

West Berkshire Council Constitution

Part 12

Contract Rules of Procedure

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Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:

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12.1 Introduction

12.1.1 Application of Rules of Procedure

Subject to any specific provisions to the contrary, these Rules apply in every case where the Council enters into an agreement with another person for the supply of goods, materials or services to, or the execution of work for, the Council. These regulations apply equally to tenders and quotations.

12.1.2 Section 135 of the Local Government Act 1972

These Contract Rules of Procedure are made under the provisions of Section 135 of the Local Government Act 1972 and govern the making of contracts for and on behalf of the Council. They include provision for competition, and regulate the manner in which tenders are invited.

12.1.3 Statutes

The statutes and statutory instruments that currently affect these Regulations are as follows:

- Local Government Act 1972;
- Local Government Act 1988;
- Education Reform Act 1988;
- Local Government and Housing Act 1989;
- Environmental Protection Act 1990;
- Local Government Act 1992;
- Local Government Act 1999;
- Local Government Act 2000;
- The Public Contracts Regulations 2006.
- The Public Contracts (Amendment) Regulations 2009

12.1.4 Amendments

Any amendments to the above or new legislation will be deemed to be included in these Rules without the need for a specific reference here.

12.1.5 Purpose of Rules

These Contract Rules of Procedure apply to all Officers and Teachers involved in the letting of orders or contracts for works, services and supplies for the Council, whether funded from Revenue or Capital Sources. They provide a basis for true and fair competition by providing a transparent and auditable procedure which, if followed, will give confidence that a fully accountable and unimpeachable contract regime exists within the Council.

These Contract Rules of Procedure have been designed to reduce the volume of work and the need to report to the Executive on contract matters. However, this only works if Members and the District Auditor can be confident that robust procedures and controls exist for the invitation, evaluation, acceptance, managing and monitoring of contracts throughout the Council.

12.1.6 Protection of the Council’s Legal Position

These Contract Rules of Procedure protect the legal position of the Council in respect of compliance with EU and UK law and in its contractual dealings with external suppliers and contractors. They protect the interests of Members, Officers and the Citizens of West Berkshire. The Head of Legal and Electoral Services shall have ultimate responsibility for ruling on and interpreting these Contract Rules of Procedure.

12.1.7 Seeking Advice

Officers who may be letting a contract must seek appropriate advice at the earliest possible opportunity. The Head of Legal and Electoral Services, Head of Finance or such officers as nominated by them shall advise on the procurement strategy and contractual arrangements.

12.1.8 The Council

In these Contract Rules of Procedure the expression “the Council” shall be deemed to include reference to the Executive, Select Committees, Overview and Scrutiny Management Commission, or Regulatory Committees or any person or persons acting in accordance with delegated authority on behalf of the Council. The expression “the appropriate Committee” shall mean the Executive, Select Committees, Overview and Scrutiny Management Commission or Regulatory Committees responsible for the contract concerned.

12.1.9 Sustainable Sources

Goods or services which are known to be, or where there is strong evidence to believe they could be, harmful to the environment and where there are other adequate options, will not be used. Wherever practical, only materials from sustainable sources will be used. Heads of Service must ensure that all procurement exercises over £50k and any procurement exercises below this value that have a significant impact on the Council’s sustainability must undergo a sustainability impact assessment as part of the project appraisal (see 12.1.8)

Officers should make themselves aware of the Council’s Sustainable Procurement Policy and any guidance notes. For advice about the application of this policy or about sustainable products officers should contact the Contract and Procurement Unit.

12.1.10 Monitoring Officer

The Council has designated that the Head of Legal and Electoral Services be the Monitoring Officer.

12.1.11 Particularly Complex Contracts

Where the Council is considering embarking upon a particularly complex contract and that involves using competitive dialogue or such other procedures as permitted by law it shall be the duty of the responsible Head of Service to consult with the Head of Legal & Electoral Services to ensure that such negotiations are authorised by law and by these Contract Rules of Procedure and are from the outset conducted by a team of Officers possessing the professional skills appropriate to the proposed transaction

12.1.12 Preparation of Contract Specification

The Head of Service letting the Contract shall ensure that the appropriate technical specification is prepared. This should clearly set out the works, services and supplies which are required by the Council and the manner in which they are to be provided.

