[Area] Technology Managing Agent Contractor Contract

Contract Guidance Manual
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## CONTRACT GUIDANCE MANUAL

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1 INTRODUCTION

1.1 Purpose of the Guidance Manual

1.1.1 The purpose of this Guidance Manual is to explain the background to the Traffic Technology Managing Agent Contractor (TechMAC) contract, the reasons for some of its provisions and to provide practical guidance on its use.

1.1.2 The Guidance Manual is not a contract document nor is it part of the contract. It should not be used for legal interpretation of the meaning of the contract.

1.1.3 This Guidance Manual should not be used as a substitute for the contract. It deals with a limited number of matters, and should only be used to improve understanding of the contract.
2 BACKGROUND AND BASIC CONCEPTS

2.1 Highways Agency Procurement Strategy

2.1.1 The Highways Agency has entered project partnering arrangements with its suppliers on major projects for a number of years. These have been successful and beneficial through the adoption of co-operative working arrangements to deliver mutually agreed common objectives. The Highways Agency is seeking to develop longer-term partnerships with suppliers which allow successful teams to be retained and maximum use made of developed skills and invested knowledge.

2.1.2 Long-term relationships allow the supply chain to be involved in the development and planning of work programmes and to deliver them more efficiently and safely. They also facilitate the recruitment and retention of the skilled resources needed to deliver the programmes.

2.1.3 Performance measurement with continual improvement targets, measuring performance, learning the lessons and delivering continual improvement are vital to the achievement of best value. It is even more important in the context of longer-term relationships.

2.1.4 The development of measurement processes to support the identification of best practice, continual improvement and the delivery of best value requires the Highways Agency to develop its knowledge and understanding of actual costs. Traditionally, reimbursement has been based on rates or prices that may or may not reflect actual costs that need to be known if real and sustainable improvements are to be achieved. This requires the adoption of open-book accounting techniques together with methods of reimbursement based on actual costs.

2.2 Aims and objectives for TechMAC

2.2.1 The original way of procuring traffic technology systems maintenance was the Regional Maintenance Contractor (RMC) Contract that was introduced in the 1970s. Following this Contract the Regional Maintenance Contractor Managing Consultant (RMCMC) Contracts were introduced in the mid 1990s to provide advice, support and act as Managing Agent on behalf of the Highways Agency. The first TechMAC contract came into operation in the Midlands in 2003. The TechMAC consolidated the RMC and MC roles into a single service provision – the Service Provider.

2.2.2 In 2003 the Highways Agency developed an enhanced Managing Agent Contractor (MAC) Contract (EMAC), which arose from the need for the Highways Agency to review PFI options for highways maintenance, the Privately Financed MAC (PFMAC). Although the TechMAC is based on the
MAC principles, it aims to continue the process of improvement and refinement prompted by feedback and it incorporates some of the features identified in the EMAC.

2.2.3 The TechMAC form of contract incorporates many of the desirable features of optimal procurement arrangements. The contract relies on quality management systems and uses self-certification procedures to remove unnecessary supervision and duplication of effort. The quality system approach allows flexibility and encourages innovation to deliver a value added service. The contract is based on a strong partnership approach with an integrated supply chain and the contract duration is a significantly longer period than traditional maintenance contracts. The contract allows the TechMAC organisation to design and undertake smaller upgrade and replacement projects up to a certain threshold value, the management of the larger Managed Works Schemes and the ongoing maintenance, operation and monitoring of the Traffic Technology Systems already in place and to be installed over the life of the TechMAC contract. It also incorporates elements of performance specifications for routine service and includes the requirement to measure and benchmark performance, and to achieve continual improvement.

2.3 Strategic Supplier Development

2.3.1 The Highways Agency Strategic Supplier Development (SSD) Team manages supply chain relationships. Particular attention has been given to the development of business relationships with key suppliers including the agreement of strategic management objectives to improve standards of business delivery. The team is responsible for Capability Assessment Toolkit (CAT) assessments, performance management and maintains regular contact with key suppliers, including site and office visits to assist in the “reality checking” of quality promises and submissions. Performance assessment is fed back into the supplier selection process to help judge capability and suitability of firms.

2.4 Achievement of Highways Agency objectives

2.4.1 At the heart of the TechMAC concept is the active involvement of the Provider in helping the Highways Agency to find the best way to achieve its objectives, bearing in mind budgetary constraints and other considerations. This will apply to improvement and renewal schemes as much as any other activity.

2.4.2 The Provider is contracted to assist the Highways Agency rather than merely to carry out work on behalf of the Agency. This requires an understanding of the Highways Agency’s aims and a willingness to continuously seek ways to improve delivery from those involved in the contract, rather than an assumption that doing what has been asked is
sufficient. This applies to Highways Agency staff as well as the Provider's staff. The TechMAC creates an environment whereby the Highways Agency and the Provider work together to achieve the Highways Agency customer facing objectives.

2.5 Partnering/Network Board

2.5.1 The opportunity has been taken to formalise the ‘partnering’ approach and philosophy advocated in the reports by Latham and Egan and which, consistent with government policy, the Highways Agency is committed to adopt and had adopted into the earlier TechMAC contracts. This is achieved by the introduction and role of the Network Board.

2.5.2 The objective of the Network Board is to enshrine the spirit of partnering and team culture into the contract. The Network Board is a strategic adviser to the parties to the contract and should not be treated as a substitute for the decisions, at an operational level, which the Service Manager is required to take.

2.5.3 Annex A gives further information on the TechMAC partnering policy.

2.6 Quality Management

2.6.1 The management of quality is at the core of the TechMAC contract. It is essential that care is taken to prepare and operate a quality management system which will give the Highways Agency the confidence that its requirements will be achieved.
3  THE CONTRACT

3.1  Form of Contract

3.1.1  The TechMAC contract is derived from the Engineering and Construction Contract (“ECC”) third edition published by the Institution of Civil Engineers in June 2005. Users should refer to the ECC guidance on issues that are common to both the ECC and the TechMAC contracts but should be aware that there are drafting differences between the contracts.

3.1.2  The TechMAC contract differs from the ECC in a number of significant ways, in particular:

1. the role of the Service Manager is much reduced from the role of the Project Manager under the ECC. It is envisaged the Service Manager will be an Highways Agency employee, and

2. the terminology is different - the Provider Provides the Services. This recognises that the Provider is appointed to help the Employer achieve its objectives, and not simply as a consultant or contractor. In practice, the Provider will be engaged by the Employer to design and undertake Schemes up to a certain threshold value, to carry out Contract Management Duties for Schemes above the threshold value and daily duties to operate, maintain and manage the Systems in their entirety in a seamless service including advice, design, works and management.

3.1.3  The TechMAC contract and this Guidance Manual use the same conventions as the ECC for:

1. the use of defined terms with a capital initial, and

2. the use of Contract Data for key variables, figures and project specific information, and

3. Service Information (Works Information in NEC) and Network Information (Site Information in NEC) to describe the works and the detailed obligations of the Provider, and

4. the use of italics for terms which are referred to in the Contract Data.

3.1.4  It is intended that the TechMAC contract is a standard form document for use by the Highways Agency and, for this reason, it incorporates within it all relevant conditions. There are no Z clauses and there is no need to select a payment option or any secondary options as one would do with an ECC.
The primary and secondary Options of NEC have been incorporated with elements of Option A, C and E and numerous secondary Options.

3.1.5 The relevant Highways Agency specific Z clauses, previously incorporated into contracts based on the ECC model have, where relevant, either been incorporated into the Conditions of Contract or are dealt with in the Service Information. Any queries or comments on the operation of the contract, if not dealt with in these guidance notes, should be referred to the Highways Agency’s Procurement Officer.

3.2 Roles and Duties

3.2.1 The TechMAC contract sets out the responsibilities and roles of the following parties:

(1) The Employer;
(2) The Service Manager,
(3) The Provider, and
(4) The Network Board.

3.2.2 The TechMAC contract also sets out the role of the Adjudicator though it should be noted that the right to adjudication is a statutory right at any time under the Housing Grants and Regeneration Act and the contract does not seek to override those rights. However the procedures in the TechMAC contract will take effect and not the Scheme set out in the Act which applies only where there are no procedures.

3.2.3 The Conditions of Contract and the Service Information set out the obligations of the person acting in each role.

3.2.4 Information on the Highways Agency’s structure is given in Annex B.

The Employer

3.2.5 The Employer is the Secretary of State for Transport represented by the Highways Agency on this contract.

The Service Manager

3.2.6 The Service Manager is the key person involved in the management of the contract from the Employer's point of view. His duties and authority are described in the clauses of the contract - they are not summarised in a single clause. See Annex C for a list of key obligations of the Employer and the Service Manager.
3.2.7 The Service Manager must confer with others within his operational team and the Highways Agency as necessary in deciding which of the various possible actions to take and in making other decisions, which may affect the operation of the contract.

3.2.8 The Service Manager may delegate specific authorities and duties under the contract to particular members of his team. Before any delegation is effective the Provider must first be notified. Any such notification to the Provider should include details of the actions delegated and the person to whom they are delegated. Delegation does not prevent the person who delegates from also acting himself.

3.2.9 The Provider is entitled to rely on the Service Manager taking all decisions which the contract requires him to take, and that they will be taken within the time limits stated in the contract. This may involve the Service Manager liaising with others within the Highways Agency if the Service Manager does not have the delegated authority to make a particular type of decision.

3.2.10 The Provider is the company appointed to carry out the Services for the duration of the Contract Period.

3.2.11 There are a number of essential differences between the Provider and a consultant or contractor under a standard ECC contract. The Services cover not only an obligation to carry out Schemes (up to a threshold value) but also an obligation to carry out maintenance, operation and monitoring of the Systems which includes the role formerly undertaken by Managing Agents of advice, design, management and administration of the Systems. The Provider therefore has single point responsibility for the management and maintenance of the Systems in the Area Network.

3.2.12 The terms of reference of the Network Board are set out in the Service Information. The intention is that the Network Board is made up of senior members of the Provider and representatives of the Employer. The Employer and the Provider are each required to appoint the individuals named in the Contract Data as representatives to the Network Board. It is open to either party to accept a proposed replacement if they are satisfied that the person is nevertheless competent to act as a representative of the party on the Network Board. The first meeting of the Network Board takes place before the starting date.

3.2.13 The representatives on the Network Board are able to request that other people attend meetings and provide any information and assistance, which the Network Board may require. Others who may be invited to attend
include contractors (who are carrying out or appointed to carry out works outside the scope of the Provider's duties), subcontractors, major suppliers or providers of services in adjacent areas.

3.2.14 The Network Board should give strategic guidance to the parties to see that the contract is operated in such a way to facilitate the achievement of the Employer's objectives. The Network Board is able to make recommendations to both the Employer and the Provider but does not have the power to change the contract. The Network Board has a role to play in reviewing performance and will recommend performance targets for year on year improvements. The Network Board operates by consensus.

3.2.15 The Network Board will have a significant interface with the technology maintenance community established by the Highways Agency. This community has a range of objectives, linked to co-operation and co-ordination between all the providers involved in the Highways Agency's maintenance programme. The Network Board will provide input to the community and receive feedback aimed at improving performance across the whole community. It is expected to promote the implementation of any such good practice on their contract.

The Adjudicator

3.2.16 The Adjudicator is appointed jointly by the Employer and the Provider when a dispute arises. The Adjudicator is selected by the party referring the dispute to adjudication.

3.2.17 If the Adjudicator appointed is not able to complete the adjudication and the parties cannot agree on a replacement, they must apply to the Disputes Administration Service of the Institution of Civil Engineers to name a replacement adjudicator.

3.3 Service Information

3.3.1 The Provider's basic obligation is to Provide the Services in accordance with the requirements of the Service Information. This includes supplying all of the necessary resources to achieve the end result including designing, fabricating, delivering, constructing, managing, supervising, testing, commissioning, maintaining and making good any defects.

3.3.2 This is a general obligation on the Provider, in addition to his obligation to comply with the Service Information to do everything reasonably necessary to achieve the economic and efficient management and maintenance of the Traffic Technology Systems on the Area Network. The extent to which the Provider succeeds in doing this will become apparent over time and will be monitored by the Service Manager.
3.3.3 The specification for the contract is broken down into four main headings which recognise that the Provider plays a crucial role in enabling the maximum usage of the network as well as simply maintaining the asset condition and undertaking Schemes. They are:

**Business Sustainability**

3.3.4 This section of the Service Information covers the internal controls required by the Provider to manage the work under the contract. These include quality management, data management, financial management, and performance management. It also includes the watchman role, acting as the “eyes and ears” of the Highways Agency.

**Maintaining Network Value**

3.3.5 The Provider is required to strike the correct balance between routine maintenance and renewals. He must promptly identify renewal Schemes or improvement Schemes that it is appropriate to carry out.

**Enabling Network Use**

3.3.6 Under this section, the work required of the Provider in allowing customers to use the Network safely and effectively is identified. It includes planning and operations, various technical assistance and customer care.

**Enhancing Network Use**

3.3.7 The work of the Provider in improving the Area Network is dealt with under this section. It includes the work expected in identifying and delivering improvement schemes of all values though the Provider will only deliver Schemes up to the threshold value.
4 NETWORK OPERATIONS

4.1 Network Management

4.1.1 Over recent years the Agency’s role has transformed from one of an asset maintainer to that of network operator, focused on providing a safe, integrated network for its customers.

4.1.2 The Agency’s 2005/06 Business Plan undertook to deliver a demonstrable reduction in incident related congestion and the minimisation of road works related congestion. Furthermore, the Business Plans for 2006/2007 and 2007/2008 build on the Public Service Agreement (PSA) targets relating to the reliability of journeys and safety on the strategic road network. These targets are likely to remain and become more challenging in future.

4.1.3 Certain roles previously undertaken by the police are now exercised by the Agency. The Agency’s network operator role combines two aspects; the Network Operations Manager (NOM) has responsibility for the Regional Control Centres (RCCs) and Traffic Officers; the Network Performance Manager has responsibility for the performance and maintenance of the network. Both roles must combine to allow the Agency to be successful in its network operator role.

4.1.4 The prime objective of the Traffic Officer Service is that of reducing incident related congestion. The detection of, response to and clearance of incidents are controlled through the RCC. The Provider will be expected to work with the National Traffic Control Centre (NTCC), RCC and Traffic Officer in the discharge of this role.

4.2 Network Occupancy Management

4.2.1 Network Occupancy Management is seen as a key tool in the drive towards minimising works related congestion, improving driver information and aiding the Agency in achieving its Public Service Agreement (PSA) target relating to journey time reliability.

