

**London Assembly
Budget Committee
Review of GLA Procurement
May 2003**

1. Introduction and findings

Background

- 1.1 As part of its examination of the Mayor's Draft Culture Strategy, the London Assembly's Culture, Sport and Tourism Committee discussed the Mayor's support of events in London. On 18 February 2003, officers from the GLA Culture Team told the Committee that Smurfit had been paid £100,000 to deliver the St Patrick's Day event in 2002. It emerged that this contract was not competitively tendered.
- 1.2 Following that meeting, the Chair of the Culture, Sport and Tourism Committee wrote on 25 February 2003 to the Mayor requesting copies of the Mayoral Approval forms relating to the St Patrick's Day contracts and any other relevant material. This information was provided to the Chair on 14 March 2003 and copies were distributed to Members of the Budget Committee.
- 1.3 At the London Assembly's meeting on 26 March 2003 the Assembly authorised the Assembly's Budget Committee to review matters related to the GLA's procurement procedures.
- 1.4 Members raised an issue arising from the GLA's quarterly monitoring data on the budget set aside for two additional procurement posts at the Budget Committee's meeting on 18 March 2003. That discussion led on to consideration of other procurement issues, particularly the Smurfit contracts for the St.Patrick's Day events of 2002 and 2003. The meeting was reconvened on 19 March 2003 so that GLA officers directly involved in preparations for the St.Patrick's events could answer the additional, and more detailed, questions Members wished to ask.

Other reviews of GLA Procurement

- 1.6 The Budget Committee's meeting on 29 April 2003 raised more general issues about GLA procurement and sought to place the procurement practices for the Smurfit contracts in a wider context. In particular the Committee noted that its review was not the first at the GLA:
 - The external auditors, the Audit Commission, reported on the issue in August 2001
 - The internal auditors, Deloitte and Touche, reported in October 2001
 - The Audit Commission's inspection of the GLA's Best Value Review of Procurement reported in December 2002.

Purpose of this report

- 1.7 This report summarises the Budget Committee's Review of GLA Procurement. It does not seek to be the last word on the subject, but it does seek to contribute to GLA officers' stated aim of bringing about improvements to the service.

Importance of GLA procurement

- 1.8 GLA procurement is important because it enables the GLA to:
- Secure public confidence in the transparency of its processes
 - Achieve value for money in its expenditure on goods and services
 - Interact with London's business community and give a positive impression of the organisation.

Assistance provided to the Committee

- 1.9 The Committee would like to record its thanks to those GLA officers who provided information to the Committee and attended Committee meetings to answer questions, often at short notice.
- 1.10 Annex 4 to this report contains a list of proposals made to 29 April 2003 Budget Committee by the GLA's Executive Director of Corporate Services. The proposals detail some suggested improvements to the GLA procurement arrangements and processes. The Committee would like to record the constructive engagement of GLA officers in its work on procurement particularly through the production of an action plan with detailed proposals. Those proposals which are for the Assembly's consideration will be reported to the Assembly's Business Management and Appointments Committee on 4 June 2003.

Structure of this report

- 1.11 This report is divided into the following sections:
- Section 2: St.Patrick's Day
 - Section 3: GLA contracts receiving exceptions or retrospective approval
 - Section 4: The efficiency and effectiveness of GLA procurement
 - Section 5: The GLA Contracts Code of Practice.
- 1.12 The Annexes to the report cover the following topics:
- Annex 1: Exceptions to financial threshold procedures
 - Annex 2: GLA contracts receiving exceptions or retrospective approval
 - Annex 3: EU procurement rules
 - Annex 4: Proposals presented in a report to Budget Committee
 - Annex 5: Example questions on contracts.

Recommendations

- 1.13 Paragraph references following the recommendations in brackets relate to the later sections of this report.
- 1.14 The Committee recommends that the Mayor, as an Executive Mayor with considerable powers and responsibilities, should, in the interests of transparency and open government as well as probity:

Contracts in general

- R1 Report all exceptions to competitive tendering procedures and all retrospective approvals for contracts over £50k in value to the Assembly's Business Management and Appointments Committee on a regular basis, setting out the justification for not advertising the contract and/or awarding it without competition and/or retrospectively approving it. This would be an important safeguard against the Contracts Code being abused (3.4 to 3.6, 5.6 to 5.7)
- R2 Ensure that sufficient paperwork exists for there to be an audit trail leading from the information contained in Mayoral Approval Forms to the files kept by officers (3.5)
- R3 Develop project plans for major contracts which includes early completion of the Mayoral Approval Form and early contract signing, as far as that is possible (5.8)
- R4 Review the approach to select lists, framework agreements and call-off contracts so that the Authority obtains maximum benefit from these arrangements. This would seek to avoid companies feeling that their time has been wasted in applying to join GLA select lists, framework agreements and call-off contracts (4.6 to 4.10)
- R5 Develop a strategy, covering compliance and project planning issues, for tendering GLA contracts subject to European Union procurement rules

The Contracts Code

- R6 Consider whether it is appropriate to retain his general waiver in a revised Contracts Code, given that existing categories of exceptions have been drafted to cover any foreseeable need, e.g. urgency (5.3 to 5.5)
- R7 If the waiver is to be retained, i.e. the right to waive any provision of the Contracts Code at his discretion, then he should have a clear public policy about when it is/is not appropriate to use it. Its actual use would be reported to Business Management and Appointments Committee (5.3 to 5.5)
- R8 Clarify the role and expected content of the "risks report" if the risks report remains part of the Contracts Code, i.e. what risks it is it meant to highlight (5.3 to 5.5)
- R9 Require all members of staff attending panels awarding contracts declare any interests as a matter of routine (5.2)
- R10 Consult the Business Management and Appointments Committee for its views on the revised Contracts Code before it is approved (5.1 to 5.8)