The Head of Service must obtain and make full use of all the necessary professional and technical resources to ensure accurate and comprehensive documents are prepared.

12.1.13 Provision of Appropriate Expenditure

A tender must not be invited unless appropriate provision for the expenditure has been included in the Council's approved capital or revenue budget for the year in which the expenditure is to be incurred (or in budgets approved in draft for the next financial year by the Executive where the expenditure is to be incurred in that year) or unless the alternative financial provision is made by the Council under Financial Regulations. The budget must cover all preliminary and ancillary costs (which should include annual maintenance costs) and should be in the Budget and Policy Framework approved by Council and should be contained in the appropriate Forward Plan.

12.1.14 Failure to Comply with Rules

Failure to comply with these Contract Rules of Procedure by Officers will be viewed by the Council as a breach of the Officers Code of Conduct contained in Part 14 (Codes and Protocols) of this Constitution and may be considered a disciplinary matter.

12.1.15 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

All Heads of Service should consult with the Head of Legal and Electoral Services, the Head of Human Resources and the Head of Finance or nominated Officer before any contract is entered into which affects the employment of the Council's staff or the potential transfer of staff to the Council. Statutory periods of consultation

(which must be complied with) apply to **all** contracts affected by TUPE.

12.1.16 Claim Arising from a Contract

Any claim arising from a contract, that is not clearly within the terms of the contract, must be referred to the Head of Legal and Electoral Services for consideration of the Council's legal liability and to the Head of Finance or nominated Officer for financial consideration before any settlement is reached. It is also a reportable event within the scope of the Financial Rules of Procedure and must be reported accordingly. "Claim" here does not mean a variation to the contract that is within budget.

12.1.17 Potential for Loss

Financial values are irrelevant when considering potential loss to the Council. Heads of Service need to look at potential for loss. The maximum foreseeable loss must be established by a Risk Assessment and an Indemnity must be sought for that (subject to a £5 million indemnity being the minimum acceptable).

12.1.18 Project Appraisal

In keeping with good procurement practice project options appraisals and business case shall be carried out as follows:

- Contract value less than £50,000 – optional except where the project has a significant sustainability or equalities impact.
- Contract value greater than £50,000 and less than EU threshold – recommended.
- Contracts value exceeding EU threshold – mandatory.

Project appraisals form part of the project strategy and gateway process. Further explanation on how this operates can be obtained from the Contracts & Procurement Unit. (A fact sheet on how to carry out a project appraisal and what is expected is available from Finance).

12.1.19 Equality in Procurement

The Council must procure goods, services and works in a fair and transparent way treating all suppliers in an equal way. The Council must also take all reasonable steps to ensure that goods services and works that we buy must not cause offence or discrimination.

Heads of Service must ensure that all procurement exercises over £50k and any procurement exercises below this value that have a significant impact on the Council's Equality Duty must undergo an Equality Impact Assessment as part of the project appraisal (see 12.1.8)

12.1.20 Financial Leases

Financial leases are leases which need to be accounted for in the Council's Balance Sheet. When an officer wishes to enter into a

Financial Lease that effectively creates a Council asset permission must be sought in advance from the Head of Finance.

12.2 Compliance with the Constitution

12.2.1 Compliance with Rules

These rules consolidate all matters relating to contracts. Every order or contract made on or on behalf of the Council by an Officer of the Council, relating to either income or expenditure, must comply with these Contract Rules of Procedure.

12.2.2 Legislation

The Contract Rules of Procedure shall be subject to Directives 2004/18EC and any other procedures which may apply by reason of the United Kingdom's membership of the European Union (EU). The extensive provisions of EU and UK legislation, especially the EU Public Procurement Directives, the Local Government Planning and Land Act 1980, the Local Government Act 1988 and associated Regulations, the Local Government Act 1999 and other relevant legislation e.g. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE) apply to many of the contracts placed by the Council and must be complied with. EU and UK legislation will always take precedence over these rules.

12.2.3 Formal Exemption

The Council can formally exempt itself from any of these rules (Rule 12.8 (Exceptions to Contract Rules of Procedure refers). However, it may not exempt itself from statutory requirements (for example the Public Contract Regulations referred to in Rule 12.1.3 (Statutes)).