4.2.2 Network Operations (NO) Directorate has introduced processes that will assist the Agency to manage its network in a more effective and efficient manner. The Network Occupancy Management Process Document sets out roles, responsibilities and procedures for the management of network occupancy. In particular, the Agency needs to take a regional perspective on network access issues which requires the provision of accurate and timely information on Incidents, lane closures and other events that may affect traffic conditions on the Highways Agency’s Network.
5 PERFORMANCE

5.1 Objectives

5.1.1 The Provider's task is to assist and enable the Employer to achieve his strategic aims, objectives and values. These, as currently defined by the Highways Agency, are set out in an Annex to the Service Information. As this contract is a long term arrangement, it is recognised that these aims, objectives and values could change over time.

5.1.2 By this method, the objectives of the Employer and of the Provider start to be aligned and both are focused on the same objectives. The contract does not define in detail the work that is needed to achieve these objectives; the Provider is required to work with the Highways Agency in identifying and developing the tasks needed to achieve success.

5.2 Risk Management

5.2.1 The Quality Statement, completed at tender, is intended to identify the key risks to achieving the Employer's objectives. After award of contract the management techniques for handling the risks are set out in the Provider's Quality Plan.

5.2.2 The Provider carries out risk management of all the services, determining procedures and additions to deal with the risks as they are identified, and adding those to the Quality Plan.

5.2.3 The Quality Plan is kept under regular review, as circumstances may change, giving rise to a need to change the risk management procedures, to ensure that value for money is being achieved. The proposed changes have to be agreed by the Provider and the Service Manager, and ratified by the Network Board.

5.2.4 When a proposed Scheme is developed for acceptance, a Risk Register for that Scheme is produced, dealing with the Scheme specific risks.

5.2.5 The TechMAC contract has incorporated the elements of Early Warning where the Provider or Service Manager raises matters early which would increase the cost or affect progress which can be discussed at risk reduction meetings.

5.3 Quality Management Systems

5.3.1 The Provider is placed in a position of significant control over the quality of the work carried out, the timing of the work, and the correct payment for the Services. To give the Employer the necessary re-assurance about the
expenditure of public money, the Provider is required to operate under the control of a quality management system.

5.3.2 At return of tender, a Quality Statement was submitted outlining the Provider's approach to how he intended to maximise performance to deliver the Employers objectives. These statements are required to be incorporated into the Quality Plan, and may not be changed without the agreement of the Service Manager. These statements constitute commitments entered into by the Provider at tender, and formed the justification for the award of contract. No changes to the statements can be accepted which would result in a reduced standard of service or quality of product for the Employer, unless the reduction can be justified as providing improved value to the Employer. However, it is always open to the parties to agree changes that are mutually beneficial.

5.3.3 A Quality Plan is produced under the quality management system. This sets out the people, procedures and other resources (e.g. information systems) intended to deal with the risks to delivery of the Employer's objectives. Annex 24 of the Service Information represents a framework which the Highways Agency requires the Provider to adopt in preparing, implementing and on-going updating of its Quality Plan. Annex 24 covers some of the duties of the Provider under Annex 14 of the Service Information – this is explained in more detail in Annex F of this Manual.

5.3.4 The Quality Plan will be developed during the mobilisation period, and extended or amended as necessary as further risks are identified or to improve the quality of the Services. Any process required to manage additional risks in a Scheme Risk Register will be added to the Quality Plan.

5.3.5 The Quality Plan must comply with ISO 9001:2000, incorporate an environmental management system consistent with ISO 14001, include processes for delivering continual improvement following the guidance in ISO 9004 and comply with good industry practice.

5.3.6 The quality management system must have third party accreditation or be operating in preparation for accreditation within 12 months of the Contract Date.

5.3.7 The role of the Employer and Service Manager in relation to the quality procedures is essentially an off-line role. Other than formal requirements set out in the contract, they will have no role in approvals, authorisations, hold points and the like. The Provider must include adequate procedures using his own resources to carry out the checks and procedures set out in the Plan. However, the audit process is designed to allow the Service Manager to monitor the Provider's performance and procedures at whatever level and frequency is appropriate.
5.3.8 Neither the Employer nor the Service Manager are required to approve the Quality Plan, it is a document within the Provider's control and he will update or amend it as appropriate to reflect any changes or improvements in the way in which he manages or carries out the Services. The Quality Plan must be readily available for inspection by the Service Manager and the Employer's representatives at all times.

Audit and Quality Management Points

5.3.9 A key element of the contract is that the Provider is required to monitor and record his own performance levels. The quality table in the Contract Data requires Quality Management Points to be awarded by the Provider in respect of certain failures.

5.3.10 Usually, the reduction of Quality Management Points to 25 or less can be achieved quickly by additional audits and minor changes to procedures. Until it is, however, regular weekly reports have to be provided to explain the actions being taken to reduce the point count and the success or otherwise of those actions. Continued increases towards the upper threshold of 49 points should give rise to urgent discussions between Provider and Service Manager about how the quality system could be changed to improve performance.

5.3.11 A failure by the Provider to respond appropriately to reduce the number of Quality Management Points is a serious matter as this would indicate that the quality system is no longer being operated in the manner required by the Employer. This may lead to termination as the Provider will no longer be providing best value to the Highways Agency in terms of performance, nor the necessary assurance that the Services are being performed properly, and the Employer may consider appointing a replacement Provider.

5.3.12 The audit table in the Contract Data sets out the frequency of routine audit by the Service Manager and identifies when the Service Manager will be entitled to carry out additional audits. The Service Manager may also carry out supplementary audits at whatever frequency he considers necessary.

5.3.13 Access to the Area Network has to be provided to any auditing consultants carrying out the auditing function on behalf of the Employer. The facilities offered by the Provider will include making office space available, free and unimpeded access to records and accounts, and making available staff with knowledge of the quality system to accompany the audit teams.

5.3.14 Quality management points are accrued should the Provider not take corrective actions to rectify non conformances with his quality management system. The register is to be maintained by the Provider.
5.3.15 The number of Quality Management Points is expected to vary over the Contract Period, within a range of 0 - 25 points, 25 points being the maximum considered acceptable during any one period. If it rises above 25, the Provider reports on the reasons and the steps being taken to deal with the problem. Whilst the count remains above 25, the Employer may carry out additional audits to compensate for the failings, at the Provider’s expense. There are no other financial deductions linked directly to Quality Management Points.

5.3.16 If the Provider does not take the required actions or the Service Manager does not accept the proposals, the Service Manager serves a quality warning notice. Following the issue of a quality warning notice and until the number of Quality Management Points is reduced to 25 or less the Provider is prohibited from commencing work on any new Scheme & others can be appointed to provide new Scheme services.

5.3.17 The default on the part of the Provider to comply with the obligations stated above results in the Employer being able to terminate. The Employer may also terminate under the same clause should the reports provided fail to demonstrate how his actions will reduce the Quality Management Points to 25 or less, or if the Provider fails to take the actions proposed.

5.3.18 Annex D outlines the process should the number of Quality Management Points exceed 25.

5.4 Performance Management and Measurement

5.4.1 The Service Information includes annexes setting out specific performance requirements. These define the minimum level of service that the Employer considers can meet his objectives.

5.4.2 The concept used to develop the annexes is simple – it covers two aspects of the Providers performance. Firstly, to do the right things, and then to do the right things well. Annex 15 is about doing the right things i.e. the Provider adopts strategies (i.e. the levers) and Processes that deliver the Highways Agency’s outcomes. Doing the right things well is about Process efficiency and continual improvement and that is covered by Annex 14.

5.4.3 A series of performance measurements, based on a range of indicators, are set out in the Service Information. These are used for

- identifying the opportunity for continual improvement,
- assessing the performance of the Traffic Technology Systems and
- assessing the effectiveness of the Provider’s management processes.
5.4.4 The Network Board can agree adjustments to the Performance Requirements and the Performance Indicators. The purpose of any adjustment is to capture changes in performance levels across the network as a whole, and not to allow the Provider to renegotiate his contractual obligations.

5.4.5 The Performance Indicators require a formal measurement for each Financial Year. In addition, regular interim measurements – normally monthly – are taken. The Service Manager and Provider should agree the most appropriate way of monitoring this information, including the use of cumulative or rolling 12 month measures.

5.4.6 Further detailed guidance on the use of performance management and measurement is set out in Annex E.

5.5 Continual Improvement

5.5.1 The Provider is expected to deliver continual improvement in providing the Services, and his quality management system must include Processes for delivering continual improvement which follows the guidance in ISO 9004 and ISO 9001.

5.5.2 In particular, the Provider:

1. develops a model of his business Processes defining inputs and outputs, and showing the sequence, and how the various Processes inter-relate with each other to ensure they operate as a network - see Annex F for guidance on how Annex 24 of the Service Information impacts this activity.

2. identifies the Sub-Processes of each of the main business Processes - see Annex F for guidance on how Annex 24 of the Service Information impacts this activity

3. identifies Process Owners from within the Providers organisation and gives them authority and responsibility

4. designs Processes that visibly support the achievement of the required Outcomes for the commission – the Process Owner role has been defined in Annex 24 of the Service Information

5. understands and articulates how the Providers Processes interact with those of his various Customers and Suppliers

6. establishes and maintains an appropriate governance structure in place that can clearly manage and control cross functional Processes, and that senior leadership is engaged
(7) in addition to complying with the requirements of the contract in relation to KPI's and PI's, he develops and manages Process and activity metrics that focus on the key actions within the control of the Provider that determine achievement of the required outcomes

(8) documents and diagnoses the current (‘as is’) Process performance, and identifies opportunities for both breakthrough change, and small step on-going continual improvements

(9) carries out redesign of Processes in order to achieve targeted improvement opportunities

(10) puts in place and maintains the necessary change management mechanisms to properly implement changes and new solutions arising out of Process redesign

5.5.3 During the mobilisation period the Provider attends a one day workshop, organised by the Employer, to review the use of the ISO 9004 continual improvement guidelines in the Provider's quality management system.

5.5.4 At the beginning of the second and subsequent Financial Years the Provider submits to the Service Manager, for acceptance, details of how year on year continual improvement will be achieved.

5.5.5 The Network Board is tasked with setting targets for year on year improvements, and for taking account of these in adjusting performance targets.

5.5.6 Further detailed guidance on continual improvement is set out in Annex F.

5.6 Benchmarking / Market Comparisons

5.6.1 Benchmarking is defined by OGC as “the process of comparing your organisation's performance with that of similar organisations, with the aim of identifying opportunities for process improvement”. The Constructing Excellence web site defines a benchmark as “the best in class performance achieved for a specific business process or activity”.

5.6.2 The use of Performance Indicators, and particularly the work of the technology maintenance community, will provide some feedback to assist in benchmarking. The Provider's organisation will also have internal procedures to carry out its own benchmarking, to assess its position in the industry.

5.6.3 The use of benchmarking techniques is used to seek improvements in performance, by seeking the best in class and identifying ways of improving performance to those levels. The results of the various
benchmarking exercises will be used in the contract to help drive continuous improvement.

5.6.4 Market testing in the construction industry is a specific form of benchmarking traditionally used to compare prices for a product. It can cause significant problems if it is applied wrongly.

5.6.5 The key function of market testing is not to find the cheapest price for a service. It is to find the most efficient way of delivering it. Its use is to “benchmark” the process by comparing the performance of the Provider with that of another contractor whose capability to carry out the activity is similar to the Provider’s.

5.6.6 Market testing will be a part of the supply chain management process in routine use by the Provider. Particularly for subcontractors who are key partners, the Provider will carry out checks that the particular subcontractor is providing the most efficient service. This will be measured by its cost effectiveness; not cheapness.

5.6.7 The contract requires similar techniques to be mobilised for the Employer’s benefit. For subcontracted work, little will change. A subcontractor who provides a cost effective service for the Provider will, through the payment arrangements, transfer that to the Employer.

5.6.8 Difficulties arise in the market testing – benchmarking – of work carried out by the Provider directly. Traditionally, this has been done by competitive tendering; inefficient contractors will be less successful in winning work. In the case of a “best value” approach, with no competition on price, other methods of demonstrating efficiency have to be used.

5.6.9 It may be that current benchmarking techniques routinely carried out by the Provider will give the level of confidence on this point. If not, further benchmarking techniques need to be developed. The Provider is free to identify any arrangements that will give the confidence needed; no specific technique has been specified.

5.6.10 One approach is to award a part of the work to another organisation, to gain a comparison. Clearly, this form of benchmarking involves considerable work if it is to provide useable results. Identifying suitable work and appropriate subcontractors, preparing contract requirements, close monitoring of performance and subsequent analysis will involve a substantial resource. If, however, the benchmarking is not carried out in a rigorous manner, the results will be of little value and not provide any demonstration that the Employer is achieving best value. It is for this reason that the TechMAC refers to “market comparison” rather than “market testing”.

5.6.11 Other approaches are likely to be equally acceptable and should be followed as set out in the quality plan. If it is felt that the benchmarking/market testing arrangements are insufficient, the matter should be discussed between the Service Manager and Provider, and the procedures in the quality plan amended to cover any agreed changes.

5.7 Innovations

5.7.1 The Provider is encouraged to develop and share innovative ways of providing the Services. If the Provider identifies a way of carrying out works or managing the Services which would reduce cost, improve quality or enhance the achievement of the Employer's objectives, then he can submit these to the Service Manager, supported by a business case.

5.7.2 The proposed innovation is considered at Network Board level and the Network Board recommends whether the innovation is implemented. This is instructed by the Service Manager.
6 SCHEME MANAGEMENT

6.1 Identification, Design and Implementation

6.1.1 Scheme management is an important part of the Provider's work. The Provider acts as watchman for the Highways Agency and is required to continuously monitor the Area Network and promptly identify the need for Renewal and Improvement Schemes. The Provider assists the Highways Agency in planning, developing and constructing Schemes which meet the Employer's objectives.

6.1.2 Once a Scheme has been identified, the Provider prepares a report, and if instructed by the Service Manager, incorporates the Scheme into the Forward Programme. When directed by the Service Manager, the Provider agrees a programme and Scheme budget, develops the design of the Scheme, and submits design proposals to the Service Manager for acceptance. The Provider continuously reviews technical solutions, priorities, and carries out value management.

6.1.3 The Service Information Annex 20 sets out the Provider's duties in respect of Scheme development and the chart in Annex G illustrates the process.

6.2 Managed Works

6.2.1 If instructed by the Service Manager, the Provider provides contract management duties for Managed Works. Managed Works are Schemes having an Estimated Cost in excess of the threshold, but exclude Major Improvements. The Provider will essentially administer and manage such schemes on behalf of the Employer.