GLA Group

- R11 Provide information on the procurement strategies, practices and expenditure of each of the GLA Group authorities in their quarterly monitoring returns reported to Budget Committee and in the annual process leading to the setting of the budget (3.1 to 3.6)

St.Patrick's Day and cultural events

- R12 Decide on the procurement route to be taken for the 2004 St.Patrick's Day event (2.1 to 2.25)
- R13 Clarify whether Smurfit, as owners of the Irish Post, remains a unique supplier, given that Smurfit is now owned, or proposed to be owned by, or merged with, Thomas Crosbie Holdings (2.11)
- R14 Ensure that surplus funds from the events are held by the GLA and not by a third party (2.21)
- R15 Ensure that due diligence work on the financial soundness of potential contractors for St.Patrick's Day is undertaken (2.25)
- R16 Develop a procurement strategy for the annual programme of GLA cultural events which amount to £1.4m in value for 2003/04 (4.11 to 4.13).

Reporting back

- 1.15 The Committee acknowledges the assistance provided by the GLA's Executive Director of Corporate Services and that he has already made a number of proposals relating to GLA procurement. The proposals are contained in the GLA's Executive Director of Corporate Services' papers to 4 June 2003 Business Management and Appointments Committee (summarised below) and to 29 April 2003 Budget Committee (listed in Annex 4 of the Committee's *Review of GLA Procurement* report.
- 1.16 The Committee recommends that the GLA's Executive Director of Corporate Services should:
- R17 Provide a response to the above recommendations in a paper to the 16 July 2003 Business Management and Appointments Committee meeting, building on the proposals for two additional procurement posts and for a new system for authorising the appointment of temporary members of staff made in his paper for consideration at 4 June 2003 Business Management and Appointments Committee and the draft set of proposals contained in Annex 4 of the Committee's *Review of GLA Procurements* report.

Forwarding the report

1.17 The Committee agrees that its report *Review of GLA Procurement* should:

R18 Be forwarded to the following:

- Business Management and Appointments Committee (the Committee's next meeting is on 4 June 2003)
- Culture, Sport and Tourism Committee, along with the Executive Director of Corporate Services' paper on procurement to the 29 April 2003 Budget Committee (the Committee's next meeting is on 4 June 2003)
- Audit Panel, along with the Executive Director of Corporate Services' paper on procurement to the 29 April 2003 Budget Committee, so that the Panel can undertake appropriate follow-up work in six months' time (the Panel's next meeting is on 17 June 2003)
- The Assembly, along with the Executive Director of Corporate Services' paper on procurement to the 29 April 2003 Budget Committee (the Assembly's next meeting is on 11 June 2003)
- The functional bodies within the GLA Group so that it is drawn to their attention.

Conclusion

1.18 The Committee concludes that:

The procurement processes for the 2002 and 2003 St.Patrick's Day events were flawed. GLA officers were unable to provide a satisfactory audit trail which supports the procurement decisions taken. Members have wider concerns about procurement practices at the GLA and are keen to see improvements made over the next six months. Many of the matters which have caused concern are systemic and structural and are not due to a lack of staff.

2. St.Patrick's Day

Background

- 2.1 The Mayor's manifesto pledge to expand London's St.Patrick's Day celebrations led to two popular events being held in 2002 and 2003 with support from a range of parties across the political spectrum. Many thousands of Londoners enjoyed these two events.
- 2.2 The Assembly's, and this Committee's, work on St.Patrick's Day in no way seeks to question the appropriateness of staging an annual event celebrating London's Irish community. The sole purpose of Members' enquiries has been to ensure that London taxpayers received value for money from the procurement approach adopted by the GLA and that the proper procedures were followed and documented.

St.Patrick's Day 2001

- 2.3 The preparatory work for the 2002 and 2003 St.Patrick's Day events began in the run-up to a smaller 2001 event. Although there was insufficient time after the Mayoral and Assembly elections in 2000 to stage the kind of event the Mayor wanted in 2001, there was an opportunity to ask for views from interested parties as to the type of future event they wished to see.
- 2.4 GLA officers informed the Committee on 19 March 2003 that an initial meeting was held with approximately 90 Irish community organisations in attendance, including the Irish Post, owned by Smurfit. It was agreed at the meeting that market research should be conducted in the form of a questionnaire to Irish businesses and community organisations in London. Responses to the questionnaire produced two main conclusions: that there should be a parade and that there should be a festival with traditional Irish music.
- 2.5 The GLA's financial contribution to the 2001 event was £20,000: £8,000 for the questionnaire referred to above and £12,000 for a brochure promoting the celebrations held in London for St.Patrick's Day.
- 2.6 It is difficult for the Committee to establish, over two years on, the exact sequence of events or the types of discussions held with interested parties. GLA officers have assured the Committee that it was clear to all participating in the preliminary discussions that the Irish Post was best placed to move forward with the preparations for a larger event in 2002, an event which would attract a greater level of financial backing from the GLA. It is unclear to the Committee whether other parties were asked whether they would be interested in playing a lead role (in the sense of the role the Irish Post ended up playing).