12.2.4 Non-Disaggregation of Contracts

Contracts must not be disaggregated in order to avoid these Contract Rules of Procedure or EU Directives. The contract value shall be the total cost of the supply, service or work to be procured over the contract term. Care must be taken that this does not breach the aggregation rules of the EU Directives.

12.2.5 Maintenance of Records

Adequate records must be maintained by all staff, consultants and agents to demonstrate that the provisions of these Rules and relevant legislation have been complied with.

12.3 European Procurement Rules

12.3.1 Seeking Advice

Advice must always be taken from Head of Finance and the Head of Legal and Electoral Services or such officers as nominated by them Officer in respect of: applicability of the regulations to tendering;

- producing and advertising EU tender notices for publication in OJEU (“the Official Journal of the European Union”);
- preparing tender documents;
- award criteria for tender selection;
- evaluation process and debriefing;
- Notification of the decision.

12.3.2 Public Procurement Regulations

The procedures for the award of public works, public supply and public services contracts have been incorporated into The Public Contracts Regulations 2006 and the Public Contracts (Amendment) Regulations 2009 and cover the following categories of procurement:

- **Public Supply Contracts**

The procurement of goods by purchase, lease, hire, or rental. Also see 12.1.20 Financial Leases.

- **Public Works Contracts**

Contracts for the execution of works relating to building or civil engineering activities.

- **Public Service Contracts**

All contracts which are not covered by the Public Supply or Public Works Contracts or which are pure Service Contracts. Services under this regulation are classed as either Part A or Part B. The regulations apply in their entirety to Part A services, and only in part to Part B services. If a contract is for both supplies and for services it will be a Supply Contract if the value of supplies is greater than that for services, and a Service Contract if the consideration for the services is greater than the value of the supplies. Further clarification on this can be obtained from the Contracts & Procurement Unit.

The categories have a different threshold value above which the regulations apply. These thresholds are re-valued every two years and published in the Official Journal. The current value can be obtained from Head of Finance or nominated Officer or from the Office of Government and Commerce (OGC) website at www.ogc.gov.uk. The threshold values for 2009/10 were £156,442 for goods and services and £3,927,260 for works contracts.

12.3.3 Public Procurement Regulations – Advertising of Procurements

The Public Contracts Regulations 2006 require that all contracts that are over the EU thresholds and subject to the full application of EU procurement rules to be advertised in the Official Journal of the European Union.

However under the EU Treaty principles where the contract is of potential cross border interest then it must be publicised to ensure that providers from other member states have an opportunity to participate and the process is conducted in a fair and transparent manner.

Consideration should also be given to placing adverts in appropriate media e.g. the Council's website, trade publications and local press.

All adverts for the Council website shall be posted by the Contracts & Procurement Unit who will collate and feed back expressions of interest to the sponsoring service unit.

No advert may be placed in any advertising medium prior to the despatch of any advert to be placed in the European Journal (this only applies to contracts for which advertisement in the Official Journal of the European Union is obligatory). Adverts or notices in the Official Journal of European Union will be placed electronically by the Contracts & Procurement Unit. All public notices and advertisements issued by the Council in respect of procurement shall be approved by the Contracts & Procurement Unit who will maintain a register of all advertisements placed.

Furthermore the advertisement to be placed in any UK trade magazine or journal may not contain more detail than the advertisement in the European Journal.

12.3.4 Public Procurement Regulations - Process Requirements

- (a) Estimates of contract value are net of VAT.
- (b) Aggregation rules apply so that a series of contracts for works of a similar character or services of the same type should be aggregated across the whole Council. Care must be taken that this does not breach the aggregation rules of the EU Directives. Guidance must be sought on the aggregation rules from the Head of Legal and Electoral Services. See also 12.2.4.
- (c) Although there are a number of procedures available under the EU procurement regulations, in all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Finance and/or the Head of Legal and Electoral Services or such Officer as nominated by them. The Restricted Procedure is effectively "selective" tendering as prospective tenderers who express an interest in tendering are "screened" before being invited to tender. The Restricted Procedure requires not less than five (provided there are five suitably qualified tenderers) tenderers be invited to tender.
- (d) The Regulations cover the financial, technical, and economic qualifications, which should be taken into account in selecting

those tenderers who will be invited to tender. Officers must be very careful not to impose conditions which could be considered anti-competitive and that a European tenderer could not satisfy, for example, a condition that the tenderer must have a local office or prior inclusion on the Approved Supplier database.