6.3 Third Party Schemes

6.3.1 The Service Manager can instruct the Provider to provide contract management duties in respect of an improvement Scheme carried out pursuant to an agreement between the Employer and a third party, although there is no expectation that this will be the case, since the developer may influence who manages the scheme.
7 BUDGETS AND FORECASTS

7.1 Introduction

7.1.1 An essential part of the Provider's services is in assisting the Employer to manage its budgets effectively and with the financial management of the Area Network. The Provider prepares an initial plan and programme, based on allocated budgets, and continuously monitors expenditure, forecasts and progress, and promptly identifies and reports on the need for action.

7.1.2 The charts in Annex H illustrate the process.

7.2 Annual Plan

7.2.1 The Provider prepares an Annual Plan for each Financial Year identifying all the Services to be provided, including timings, proposed resources and forecast expenditure for each activity. If the forecast expenditure exceeds the Employer's Services Budget the Annual Plan is adjusted accordingly.

7.3 Programme

7.3.1 The Provider has to prepare an initial programme and submit this to the Service Manager within four weeks of the Contract Date. It should be noted that the Contract Date is the date the contract comes into existence and not the access date or starting date which may be different.

7.3.2 This programme is then revised, after the preparation of each Annual Plan, or if the Forward Programme is changed, if any of the Services are delayed, and at any intervals specified in the Contract Data. Further to this and under this clause the Service Manager can also instruct a revised programme, and such programme must be provided to the Service Manager within the period of reply stated in the Contract Data.

7.3.3 The level of detail required to be shown on each programme is stated within the contract. As the Schemes progress there will inevitably be changes in the form of compensation events. It is important that these are not just notified, but included on revisions to the programme so that their effect on overall progress can be monitored and any required delay mitigation plans devised. The information specified for revised programmes is stated within the contract.

7.4 Forecasting and Monitoring.

7.4.1 The Provider monitors actual and forecast expenditure against the Annual Plan and reports monthly to the Service Manager highlighting any deviation. The Provider does not incur expenditure in excess of the Annual Plan for any Financial Year without the agreement of the Service Manager.
8 PAYMENT

8.1 General

8.1.1 The contract makes payment in four ways:

A – Monthly lump sums for Lump Sum Duties, and

B - Lump sum for mobilisation and demobilisation, and

C - Target Price for Schemes, usually renewal and improvement schemes, and

D – Defined Cost plus Fee (similar to cost reimbursable) for Services listed in section C of the Pricing Schedule.

8.1.2 The Prices for these are stated in or calculated in accordance with the Pricing Schedule.

8.1.3 Not only does this align closely with the ECC terminology, it also reflects the fact that all Schemes are paid for on a Target Price basis.

8.1.4 Annex I gives guidance on the use of Target Prices in the TechMAC contracts.

8.2 Amount Due

8.2.1 Payment for work carried out is lump sum payments for Lump Sum Duties and mobilisation and demobilisation, together with the Provider's Cost plus Fee for the remainder of the services, and other payments due under the contract to or from the Provider.

8.2.2 The Provider must supply two invoices, one for lump sum duties and the other in respect of other duties, to the Employer and ensure they are entered onto the Employers invoicing system. Payment is in accordance with the Housing, Grants, Construction and Re-Generation Act 1996 and due notification must have been received prior to any deductions being made.

8.3 Schedule of Cost Components

8.3.1 The Schedule of Cost Components (SCC) contained in the contract defines the cost components which form the Provider's Cost. This is an exhaustive list of reimbursable costs, and any components of costs not covered by the SCC will not be payable – they are allowed for in the Fee percentage. The contract also defines Disallowed Cost, which identifies those costs that would otherwise be reimbursed under the SCC, but for which the Provider will not be reimbursed.
8.3.2 Charges associated with premises used by the *Provider* to Provide the Services are dealt with as follows:

(1) **For premises inside the Working Area** – this includes premises created and used by the *Provider* solely for this contract, but excludes any area used for work not in the contract.

- The percentage for Working Area overheads stated in Contract Data Part Two is applied to people in those premises.

(2) **For premises outside the Working Area** - including those within the Working Area but used for work not in the contract.

- An overhead percentage for the design office of a Principal Design Consultant identified in the Contract Data Part Two is calculated, and applied to people in that office.

- An overhead percentage for any office, excluding the design office of a Principal Design Consultant and any office of the *Provider* outside the Working Areas, where the cost of people engaged directly in Providing the Services during a Financial Year is more than £100,000 (Relevant Premises) is calculated and applied to people in that office.

- The **overhead percentage for other premises** stated in the Contract Data Part Two is applied to people in any other office.

8.3.3 People working outside the Working Areas who are only providing the supporting functions identified in the Fee Schedule are included in the Fee, and are therefore excluded from Defined Cost.

8.4 **Associated Companies/Sub-contracting**

**Defined Cost plus Fee**

8.4.1 Where a part of the Services is sub-contracted, the amount payable to the Subcontractor will generally form part of the Defined Cost. However the Fee percentage is different as generally the *Provider* will have a lower overhead cost than if they had performed the Services themselves and the **subcontracted fee percentage** will apply.

8.4.2 A different regime applies where the Subcontractor is an Associated Company. The term “Associated Company” is widely defined to cover shareholders in the *Provider*, participants in an integrated or non-integrated joint venture consortium and any parent or subsidiary company, or entity of
any such persons. In these cases the work will be treated as if it had not
been sub-contracted and payment will be assessed in accordance with the
Schedule of Cost Components. This will involve breaking the costs down
into the Defined Cost and then applying the direct fee percentage.

8.4.3 Cost transparency is one of the key objectives of the TechMAC contract.
Where work is sub-contracted, payment to the Provider is based not on the
“actual” (direct) cost of work carried out, but on the amount payable to the
Subcontractor under his sub-contract (unless the Subcontractor is an
Associated Company – see paragraph 8.4.2 above). It is therefore critical
for the Employer to understand the basis of the payment arrangements
between the Provider and its Subcontractors, to ensure that they provide
as much transparency of cost as possible and enable the Employer to
check that best value is being obtained.

8.5 Recording Cost

8.5.1 The contract defines the records required in respect of Defined Cost and
payment. This is a key objective of the TechMAC contract to enable the
Highways Agency to develop its knowledge and understanding of actual
costs.

8.5.2 The Provider regularly monitors actual expenditure and forecast
expenditure, and notifies the Service Manager of any deviation. The
notification takes the form of monthly reports, and in the case of a
substantial deviation, a formal early warning.

8.5.3 When submitting proposals for year on year continual improvement the
Provider uses the cost records.

8.6 Adjustment to Fee

8.6.1 As part of his tender submission the Provider completed a Fee Schedule
which contained the build up of the Provider’s subcontracted and direct fee
percentage and was supported by detailed substantiation.

8.6.2 If the Provider proposes to change his method of Providing the Services
and this alters the basis on which the fee percentages are calculated (for
example the transfer of a head office function to site, or a site function to
head office), the Provider advises the Service Manager in advance and
submits proposed adjustments to the Fee Schedule and either the direct
fee percentage or subcontracted fee percentage for approval. The Provider
does not implement the change until the Employer gives approval.
Adjustments to the fee percentage are assessed using the data provided at
tender.
9 GENERAL

9.1 Health and Safety

9.1.1 The contract sets out the Provider’s obligations in relation to health and safety.

9.1.2 Guidance for clients, CDM co-ordinators designers, principal contractors, contractors and workers is available on the CITB-Construction Skills website at: www.citb.co.uk/healthsafety/cdmregulations

9.1.3 The Highways Agency’s Health & Safety team should be contacted for further guidance.

9.2 Employer’s Risks and Insurance

9.2.1 The contract identifies a number of risks which are to be borne by the Employer. In general these are risks which the Provider is not well placed either to manage or to cover by insurance, and which as a result are considered suitable to be retained by the Employer. It is however open to the parties (via the Network Board) to agree a different allocation of risks if there are good reasons for doing so. The Provider is required to maintain the insurances stated in the Insurance Table in the contract.

9.3 Information Systems

9.3.1 For guidance on electronic document record management and document handover see Annex J.

9.4 Third Party Claims

9.4.1 The Provider has duties in connection with claims by the Employer against third parties for damage to Crown property (Green Claims), and claims by third parties against the Employer (Red Claims).

Green Claims

9.4.2 The Provider must repair any defects in the Traffic Technology Systems whether or not caused by itself or Others. Others will include any Outgoing Provider. This may arise, for example if the Provider considers that any Outgoing Provider had failed to maintain the Traffic Technology Systems in accordance with his obligation. The Provider is also obliged to repair and replace loss or damage to the Traffic Technology Systems and any Materials and Equipment caused by the act or default of Others.
9.4.3 If the repair or replacement falls within any of the Provider’s Lump Sum Duties, the Provider is entitled to pursue a claim against any third party and to recover his costs in the name of the Employer. The Provider is reimbursed any money recovered as a result of such action but he is required to indemnify the Employer against any costs and liabilities, which the Employer may incur as a result of the Provider pursuing the claim. It is up to the Provider how he deals with these sorts of defects. For example he may be able to convince any Outgoing Provider or anyone else responsible for the damage to come and rectify at no cost to the Provider or the Employer.

9.4.4 If a repair or replacement does not fall within the Lump Sum Duties then the Provider carries out any repair or replacement. However, the Employer may request the Provider to pursue a claim against any third party in order to recover any additional costs, which the Employer incurs. The rules for how the Provider conducts the claim against the third party are set out in the Service Information. The Provider is paid for conducting claims against third parties in this way on a cost reimbursable basis. The Provider must account to the Employer for any money, which he recovers as a result of pursuing claims on behalf of the Employer.

Red Claims

9.4.5 The Employer must notify the Provider within 7 days of receiving any notice or demand in respect of a Third Party Claim.

9.4.6 The Provider is given the option to conduct the defence of any Third Party Claim in the name of the Employer. The Provider may wish to do this in circumstances where the claim arises from his own act or default. The Employer is required to co-operate and give assistance to the Provider in its defence of any Third Party Claim.

9.4.7 The Provider is required to keep the Employer fully informed as regards the conduct of a Third Party Claim. The Employer would expect to have full details of any stage that the proceedings had reached and any settlement negotiations that were current.

9.4.8 The Employer must not settle or agree to make any payment in respect of any Third Party Claim without the prior consent of the Provider.

9.4.9 The Provider bears all of the costs which he incurs in defending a Third Party Claim and he also indemnifies the Employer against any costs incurred by the Employer which arise out the Provider’s defence of the Third Party Claim.

9.4.10 The Employer can give notice that he is taking over the conduct of a Third Party Claim. If the Employer does this he loses his indemnity from the
Provider. The Employer can still seek to recover from the Provider any costs or damages incurred in settling a Third Party Claim. However, in these circumstances the Employer would have to prove that the matter was one at the Provider's risk and the amount paid in settlement was reasonable.

9.4.11 The charts in Annex K illustrate the Third Party Claims processes.

9.5 Compensation Events

9.5.1 Compensation Events are assessed in much the same way as the NEC3 family of contracts by looking at a forecast of the additional cost to the Provider of Providing the Services as a result of the event having occurred. The costs are as forecasted by the Provider at the time immediately before and immediately after the event occurs or change implemented. Where there are alternative ways of dealing with the problem the Provider prepares quotations for different ways of tackling it. The Service Manager can then select the preferred option i.e. which will best serve the interests of the Employer. In some cases it may be the lowest cost solution, in other cases it might be one which causes the least delay. The Provider will not, in every case, be entitled to an increase in the Prices. Some events may cause the Prices to be reduced.

9.5.2 The list of the grounds for compensation events in the Contract are slightly different to those under NEC3.

9.5.3 The Provider must satisfy himself of the extent and location of the Traffic Technology Systems, this will be apparent from the Network and Service Information and any other information about the Traffic Technology Systems. The Provider must satisfy himself as to the scope and nature of the Services and all of the resources that will be necessary to achieve the Performance Requirements.

9.5.4 The contract lists the five tests, which the Service Manager applies to an event notified by the Provider in order to decide whether or not it qualifies as a compensation event. If the Service Manager does not provide any notification to the Provider within the two weeks stated then the Provider may assume that he is to submit quotations for the event.

9.5.5 Quotations for compensation events comprise any changes to the Prices and any consequential changes to the Service Information. The use of the term “quotations” is not the same as the normal use in commerce for example, the free submission of any offer. Quotations are based on an assessment of forecast or actual Provider's Defined Cost arising from a compensation event. The build up of each quotation is required to be submitted by the Provider. If any re-programming of any item of work is required, the quotation should include the alteration to the programme
showing any change to planned commencement or completion dates. If the Schemes Budget will be affected by a compensation event the Provider must include any proposed alteration to the Forward Programme.

9.5.6 The Service Manager is not obliged to reply to a quotation. Under his quality management system, the Provider is responsible for ensuring the quotation is correct, and the Service Manager may not check the majority of quotations. The Service Manager may rely on the audit process, picking up any faults in the Provider’s pricing. The Service Manager is likely to check at least some quotations – either as a random sample or by selection.

9.6 Title

9.6.1 Due to the nature of the Construction Industry and the transfer of title during the works it is common practise for contracts to contain mechanisms to define to which entity title transfers at which stage, or when certain obligations have been made under the contract.

9.6.2 TechMAC is no different, although the nature of the TechMAC Contract is more concerned with service delivery than traditional construction works there are unique working practises under it that require contractual provisions in order to protect the Employer from loss of title.

9.6.3 Equipment or Materials outside the Area Network and marked for the contract have title passed to the Employer once they are marked.

9.6.4 The Employer also retains title over Equipment and Materials brought into the Area Network by the Provider, and title returns to the Provider once removed but only with the Service Manager’s permission.

9.6.5 Agreement is negotiated on an individual basis to whom retains which Intellectual Property rights and defined within the Service Information.

9.6.6 The procedure for the responsibility and usage of Employer’s Stocks is outlined within the contract. Title remains with the Employer for all his stocks at all times.
ANNEX A – PARTNERING

1 TECHMAC PARTNERING POLICY

1.1 Introduction

1.1.1 The Highways Agency’s primary objective is to provide a safe and reliable highway network through its strategic aim of maintaining, operating and improving the motorway and trunk road network in a sustainable manner. These are underpinned by the key objectives set out in the Highways Agency Business Plan.

1.1.2 The Agency also considers individual contracts as a partnership between all parties that contribute to the delivery of this objective. Individual contracts may be considered as public-private partnerships contributing to the key objectives within which the Highways Agency and its suppliers operate.

1.1.3 The purpose of this document is to outline the partnering policy of the Highways Agency with regard to the TechMAC. It highlights the benefits that can be achieved but does not prescribe a way in which these benefits are to be achieved.

