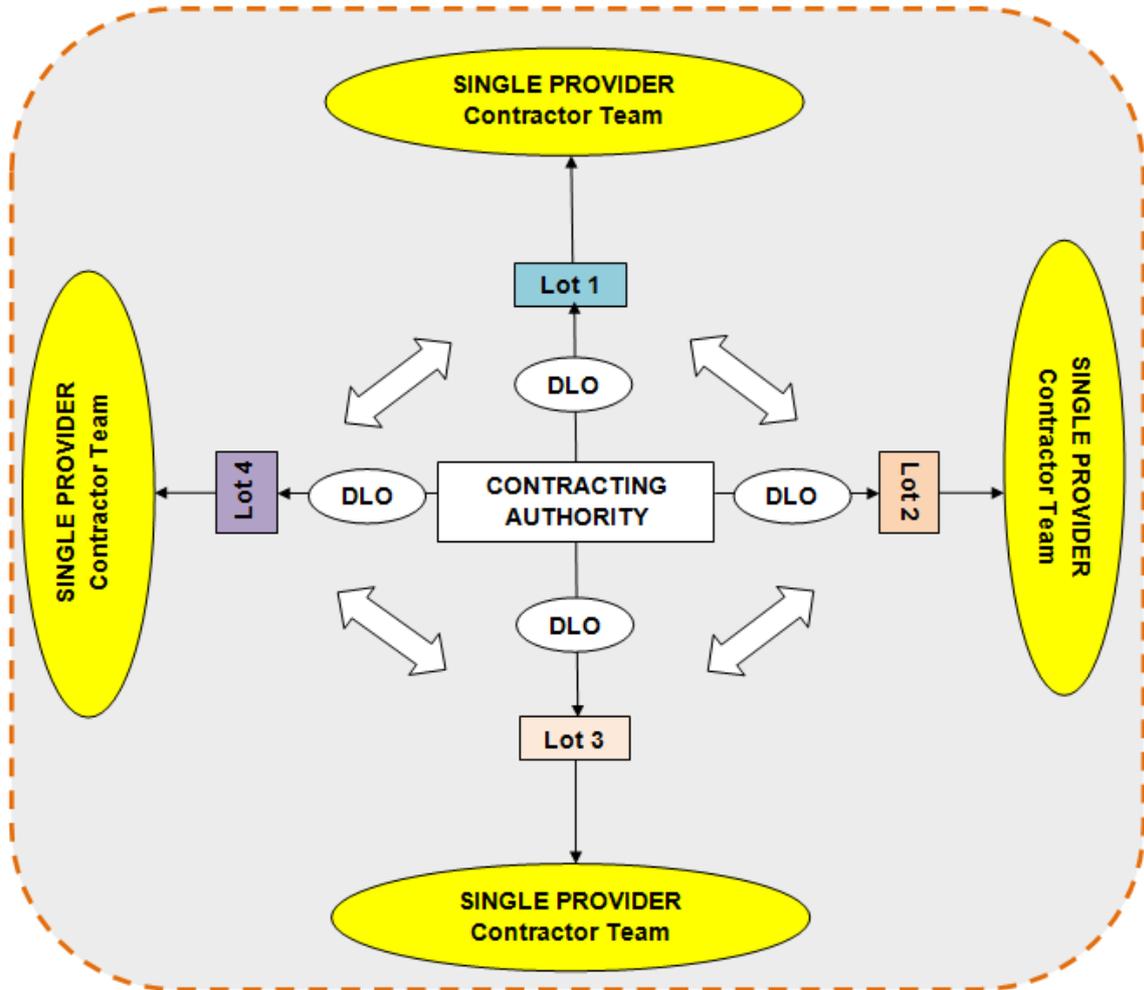
<sup>3</sup> As of 1<sup>st</sup> October 2014, the construction CoPE for DHSSPS is now CPD Construction Division – Health Projects.

- DHSSPS permit mini competitions to be held, at its absolute discretion, in order to demonstrate the achievement of best value for money, particularly on larger value jobs.
- feedback from completed jobs is used to inform the Property Asset Plan (PAP). This is to ensure that an up to date record of properties is maintained and used to prioritise maintenance works. This is part of an overall maintenance plan with the objective of meeting DHSSPS's overarching Estate Strategy.

**MODEL DIAGRAM 1A – MTC SINGLE PROVIDERS ON LOT/SECTOR BASIS**



**MODEL DIAGRAM 1B – MTC SINGLE PROVIDERS ON LOT/SECTOR BASIS**



Indicates that at the discretion of DHSSPS, Single Providers may be given work orders in other sectors/lots.



Indicates mini competitions between sectors/lots are possible.

## Case Study 2 - Contract Type

Properties Division, as part of the Department of Finance and Personnel, is responsible for maintaining a total of approximately 2,200 individual properties located throughout Northern Ireland. These properties are diverse in both type and nature and are spread across two geographical areas: North and South. These areas form the basis of lots that are awarded to contractor(s) under a Property Management Framework Agreement for a maximum of four years.