- (e) Officers are reminded that, in tender documentation, wherever appropriate, a contract shall require a minimum standard compliance with British Standard Specification of British Standard Code of Practice issued by the British Standards Institution or Public Authority Standard. The European equivalent standard must also be quoted and if there is no equivalent European standard then the words must be added “or other equivalent European standard will be accepted” or International standard recognised in another Member State. All contracts, so far as is practicable, shall require that goods and materials used in their execution shall have been produced in the UK, British Commonwealth or the European Community or any other Country having reciprocal trading agreements with the European Community. The Council cannot reject an offer from a contractor on the basis that materials, goods or services offered do not comply with any standards set out in the tender documents if the contractor can prove to the Council that what they are proposing will satisfy the requirements of the technical specification in an equivalent manner.
- (f) The practice of nominating suppliers, sub-contractors or consultants in technical specifications must be justified by the subject of the contract and accompanied by the words “or equivalent”. Approval for the use of this method must first be sought from the Head of Finance or nominated Officer and the Head of Legal and Electoral Services or nominated Officer.
- (g) The basis of award will be either ‘lowest price’ or ‘the most economically advantageous tender’. The basis of the award must be set out in the Official Journal of European Union notice. Where the most economically advantageous tender is the basis of the award then the criteria, which will be used to assess, must be set out either in the Official Journal of European Union or the tender documentation. Please refer to 12.7.6
- (h) It is essential that Officers allow sufficient time for replies and vetting of tenders and evaluation of tenders. The procurement regulations provide minimum time periods which will also need to be built into the procurement programme. Timescales for the Restricted Procedure are the time between:

- (i) the advert in the European Journal and the return of expressions of interest (30 days or 37 days depending on the method of dispatch); and
- (ii) the sending out of the invitation to tender and its return (40 days).

These timescales can be reduced if a Prior Information Notice (PIN) has been issued (see 12.3.6), the OJEU is sent electronically, or the tender documents are available electronically. If you propose alternative timescales and alternative procedures please consult with the Head of Finance or Head of Legal & Electoral Service or such officer as nominated by them.

- (i) When expressions of interest are returned the Officers involved in the tendering exercise will have to leave sufficient time to analyse replies with regard to financial requirements and other technical and economic qualifications for selection. It is also important to ensure that the Officers who need to be involved in analysing the tenders are made aware of the timetable for the letting of the contract as early in the process as possible.
- (j) Where a contract that has been advertised is then let, the Head of Service concerned must ensure that a “Contract Award Notice” is sent to the European Journal within prescribed timescales of the date of award of the contract. The Contracts & Procurement Unit must be notified when a contract award has been made and will send a ‘Contract Award Notice’ to the OJEU electronically. . There are notification requirement under the Public Contracts (Amendment) Regulations both to the successful and the unsuccessful tenderers. There are also “standstill” period requirements under the Regulations. Please seek further advice and guidance from the Head of Legal and Electoral Services or their nominated Officer.
- (k) Where presentations or interviews are to be used as part of the evaluation procedure for tenders this must be communicated to tenderers within the tender documents. Presentations and interviews should not be used to moderate the entire tender scores. Those officers, members and other stakeholders evaluating the interview or presentation should be informed that they are not selecting the supplier but are only marking that particular element of the tender. Evaluation Guidance and a presentation checklist are available from the Corporate Contract and Procurement Unit.

12.3.5 Procurement Regulations – Procurement techniques

The Procurement Regulations provide for the following procurement techniques:

- Electronic Auctions – a repetitive process involving an electronic device for the presentation of new prices once tenders have been evaluated.
- Dynamic Purchasing Systems – an electronic framework agreement where indicative bids to enter into the framework can be made at any time and which call-off is subject to a competitive tender.
- Framework agreements – is an agreement or other arrangement between one or more contracting authorities and one or more economic operator (e.g. providers) which established terms (in particular the terms as to price and where appropriate, quantity) under which economic operators will enter into one or more contracts with a contracting authority in the period during which the framework applies.
- The Contracts & Procurement Unit will determine the use of these techniques in any procurement process.
- There are four main competitive procurement procedures under the Regulations:
 - Restricted Procedure
 - Open Procedure
 - Competitive Dialogue
 - Negotiated Procedure
- in all circumstances Restricted Procedure shall be used unless approval is sought from the Head of Legal & Electoral Services.