St.Patrick's Day 2002

Background

- 2.7 The 2002 St.Patrick's Day event attracted £100,000 worth of GLA funding which was provided through a contract with Smurfit. The contract with Smurfit had two main elements: sponsorship raising and event management. Smurfit was committed to raising at least £174,000 sponsorship towards the event. This meant that the total budget for the event was £274,000. A small surplus was carried over to the 2003 event.
- 2.8 The standard practice in the GLA for contracts over £50,000 in value is for an advertisement to be placed inviting companies to tender. This is set down in the GLA Contracts Code of Conduct. The Code makes provision for an exception procedure (see Annex 1 for the relevant excerpt from the Code).
- 2.9 In this instance an exception procedure for a single tender action was used. The effect of using such an exception was that there was no competitive tendering process; that is, no other companies had the opportunity to tender for the contract.
- 2.10 The basis of the exception stated in the form for the 2002 event was "specialist services/supplies: only available from one supplier, e.g. specialist niche consultants" with two reasons given:
- The unique position the Irish Post occupies in London's Irish community which made it best placed to raise sponsorship from the Irish business community
 - Smurfit was the only company willing to operate on a 'not-for-profit' basis.

Unique position of the Irish Post

- 2.11 As noted in 2.6 above, it is difficult for Committee Members to go back to over two years ago and piece together how events unfolded. This makes the claim that the Irish Post occupied a unique position hard to evaluate. It could be the case that the Irish Post would have been a very strong contender to assist the GLA with the event but that other organisations would have appreciated an opportunity to put their case forward through a competitive tendering exercise. The judgement as to whether Smurfit was the only company, or at least by far the best-placed company, in a position to raise and maximise sponsorship from the Irish business community is difficult to evaluate.

'Not-for-profit'

- 2.12 In terms of 'not-for-profit', it is certainly the case that Smurfit ploughed back into the 2003 event the additional funds raised from sponsorship over and above the £174,000 it was committed to raise in 2002. The status of the 2003 surplus for the 2004 event is raised later in this report.
- 2.13 The notion of 'not-for-profit' extends beyond the issue of sponsorship funds as there was a second aspect to Smurfit's role: event management. The test of the value for money provided by Smurfit on event management would have been through a competitive tendering process. However, given that the event management aspect was part of the same contract as the sponsorship raising aspect, this did not happen. Additionally the contract makes no reference to Smurfit operating on a 'not-for-profit' basis in the sense that Smurfit was not precluded from making a profit on its management fee. This reinforces the Committee's view that there are question marks over the use of 'not-for-profit' terminology in this instance and that a more thorough benchmarking exercise was required to justify the procurement option chosen.
- 2.14 GLA officers told the Committee that it is standard practice to place services for the same cultural event under one contract and that this type of arrangement can often offer advantages. While this may be the case generally, the Committee is concerned that the assertion that the Irish Post is uniquely placed in London's Irish community has led to a position where other companies providing generic events management services have been ruled out of tendering for St.Patrick's Day events.
- 2.15 Notes of a meeting held between GLA officers and the other organisations involved in the event on 21 March 2002 show that the Mean Fiddler organisation acted as Smurfit's subcontractor in 2002 to supply events management services. This suggests that other companies were in a position to provide at least some of the services offered by Smurfit and therefore the packaging of the services into one contract let by a single tender action was, in the Committee's view, not the option which would provide the GLA with the greatest level of assurance that value for money had been achieved.
- 2.16 The Committee is also concerned that, on the basis of the documentation provided by GLA officers, the supporting information required by paragraph 12.9 of the Code (see Annex 1 for details) for contracts with exceptions from financial procedures was not attached to the application form. The supporting information required includes a statement of the method by which value for money is demonstrated.

St.Patrick's Day 2003

- 2.17 The 2003 event bears many similarities to the 2002 event, which in itself is of concern as there was much more preparatory time in the run-up to the event. It is of concern to the Committee that no steps were taken for the 2003 event to test the assumption that Smurfit was uniquely placed to raise sponsorship in the Irish business community.
- 2.18 In 2003 the GLA's financial contribution increased from £100,000 to £112,000 and the overall budget from £274,000 to £350,000.
- 2.19 One difference was that the exception to the Code's financial thresholds form (which allows a single tender action) was not used to record as Smurfit's status as a specialist supplier (as it had been in 2002). Instead the Mayor used his general waiver under paragraph 12.6 of the Code (see Annex 1). GLA officers told the Committee that the categorisation was a matter of convenience. The general provision in Code for a Mayoral waiver is discussed in section 5 of this report. In this instance it is, in the Committee's view, inconsistent to justify a single tender action for the 2002 and 2003 events for the same reasons but to use different provisions within the Code to do so.
- 2.20 Paragraph 12.6 of the Code specifically requires a 'risks report' to be written for those contracts subject to the Mayor's waiver. It is unclear to the Committee precisely what the written 'risks report' is meant to cover and bring to the Mayor's attention. This is a concern. In this instance GLA officers told the Committee the 'risks report' was contained in the Mayoral Approval Form. It is not obvious to the Committee what risks information was included in the Mayoral Approval Form over and above the standard legal and financial implications in order to meet the requirements of the Code.

The surplus from the event

- 2.21 As noted above, there is an understanding between the GLA and Smurfit for any surplus arising from the event to be held over by Smurfit for use in the following year's event. The Committee has a number of concerns and questions about this arrangement:
- The contracts with Smurfit do not make any reference to the agreement to roll over any surplus funds to future years' events and nor does this appear to have been recorded in writing elsewhere. Any enforcement would accordingly be difficult
 - Were the contract for the 2004 St.Patrick's Day event not to be awarded to Smurfit, or were there not to be a St.Patrick's Day event in 2004, how would the transfer of the existing surplus from Smurfit to the GLA (or the event organisers) be enforced?
 - Given that the surplus has not been transferred to the GLA, in whose name is the account which holds the surplus and under what authority are the funds being held in that account?
 - Does the account attract interest, and who receives that - the GLA or Smurfit?