1.2 The TechMAC Relationship

1.2.1 The TechMAC contract recognises the need for client and supplier to work together to fulfil the objectives of the contract and to deliver the service to the customer. It has been written by the Agency in such a way that both the client and the supplier must work together for the benefits of the contract to be realised.

1.2.2 The Agency intends to execute their role in the contract in a collaborative manner that is open and transparent. The Agency would like to ensure that their suppliers are reasonably profitable within the context of the contract and are committed to long-term relationships. The Agency also understands that the supplier is a commercial entity and therefore has a commitment to his stakeholders.

1.3 TechMAC Principal Role and Obligation

1.3.1 The TechMAC’s fundamental obligation is to assist and enable the achievement by Highways Agency of the strategic aims and objectives as set out in HA Business Plan with respect to the Area covered by its appointment.
1.3.2 In pursuit of this the TechMAC advises HA on statutory functions, plans and programmes work, prepares designs and supervises work on site. The TechMAC also administers the Contract and other contractors on behalf of the Highways Agency and certifies payments to them.

1.4 **TechMAC Role in Network Stewardship**

1.4.1 The TechMAC’s role requires a flexible and conscientious approach to the stewardship of the network through true partnership with the Highways Agency. Good management, consideration for the customer, and prudent investment decisions are essential prerequisites for Network Stewardship. However this does not imply transfer of risk to the TechMAC for every eventuality on the Area Network and in most cases the fundamental risks involving the road user remain with the Highways Agency as to do otherwise would not provide good value for money.

1.5 **TechMAC Wider Role: Self-Supervision, Innovation and Initiative**

1.5.1 The TechMAC has a contractual responsibility to plan routine services, specified by performance specification and paid by Lump Sum and this provides the incentive to innovate. The TechMAC’s role includes responsibility for incident response and initial response to critical defects on the Area Network demanding a "right first time" approach with self-supervision. The service required is more akin to a facility manager than that of a traditional contractor and great importance is attached to the operation of robust procedures within a quality management system.

1.6 **Other Contractors**

1.6.1 Other contractors will carry out work for HA within the Area Network and for some of these the TechMAC will have designed and will supervise the work. For all work performed by others within the Area Network the TechMAC will be required to co-operate in road space planning, traffic management and other co-ordinating activities to optimise service for the road user.

1.7 **Objectives**

1.7.1 Highways Agency objectives encompass the requirement to be tuned to customer needs, the desire for a quality network and the need to demonstrate value for money, while recognising that the Highways Agency must foster and facilitate successful relationships with its suppliers. There is a need for this approach to the relationship to be reciprocated by the Highways Agency’s suppliers.

1.7.2 To ensure a clear understanding between all parties the suppliers should provide their corporate and contract specific objectives.
1.7.3 Partnering is intended to create a win-win relationship, rather than focusing solely on the costs, risks and benefits to the Highways Agency. It provides an environment where both sides consider the successful delivery of the project and the commitments they have made, and the risks they will take, to realise benefits to all parties involved. This calls for mutually agreed partnering objectives, which promote trust, confidence, cooperation and respect.

1.7.4 The Highways Agency considers partnering as a way to facilitate the delivery of the contract. This requires that each party understand the roles and responsibilities under the contract and are prepared to work together across the boundaries of those responsibilities. The table below identifies some of the principles that have been incorporated in the contract to promote close working relationships.

<table>
<thead>
<tr>
<th>TechMAC Partnering Principle</th>
<th>Partnering Benefit</th>
<th>Partnering Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Long contract duration (4-7 years)</td>
<td>Long term work leading to common understanding of project and risk</td>
<td>Successful delivery of business objectives for the Highways Agency and its partners</td>
</tr>
<tr>
<td>Performance measurement (benchmarking)</td>
<td>Delivery of best practice and promotion of innovation</td>
<td></td>
</tr>
<tr>
<td>Performance measurement (continuous improvement)</td>
<td>Organisational learning and sharing of knowledge</td>
<td></td>
</tr>
<tr>
<td>Payment mechanism</td>
<td>Equitable rewards for partners</td>
<td></td>
</tr>
<tr>
<td>Communication/ relationship management</td>
<td>Reduction in disputes and improved decision making</td>
<td></td>
</tr>
<tr>
<td>Quality Management</td>
<td>Robust procedures and improved service delivery</td>
<td></td>
</tr>
<tr>
<td>Risk Management (Shared risk register)</td>
<td>Greater financial certainty for all parties involved in the contract</td>
<td></td>
</tr>
<tr>
<td>Self supervision (Audit and certification)</td>
<td>Removal of duplication of effort as partners concentrate on their core skills</td>
<td></td>
</tr>
</tbody>
</table>

1.7.5 The Network Board has the responsibility to provide partnering leadership. Further information on the board's terms of reference can be found in Annex 8 of the Service Information and one of the objectives of the board is clearly stated as “to create and maintain a partnering process and team culture”. It is expected that the partnering process will commence during mobilisation and throughout the contract.
ANNEX B – HIGHWAYS AGENCY STRUCTURE

1.1 Introduction

1.1.1 The Highways Agency is an Executive Agency of the Department for Transport with a Board made up of a Chief Executive and a Strategic Planning and Direction Management Team of Board Directors. These Directors are responsible for the Directorates whose aims and purposes are listed below.

1.1.2 The Agency’s Corporate Plan, Customer First, sets out its vision for the next 5 years and beyond for providing a continuously improving service to all its customers. It is a map of how the Highways Agency can work together and with its partners and stakeholders to make a real difference for its customers as it delivers its new role of traffic manager.

1.1.3 The Highways Agency has broadened its remit to include a 24-hour, seven days a week traffic management service to help reduce congestion and improve reliability. This role is in addition to the traditional strengths and success in building, maintaining and operating England’s strategic road network.

1.2 The Directorate Aims and purposes

1.2.1 These are set out in the pages following and have been extracted from the Highways Agency Management Plan.
Network Strategy Directorate (NS)

Long Term Focus
Provide a strategic road network that balances customers’ demands with constraints.

Purpose
• To reduce the demands for the network by influencing how the traveling public and others use the network.
• To understand the nature of the gap between the future demands on the network and the potential to supply additional capacity.
• To reduce levels of congestion by deciding upon the best way of investing in order to achieve maximum network capacity.
• To make journeys more reliable by setting appropriate standard of network performance.

Network Operations Directorate (NOD)

Long Term Focus
Deliver a major improvement to the quality and level of service we provide to our customers by establishing ourselves as a customer focused service Provider. Key to this will be the integration of our asset management responsibilities with the traffic management role to produce a cohesive operational organisation based on good performance management.

Purpose
• To maintain, manage and improve the asset and deliver a new approach to traffic management on the strategic network.

Major Projects Directorate (MPD)

Long Term Focus
We will seek continually to improve the way we deliver projects: to deliver faster, more effectively and at best value. We will take advantage of the latest technology, techniques and materials. We will develop enhanced methods of programme management to manage the impacts on the network and supply chain. We will develop better ways to exchange ideas, adopt best practice, manage risk and improve the services we offer.

Purpose
Major Projects Directorate (MPD) contributes to DfT’s Public Service Agreement (PSA) targets on congestion, reliability, safety and environment by delivering:
• Major congestion and junction improvement schemes
• Bypass schemes that will make life safer and more pleasant for hard-pressed local communities
• Large safety schemes
• Large and complex maintenance schemes (on behalf of TOD).
• Smaller safety and congestion schemes (on behalf of TOD).

Finance Services Directorate (FS)

Long Term Focus
To support the Agency in the delivery of its objectives through the provision of high quality financial services.

Purpose
Finance Services is responsible for business management and financial control in the Highways Agency, for complying with the Government’s requirements for resource accounting and budgeting and for ensuring propriety and value for money in the Agency’s work.
Network Services Directorate (NSD)

Long Term Focus

Our aims are:

- to provide flexible well-focused staff who will meet the demanding workload required to support the operational and technical objectives of the Agency. In focusing on the key tasks identified we are targeting our resources to best meet this aim. We are also providing the building blocks of knowledge for future years, which will enable innovation and good practice to be delivered for the Agency.

- To develop and operate procurement best value solutions and services to achieve timely delivery of the 10 Year Plan programme by working in partnership with a sustainable supply chain, involving the establishment of longer-term relationships with key suppliers.

Purpose

- Responsible for a best practice approach to trunk road management, operation and design

- Provide specialist technical support to achieve work set out in the Agency’s business plan

- Improve and develop tools and guidance for trunk road management, operation and design

- Responsible for the Agency’s research and development programme

- The main priority is the provision of specialist advice to MPD, NOD and other directorates

- To represent the Agency and UK nationally and internationally.

Safety and Information Division is responsible for the safety strategy across the Agency’s activities including developing guidance and advising on safety management of specific activities, provision of strategic advice and support relating to technology programmes and intelligent transport systems and development of traffic and driver information systems.

Operational Support Division provides specialist environmental, structural and geotechnical support and guidance on all aspects of highway operation, maintenance and improvement. This includes providing advice on technology standards, accessibility and integration issues, cost forecasting, as well as formal structural approvals and geotechnical certification. The division also supports new and existing procurement requirements.

Research and Development of Standards Division provides the focus for the co-ordination of research across the whole spectrum of the Agency’s activities. The division is also responsible for leading innovation in highway structures and pavements, traffic modeling and appraisal and environmental and sustainability matters - turning the results of research into practical standards to support the Agency’s business.

PD is responsible for determining procurement strategies to deliver best value across the whole range of the Agency’s purchasing requirements. It has responsibility for the identification of the best suppliers to deliver the Agency’s needs, for implementing performance measurement across the supply base and for working, in conjunction with other parts of the Agency, with suppliers to improve performance and achieve best value. PD provides the Agency’s tendering and contract letting service in support of other business areas ensuring propriety and regularity. It also has responsibility for resolving contractual disputes with suppliers.
Human Resource Services
Directorate (HRS)

Long Term Focus
To build excellence in Highways Agency’s workforce, working practices and working environment.

Purpose
The central role of HRS is to support and equip the Agency to meet its business objectives. The directorate delivers a range of personnel, training, estate/facilities and business improvement services; and develops policies and strategies that:

- Enable HA to improve its working practices and the working environment
- Enable the Agency to recruit, retain and accommodate a motivated workforce with the necessary competencies in the most efficient and effective manner.

HRS consists of three divisions: Business Improvement and Estates Division (BIED) and Personnel and Development North and South Divisions (P&D).

Information Directorate (ID)

Long term Focus
To enhance the Agency’s capacity and capability to provide better information to our customers, staff and partners, to better deliver core services. The key element of this vision is the deployment of the Information Strategy that will encapsulate the information principles upon which all Agency information services and projects will be aligned.

Purpose
β To inform our customers be providing Trusted, Reliable, Useful and Effective information
β To make best use of our information asset to improve our performance and the performance of our partners
- To deliver efficient, effective, reliable and robust information systems and services support to our customers, staff and stakeholders
### 1.3 Team Structure

1.3.1 The detail team structure for the management of the TechMAC is not known and may well be structured to reflect the partnering discussions held after award of the Contract. The following is a template for the description of the team.

1.3.2 The Team relies on a network of support from within the Highways Agency to deliver its service. The *Service Manager* is the focal point for the TechMAC Contract. However, it is anticipated that the *Provider* will have regular liaison with other teams within the Highways Agency to assist with delivering the Services and managing the TechMAC Contract. The following teams assist with the delivery of the current Area services and have regular contact with the Area Team and/or the current suppliers.

<table>
<thead>
<tr>
<th>Network Operations</th>
<th>Procurement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adjacent TechMAC Areas</td>
<td>Local Procurement Team</td>
</tr>
<tr>
<td>DBFO Teams</td>
<td>Traffic Technology Procurement Development Team</td>
</tr>
<tr>
<td>MAC Teams</td>
<td>Strategic Supplier Development</td>
</tr>
<tr>
<td>RCC Delivery Team</td>
<td>NOCA</td>
</tr>
<tr>
<td>Network Access &amp; Resilience</td>
<td>Corporate Directorate</td>
</tr>
<tr>
<td>Programme Planning &amp; Business Support</td>
<td>Regional Communications Manager (and local GNN)</td>
</tr>
<tr>
<td>Bulk Purchase</td>
<td>Customer Champion Team</td>
</tr>
<tr>
<td>Operational Policy</td>
<td>Publications Team</td>
</tr>
<tr>
<td>Regional Intelligence Unit</td>
<td></td>
</tr>
<tr>
<td><strong>Network Services</strong></td>
<td><strong>Human Resources Services</strong></td>
</tr>
<tr>
<td>Structures (inc TAA)</td>
<td><strong>Information Directorate</strong></td>
</tr>
<tr>
<td>Geotechnical</td>
<td>Information Strategy and Planning</td>
</tr>
<tr>
<td>Environmental</td>
<td>Information Service Development</td>
</tr>
<tr>
<td>Quantity Surveying</td>
<td>Information Service Delivery</td>
</tr>
<tr>
<td>Signs &amp; Highway Layout</td>
<td></td>
</tr>
<tr>
<td>Technology</td>
<td><strong>Network Strategy</strong></td>
</tr>
<tr>
<td>Traffic Appraisal and Modelling</td>
<td><strong>Major Projects</strong></td>
</tr>
<tr>
<td>Local Business Management Team (LBMT)</td>
<td></td>
</tr>
<tr>
<td>Payment Team</td>
<td></td>
</tr>
<tr>
<td>Claims Branch</td>
<td></td>
</tr>
</tbody>
</table>
# ANNEX C – KEY OBLIGATIONS OF EMPLOYER AND SERVICE MANAGER