Properties Division uses [NEC3: Term Service Contract \(TSC\) Option A \(priced contract with Price List\)](#) with amendments. The Price List is based upon the most currently available schedule of rates for building, decoration, mechanical and electrical works as published by Carillion PLC.

Properties Division use this form of contract because it:

- acts as an enabler for efficiencies to be achieved;
- is based on partnering principles;
- has been specifically designed for use on Term Service Contracts;
- has been designed to act as a stimulus to good management and is written as a series of processes to be managed; and
- was endorsed by the Office of Government and Commerce, which recommended its use by public sector procurers.

Within this Contract Type, a contractor is paid a lump sum per task, per property, on a monthly basis. This is for all tasks that Properties Division defines as Planned Preventative Maintenance and that are completed during the month.

Within this Contract Type, Properties Division monitors a contractor's performance against Key Performance Indicators. Where the contractor does not achieve its targets, low performance damages are applied.

## **Case Study 3 – Payment**

### **NI Water – Invoices and Payments**

Within NI Water's Finance and Regulation Directorate, the objective of the Accounts Payable function is to accurately process and pay properly-approved invoices in an efficient manner. The Accounts Payable function works within the wider Purchase to Pay (P2P) process. All supplier invoices are submitted directly to the Account Payable team by post or email. Faxed copies of invoices are not accepted.

### **No PO No Pay Policy**

NI Water operates a 'No PO No Pay' policy, meaning all invoices received must quote a valid Purchase Order (PO) reference (with limited exceptions). Any invoice received without a PO will be returned to the supplier requesting that a PO number is provided. It is not acceptable to raise POs retrospectively once invoices are received from suppliers.

A PO must be raised for each purchase. Previous PO numbers must not be issued to suppliers for new purchases. The requestor is responsible for providing a valid PO to suppliers.

### **Duplicate Invoices**

Before processing any invoice, Accounts Payable checks to ensure that the invoice has not been processed previously. This can be done by verifying that the invoice number does not already exist on the accounting system for that supplier. The invoice value and date are also checked against previous invoices received from the supplier. If the invoice in question has already been processed, the copy is destroyed.

## **Invoice Accuracy**

Invoice accuracy is checked by the Admin Officers (AO) processing the invoice, once they have validated it. These checks ensure that the supplier name, address, invoice number, date, gross total and VAT total entered into the Oracle database correspond to the details provided on the invoice.

Accounts Payable supervisors also review a 20% sample of all invoices processed and approved for payment. In addition to reviewing the same details as the AO on that team, they also ensure that adequate approvals have been received from the requestor/approver, in accordance with NI Water Financial Delegations if necessary.

## **NI Water Financial and Procurement Delegations Policy**

The NI Water Financial and Procurement Delegations policy must be followed at all times when approving invoices.

Officers approving expenditure need to be set up on the financial systems with appropriate access rights before approving invoices. PO/invoice monetary approval limits are dependent on employee grade.

Where the invoice can be matched with its associated PO and Goods Received Note (GRN), the approval of the PO by the approver is deemed to be sufficient authority to pay.

Where invoices need to be approved, the final approving officer must be at least one grade higher than the officer who requested the purchase.

Under no circumstances should orders or invoices be broken down into smaller elements with the intention of circumventing the requirement for a higher level of approval.

## **Prompt Payment**

Payment to suppliers should be made within the timescales dictated by any terms of contract, or by any general conditions governing terms of business.

There is a commitment to pay all undisputed invoices within 30 days from the receipt of a valid invoice. Disputed invoices should be paid within 30 days of the dispute settlement date. In August 2009, NI Water introduced 10 day payment terms to aid SMEs during the economic downturn. These 10 day terms currently remain in place.

## Case Study 4 – Orders, Payments and Completion Certificates

Within the Department of Justice, protocols have been established for the:

- initiation of work orders;
- issue of payment and completion certificates; and
- audit of work completed.

These protocols are set out in the table below:

<b>Measured Term Contract for Maintenance and Minor Works</b>			
<b>Order Value</b>			
	<b>Under £2,500</b>	<b>£2,501 - £20,000</b>	<b>Over £20,000</b>
<b>Order</b>	Authorised for issue by: - Estate Management - Estate Advisor.	Authorised for issue by: - Estate Management - Estate Advisor.	All orders are issued by Estate Management.  (charged to relevant cost centre code if revenue work for establishment).
<b>Interim Payments</b>	Not permitted  (to incentivise delivery of final accounts).	Not permitted  (to incentivise delivery of final accounts).	Independently certified by the client's Quantity Surveyor under cover of payment certificate for client approval.
<b>Final Accounts</b>	Submitted by contractor and validated by the client.	Submitted by the contractor and independently certified by the client's Quantity Surveyor.  Once agreed a signed Statement of Final Account is issued together with a payment certificate for client approval.	Jointly prepared by the client's independent Quantity Surveyor and the contractor. Once agreed a signed Statement of Final Account is issued together with a payment certificate for client approval.
<b>Completion Certificate</b>	Self Certified by contractor as complete and installed correctly. Validated by the client.	Self Certified by contractor as complete and installed correctly. Validated by the client.	Independently certified by the Project Manager.