Risk issues

- 2.22 The contracts with Smurfit were signed very shortly before the day of the event and stated to commence on the date of the contract: 14 March 2002 for the St.Patrick's Day event which was on 17 March 2002 and 10 March 2003 for the St.Patrick's Day event which was on 16 March 2003.
- 2.23 Information provided to the Committee by GLA officers asserts that "Smurfit undertook work at their own risk whilst the detailed event plans and contract terms were being discussed". For the 2002 event Mayoral approval was obtained on 15 March. The Mayor's Policy Director overseeing cultural events told the Committee on 19 March that "if the Mayor hadn't approved the funding, then the funding would not have been forthcoming, and Smurfit would have been in a position of not receiving the funding".
- 2.24 However the Committee's view is that there was a risk to the GLA that Smurfit might have taken legal action for the costs it had already incurred before the contract terms were agreed, or that third parties might have taken action against Smurfit which would have joined the GLA in the proceedings, had the arrangements understood between the parties not been authorised by the Mayor at a late stage. The lack of a contract does not necessarily mean that the GLA is not liable for work done by Smurfit in preparation for the event before the contract was signed. If the Mayor had not given his approval it seems hard to believe that no claim would have been made by Smurfit or the sponsors. There were other risks of a political nature, had the event not proceeded, or had Smurfit gone ahead on its own.

Checks

- 2.25 In the run-up to the 2002 St.Patrick's Day event it has emerged that no due diligence checks were made by GLA officers as to the financial soundness of Smurfit. This is of concern to the Committee.

3. GLA contracts receiving exceptions or retrospective approval

Background

- 3.1 Between 19 February 2002 and 31 March 2003 the GLA let 47 contracts and funding agreements which exceeded £50,000 in value. Annex 2 lists the contracts.
- 3.2 21 of the 47 contracts fall into one or more of the following categories:
- Retrospective approval was obtained
 - The approval date followed the contract or funding start date
 - No advertisement was placed
 - A single tender process was followed.
- 3.3 2 of the 21 contracts relate to Smurfit's work for St.Patrick's Day 2002 and 2003.
- 3.4 The Committee is not questioning that there will be cases in which granting an exception or giving retrospective approval is appropriate and is the correct course of action. It is instead using the information provided by GLA officers on the larger contracts the organisations has awarded in the recent past to map out the Assembly's future scrutiny role in this regard.
- 3.5 It is accepted by GLA officers that current processes do not make it easy to ascertain an audit trail showing the key stages in the award of major GLA contracts. The Committee is keen to suggest improvements, including the introduction of reporting arrangements to the Assembly or one of its Committees for exceptions, which will assist in making the process more transparent.
- 3.6 It is not the Committee's role to undertake a detailed review of the contracts listed, but Annex 5 lists the sorts of questions Assembly Members might have asked, or which might have been unnecessary, had there been a process in place for reporting exceptions to the Assembly or one of its Committees. The questions cover four contracts, which are used as examples: (again, no judgement is made or intended as to the subject matter of the contracts):
- Consignia, Distribution of BVPP summary, value of £204,127
 - Link Direct Ltd, Distribution of The Londoner, value of £110,398
 - TBWA, media campaign on minicabs, value of £300,000
 - Serious Int'l Music Producers, Draft Culture Strategy Launch, value of £90,000.

4. The efficiency and effectiveness of GLA procurement

Background

4.1 At its 29 April meeting the Committee looked at some of the wider issues affecting the GLA's approach to procurement, particularly:

- Other reviews of procurement (internal audit, external audit and best value)
- Additional procurement posts
- Select lists, framework agreements and call-off contracts
- Cultural events.

Internal audit report on procurement

4.2 In its 2001 report on procurement, internal audit recommended that, as a matter of priority, the role played by procurement officers and the services provided should be communicated to staff. The Committee would like to see the implementation of this recommendation developed so that an analysis is made available of the proportion and numbers of higher value procurement exercises in which procurement officers are actively involved.

External audit report on procurement

4.3 In its 2001 report on procurement, external audit recommended that, as a matter of priority, procurement training should be improved and that a specific approach to risk assessment should be established. At its 29 April meeting the Committee was told that 90 GLA members of staff had received procurement training.

Best value review of procurement

4.4 The Audit Commission inspection of the GLA best value review of procurement stated "more work needs to be done to improve information systems, and to bring some good practice initiatives such as partnerships and the select lists, to fruition; and to demonstrate value for money and how the outcomes meet the aims". The Assembly will monitor the GLA's progress in implementing the review's findings.

Additional procurement posts

4.5 The November 2001 the Assembly's Appointments Committee resolved that the filling of two new procurement posts should be delayed until after the best value review of procurement had been completed. The Audit Commission reported on its inspection of the GLA's best value review in December 2002. The posts are due to be discussed at the Assembly's Business Management and Appointments Committee in June 2003.

Select lists, framework agreements and call-off contracts

- 4.6 Select lists, framework agreements and call-off contracts all relate to a type of procurement arrangement whereby companies are first shortlisted through a competitive tendering process and then at a later date are invited to bid for particular tenders.
- 4.7 The box below contains comments, given anonymously, from a company which has entered into a GLA framework agreement. It is of concern to the Committee that a company applied successfully to join the GLA's framework agreement for consultancy services 18 months ago and yet has never been asked to tender.