<table>
<thead>
<tr>
<th>Clause</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>To act as stated in the contract and in a spirit of mutual trust and cooperation.</td>
</tr>
<tr>
<td>14.5</td>
<td>To give notice to the Provider before replacing the Service Manager.</td>
</tr>
<tr>
<td>15.1</td>
<td>To appoint representatives to sit on the Network Board.</td>
</tr>
<tr>
<td>16.1</td>
<td>To provide access to the Network Area subject to limitations in the Network Information.</td>
</tr>
<tr>
<td>18.1 and 18.2</td>
<td>To resolve any ambiguity or inconsistency and to decide how an illegality or impossibility is to be overcome.</td>
</tr>
<tr>
<td>21.3</td>
<td>To appoint a Contractor for Managed Works Schemes.</td>
</tr>
<tr>
<td>25.3</td>
<td>To co-operate in carrying out actions set out in the Risk Register.</td>
</tr>
<tr>
<td>30.2 and 30.3</td>
<td>To notify the Provider of extensions to the contract period.</td>
</tr>
<tr>
<td>37.8</td>
<td>To request any Incoming Provider to provide to the Provider the information required under regulation 10 of TUPE.</td>
</tr>
<tr>
<td>51.1</td>
<td>To pay the Provider’s invoices on or before the final date for payment.</td>
</tr>
<tr>
<td>51.6</td>
<td>To notify the Provider within the prescribed time limits if any part of a payment is to be withheld.</td>
</tr>
<tr>
<td>52.9</td>
<td>To consider Scheme comparison reports as part of the annual review process.</td>
</tr>
<tr>
<td>58.2</td>
<td>To approve, if appropriate, proposed adjustments to the Fee Schedule and to the subcontracted fee percentage and direct fee percentage.</td>
</tr>
<tr>
<td>71.1</td>
<td>To make available to the Provider the Premises.</td>
</tr>
<tr>
<td>75.7</td>
<td>To do anything necessary to confirm the terms of any assignment of intellectual Property Rights or licence to use documents.</td>
</tr>
<tr>
<td>83.1</td>
<td>To notify the Provider as soon as practicable if any notice or demand is received in respect of an Indemnified Claim.</td>
</tr>
</tbody>
</table>
### Express obligations of the Employer

<table>
<thead>
<tr>
<th>Clause</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>83.2</td>
<td>To co-operate and assist the <em>Provider</em> in its defence of an Indemnified Claim.</td>
</tr>
<tr>
<td>83.4</td>
<td>To obtain the <em>Provider's</em> consent before settling or making a payment in respect of an Indemnified Claim.</td>
</tr>
<tr>
<td>83.6</td>
<td>To give the <em>Provider</em> notice if he intends to take over the conduct of an Indemnified Claim.</td>
</tr>
<tr>
<td>101.4</td>
<td>To deduct payment in accordance with the requirements of the Construction Industry Scheme.</td>
</tr>
<tr>
<td>103.1</td>
<td>To use recycled paper in connection with the contract</td>
</tr>
</tbody>
</table>

### Express obligations of the Service Manager

<table>
<thead>
<tr>
<th>Clause</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.1</td>
<td>To act as stated in the contract and in a spirit of mutual trust and co-operation.</td>
</tr>
<tr>
<td>11.1 (14)</td>
<td>To decide Disallowed Cost</td>
</tr>
<tr>
<td>11.1 (22)</td>
<td>To agree Estimated Cost.</td>
</tr>
<tr>
<td>13.4</td>
<td>To extend the <em>period for reply</em> with the agreement of the <em>Provider</em>.</td>
</tr>
<tr>
<td>13.6</td>
<td>To withhold acceptance of a submission by the <em>Provider</em>.</td>
</tr>
<tr>
<td>15.8</td>
<td>To notify the <em>Provider</em> of Employer's decision if the Network Board cannot act by consensus</td>
</tr>
</tbody>
</table>
| 17.1   | To give an early warning of any matter which could:  
| | • increase the *Provider's* Cost of Providing the Services  
| | • affect the progress or performance of the Services or  
<p>| | • impair the performance of the Area Network in use |
| 17.2   | To instruct the <em>Provider</em> to attend an early warning meeting and to instruct others to attend if the <em>Provider</em> agrees. |
| 18.1 and 18.2 | To notify the <em>Provider</em> if he becomes aware of an ambiguity or inconsistency and to notify the <em>Provider</em> of the Employer's decision. |</p>
<table>
<thead>
<tr>
<th>Clause</th>
<th>Obligation</th>
</tr>
</thead>
<tbody>
<tr>
<td>22.2</td>
<td>To approve design where appropriate/stated in Service Information</td>
</tr>
<tr>
<td>24.1 and 24.3</td>
<td>To accept proposed replacements of key personnel and to instruct the Provider to remove and replace an employee if appropriate.</td>
</tr>
<tr>
<td>25.2</td>
<td>To instruct the Provider to liaise with, and provide access to, others as appropriate.</td>
</tr>
<tr>
<td>25.3</td>
<td>To co-operate in carrying out actions in the Risk Register.</td>
</tr>
<tr>
<td>26.4</td>
<td>To instruct the Provider to remove and replace a Subcontractor.</td>
</tr>
<tr>
<td>31.1, 31.3 and 31.4</td>
<td>To consider the Annual Plan.</td>
</tr>
<tr>
<td>32.1</td>
<td>To consider the Programme.</td>
</tr>
<tr>
<td>33.1 and 33.3</td>
<td>To decide and notify any changes to the Forward Programme, Service Information and the Prices resulting from potential deviations from the Annual Plan.</td>
</tr>
<tr>
<td>34.1 and 34.2</td>
<td>To decide any changes to the timing of Schemes.</td>
</tr>
<tr>
<td>36.1</td>
<td>To instruct the Provider not to provide any part of the Services if these will not be completed before the end of the Contract Period</td>
</tr>
<tr>
<td>40.3 and 40.4</td>
<td>To notify the Provider if he considers that the Quality Plan does not comply with the requirements of the contract, and to consider proposed revisions to the Quality Statement and to accept or decline as appropriate.</td>
</tr>
<tr>
<td>41.1</td>
<td>To carry out routine and additional audit in accordance with the audit table</td>
</tr>
<tr>
<td>41.2</td>
<td>To carry out supplementary audits.</td>
</tr>
<tr>
<td>41.7</td>
<td>To serve a quality warning notice if the Provider exceeds 25 Quality Management Points.</td>
</tr>
<tr>
<td>41.7</td>
<td>To receive and review the Provider's reports and to audit that the actions detailed in the reports are taken by the Provider.</td>
</tr>
<tr>
<td>50.2</td>
<td>To specify the format of the Provider's invoices</td>
</tr>
<tr>
<td>51.6</td>
<td>To notify the Provider if the Employer intends to withhold payment.</td>
</tr>
<tr>
<td>Clause</td>
<td>Obligation</td>
</tr>
<tr>
<td>--------</td>
<td>------------</td>
</tr>
<tr>
<td>52.3</td>
<td>To instruct the Provider to carry out additional market comparisons.</td>
</tr>
<tr>
<td>52.9</td>
<td>Approve changes to the Quality Plan resulting from incorrectly assessed Prices for a Scheme.</td>
</tr>
<tr>
<td>54.3</td>
<td>To instruct implementation of an Innovation agreed by the Parties.</td>
</tr>
<tr>
<td>57.1</td>
<td>Agree the Overhead Percentage for the Principal Design Office and any Relevant Premises.</td>
</tr>
<tr>
<td>61.1</td>
<td>To notify the Provider of a compensation event.</td>
</tr>
<tr>
<td>61.2</td>
<td>To instruct the Provider to submit a quotation for a proposed instruction or proposed changed decision.</td>
</tr>
<tr>
<td>61.4</td>
<td>To decide if an event notified by the Provider is a compensation event.</td>
</tr>
<tr>
<td>61.5</td>
<td>To decide and if the Provider did not give an early warning that he could have given and to give notification accordingly.</td>
</tr>
<tr>
<td>62.1</td>
<td>To instruct the Provider to submit quotations for a compensation event based on different ways of dealing with it.</td>
</tr>
<tr>
<td>62.4</td>
<td>To reply to a quotation for a compensation event.</td>
</tr>
<tr>
<td>64.1 and 64.2</td>
<td>To assess compensation event if Provider has failed to do so properly or at all.</td>
</tr>
<tr>
<td>74.1</td>
<td>To instruct how abandoned objects of historic interest or value are to be dealt with.</td>
</tr>
<tr>
<td>85.1</td>
<td>To accept Provider's insurance policies.</td>
</tr>
<tr>
<td>94.1</td>
<td>To receive or issue termination notices.</td>
</tr>
<tr>
<td>95.2, 95.3</td>
<td>To notify the Employer if a termination event has occurred</td>
</tr>
</tbody>
</table>
ANNEX D - QUALITY MANAGEMENT

Actions when Quality Management Points exceed 25

QMP > 25

P & SM meet to consider ways of reducing QMP to less than 25 and avoid gaining further QMP

YES: Action schedule agreed?

YES

P submits proposals for acceptance

YES: SM accepts proposals?

YES

P takes agreed actions?

YES

QMP reduced to below 25?

YES

End of process

NO

SM issues quality warning notice

NO

P carries out no further Schemes or Managed Works

NO

End of process

NO

End of process

NO

P takes agreed actions?

YES

P issues report on steps to be taken?

YES

Report accepted by SM?

YES

SM withdraws quality warning notice

NO

NO

P issues weekly report on actions taken and proposed

End of process

NO

Termination process
ANNEX E – PERFORMANCE MEASUREMENT

1.1 Introduction

1.1.1 The Highways Agency wants its Providers to deliver best value solutions and services i.e. to deliver the Agency's business objectives at the lowest affordable cost whilst achieving continual improvement.

1.1.2 The management and measurement of performance is a key aspect of delivering best value in terms of both demonstrating compliance with the requirements of the contract, but also for managing the Continual Improvement Process.

1.1.3 The fundamental requirement of the performance management and measurement process under this contract is that the intelligence gained is used to manage and improve the business. It should be used to identify issues relating to performance, and link directly into an improvement plan.

1.2 The Performance Management Model

1.2.1 This model is described in Annex 15 of the Service Information and links the Agency's desired outcomes to controllable activities through a number of levers, which are in turn executed by the Providers Processes. The overarching principle is that outcomes cannot be directly controlled – the Provider must therefore determine what it is that they do have control over, that if they carried out, would positively impact on the outcomes – these are the levers. The model looks to demonstrate a causal linkage between those outcomes and levers i.e. if the levers are properly executed then the outcomes should be achieved. That execution and linkage needs to be tested by measurement.

1.2.2 In developing this model the Agency has to a large extent prescribed the outcomes they require, and to a lesser extent the levers. The Performance Measurement Framework described below is intended to measure performance at both these levels.

1.2.3 It is important that when developing the levers the Provider addresses all the ‘requirements’ (as defined by ISO 9001:2000) of the Highways Agency.

1.2.4 A crucial distinction needs to be made between the levers and the Processes. The levers are essentially strategic aims – they do not contain ‘work’ – the work necessary to achieve those aims is included in the Providers Processes and the activities within them. When the levers have been developed only half of the job has been done – the Provider must then ensure that it's Processes are designed to perform those levers –
otherwise the whole exercise is aspirational and nothing actually happens in practice.

1.2.5 The Agency at tender stage has no insight into the Providers Process designs, and so cannot practically develop performance measures for those. Annex 14 of the Service Information requires the Provider to establish and manage the indicators of its' process performance.

1.2.6 A separate indicator has been developed for recording continual improvement and this is described in Annex 14.

1.2.7 As the Provider delivers the Services over time it is expected that by using performance measurement data the linkage between the Levers and Outcomes will be better understood and so improved – in this way the integrated team can make best use of it's available resources.

1.3 The Performance Measurement Framework

1.3.1 This is represented by “Motivating Success” – A Toolkit for Performance Measurement – Technology Maintenance. The Provider is expected to assist in the on-going development of this Framework.

1.3.2 To achieve consistency across TechMAC Contracts, currently seven performance related themes or “Areas of Measure” have been identified.

(1) Product - the degree to which the delivered product meets or exceeds expectations.

(2) Service - the degree to which the service during delivery meets or exceeds expectations.

(3) Right First Time - the impact of re-working and defects.

(4) Cost - the degree to which costs are controlled.

(5) Time - the degree to which key deliverables meet or exceed agreed completion dates.

(6) Safety - The degree to which the risk of harm to persons or damage to facilities is limited.

(7) Client Performance - To establish the performance of the Highways Agency in fulfilling its Client role under the contract, using the 360 degree Supplier Feedback Report.

1.3.3 Indicators are attached to the levers under the first six themes above and performance in the application of a particular lever is measured via a satisfaction rating out of 10 for each indicator under that lever, with 10 being awarded when all indicator aspects are completed to entire satisfaction. These aspects are described for each lever and cover the
contractual requirements, the Provider's Quality Plan and Statement, and any other agreed targets.

1.3.4 These aspects will be a mixture of statements describing what performance should be apparent, together with actual measures. It is the identification of a performance issue that is important, irrespective of the source i.e. the source could be a recognition that something described in the aspects is not being done, or it could be the results of an actual measure taken. The crucial thing is to identify the issue and implement an improvement plan to resolve it.

1.3.5 The indicators will be segregated into those for which monthly reports are required and those that can be measured quarterly.

1.3.6 There will be an annual review based upon the Provider's performance throughout the year.

1.4 Use of the Data

1.4.1 The data captured will be used to assess the Provider's performance and could also have an impact on future tendering opportunities.

1.4.2 Data from the measurement process will include results for:

- The indicators recorded monthly
- The indicators recorded quarterly
- The Provider's Process indicators
- The record of Continual Improvement events
- This data will form part of each monthly progress report (refer to Annex SI 19) and will identify issues for which an improvement in performance is required (non-conformities) together with an action plan for that improvement – this then ties in as appropriate with the control of Quality Management points covered in Annex D.

1.5 Future Development

1.5.1 It is important to the Agency that performance measurement is kept simple and effective and that a proliferation of non-meaningful measures is avoided.

1.5.2 The Framework indicators should be construed as an initial draft and they should be developed over time with support from the Provider.
1.5.3 The *Provider* has a big role to play in helping to engender a culture of using measurement data to practically inform and drive the business in operational terms and not simply see it as a task that is done because it has been asked for.
ANNEX F – CONTINUAL IMPROVEMENT PROCESS

1.1 Introduction

1.1.1 This guidance relates to Annex 14, and in parts to Annexes 15 and 24 of the Service Information.

1.1.2 Annex 15 looks to ensure that effort is directed toward, and linked to delivery of outcomes.

1.1.3 Annex 24 covers how the Highways Agency requires the Provider to structure and operate its Quality Plan.

1.1.4 Annex 14 looks to achieve two things:
   (1) That the Provider's work Processes are designed in a way that they connect to outcomes, and
   (2) That those Processes are redesigned as required to improve efficiency.

1.1.5 The following is primarily concerned with Annex 14.

1.2 General Overview

1.2.1 There are four main elements to this Annex:
   1. Continual Improvement Lifecycle
   2. Continual Improvement Mechanism
   3. Measuring and Monitoring of Processes
   4. Recording Continual Improvement

1.2.2 It is important to the Highways Agency that the Provider adopts a disciplined and systematic approach to the identification and implementation of improvement opportunities, and that this becomes an integral part of the Provider's quality management system.