12.3.6 Prior Information Notice (PIN)

Prior to the commencement of each financial year, Heads of Service are required to examine projected expenditure for all new significant procurements (including any with an anticipated contract value more than £50,000) for the forthcoming year.

Heads of Service must provide a procurement programme (indicating contract values) to the Head of Finance or nominated Officer by the end of March this is also required by the 'Protocol for Member Involvement in Procurements over £50,000'. The Head of Finance or nominated Officer may decide that a "Prior Information Notice" (PIN) should be published in the European Journal for the year ahead for the whole Council for all relevant categories which exceed the EU thresholds as per Rule 12.3.2.

12.4 Prevention of Corruption

12.4.1 General

The public is entitled to demand of Local Government Officers conduct of the highest standard. Public confidence in their

integrity would be undermined were the least suspicion, however ill-founded, to arise that they could in any way be influenced by improper motives.

12.4.2 Member or Officer Interests

Where a Member or Officer of the Council has a personal or prejudicial interest, financial or otherwise in a contract or proposed contract, and is also involved in the process of letting or managing of that contract, this interest must be registered with the Monitoring Officer. In the case of a Member the interest must also be declared at the meeting of any committee, sub - committee or project board at which the Member is present and at which the contract or proposed contract is discussed. If the interest is prejudicial and the Member should leave the meeting and take no part in any discussions or seek to influence any decision.

In the case of ownership of shares Members should seek advice from the Head of Legal and Electoral Services as to the current level of share ownership accepted by the Standards Board as being *de minimus* for the purposes of declarations of interest.

12.4.3 Statutory Provisions

The following statutory provisions govern contracts and other matters:

- The obligations of elected Members to disclose interests in contracts and other matters and to refrain from speaking or voting thereon which are prescribed by Sections 94 to 98 and 105 of the Local Government Act 1972 and Section 19 of the Local Government and Housing Act 1989.
- The duty of Officers to disclose interests in contracts as required by Section 117 of the Local Government Act 1972.
- Section 117 also requires that “an Officer shall not, under cover of her/his office or employment, accept any fee or reward whatsoever other than her/his proper remuneration.”
- An Officer who contravenes the provisions of Section 117 shall be liable on summary conviction to a fine and additionally will be the subject of disciplinary proceedings by the Council.
- The duty of Members and Officers to adhere to the Codes of Conduct contained in Part 14 (Codes and Protocols) of this Constitution.

12.5 Tendering - General Principles

12.5.1 Preliminaries

It is the responsibility of the Chief Executive, Corporate Directors and the Head of Service to ensure all purchases of goods and services and works comply with

- (a) legal requirements;
- (b) EU Directives
- (c) the Council Financial Rules of Procedure
- (d) any code, guidance or conditions approved by the Governance & Audit Committee, the Executive or the Council to the exercises of powers delegated by them.

12.5.2 Authority

All transactions must fall within the powers delegated to the Chief Executive or Corporate Director or the Head of Service or must have been approved by a decision (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive, the Council or one of its committees or sub-committees.

No contract, agreement or other document shall be signed or sealed unless it gives effect to:

- (a) a decision or resolution (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive or one of its committees or sub committees; or
- (b) a decision by an officer exercising delegated powers.
- (c) 12.1.13.provisions have been adhered to.

12.5.3 Contract Thresholds

There are four thresholds to be followed when letting an order or a contract depending on the estimated contract value. Detailed procedure notes are available from Head of Finance or nominated Officer. Contracts must not be disaggregated in order to avoid thresholds. Contract thresholds shall be based on the **TOTAL** value of the contract. For example a three-year contract of £50,000 per year is valued at £150,000. In circumstances where the aggregation of annual values is not required to comply with EU or UK legislation the Head of Finance or nominated Officer can approve that the annual value shall apply for threshold classification.

It is the responsibility of the Head of Service to ensure that the Council is receiving best value for money in accordance with the duty imposed under Section 3 of the Local Government Act 1999.