Comments by a third party on the GLA framework agreement for consultancy services

"Basically the story is one of general inefficiency. The original invitation to join a framework agreement for consultancy services was issued about 18 months ago. It contained about 12 categories for different services and took a long time to complete. What then followed was an endless stream of 'apologies, but we're still processing...' letters. Then we started receiving drip feed letters saying 'congrats, you've been included on the framework agreement, category x'. However, whenever you tried to contact the GLA to further discuss, no one ever responded.

The GLA is not unique in this area, but this sort of experience where consultants spend a lot of time making submissions, the submissions eventually prove successful, but then no discernable value is gained, hardly breed confidence and generate any interest in working with the GLA. Perhaps more importantly, it raises questions about how the GLA is actually sourcing consultancy support!! Our consultancy (presumably amongst others) is supposed to be an approved supplier in several categories but has never been invited to bid for anything. What's the point of establishing the framework agreement if it's never used or used too selectively?"

- 4.8 A confidential survey of companies involved in GLA select lists, framework agreements and call-off contracts might go some way to gauging whether this is an isolated example or whether other companies hold similar views.
- 4.9 At the Committee's 29 April meeting GLA officers acknowledged that lessons could be learned from the way in which select lists had been administered and that when the list comes up for review improvements would be sought.
- 4.10 A first step to establishing the extent to which the approach needs to be revised would be for GLA officers to undertake a regular analysis of the proportion of companies on GLA select lists, framework agreements and call-off contracts which have not been invited to tender.

Cultural events

- 4.11 The GLA cultural events programme budget is £1.4m for 2003/04, including:
- £0.3m for Respect
 - £0.2m for the Trafalgar Square summer programme
 - £0.2m for the Notting Hill Carnival
 - £0.2m for New Year's Eve.
- 4.12 GLA officers attending the Committee's 29 April meeting were unsure whether there was a specific strategy in existence for procuring services for the GLA's cultural events. Given the level of proposed funding for cultural events as a whole, the Committee would like to see such a strategy developed to maximise value for money, transparency and competition. The strategy should refer to EU procurement rules (where applicable) and to groups of contracts which raise similar or linked issues within any part of the programme.
- 4.13 EU procurement rules distinguish between a full procurement regime (known as Part A) and a minimal regime (known as Part B). Project management contracts count as Part A, while recreational, cultural and sporting contracts count as Part B (see Annex 3). The strategy for procuring services for cultural events should be clear in stating that a formal assessment should be made as to which category the GLA places each of the contracts it lets for its cultural events and on what basis this decision has been made. The Committee recognises that cultural events by their nature often develop as a project progresses, making an assessment of how the contract is to be procured difficult.

5. The GLA Contracts Code of Practice

Background

- 5.1 The GLA Contracts Code of Practice is the rulebook for awarding GLA contracts. It was approved by the Mayor in February 2002. There are plans for the Code to be revised in the light of the various reviews of procurement at the GLA and the GLA's Executive Director of Corporate Services mentioned at the Committee's 29 April meeting that he had in mind to recommend changes to procedures which would meet a number of the concerns set out below (see Annex 4).

Declarations of interest

- 5.2 Paragraph 8.4 of the Code states that "officers with a potential or actual pecuniary interest in any contract are to be excluded from involvement in the contract award process". Paragraph 8.5 states that non-pecuniary interests and relationships are also of concern. When questioned by the Committee on 29 April, GLA officers were unaware if there have been instances of members of staff being excluded from evaluation panels. The Committee is keen to see systems put in place to record and monitor declarations of interest. One mechanism would be to make declarations of interest a standing formal item on evaluation panel agendas.

Mayor's waiver

- 5.3 Paragraph 12.6.1 of the Code sets out five circumstances where contracts over £50,000 in value (but not subject to EU procurement rules) can be awarded without the Code's normal advertising requirements. Exceptions in these five circumstances can be authorised by senior GLA officers (paragraph 12.9) and closely follow some of the circumstances where EU advertising rules can be waived. Under paragraph 12.6 of the Code the Mayor can waive any of the Code's requirements (including but not limited to advertising) where he thinks it appropriate, upon submission of a formal 'risks report' by the Heads of Legal and Finance.
- 5.4 As noted in paragraph 2.18 above, the Mayor's waiver under paragraph 12.6 of the Code was used for the Smurfit contract for the St.Patrick's Day event in 2003. The Committee would like to see the provision of a Mayoral waiver reviewed in the forthcoming revision of the Code. The current arrangements for granting exceptions raise the question of what purpose is served by waivers granted by senior GLA officers under certain conditions if there is an overriding general waiver open to the Mayor? A policy outlining those circumstances when it is appropriate to use the Mayor's waiver should be developed as a minimum safeguard against potential abuse – at least as an interim measure until the Code is revised. The absence of such a policy makes it difficult to judge whether value for money and the public interest is being protected.
- 5.5 The completed 'risks report' should be a full and clear statement of why a Mayoral waiver was sought and the Code should set out the types of risks it is expected to cover over and above normal legal and financial implications.