1.2.3 The quality requirements of this contract are based upon the standard ISO 9001:2000. Its associated standard, ISO 9004:2000 forms the basis on which Continual Improvement is managed.

1.2.4 Both standards promote the use of a Process approach to the management of quality and improvements.

1.2.5 The guidance outlined here supports the use of the above standards, is intended to reflect good practice, and should not be construed as additional work, simply a more systematic method to achieve the Highways Agency outcomes whilst delivering best value.
1.3 **Section 1 - Continual Improvement Lifecycle**

1.3.1 This reflects an overall management approach to performance improvement. It is represented as a Process in its own right on the attached Sketch 1. Its main purpose is to ensure that existing Processes meet the Highways Agency’s outcomes, as per the performance management model described in Annex 15 of the Service Information i.e. to ensure that the Providers’ provision of the Services is ‘effective’

1.3.2 Throughout the duration of the commission the Provider should endeavour to manage continual improvement using the Process approach outlined in the standards, and embracing the following principles:

   a) Design and document Processes for incorporation into the Providers quality management system
      - This should be done during the mobilisation period and geared to deliver Highways Agency Outcomes. These Processes should be documented and show who does what work, when and in what sequence
      - Annex SI 24 includes a generic Process Model showing 7 core Processes and a number of Sub-processes within each of those. This Model is designed in such a way that it can be used across all the MAC contracts operated by the Highways Agency. The Provider needs to produce designs for each of the Sub-processes
      - The Processes should be designed to shape the performance of the Levers contained in Annex 15

   b) Implement the Processes
      - Ensuring that the Process design is complied with in use – Annex SI 24 includes guidance in this regard specifically about process ownership and accountability

   c) Measure Process performance
      - By using performance indicators referred to in Section 3 Measuring and Monitoring of Processes, and others as developed

   d) Review whether the Processes adequately meet Customer needs (Highways Agency and other interested parties, embracing the Highways Agency’s ‘Customer First’ policies)
      - Does the work activity of the Process contribute to the delivery of the desired Outcomes? – Annex 15 of the Service
Information helps set out some levers by which these outcomes should be delivered

- It is important that the connection between the levers and outcomes is challenged and proven (i.e. there is a clear demonstration of how performing the lever contributes to the outcome, by how much, and with what time lag) – by doing this, the Provider should be able to determine which levers have the greatest impact and so be able to channel available funds to the correct initiatives – this requires a balanced view between all the levers

- Some form of benchmarking should also be undertaken to see how other Service Provider's within the Technology Maintenance Community are performing their Processes

e) Investigate opportunities to effect Process improvements by examining how work activities can be shared or moved outside it's organisational boundaries in support of the Employer's collaboration strategy – this is revisited again during the redesign phase of any existing Process (refer Process Redesign Methodology below)

- Using collaboration to obtain efficiency gains is part of the Governments Gershon initiative, (and part of the Highways Agency's desired Outcomes i.e. Improved Effectiveness and Efficiency) and a contribution to this aim should be pursued by the Provider – entities outside the Provider's organisational boundaries could for example be suppliers, peer Provider companies, local authorities and other stakeholders – the opportunity to move work between these should be investigated to see if time or cost savings can be made – there may be contractual and liability issues to consider, but that should form part of an overall business case for any improvement initiatives

f) Identify any performance gaps

- Between where performance needs to be in order to perform the levers and satisfy Highways Agency outcomes including benchmarked peer performance, and where it actually is, as demonstrated by measurement and other available intelligence.

g) Set new performance targets

- These should be stretch goals set by executive leadership from the Provider in consultation with the Service Manager –
any new target should be achievable with no reduction in the quality of service delivery levels

- Business cases are required when setting targets to ensure that better quality from performance improvements does not incur extra cost unless specifically accepted by the Highways Agency – the target should be lower cost and/or reduced cycle time whilst maintaining at least the quality required by the contract or to achieve the Employer’s aim and objectives

h) Develop improvement plans
   - To close the performance gap – these plans should be detailed and achievable – the Service Manager should be consulted about and agree the plan

i) Improve the execution of the Processes as required (e.g. provide training, better tools etc.) – where the design is adequate but it is not being executed properly
   - It is important to be clear about what is actually causing any performance problems – it could be non-compliance with a perfectly good process design, for whatever reason. There may be an opportunity to correct/improve performance without having to redesign the process
   - Prior to embarking on any process redesign, the Provider should be certain that the existing design is being properly executed

j) Improve the design of the process as required by modifying or replacing the design
   - Where the existing process design is incapable of achieving the required performance, however well it is executed – improvement is achieved by modifying the design or replacing the design – see Continual Improvement Mechanism below for Process redesign methodology. It is important to recognise that the Process can only perform to the extent that its design will allow it

k) Continuously repeat the above operations
   - To deliver ‘continual improvement’

1.4 Section 2 - Continual Improvement Mechanism

1.4.1 This describes an approach for redesigning Processes to improve performance, and realign performance with the levers and outcomes
1.4.2 In general terms, the approach can be systemised as follows:

a) Creation of a **Process Model** showing the Providers core Business Processes and how they inter-relate – some work has already been done on the creation of this Model – i.e. this is the Model included in Annex 24 of the Service Information – the Provider needs to add to the Model by designing each of the Sub-processes. The Provider is expected to adhere to the Processes and Sub-processes described in Annex 24 without alteration – i.e. all work on the commission can be included in one of the Sub-processes

b) Operation of a **Process Redesign Methodology** in the format appended or similar as shown on the attached Sketch 2

1.4.3 ISO 9004:2004 requires the Provider to identify its product realisation Processes and support Processes – it also requires that the sequence and interaction of Processes are shown, and how they are linked.

1.4.4 The model shown in Annex 24 of the Service Information is needed to scope the work in each Process and how they all inter-relate.

**Process Redesign Methodology**

**General Overview**

1.4.5 The outcome of redesigning processes is to have more efficient ways of working by maximising the efficiency of value-adding work, driving out non-value adding work and eliminating waste, thus reducing cost and/or cycle time without reducing the quality of the service. Indeed, there should be opportunities to enhance quality (if appropriate to do so), whilst reducing the other two facets i.e. the Providers’ delivery of the Services is ‘efficient’. A further benefit is to ensure that process designs adequately shape the performance of the Levers which in turn deliver the Outcomes as required by the performance management model described in Annex 15

1.4.6 There are four elements to this redesign methodology, as described in the attached Sketch 2:

1. Mobilise
2. Diagnose
3. Redesign
4. Implement
1.4.7 The methodology should be applied over time to each of the core Business Processes and sub-Processes in a prioritised manner i.e. the easiest and greatest impact ones first.

1.4.8 The Provider is looking for both incremental and breakthrough performance improvements. It is likely that incremental improvements will be identified and implemented during any redesign work, whereas breakthrough improvements would most likely involve the full format including a formal pilot and rollout.

1.4.9 This will need to be done on an on-going basis to keep up with change.

Mobilisation

1.4.10 In general terms the work involved in this phase concerns getting the necessary resources in place to commence the Process improvement cycle.

Identify Business Processes (Process Model)

1.4.11 The Provider will design Sub-processes described in Annex 24 of the Service Information as part of its QMS – the Process model in annex 24 shows how the various Processes inter-relate and represents all the work that the Provider carries out under the contract, expressed in Process terms.

Appoint Process Owners with authority, and establish governance structure

1.4.12 The work included in the Providers’ Processes will most likely cross over a number of functions within its organisation. These functions may have separate managers, depending on how the Provider is structured. That being the case, then it is vitally important that the Processes are represented in the organisation. This is achieved by appointing Process Owners for each of them – these should be senior people with ‘clout’ and influence. This requirement, including the role of the Process Owner, is covered by Annex 24 of the Service Information.

1.4.13 The Process Owners are responsible, amongst other things, for the design and measurement of the Processes, not necessarily for the resources that execute the work in those Processes. The key issue is that there should be separate ownership of the design and the implementation of the process at the local level. The Executive Process Owner is accountable for both, but may delegate at the local level – this is covered by Annex 24 of the Service Information.

1.4.14 There needs to be some form of governance structure that manages the work of the Process Owners, and ensures that executive leadership within the Providers organisation supports their work. This is crucial when any
changes are to be made to existing management systems or ways of working

Determine Process Performance Indicators

1.4.15 In order that subsequent diagnosis can be carried out it is important to establish indicators that measure the performance of the Process – these may or may not be the PI’s mentioned in the contract.

1.4.16 There is a separate requirement in Annex 14 for the Provider to establish its own Process / Activity indicators during the mobilisation period, and keep these under review.

Prioritise Processes

1.4.17 To redesign all Processes / Sub-Processes at once would cause unnecessary chaos within the Providers operations – a limited number, those with the highest improvement yield potential should be selected and worked on. This redesign work should be sponsored by the Executive Process Owner.

Select Design Team Members

1.4.18 The Provider will need to allocate resource to carry out the diagnosis and redesign work – the extent to which their time is committed by the Provider will dictate the speed by which results are achieved. It is important to scope the potential improvement that redesign could bring, and then consider by cost: benefit analysis whether there is a business case for full time resource.

Diagnosis

1.4.19 The work involved in his phase looks to determine how the current Process is performing and where the opportunities are for design improvements.

Bound and Scope the Processes

1.4.20 Defines the inputs and outputs of each Process, it's performance objective and the work contained within that Process – it is likely that some Process mapping would already have been done when developing the Providers quality management system.

Determine HA / Customer Needs

1.4.21 As processes are Outcome based and Customer focused then it is necessary to determine the needs of the Customer(s) that are being serviced by each Process – i.e. its ultimate objective – it is only when these
outcome based needs are established that the current performance can be assessed i.e. are those needs being met by the current method of working?

**Understand performance of the current Process**

1.4.22 Gaining a full understanding of how the Process performs i.e. who does what work, where and when and under what circumstances

1.4.23 This understanding should be largely focused on hard data (i.e. performance measurement and other available intelligence) about the Process rather than intuition about how it should work

**Identify flaws in existing Process design**

1.4.24 In gaining an understanding of the existing Process it should become evident where the current design is flawed i.e. there may be non necessary activities included that contribute nothing to outcomes but add cost and time – any new process design should seek to eliminate such work

**Set targets for the new design**

1.4.25 These should be stretch goals and should be set by the Providers executive leadership and the Process Owner, in consultation with the Service Manager

**Redesign**

**Create design concept**

1.4.26 From the experience gained in the Diagnosis phase, together with the target performance improvement, it should be evident what the major required changes are in the Providers current way of working (i.e. Process design) in order to achieve the improvements. The correction of these issues should form the basis of the concept for the new design

**Investigate opportunities for external collaboration**

1.4.27 When creating a new Process design concept, the Provider will normally review its work within the confines of its own organisational boundaries.

1.4.28 However, in support of the Highways Agency expectations outlined in their document ‘Achieving Efficiency Gains from Collaborative Roads Procurement – a Highways Industry Strategy (19th September 2005)’ the Provider should investigate opportunities to affect Process improvements by examining how work activities can be shared or moved outside its organisational boundaries, with

(i) its suppliers,
(ii) the Highways Agency itself,
(iii) its peer organisations within the Highways Agency Maintenance Community,
(iv) Local authorities and other interested parties e.g. some form of joint winter service delivery involving sharing of resources (salt etc.)

1.4.29 Obviously, as with any other ‘internal’ Process design changes a business case is required addressing risks in the context of commercial benefit and legal liability. It would obviously be useful to identify the efficiency cost saving achieved from collaboration.

**Develop End State Vision for Design**

1.4.30 This work is essentially documenting the redesign of the existing Process, taking into account that the final design will not be available until the lessons learned from the Lab and Pilot stages have been incorporated. Any new process design should seek to:

(a) deliver at least compliance with the performance specified in the contract
(b) optimise the efficiency of value adding activity
(c) minimise non value adding work
(d) eliminate waste
(e) eliminate or at least reduce ‘hand-off’s’ (i.e. work unnecessarily passed between functional departments of the Provider thus creating the potential for delay and extra cost)

1.4.31 In documenting the new design recognition should be taken of any need to alter existing management or information systems.

**Develop Implementation Roadmap**

1.4.32 A plan showing how the new design is to be adopted – it may not be feasible to implement the whole of the new design in one phase (e.g. if too disruptive), and so separate releases may be required.

**Build Initial Laboratory Prototype**

1.4.33 Mistakes will be made in designing the new process – to avoid disruption to the Providers existing operations, it should be operated in a controlled environment first to discover these mistakes prior to carrying out a pilot – this need not be an extensive exercise, merely a ‘dry run’ to uncover any flaws

**Test, Learn, Improve and Iterate**
1.4.34 Adjust the new design based on learning during the Lab phase.

Implement

1.4.35 This is without doubt the most difficult phase. All the preceding work can be done without affecting the operation of the Service Provider business in any real terms.

1.4.36 This phase involves changing the way the business works (i.e. peoples’ jobs and management systems) – hence the crucial requirement to enlist executive support and leadership during the Mobilisation phase above.

Implement Initial Field Version (Pilot)

1.4.37 Operating the new design again in a controlled environment (e.g. on a limited scale) but using a real piece of work.

1.4.38 The object of the pilot is to uncover operational problems before rolling out the new design.

Realise Initial Benefits

1.4.39 It is likely that some initial improvements (i.e. incremental and early elements on any breakthrough) can be achieved during / following the pilot and these should be captured – showing results as early as possible is important to maintain executive buy-in.

Develop Supporting Infrastructure

1.4.40 Any Process design change will most likely involve a change to existing systems, procedures or facilities – if these are not adapted to suit the new design then performance improvement will be jeopardised.

1.4.41 Again executive leadership from within the Providers organisation here is required to affect the necessary changes.

Rollout

1.4.42 This involves full implementation of the new Process design and could be carried out in phases.

Institutionalise and Implement Succeeding Releases

1.4.43 Institutionalisation needs communication within the Providers business such that those operating or affected by the new Process design understand what is required and that it is adopted by all those involved. Again, executive support is crucial to make this happen.
1.4.44 Implementing succeeding releases is applicable if the new design is rolled out in phases to avoid excessive disruption to the organisation.

1.5 **Section 3 – Measuring and Monitoring of Processes**

1.5.1 During the Mobilisation period the *Provider* will establish and document its Processes and procedures.

1.5.2 It is important that the *Provider* identifies the key activities within its Processes that are critical to the success of the output of those Processes, and that he measures the performance of those key critical activities.

1.5.3 These are referred to as Process and Activity Indicators, and they will potentially be unique to each *Provider*, depending on how it organises its work, its management systems, technology, tools used etc.