12.5.4 Threshold 1 - Contract Values

Less than £10,000 for single, non-repetitive orders ONLY – telephone quotes acceptable.

The Head of Service or their delegated Officers may place non-repetitive orders under the value of £10,000 for works, goods and services, without inviting written quotations. The Head of Service or their delegated Officers must maintain written records of telephone quotations.

12.5.5 Threshold 2 - Contract Values

Between £10,000 and £49,999 – written quotations required.

The Head of Service or their delegated Officers must obtain a minimum of three written quotations must be sought from appropriate sources.

12.5.6 Threshold 3 - Contract Values

Between £50,000 and EU threshold.

These must be let as a competitive tender with Member involvement and advertised or taken from the appropriate Select List. A minimum of five tenders are to be invited.

The Head of Service or their delegated Officers are responsible for ensuring that the Tender Procedure is followed. Approval is required for Revenue and Capital projects in accordance with Rule 11.8 contained in the Financial Rules of Procedure.

[Additionally, Members of the Council involved in the competitive tender must follow the current protocol for member involvement in procurement in contracts valued over £50,000, available from the Contracts & Procurement Unit.]

12.5.7 Threshold 4 – Contracts over EU Threshold

These must be let as a competitive tender in accordance with EU Regulations. Please note statutory timetable and the need to consult with the Contracts & Procurement Unit who will ensure that tenders are invited in full compliance with Tender Procedures and EU Public Procurement Law and UK legislation.

The Head of Service or their delegated Officers must consult with the Head of Finance or nominated Officer.

[Additionally, Members of the Council involved in the competitive tender must follow the current protocol for member involvement in procurement in contracts valued over £50,000, available from the Contracts & Procurement Unit.]

12.5.8 Invitation to Tender

For contracts of £50,000 and over, tenderers must be selected from the response to a public notice or advertisement .

12.6 Tendering Procedures

12.6.1 Introduction

The rules set out here apply to all contracts with a value of more than £50,000 (Threshold 3 and above).

12.6.2 Instructions to Tenderers

The Head of Service must ensure that the tendering instructions specified in this regulation are issued to every person invited to tender, or who requests tender documents.

Every tender sum must be calculated by reference to the specification and any departure from the tender document or tender which is submitted subject to any unacceptable reservation, qualification or condition by the person submitting them may be treated as grounds for disregarding the tender.

The date, time and place for the receipt of tenders must be specified. State the day of the week as well as the date. This is a good check to ensure you are requesting the return of the tender on a day the Council offices are open.

Tenders must be submitted on a form of tender prepared and supplied by the Council.

Tenders received after the date and time specified for receipt will be disregarded unless the Head of Legal & Electoral Services considers the circumstances to be exceptional.

Any other departure from these regulations may lead to the tender being disregarded.

The Council does not bind itself to accept the lowest or any tender, or to accept any tender in full.

Tenders must be submitted in a plain sealed envelope bearing details of the subject of the tender, and the date and time and place for its receipt, but no other name or mark which does or may identify the sender. It is essential that the correct Head of Service is named on the envelope so that tenders are forwarded to the correct destination on receipt

12.6.3 Receipt of Tenders

All tenders for contracts must be addressed to the relevant Head of Service. It is the responsibility of the Head of Service to ensure all tenders for contracts are retained in a secure place.

All tenders received shall be stamped upon receipt with the date and time of receipt.

Tenders that are received late or are delivered to the incorrect address shall be marked accordingly and then shall be retained securely unopened by the relevant Head of Service after the valid tenders have been opened for a period of at least six weeks, upon which, they shall be destroyed.

Tender envelopes bearing marks identifying the sender shall also be retained securely unopened by the relevant Head of Service after the valid tenders have been opened for a period of at least six weeks, after which, they shall be destroyed.

12.6.4 Opening of Tenders – Refers to Sections 2b, 5 and 8

Opening of tenders over £50,000 must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of the completed form is sent to Finance. The tender opening is arranged by the Head of Service.

The opening is to be in the presence of the Head of Service or a nominated representative, an elected Member, and a representative of Finance. The Head of Service shall complete the tender opening form.

The standard form must be certified as correct by the elected Member present and witnessed by all other Officers present.