Exceptions to the Code

- 5.6 At present Mayoral Approval Forms are reported in summary form to the Assembly through Mayor's Question Time, held ten times a year. This takes the form of an appendix to the Mayor's formal report to Mayor's Question Time. Current reporting arrangements do not specifically cover the award of contracts which have received exceptions from the Code's financial thresholds.
- 5.7 The Committee would like to see specific reporting arrangements developed whereby contracts receiving exceptions are reported to the Assembly or one of its Committees regularly and the basis for exception justified as a matter of course in order that they are placed in public domain and are available for scrutiny. The reporting should include copies of completed 'risks reports'.

Mayoral Approval Forms

- 5.8 The Committee would like to see the Code encourage an early signing off of Mayoral Approval Forms, where that is possible, so that there is no doubt that there is approval for the course of action being taken well before the later stages of contract negotiations.

Exceptions to financial threshold procedures

The thresholds, processes and indicative timescales are:

£	Process	Indicative timescale
0 – 5,000	Seek VFM	Same day
5,001 – 15,000	3 Oral quotes	1 - 2 days
15,001 – 25,000	3 Written quotes	1 day – 1 week
25,001 – 50,000	Mini Tender (no advert required)	3 – 6 weeks
50,001 +	Full advertised tender	6 weeks – 3 months
Dependant on whether the procurement relates to supplies, services or works (see Annex 3)	EU procedure applies	6 months +

The following are extracts from the Contracts Code of Practice:

“12.6 The Mayor may waive any requirements of this Contracts Code upon submission of a formal written “risks report” by the Head of Legal and the Head of Finance.

12.6.1 The exceptions are:-

- **Genuine emergency**

(i.e. unforeseen events likely to cause immediate danger to people or property such as bombing or flooding).

- **Specialist services / supplies**

Only available from one supplier e.g. specialist niche consultants.

- **For reasons of compatibility**

With existing services/products, e.g. equipment that needs parts from its own manufacturer.

- **Urgency NOT of the Authority’s own making**

Again, the urgency must be unforeseen e.g. a current supplier goes bust.

- Urgency caused by previous delay by the Authority or a requirement by the Mayor or Assembly or Officers to implement a strategy or idea urgently **will not** justify an exception to the financial thresholds.

- **Engaging counsel**

The exception in common with other London Boroughs to accommodate urgent requirement for top quality barristers.

- 12.9 If you believe that your circumstances genuinely fall within one of the above exceptions then the pro-forma overleaf must be completed and submitted to the Head of Legal BEFORE the contract is entered into. The nature, value and duration of the contract and the proposed supplier must be specified. The exception and the information to support it must be provided. The method by which you can demonstrate value for money must be stated. Alternative quotes should be attached to the form. Your Executive Director must first sign the application in their name.”

GLA contracts receiving exceptions or retrospective approval

Contractor	Project	Value	Commentary
1. OCS	Cleaning for City Hall	£832k	Retrospective approval via a MAF due to negotiation on final contract terms
2. Emcor	Building Maintenance for City Hall	£965k	Retrospective approval via a MAF due to negotiation on final contract terms
3. Annodata Business Comm	Photocopier lease	£112k	Retrospective approval via a MAF due to negotiation on final contract terms
4. Sykes & Son Ltd	Building works, Trafalgar Sq.	£129k	Approved after the contract start date.
5. Consignia	Distribution of BVPP summary	£204k	Consignia viewed as a unique supplier.
6. Link Direct Ltd	Distribution of the Londoner	£110k	Not advertised but discussion with short listed companies about framework bid. It is not stated how many companies were short-listed. Retrospectively approved via a MAF.
7. Mori	Annual survey	£69k	Not advertised but 4 companies submitted bids. Approved after the contract start date.
8. TBWA	Media campaign on minicabs	£300k	Fully funded by TfL. Single tender – reason given that there was a need for consistency with the first campaign.
9. Mori	Opinion surveys of Londoners	£60k	Retrospectively approved via a MAF.
10. Civic Forum	Working with stakeholders	£90k	Civic Forum viewed as a unique supplier. Retrospectively approved via a MAF due to long negotiation over contract terms.
11. Volterra Consulting	Work for GLA Economics	£120k	Not advertised but 5 specialist companies contacted. It is not stated how many of the 5 bid.
12. Smurfit	St.Patrick's Day 2002	£100k	Smurfit viewed as a unique supplier. Already looked at by the Assembly.

GLA contracts receiving exceptions or retrospective approval (cont.)

Contractor	Project	Value	Commentary
13. Event Organisation Co.	Royal opening of City Hall	£55k	Not advertised but 5 companies sent specification. It is not stated how many of the 5 bid.
14. Smurfit	St.Patrick's Day 2003	£112k	Smurfit viewed as a unique supplier. Already looked at by the Assembly.
15. Serious Int'l Music Producers	Draft Culture Strategy launch	£90k	Approved after the contract start date.
16. London Conservation	Open space and habitat	£51k	Not advertised but 5 companies invited to tender. It is not stated how many of the 5 bid.
17. Enviro Consulting	Technical waste assessment	£55k	Retrospectively approved via a MAF.
18. Dr Foster Ltd	Mental health research	£64k	Not advertised but 7 firms were invited to tender. It is not stated how many of the 7 bid.
19. Black Londoners Forum	Funding for 2001/02	£50k	Approval retrospectively but approval in principle given.
20. London Connects	Funding for 2002/03	£50k	Approved after the contract start date.
21. London Zoo	Funding for 2002/03	£372k	Approval retrospectively due to uncertainty of budget provision and delays with contract negotiation.
Total		£3,990k	

EU procurement rules

The following are extracts from the Contracts Code of Practice:

18.1.2 ...

