

# Due Diligence Protocol

Thanet District Council

## 1.0 Introduction

### 1.1. What is Due Diligence?

- 1.1.1. Due diligence is firmly established as an element of corporate good governance and is an investigation of a business or person prior to signing a contract.
- 1.1.2. For the Council this contract can take a variety of forms, examples of these are a contract to provide services, an agreement in relation to a grant, a lease agreement or a joint venture/development partner agreement.
- 1.1.3. Why do it?
- 1.1.4. Both the Bribery Act 2010 and Money Laundering Regulations 2007 contain sections pertaining to the use of due diligence when establishing relationships with third parties.
- 1.1.5. In essence due diligence is undertaken to:
  - (a) Identify the entity and verify the entity's identity on the basis of documents, data or information obtained from a reliable and independent source;
  - (b) Establish the ability of the entity to deliver the contract
- 1.1.6. Due diligence is implemented to cut down on unpleasant surprises and reduces the chance that business practices of a service provider or grant recipient reflect poorly on the Council.
- 1.1.7. Due diligence will not provide a yes or no answer as to if the authority should use/partner with an entity. However, performing these types of investigation results in informed decision making through the use of enhanced information gathered during the process.
- 1.1.8. Decision makers can then analyse information and deliberate regarding costs, benefits and risks prior to entering into contracts.

## 2.0 What are the steps involved?

- 2.1. As due diligence is such an important part of the contract process, planning is essential as it may take some time to gather the appropriate information, consult experts, analyse the information and provide answers to questions.
- 2.2. Staff resource should also be considered, for example particular legal advice maybe required.
- 2.3. **STEP 1 – Planning**
  - 2.3.1. The steps of due diligence should be planned so that work can be completed before the contract discussions are too far advanced. For contract partners that present concerns it may be useful to consult with legal and finance colleagues to establish the best form of due diligence.
  - 2.3.2. The level of due diligence is likely to vary considerably from contract to contract depending upon the risk to the authority of the contract being entered into.
  - 2.3.3. Therefore planning is a key stage to ensure that all questions are answered and concerns alleviated, prior to contract award.
- 2.4. **STEP 2 – Gather Information**
  - 2.4.1. The first major step is to gather the information required in order to perform due diligence. The planning stage should of assisted in assessing the information that is likely to be required, but at the very least the information that should be gathered can be split into four categories:

#### 2.4.2. Basic Information

- Name of organisation and directors/officers
- Registered address
- CVs of principals
- Contact details
- Group Structure (chart) showing how the contracting company fits into the overall corporate structure
- Company registration number and date of registration (where appropriate)
- VAT number
- Project outline
- Evidence the proposed project would not represent an excessive increase in the overall scale of the organisation's activities.
- Relevant experience of similar projects

#### 2.4.3. Financial information

- Last 3 years financial accounts
- Auditor contact details
- Financial Plan
- Evidence of funds required to complete the project.

#### 2.4.4. Web searches

- External credit rating
- Credit reference (taken by TDC)
- General search on company performance
- Press/media

#### 2.4.5. Government policy

- Compliance with money laundering regulations

### 2.5. **STEP 3 – Analyse the Information gathered**

2.5.1. Analysis of the information gathered is essential in order make an informed decision regarding contract award.

2.5.2. Key questions that should be considered are:

#### 2.5.3. Corporate image

- Has there been any negative publicity in the media around the company and how has the company dealt with and resolved these issues?
- Are there any pending legal cases against the entity?
- Is the entity only looking for a marketing opportunity by partnering with the Council?
- Is the entity looking only for procurement opportunities or money from the Council?
- Is the entity willing to engage in a transparent manner, with for example due regard to the Freedom Of Information Act?
- Is the entity willing to accept limitations around publicity of its relationship with the Council so that the Council is not perceived as endorsing the entity?

#### 2.5.4. Social Responsibility

- Is the entity involved primarily in activities that the Council do not wish to align with, i.e. tobacco, firearms.
- Does the entity openly discriminate against race, sex or religion?
- Are there any concerns with the entity around corporate social responsibility?

- Is there any history regarding child or forced labour?
- Does the entity endorse standard Health & Safety requirements for workers?

#### 2.5.5. Environmental Responsibility

- Does the entity assess the environmental impact of the project to be delivered?
- How does the entity monitor and set targets for improved environmental performance?
- Are there sufficient contingency plans to deal with emergencies relating to the contract?

#### 2.5.6. Financial Ability

- Does the entity have the resources to fulfil its obligations through the contract?
- Does the entity issue annual accounts?
- Does the entity have a long track record, how many years has it been established?
- Does the entity have a stable structure and good governance around financial decision making?

#### 2.5.7. Policy Compatibility

- Does the entity comply with all statutory regulations?
- Is it subject to any investigations by government, i.e. HMRC.
- Would entering into the contract cause the Council any issues with regards to its own constitution?

### 2.6. **STEP 4 – Further Specific and supplementary enquiries**

2.6.1. Further supplementary enquires may be required to answer the concerns or questions raised, however the level of these enquiries is likely to be dependent on:

- The scale of the proposed project or contract
- Responses to the initial enquires made

2.6.2. If the financial commitment is at a low level then enquires made will be restricted. The nature of the project and the level of risk are also considerations.

2.6.3. The planning stage of the due diligence process will allow you to assess the required level of further enquiries.

2.6.4. It is essential that a specific time limit is set for entities to respond, so that the awarding of the contract is not unduly delayed.

### 2.7. **STEP 5 – Decision making**

2.7.1. Once a comprehensive picture is built up of the entity concerned, an informed decision making process can occur using the information obtained.

2.7.2. An entity that has struggled to provide information or answer some of the key questions is likely to be unsuccessful in winning the contract.

2.7.3. When it comes to decision making, a final decision must be reached in a timely manner and in conjunction with advice received from other departments such as legal and finance.

## 3.0 **Conclusion**

3.1. Due diligence assists in the detection and treatment of risk in relation to a contract award.

3.2. The process can be lengthy, but ultimately leads to the reputational protection of the Council and its finances, as well as the protection and reputation of the decision makers.