12.6.5 Tender Opening - Confidentiality and Security

The information obtained at tender opening is confidential to those involved in the opening process, and those directly involved in the tender evaluation. This confidentiality must be maintained. If any questions arise as to a breach of confidentiality, the Monitoring Officer shall be consulted over the appropriate action. To assist with tender confidentiality opened tenders shall be kept securely in a locked cabinet/office until the contract has been awarded.

12.6.6 Tender Evaluation – Refers to Section 9

The Contract Notice will state that tender award will be on the basis of either:

- a) lowest price; or
- b) the most economically advantageous tender based on criteria stated in the tender documents.

In most cases the latter will have been used and the tender documentation will clearly state the award criteria to be adopted.

12.6.7 Alterations to Tenders

Alterations to a tender sum will not be permitted except as provided below.

12.6.8 Tenders Submitted for the Execution of Work

In the case of tenders submitted for the execution of work and based on priced bills of quantities or schedules of approximate or provisional quantities or schedules of work which are submitted with the tender and form part of the tender documents the effect of errors in totalling, extensions or calculations or other errors or omissions discovered in the tenders will be ascertained and the details notified in writing to the tenderer who will be given the opportunity of:

- (a) confirming the offer at the original amount; or
- (b) withdrawing the offer; or
- (c) amending the offer to correct genuine errors or omissions; or
- (d) in the case of agency contracts amending his/her tender in a manner directed by the employing authority.

The tenderer will be required to confirm in writing either agreement to offer standing at the original amount or withdrawal of offer or

agreement to the adjusted tender amount. This must be given in writing before the decision to award the contract is made.

Contractors failing to bid should be asked, when requested to return the tender documentation, why they decided not to bid.

Their response should be recorded on the file and a copy forwarded to the Contracts & Procurement Unit for future reference.

12.6.9 Acceptance of Tenders

If the tendered price cannot be met from the allocated budget or the scheme has materially altered then the Corporate Board must consider and approve a written report prior to acceptance of tender and that report should confirm that the tender offers Best Value to the Council.

The Head of Service concerned shall make suitable arrangements for recording any action taken by him/her to ensure there is an adequate audit trail explaining the reasons for decisions.

The appropriate Head of Service will be responsible for ensuring that:

- a) tenders are reviewed in a timely manner against the set criteria for accuracy and completeness;
- b) the examination is carried out by an employee independent of the tendering process;
- c) there is evidence of checks undertaken recorded on the tender documents.

12.7 Exceptions to Contract Rules of Procedure

12.7.1 General

An exception to the Contract Rules of Procedure is an authority to approve either partially or fully to let a contract without complying with one or more of the Rules. An exception to the Rules for contract may be granted subject to conditions. An exception **cannot** be granted where a breach of any UK or EU legislation would be incurred

Only the Head of Legal and Electoral Services and/or the Head of Finance or such officer as nominated by them may grant an exception to these Rules (see 12.8.2 below). Subject to statutory requirements applications for exception must be made in writing and in accordance with 12.8.2 and include an appropriate exception under 12.8.3 that is requested and the justification for the exception

An application for an exception to the Rules will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to the Rules. If an application is granted, the appropriate Director and/or the Head of Service responsible for the contract

must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money

12.7.2 Exception values and delegations

For all contracts up to £49,999 the Head of Finance or nominated Officer must approve the exception.

For contracts between £50,000 and EU threshold the Head of Finance or nominated Officer will consult with the Head of Legal and Electoral Services and the appropriate Corporate Director.

For contracts between EU threshold and £500,000 the exception will be dealt with by way of recommendation to the Corporate Board after consultation with the Head of Finance and with the Head of Legal and Electoral Services or such officer as nominated by them.

For contracts over £500,000 the Head of Finance and the Head of Legal and Electoral Services or such officer as nominated by them will make a recommendation to the Executive.