1.5.4 At the end of the Mobilisation period the *Provider* shall provide to the *Service Manager* a list of those Process and Activity Indicators covering:

(a) Concise description of what is being measured and why i.e. the cause and effect linkage between the activity and performance

(b) Explanation of how the measurement data is going to be collected – format, frequency etc

(c) Frequency of consolidated report on all Process and Activity Metrics

1.5.5 Results from these measures should be used for future performance management throughout the duration of the commission.

1.5.6 Establishing these indicators is not likely to be a ‘one-off’ event – they may be altered due to experience in use.

1.5.7 This should not be considered additional work – many existing Providers identify and record similar performance measures – what is being called for here is a slightly more disciplined and structured approach.

1.5.8 The primary objective of these indicators is to assist the *Provider* in managing performance by acting upon current rather than historic data.

1.6 **Section 4 - Recording Continual Improvement**

1.6.1 The *Provider* is required to record Continual Improvement by the use of a simple indicator that can be developed and made more sophisticated over time as appropriate. This indicator is not in any way linked to the bonus payment mechanism in the contract.
1.6.2 This indicator has been developed as follows:

1. Incremental improvements – these can be classified as an improvement of the execution of an existing Process design, or a small scale Process design change – in either event the threshold is set at £50,000 NPV of the cost saving. The threshold is set wide enough to avoid the need to waste time calculating which event falls under which category. To avoid any complicated life cycle costing exercises, the saving is the amount over the remaining period of the contract.

2. Breakthrough improvements – these are bigger scale Process design changes resulting in an NPV cost saving over £50,000, again over the remaining contract period.

3. Innovations – any change to an existing standard resulting in a NPV cost saving of any level as per the contract definition.

1.6.3 The unit of measure will simply be the number of Continual Improvement events in each category actually accepted by the Service Manager and used by the Provider (rather than say proposed and subsequently abandoned) – the full benefit of the event may not necessarily have been realised in order for it to be recorded.

1.6.4 The frequency of measurement will be quarterly commencing at the start of the Service (i.e. end of Mobilisation Period) – the indicator in the Framework for Performance Measurement provides for some annual targets – when measuring at quarterly intervals, the likelihood of achieving any per annum targets should be assessed.

1.6.5 Any continual improvement event should not detract from the quality of service required under the contract. Indeed the Service Provider should endeavour to reduce cost and cycle times whilst simultaneously maintaining or improving the level of quality. If there is a proposed increase in cost in order to produce a level of quality greater than called for under the contract then there should be a sound business case requiring the prior approval of the Highways Agency.

1.6.6 Perceived improvements such as an over-estimated target resulting in an artificial cost saving should not be classified. There should be a demonstrable change to the Provider (at area level or its Head Office if there is a consequential impact on area performance) work methods that drives the operational improvement.

1.6.7 Furthermore, an improvement that is necessary to uplift a poor performance in order to achieve a contract requirement (be that a PI or any
other aspect of the Service Information) should not be classified here as Continual Improvement.

1.6.8 Also, any result (e.g. cost or time saving, or quality enhancement) of a Continual Improvement ‘event’ needs to be converted to a common currency, and this is the NPV of a monetary cost saving, discounted to NPV at a notional 6% discount rate (excluding Innovations which should be calculated in accordance with the contract).
ANNEX F – SKETCH 1

HIGHWAYS AGENCY – NEW MODEL TECH MAC – CONTINUAL IMPROVEMENT LIFECYCLE

- Set Performance target
- Identify performance gap
- Investigate Collaboration opportunities
- Measure Process Performance
- Understand Customer needs And Benchmark

- Develop Improvement plan
- Improve execution (training, tools, Personnel, attitudes)
- Improve design
- Modify design
- Replace design

- Implement Process
- Design and document Process

ANNEX F – SKETCH 2

HIGHWAYS AGENCY – NEW MODEL TECH MAC – PROCESS REDESIGN METHODOLOGY

MOBILISE
- IDENTIFY PROCESSES (PROCESS MODEL)
- APPOINT PROCESS OWNERS WITH AUTHORITY
- ESTABLISH GOVERNANCE STRUCTURE
- DETERMINE PROCESS METRICS
- PRIORITISE PROCESSES
- SELECT DESIGN TEAM MEMBERS

DIAGNOSE
- BOUND AND SCOPE THE PROCESSES
- DETERMINE HA/CUSTOMER NEEDS
- UNDERSTAND PERFORMANCE OF THE CURRENT PROCESSES
- IDENTIFY FLAWS IN EXISTING PROCESS DESIGN
- SET TARGETS FOR THE NEW DESIGN

REDESIGN
- CREATE DESIGN CONCEPT
- INVESTIGATE OPPORTUNITIES FOR EXTERNAL COLLABORATION
- DEVELOP END-STATE VISION FOR DESIGN
- DEVELOP IMPLEMENTATION ROADMAP
- BUILD INITIAL LABORATORY PROTOTYPE OF NEW DESIGN
- TEST, LEARN, IMPROVE AND ITERATE

IMPLEMENT
- IMPLEMENT INITIAL FIELD VERSION (PILOT)
- REALISE INITIAL BENEFITS
- DEVELOP SUPPORTING INFRASTRUCTURE
- ROLLOUT
- INSTITUTIONALISE AND IMPLEMENT SUCCEEDING RELEASES
ANNEX G – SCHEME DEVELOPMENT

For full details see Annex 20 in the Service Information.
ANNEX H – BUDGETS AND FORECASTS

OVERVIEW

Conditions of contract

Service Information

Performance Objectives

Customer Service Objectives

Quality Statement

4.1.1(d) Prepare Quality Plan

20.1 & 4.1.1 Provide the Services - mobilisation duties

01 Programme development

02 Annual Plan preparation

32.3 Incorporate Plan into Programme

01 Programme development

20.1 Provide the remaining Services

20.1 & 33.1 Prepare forecasts and programmes for next Financial Year

HA review proposals and determine Allocated Budget

55 Performance and costs monitoring

03 Programme review

04 Forecasting costs

05 Compliance with Service Information

08 Performance measurement

07 Continual Improvement

09 Innovation

Colour code:

Contract material

Actions of HA

Actions of Provider

Shared actions
01 PROGRAMME DEVELOPMENT
03 PROGRAMME REVIEW

Programme submission and acceptance

01

4.3.6 Programme management

32.3 & 32.4 contents of programme

32.1 Submit to Service Manager

End

Programme review

03

Review current progress against programme

NO Information on programme changed?

YES

32.2 Programme revised at periods stated in Contract Data

32.2 Programme revised to show changes
02 ANNUAL PLAN PREPARATION

02

SM notifies Allocated Budget

2.7.2(1)
Prepare Annual Plan

4.1.1(m)
Mobilisation Period task

2.7.2(3)
Adjust Annual Plan as instructed by Service Manager

Plan matches budget?

YES

NO

31.1 & 31.2
Submit plan to SM

31.3
reasons for not accepting

Service Manager accepts plan?

YES

NO

End

Revise Annual Plan
04 FORECASTING COSTS

33.1 & 2.7.3(1)
prepare forecasts of costs

2.7.3(2)
Monitor costs against forecast and Annual Plan

33.2 & 2.7.3(3)
Report on cost variance

Forecast cost higher than Annual Plan?

33.2
Submit proposals for changes to remaining work

Forecast cost of Schemes lower than Annual Plan?

33.3
SM may change Forward Programme, Service Information and Prices

SM changes Forward Programme?

34.1 & 34.2
SM may change Service Information and Prices

End
05 PERFORMANCE AND COSTS MONITORING
06 COMPLIANCE WITH SERVICE INFORMATION

05

Record activities carried out

Resources used, effectiveness, cost

53.1
Provide information to SM of cost of services and performance levels.

2.2.3
Performance monitoring

Provider's Quality audits

06

Work complies with contract?

NO

42.1
Identify reasons, correct non-conformity

YES

End
07 CONTINUOUS IMPROVEMENT

2.2.3 Performance monitoring

53.1 Compare performance and costs with Annual Plan forecasts

Identify opportunities for improvement

Improvement gives cost saving?

YES

Review improvement – what has improved?

NO

53.2 Submit proposals to SM

SM accepts proposals?

YES

53.4 Network Board shares savings by adjusting prices after Annual Plan accepted

53.3 Revise Quality Plan

NO

End

Improvement in process delivering specified service requirements at lower resource cost.
08 PERFORMANCE MEASUREMENT

08

S3.1 Providing information

2.2.1 & 2.2.3 Monitor and report on performance measures

Performance measures likely to be met?

YES

SI Annex 15 Provider changes procedures

NO

Performance measures met?

YES

2.1.5, 2.1.6 & Annex 15 Identify reasons, report and propose actions to Network Board and Service Manager

Annex 15 Service Manager agrees actions to be taken

NO

End

SI Annex 15 Provider changes procedures

NO
09 INNOVATIONS

09

Innovations process

NO

Innovation identified?

YES

Assess costs, benefits, risks

NO

Innovation accepted?

YES

Share benefits, change SI

End

55 innovations

09 INNOVATIONS
ANNEX I – TARGET PRICE

1 INTRODUCTION

1.1 Purpose of the Guidance Note

1.1.1 This guidance note explains the use of Target Prices in the Highways Agency’s TechMAC contract. It aims to highlight the main issues involved both in principle and in practice, and to assist the Highways Agency/Provider's team in the operation of the Target Price system. It is not intended to be fully comprehensive nor is it intended to be a detailed instruction on how to operate the Target Price mechanism.

1.2 The Target Price System

1.2.1 The Highways Agency strategy is to move payment for work away from a price based assessment towards a cost based method of payment. The purpose of the Target Price system is to assist this, by allowing prices for schemes to be based on forecast cost whilst maintaining public accountability.

1.2.2 A Target Price is the forecast of the Defined Cost of the work required plus the resulting Fee. It takes account of risks, programming and methodology needs, and is prepared on the same basis as the sample schemes and activity schedule priced during tender.

1.2.3 The price derived from the sample schemes and activity schedule becomes the target, and the Provider is reimbursed his actual Defined Cost plus resulting Fee, which includes profit, defined by the Provider at tender, and shares any overspend/underspend compared to the target. Through the target share arrangements, both the Provider and Service Manager are motivated to carry out the work in the schemes in an efficient manner and share in the benefits achieved.

1.2.4 The sample schemes focus on major items of work which will make up the majority of the expenditure. The items of work that make up a scheme are identified from activities in the activity schedule.

1.2.5 At tender stage the Provider prices the activities in the activity schedule, some of which are used to build up sample scheme prices, provides supporting pricing data for each activity and provides a method statement with resources, a risk register and a programme for each sample scheme.
1.2.6 The resource costing information provided at tender is used for tender assessment, and following contract award, for reconciliation of the prices for work similar to that in the sample schemes.

1.2.7 A flow chart is included to illustrate the approach in operating the Target Price mechanism. This can be used by the Provider/Highways Agency in developing the detailed procedures required to operate the contracts. Further guidance on the steps involved is given in the following sections.

2 PRICING OF SCHEMES

2.1 Initial Resource Costing

2.1.1 The reason for seeking information at tender is to preserve public accountability when agreeing the Price for a scheme. The Highways Agency has appointed the Provider following a competition, part of which was over the prices for work proposed by him – incorporating his assessment of resource levels and costs necessary for the work. These resource levels and costs must be recognised when defining the prices for an actual scheme to be constructed.

2.1.2 Diagram 1 below indicates the approach followed by the Provider when pricing a scheme. This process is followed for both a scheme at tender and a scheme proposed after award. The key difference is that, after award, the Provider is required to demonstrate the reconciliation between the prices proposed and those in the tender scheme.

2.1.3 During the scheme identification process the Provider prepares a programme, method statement and a scheme risk register in sufficient detail to prepare an estimate for the Highways Agency to consider approval. If approval to proceed with the design is given and the detailed design commences, the Provider prepares activity sheets for the scheme in the same format as the tender activity sheets. The activity sheets are then priced using the same estimating resource and techniques as was used for the tender schemes.

Diagram 1: Principles of adjusting prices
2.1.4 All resources required to implement the scheme are included in the activity sheets. If people are only required part-time or their work is split with other activities, the forecast proportion of their time on the scheme must be included in the price for the scheme. The contract does not permit global apportionment or apportionment at a later date.

2.1.5 If, at tender, a statement is made (through the Pricing Schedule or Scheme pricing information) that a certain level of resource is required to complete a task, and the same task is included in a scheme, then that level of resource should be used when determining the price for a scheme. Similarly, a unit rate for a resource given at tender should be used for the same resource in a scheme. If they are not the same, an explanation by the Provider is required.

2.1.6 If an item of work is similar to, but not the same, as the work in the Scheme pricing information, then again the reasons for the changes from the resource costs and outputs detailed in the Scheme pricing information are explained. Where no equivalent work is included within the Scheme pricing information, the price is calculated on the same basis as items in the Pricing Schedule, but evidently no reconciliation can be given for the resource levels. The base costs of the resource should, however, be either those set out in the tender scheme or be adjusted in a justifiable way.

2.1.7 If the work in a scheme is such that it includes a significant element of work that is not covered in the tender schemes and is likely to be repeated, it would be worthwhile adding this scheme to the library of schemes that can later be used for reconciliation. That would simplify the work of estimating in the future. The scheme should only be added to the library after the post completion review of costs has been carried out. The scheme price will include risk allowances for future events; the price of the scheme should not be adjusted if the events encountered were different from the risk allowances. However, if errors are discovered in deriving the price, the scheme price should be corrected to remove the error before placing the scheme in the library.

2.1.8 A scheme should not be added to the library if it results from the adjustment of a tender scheme, or includes only minor additions. The original tender schemes should always be used for reconciliation, and not an adjusted tender scheme.
2.2 Risk

2.2.1 The prices for the sample schemes provided at tender stage will contain certain risk allowances. The extent and the amount of the allowances will depend on various factors such as the access periods and construction constraints inherent in the sample scheme details, and any timing constraints that affect weather and other seasonal risks.

2.2.2 To derive a price for an actual scheme to be constructed, the risk allowances incorporated in the sample schemes must be recognised. If the risks in the actual scheme are different from those in the sample scheme, the Provider must identify them and give reasons for and the method of adjustment of any changes he proposes to make to the risk allowances. The detailed costing information of the original risks (that were or should have been included) and the revised risks will assist in assessing the validity of any of the changes proposed.

2.2.3 The risk allowances are included in the derived price unless the Service Manager agrees to treat a risk as a compensation event, in which case that risk allowance is removed from the derived price for the scheme. Although the risks for each scheme must be reviewed in context, it is envisaged that risk transfer will be the exception rather than the rule, with consideration being given to best value and previous experience.