EU Procurement Thresholds	
Supplies	£144,456
Services	£144,456
Works	£3,611,395

18.2.1.4 The application of the Services Directorate is split between Part A services (e.g. IT) which are subject to the full European regime and Part B services (e.g. catering) which have minimal legislative requirements.

18.2.1.5 Part A services (see below) are subject to the full requirements which are extremely detailed and will affect project timetabling. You will need legal assistance and the separate EU Procurement Manual.

18.2.1.6 Part B services (summarised below) have minor requirements, which should not affect project time-scales. The timescale should be 4 – 6 months. The process will be the same as for Contracts above £50,000.

Part A services (full regime)	Part B services (partial regime)
Accounting, auditing, book-keeping	Catering
Market research and opinion polling	Legal
Management consultancy	Security
Architectural, engineering, urban planning, landscaping, and related technical services	Educational
Advertising	Health and social
Building cleaning and property management	Recreational, cultural and sporting
Sewerage and refuse disposal	Other services
IT services	
Financial services	
Transport and courier services	
Maintenance and repair of vehicles and equipment	

Explanatory notes: (please note that these note are not taken from the Code)

As the Contracts Code states, contracts for services are divided by EU law into "Part A Services", which require advertising in the Official Journal of the European Communities (OJEC) if over the threshold limit (£144,456), and "Part B Services", which can be awarded without OJEC advert, whatever the value. Often contracts contain a mixture of Part A and B services. What happens then? The awarding authority must attempt to value the different elements. If the value of the Part A Services is more than the Part B, it is classed as a contract for Part A Services, and so must be advertised in the OJEC if over the threshold.

For example, the services of singers, bands and individual artistes falls within the "Recreational, cultural and sporting" category and is a Part B Service. As such directly engaging those services for a concert does not require OJEC advertisement. Organising a cultural event involves a great deal more than this, including project management of all the various elements such as facility hire, crowd control and security, advertising etc. This project management element is classed as "Other management services", under the Management Consultancy and Other Services heading in the Part A Services list.

If the value of the payment being made by the awarding authority for the project management of the event (a Part A Service) is greater than the fees paid for the entertainers and other Part B elements, then the contract is in truth a Part A Services contract.

If the Part A elements are over £144,456 in terms of the GLA's payment to the service provider, it must be advertised in OJEC. This is likely only to be an issue for very large events where the GLA payment exceeds £144,456. It should also be recognised that cultural events, by their nature, often develop as a project progresses making an assessment of the Part A and Part B elements particularly difficult.

Even if below this figure it may have to be aggregated with previously awarded contracts for similar services, and if doing so exceeds the threshold limit it must be advertised in OJEC unless EU rules allow for a single tender exemption (negotiated procedure) without advertisement.

Explanatory notes: single tender exemptions under EU procurement law

There follow notes on single tender exemptions under EU Procurement Law (please note that they are not taken from the Code):

A single tender exemption (“negotiated procedure” in EU law) for a contract over £144,456 in value can only be used under EU rules for Part A Services and for Supplies in certain circumstances and these are summarised below. Please note that OJEC refers to the Official Journal of the European Communities.

Without advertisement in the OJEC

1. A previous tender exercise produced no tenders or only inappropriate tenders (as long as the terms of the contract remain substantially unchanged).
2. There is only one service provider in a position to provide the service (for technical or artistic reasons or because of exclusive rights). **See note d below.**
3. The contract follows a design contest and the rules require it to be awarded to the successful contestant or one of them (as long as all successful contestants are invited to negotiate).
4. For reasons of extreme urgency the time limits required for tendering or for negotiating (i.e. single tender exemption) without an OJEC advert cannot be met. The urgent events must be unforeseeable by and not be attributable to the awarding authority.
5. Additional services are required from the service provider which because of unforeseen circumstances had not been included in the original project or contract. It must cause great inconvenience to award the additional work separately. The additional service must not exceed 50% of the value of the original contract.
6. New services are required from the service provider which are a repetition of services carried out under the original contract.

With advertisement in the OJEC

7. A previous tender exercise was discontinued because of irregular tenders.
8. The nature of the services or the risks involved do not permit overall pricing (exceptional cases only).
9. Contract specifications cannot be established with sufficient precision to award the contract by a tender exercise due to the nature of the services, particularly conceptual/intellectual services or financial services.

Explanatory notes:

a. A single tender exemption is the direct **negotiation** of a contract with one or more potential suppliers, leading to the award of the contract to one. Under EU law this is called the “negotiated procedure”. Provided they are treated equally, negotiations can take place with different contractors on different terms. This can take place with or without advertisement in the OJEC (Official Journal of the European Communities) depending on circumstances– see above.

b. A **tender** exercise is where more than one potential supplier bids for work on the basis of a common specification and common contract terms.

c. If none of the above circumstances apply then a **full tender** exercise must be gone through following advertisement in the OJEC.

d. **Sole provider exemption (para 2 above):** The EU Commission takes a very narrow view as to the circumstances in which the sole provider ground can be invoked to justify a single tender exemption (negotiated procedure). In its 1997 guide the Commission stated:

*“This is a very narrow exemption and applies only to those cases where it can be said that to invite tenders or expressions of interest would be abusive because there is only one service provider who can provide the particular service. The safest cases where the exception can be used are those where a particular service provider has the exclusive right to carry out particular services. However, the exception does not apply if the exclusive right is licensed to other parties or can reasonably be obtained on licence. The cases where, in the absence of exclusive rights, technical or artistic reasons justify recourse to the negotiated procedure are very narrow indeed. An example might be found where a local authority had already commissioned a work of art and later decided to commission a second work of art to make a “pair”. In such circumstances it would be necessary to show for *objective reasons* that it could not be envisaged that the second work of art be provided by a different artist.” (Emphasis added.)*

e. Breaches of EU procurement law can be reported to the European Commission who can take action against the public body concerned.