2.2.4 Both parties must agree the transfer of any risk event; with a clear statement that should the event occur it is a compensation event. The event itself must be clearly defined and include details of the forecast of the Defined Cost for the event. Details must be entered into the Risk Register.

2.2.5 If the transferred risk event occurs, the compensation event mechanism is triggered. The forecast cost of the compensation event plus Fee is added to the target, and the Provider is reimbursed his actual Defined Cost plus Fee, and shares any overspend/underspend compared to the target.

2.2.6 It is essential that during the post completion review for a scheme, forecast risk costs and actual risk costs are compared so that any significant difference can be understood, and the information used to inform risk allowances and risk transfer decisions for future schemes.

2.3 Subcontracting

2.3.1 Cost transparency is one of the key objectives of the TechMAC contract. It is therefore critical for the Employer to understand the basis of the payment arrangements between the Provider and its Subcontractors, to ensure that they provide as much transparency of cost as possible and enable the Employer to satisfy itself that best value is being obtained. This information
will also allow the Provider to demonstrate that subcontracted work on a scheme is being priced using the same approach as the tender schemes were priced. The understanding of the payment arrangements is particularly important where work is subcontracted under a target cost arrangement, since payment to the Provider for work carried out is based not on a lump sum but on the amount payable to the Subcontractor under his subcontract.

2.3.2 As part of his supply chain control, the Provider will have a procedure for selecting the appropriate subcontractor for any work he wishes to sublet. This procedure will identify how the appropriate price for the work is established, through whatever pricing or cost information applies to the relationship. It is expected that key subcontractors would form a part of the partnering group, and would have been identified at tender. Through the supply chain management procedure, other suppliers may already be aligned with the Provider, but not expressly included at tender stage. The tender schemes will have been priced following this procedure.

2.3.3 When the same subcontractor is used for the actual scheme as was identified in the tender scheme, the pricing or cost information for that subcontractor should be used for the new scheme. For major subcontractors, this would normally be resource based pricing as for the Provider. For smaller subcontracts, a simpler schedule, or bill of rates approach may have been used. In either event, the pricing of the work should follow the approach in the tender schemes.

2.3.4 Where a subcontractor is to be used when one was not identified at tender, the supply chain procedure in the Provider's Quality Plan should be applied. The subcontractor should be identified and chosen as being the most appropriate one, taking into account capability, availability and other qualitative assessments as well as price. These selection criteria should be those set out in the Provider's supply chain procedure.

2.3.5 It may be that the subcontractor is changed from the one identified in the tender scheme. To assess the effect on the pricing of schemes, it is necessary to understand the reasons for the change in subcontractor, and relate those to the selection process in the supply chain procedure. Diagram 2 below illustrates this process.

2.3.6 The key issue in fixing prices for subcontracted work is that probity must be maintained. The Provider made certain pricing commitments at tender (the Scheme pricing information), which formed the basis for his selection. These commitments must be applied in pricing new work, and prices must not be increased simply to remove a loss or improve a profit.
Diagram 2: Change in Subcontractor

2.3.7 At one extreme, a subcontractor is changed because, in applying the supply chain approach, an alternative organisation is able to provide a better overall service (including price). At the other extreme, a subcontractor may have to be changed because he refuses to carry out work at the prices quoted, and higher prices have to be paid to the replacement subcontractor. In the first case, the change is clearly acceptable, and the new supplier’s prices are used. In the second case, however, public accountability requires that the inherent loss in the tender pricing promises be carried forward. The subcontract basis of pricing used in the tender schemes must continue to be applied for the new work.

2.3.8 Each case must be decided on its merit; the key principles set out above should be applied in determining the prices for subcontract work.

2.4 Resource Reconciliation

2.4.1 The Provider must give reasons for and the method of adjustment of any changes he proposes to make to the subcontracting arrangements, resource levels and costs in the Scheme pricing information. The programmes and method statements provided at tender will assist in assessing the validity of any proposed changes. A proforma approach to explaining the adjustments is to be preferred – it allows a simpler review/audit process. To assist in the reconciliation, the prices for the new scheme should have activities grouped in a way that matches the tender schemes.

2.4.2 It is not intended that the Service Manager will check all scheme prices. During the early stages of the contract, the Service Manager will need to be closely involved in assessing the process that the Provider will carry out in
deriving the Prices. The Service Manager should be satisfied that, if followed properly, the Provider should derive the correct price in line with tendered information. The Provider's first party audits will monitor and check that his pricing procedures are effective and delivering the correct result.

2.4.3 The Service Manager may wish to audit the process fairly closely for some early schemes, but he should avoid applying a checking procedure – substituting his own judgement for the Provider's – when carrying out these reviews. The question should be – have the Provider's staff been properly deployed, carried out the proper procedures and justified their judgements properly.

2.5 Emergency Works

2.5.1 Where urgent emergency works are required and there is insufficient time to prepare a Target Price, a system similar to small schemes could be followed.

2.5.2 An estimate for the urgent work would be required and the work authorised by the Service Manager. Payment should be on the basis of actual Defined Cost plus resulting Fee for that work; a Target Price should not be developed retrospectively. All the contract provisions would apply, reporting back on estimates etc., to keep proper control.

2.6 Indexation

2.6.1 Adjustment for inflation for target contracts is necessary only for the Provider's share and not the periodic payment of the amount due. This is because payment is the Actual Defined Cost plus the Fee. Actual Defined Cost is current cost and automatically includes any inflation occurring since the base date. However, since the Provider's share is calculated from the difference between the target price and the Actual Defined Cost plus the resulting Fee, the two must be compatible in terms of allowance for inflation. In order to maintain comparability, an amount for price adjustment is included in the target price. Any scheme costs or compensation events included in the target price and assessed at current costs are de-escalated to the base date.

2.6.2 Clauses setting out the detailed indexation provisions are contained in the contract.

3 POST COMPLETION REVIEW

3.1 General
3.1.1 The contract requires a post completion comparison between the prices derived by the Provider and the Defined Cost plus resulting Fee actually incurred. This is carried out for each scheme and takes place upon completion of the scheme.

3.1.2 For target contracts, the Defined Cost plus Fee will be automatically recorded, and the level of detail – allocation of resources to activities – needs to be sufficiently detailed to allow a sensible analysis of the results to be made.

3.1.3 The cost capture should be as a minimum to the level of detail in the Scheme pricing information. However, if the Provider’s quality submission indicates cost capture to a greater detail, this should be followed.

3.1.4 The detailed procedures in the Provider's quality plan should explain how this task is to be carried out and result in obtaining the information sought. The Service Manager should again assess closely how this procedure will work, and rely on this, rather than a checking process of his own, to give warning of any failings in pricing.

3.1.5 This review is intended, and should be used, as a test of the Provider’s ability to prepare realistic estimates. Any significant difference between the forecast Defined Cost of an operation and its actual Defined Cost should be reviewed carefully to see why the forecast was different. It may be because a risk event did or did not arise; but it may also be that an inappropriate amount was entered as a risk allowance. The results of these reviews should be reported to the Service Manager, together with a note of the actions taken, if necessary, as a result of the review.

3.1.6 There should be no post completion adjustment of the prices, other than for a significant clerical error (for example, an arithmetical error is found). The review is not intended to provide a mechanism for reducing profits or losses on a competed scheme. It is intended to highlight any failings in the Provider's systems for deriving prices, so the procedure can be changed to avoid future failings. Examples of failings are: not assessing all the changed circumstances; insufficiently skilled staff carrying out the assessment; inadequate checking.

3.2 Errors

3.2.1 Errors in the pricing data appear to give difficulties to some. It has to be recognised that there will be errors in the data – both up and down. The sustainability and affordability tests at tender, and the tenderers wish to make acceptable profits, should ensure that there are no errors of a size likely to damage the operation of the contract. Errors in pricing may be
identified whilst preparing prices, or as a result of the post completion review.

3.2.2 If errors are found, they should be recognised and disclosed. Errors cannot be simply corrected - the figures used in the tender pricing data must be used for new schemes. It may be possible, in the annual review process, to make adjustments to some as part of the continual improvement process. For example, a number of “compensating” errors could be corrected together, or part of a continuous improvement benefit may be used to offset a low price. The overall impact of any such changes should, however, not lead to any increase in the prices to be paid by the Highways Agency. That could not be justified under public accountability rules and could lead to censure.

3.2.3 There will be various reasons why the outturn cost of a scheme may differ from the forecast cost and the post completion review will identify these. A simplified example of how errors are dealt with is shown in the diagram below:

### Diagram 3: Errors

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Resource cost</th>
<th>Resource usage</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tender Scheme</td>
<td>£100</td>
<td>100 No</td>
<td>£10,000</td>
</tr>
<tr>
<td>Scheme 1 target</td>
<td>£100</td>
<td>100 No</td>
<td>£10,000</td>
</tr>
<tr>
<td>Scheme 1 outturn</td>
<td>£90</td>
<td>130 No</td>
<td>£11,700</td>
</tr>
<tr>
<td>Scheme 2 target</td>
<td>£100</td>
<td>100 No</td>
<td>£10,000</td>
</tr>
</tbody>
</table>

3.2.4 It is assumed that extent and nature of the work and risks in Schemes 1 and 2 are identical to the tender scheme, and that the only reason for the difference in the outturn cost for Scheme 1 is due to errors in the original pricing data. When deriving the price for Scheme 2 those errors are not corrected and the original pricing data is used to calculate the target. The Provider and Service Manager will be aware that the projected outturn for Scheme 2 is higher than the target, and the post completion review will recognise this. (Note that, through the annual review/continual improvement process, prices may be changed – this example ignores that for simplicity.)
TARGET PRICE FLOW CHART

scheme identified

prepare programme, method statement, risk register

planning resource

prepare activity sheets for scheme

costing resource

price activity sheets using same cost base as tender schemes

similar activities in tender schemes?

resources reconcile?

No

No

Yes

error in tender scheme?

Yes

adjust scheme cost to carry forward tender error; recognise error in estimating database

identify reasons for change; adjust scheme cost

Service Manager agreement to scheme; carry out work and post completion cost review

error in tender scheme?

Yes

recognise error in estimating database: do not correct

No

Yes

identify reasons for change; adjust estimating database and any new scheme in library

activity cost + Fee similar to derived price?

end
ANNEX J – INFORMATION SYSTEMS

Electronic Document Record Management and Document Handover

1. The Employer requires that the Provider manages the Documents in connection with Provision of the Services in a way that meets the needs and requirements of the Employer. Essentially this will involve developing an electronic document and record management system (EDRMS) with a file plan structure that aligns with or mirrors the Employers needs. The requirement to use an EDRMS system should offer a practical solution to electronic document management. The electronic storage of Documents with an approved file plan will also enable easy access for the Employer.

2. Guidance on the file plans is offered through the following draft documents available from the Service Manager:

   - **Highways Agency File Plan** – high level function plan for the whole of the HA.
   
   - **Major Projects File Plan** – Provides a basis for any electronic as-builts for TPI schemes that should be delivered to the Provider in this structure and should form a logical substructure to any file schema being proposed.

   - **TechMAC File Plan** – to assist in the creation of the EDRMS file plan.

3. It is equally important that the scanning of Documents and the management of these scanned documents comply with the Employers record management policies. The Provider should liaise with the Service Manager to ensure that the format and structure of all scanned documents meets the needs of the Employer.

4. There is a requirement to hand over hard copy and electronic documents/records belonging to the Employer at the end of the Contract Period. The electronic documents/records shall be in a format as agreed with the Service Manager and shall be held within the EDRMS, unless otherwise agreed by the Service Manager.
**ANNEX K – THIRD PARTY CLAIMS**

**Red Claims**

- **A Red Claim is received**
  - **By the Provider**
    - The Provider informs the Service Manager within 14 days
  - **By the Employer**
    - NO: Employer requests information?
      - YES: The Provider submits the requested information to Red Claims Branch (with a copy to the Service Manager)
      - NO: The Provider sends the following to Red Claims Branch (with a copy to the Service Manager):
        - particulars of claim.
        - Form TR137/H41.
        - Police/Traffic officer accident report.
        - site observations.
        - details of inspections.
  - **Is it an Indemnified Claim?**
    - **YES**: The provisions of clause 83 of the Conditions of Contract apply
      - **The Employer:**
        - notifies the Provider as soon as practicable of any notice or demand which it receives.
        - co-operates with and gives reasonable assistance to the Provider in defending the Indemnified Claim.
        - does not settle nor agree to make a payment in respect of the Indemnified Claim without the prior consent of the Provider.
        - may give the Provider notice that he is taking over the conduct of an Indemnified Claim.
    - **NO**: The Provider:
      - may conduct the defence of any Indemnified Claim (including any settlement negotiations) in the name of the Employer.
      - keeps the Employer fully informed and consults with the Employer.
      - bears the costs which he incurs in defending an Indemnified Claim.
      - indemnifies the Employer against any costs incurred by the Employer arising out of the Provider's defence.

- **The Provider does not:**
  - acknowledge receipt of claim.
  - enter into correspondence with claimant.

- **The Provider assists the Employer when requested:**
  - with any legal action.
  - to take steps required under Civil Procedure Rules 1998.

- **The Provider retains records of all information for a period of not less than six years from the date of issue**
Green Claims

The Provider becomes aware of an incident which may give rise to a Green Claim

Within 14 days of becoming aware of the incident the Provider issues completed Form TR430 to the Service Manager.

The Provider immediately takes all necessary steps to obtain the name, address, vehicle particulars and insurance details from the responsible party if the Provider attends the incident, or otherwise from the police or Traffic Officer.

- Does the estimated repair cost exceed £5k?
  - NO
  - YES
    - Has the incident resulted in a fatality?
      - NO
      - YES
        - Has or may have the incident resulted in a serious incident?
          - NO
          - YES
            - Is a counterclaim anticipated or has been received?
              - NO
              - YES
                - Does the damage involve property which is not the Provider’s responsibility?
                  - NO
                  - YES
                    - Does it involve theft, mining subsidence, armed/NATO forces, or a Gov. Dept?
                      - NO
                      - YES
                        - The Provider does not pursue the claim and if necessary submits an updated Form TR430 to the Service Manager.

- YES
- NO

- The Provider immediately ceases any action and issues completed Form TR430 to the Service Manager.

- Does the Service Manager reply within 21 days of receipt?
  - YES
  - NO
    - Is the reply an instruction to cease to pursue the claim?
      - NO
      - YES
        - The Provider does not pursue the claim and if necessary submits an updated Form TR430 to the Service Manager.

- The Provider pursues the claim in accordance with paragraph 23.4 of Annex 23 to the Service Information, and if necessary submits an updated Form TR430 to the Service Manager.