Proposals presented in a report to Budget Committee

The following proposals were presented to 29 April Budget Committee by the GLA's Executive Director of Corporate Services:

- 1.a. Report to BMAC to re-seek approval for these 2 posts: one for policy development and the other to support monitoring and control.
- 1.b. Redirection of a Legal Services vacancy towards procurement and contract work.

2. Establish a weekly case conference meeting of Finance, Legal and FM procurement resources to map issues, data and ensure consistent approach to governance. Meeting to be chaired by Head of Core Finance.

3. The exceptions process should be amended to build in the following questions to enable a fuller review of VFM and justification.
 - a) when was it known that the contract would be required?
 - b) is this the first such contract to be let?
 - c) what exactly is the specialist nature of the service/supplier?
 - d) what is the evidence that it is not available from other suppliers?
 - e) what is the consequence of tendering the contract under the procurement code rather than applying an exception.
 - f) can the contract be let under the select list – if not, why not?
 - g) what advice has been sought from the procurement team, legal or finance on the justification for this exception?In addition, the originating manager to certify that the contract has not already been offered to the supplier expressly or impliedly.
Specific guidance should be issued to managers on what action to take to demonstrate value for money especially where a single tender exception is being considered.

4. A further training programme should be offered to managers based on these new requirements as part of a wider corporate governance training programme to be built into induction and offered on a quarterly basis. Proactive advice from Procurement on contract renewal timetables based on having a better central database. BMAC to be asked to revise the code of conduct to make clear that breach of procurement procedure can be misconduct or gross misconduct under disciplinary procedures.
The procurement team to reconcile on a monthly basis all invoices paid with contracts let.
A requirement within the code for the procurement team to be notified of all tenders and contracts to be let. Exception forms should be signed off by the relevant Director.

5. That a Short Term Assignment Form (STAF) should be approved by the Assembly's Business Management and Appointments Committee for the chair and vice chair of the Committee to sign off: (a) approval in the short term post subject to funding and legal/financial advice (b) advertising on the web-site only for a minimum period of 1 week and usually 2. Normal recruitment procedures would follow thereafter.

STAFs would specifically be project related and not lead to increases in the permanent establishment of the GLA.

This arrangement would not apply to standard admin/clerical/secretarial temps secured through approved agencies.

Assignments beyond 9 months would need BMAC approval and recruitment in the normal way.

All STAFs would be reported to BMAC including the equalities profile for appointees.

6.a. The Assembly's Budget Committee should agree to a process, similar to the Mayoral Approval Form, for authority to conduct procurement, deal with any waiver of procedure and to let a contract.

6.b. That specific guidance is set out in the procurement code to regulate this relatively new area of activity.

6.c. The select list should be extended to encompass activity conducted through funding agreements and partnership contracts.

Example questions on contracts

1. *Consignia – Distribution of BVPP summary*

The types of questions the award of the contract to Consignia for the distribution of the GLA's BVPP (Best Value Performance Plan) might have given rise to (had there been a reporting process) are: why was Consignia viewed as a unique supplier? Why were no other companies identified as being in a position to provide this service when there are other universal postal service providers? Does distribution of the BVPP summary fall under the "transport and courier services" of part A of EU procurement rules? (Annex 3 provides details of EU procurement rules) If so, how did this affect the choice of procurement method?

2. *Link Direct Ltd – Distribution of The Londoner*

The types of questions the award of the contract to Link Direct Ltd to distribute The Londoner might have given rise to (had there been a reporting process) are: why was the invitation to tender for the distribution of The Londoner not advertised? How many companies were short listed to bid and how many did bid? Why was the decision to award the contract to Link Direct Ltd retrospectively approved via a Mayoral Approval Form? Should EU procurement rules not apply to the Link Direct Ltd contract as, when aggregated with the Consignia contract, it exceeds the EU threshold as both contracts relate to distribution services? When did it become apparent that the Londoner would have to be distributed and did this overlap with planning for the distribution of the BVPP summary?

3. *TBWA – media campaign on minicabs*

The type of questions the award of the contract to TBWA for the media campaign on minicabs might have given rise to (had there been a reporting process) are: why was the contract for a media campaign on minicabs awarded to TBWA without a competitive tendering process? If the advantage of using TBWA was that TBWA provided consistency with an earlier media campaign, could other advertising companies not offer the benefits of a fresh insight into the project and experience of undertaking similar projects? Does the media campaign on minicabs fall under the "advertising" of part A of EU procurement rules? If so, how did this affect the choice of procurement method? Was, and if so how, account taken of European Commission advice that the sole provider justification for using the negotiated procedure (single tender exemption) is to be applied very narrowly?

4. *Serious Int'l Music Producers – Draft Culture Strategy Launch*

The types of questions the award of the contract to Serious International Music Producers for the Draft Culture Strategy Launch might have given rise to (had there been a reporting process) are: why was the contract awarded to Serious International Music Producers for the Draft Culture Strategy Launch approved after the contract start date? Why was the decision to award the contract to Serious Int'l Music Producers retrospectively approved via a Mayoral Approval Form? Why was the virement relating to this contract reported to the 18 March 2003 Budget Committee meeting for Members' views when the contract had already started on 19 February 2003?