12.7.3 Exceptional circumstances

An exception to the requirements to follow the tender or quotation procedure **may** be granted in the following circumstances:

- (a) An unforeseen emergency arises and the work, service or supply is required urgently and would not therefore permit an invitation to tender or quote.
- (b) For justifiable technical reasons works, services, goods can only be obtained from one supplier ;
- (c) Acquiring goods or services from a different supplier would result in incompatibility with existing goods and services or disproportionate technical difficulties;
- (d) The proposed contract is an extension to or a variation of the scope of an existing contract, if permitted by EU or UK legislation.
- (e) Government circular or legislation is in force which differs from these Contract Rules of Procedure.
- (f) Negotiated tender with existing contractor where it is desirable in the best interests of the Council that a tender shall be invited for the execution of works or the supply of goods and materials from a contractor already engaged by the Council for a particular reason(s) but subject to compliance with EU or UK legislation.
- (g) Contracts with professional persons in which the personal skill of those persons is of primary importance, and there would be no genuine competition but subject to compliance with EU or UK legislation.
- (h) Contracts for the supply of goods or materials and services if:

- (i) the goods or materials are sold at a fixed price and no reasonably satisfactory alternative is available;
 - (ii) the prices of the goods or materials are wholly controlled by trade organisations or government order, and no reasonably satisfactory alternative is available;
 - (iii) they are obtainable from only a limited number of Contractors, but in such case, a reasonable number of those Contractors shall be invited to submit tenders but subject to compliance with EU or UK legislation;
 - (iv) they are approved by a consortium of which the Council is a Member, except the Central Buying Consortium where the Council has adopted the Standing Orders of Hampshire County Council for the purposes of our membership and so purchases made through this route are exempt from these regulations;
 - (v) for other reasons there would be no genuine competition but subject to compliance with EU or UK legislation.
- (i) Where the work to be executed or the goods or materials to be supplied consists of repairs to, or the supply of parts for, existing proprietary machinery or plant.

12.7.4 Record Retention

Unsuccessful Tenders will be held securely by the issuing Service Unit for a period of not less than two years. After the stated period the tenders may be destroyed.

Expired Contracts may be archived upon expiry and may be destroyed after 6 years if the Contract is signed or 12 years if the Contract is under seal.

12.7.5 Contracts Register –

The Responsible Head of Service must formally notify the Head of Finance of the award of all contracts above £50,000 in value. This data shall be used to compile a register of Council contracts.

The data shall be used in the completion of the annual return of EU Procurement statistics and in collaborative opportunities with neighbouring authorities including those who are part of the Thames Valley Procurement Forum, the Berkshire Procurement and Shared Services Unit and Improvement and Efficiency South East .

The relevant Corporate Director approving the exceptions below at 12.8.6.1, 12.8.6.1 and 12.8.6.3 must do so with caution and where appropriate seek legal advice. These services usually fall into Part B of the Public Contracts Regulations 2006 which means that they are not subject to the full application of the Rules. However the onus is on the Council to seek to ensure that such contracts are not of interest to other member states and each contract need to be looked at on a case by case basis. If there is a lot of repeat

purchasing of similar types of services or even where a single package is of high value then such contracts could be of inter member state interest and must be advertised in the Official Journal of the European Union. Additionally there is an obligation to comply with the requirement of the Public Contracts (Amendment) Regulations 2009 which includes the placing of a transparency notice in the Official Journal of European Union. Furthermore there is a need to demonstrate value for money in public expenditure.

12.7.6 Social Services - Residential/Nursing Care

Subject to 12.8.6, the Corporate Director (Community Services) shall have authority to approve exceptions to these Contract Rules of Procedure where spot purchasing of residential/nursing care is restricted to providers who are included on the List of Residential and Nursing Care Accredited Providers, the conditions of which include prices specified by the Executive. Orders can be placed with a single provider.

(The Contracts & Procurement Unit needs a copy of the decision for the exceptions file.)

12.7.7 Social Services - Social Care Services

Subject to 12.8.6 the Corporate Director (Community Services) shall have authority to approve exceptions to these Contract Rules of Procedure where spot purchases of domiciliary care, is restricted to providers who are included on the Accredited List of Domiciliary Care Providers and the purchase is for an individual's care package which is under £250 per week. Orders can be placed with a single provider.

(The Contracts & Procurement Unit needs a copy of the decision for the exceptions file.)

Value for money aspects can be demonstrated in inviting single tenders from the voluntary sector, especially in the case of an organisation providing a specialist service.

The existing voluntary sector provider has entered into a long term lease or similar arrangement or has made substantial capital investment in a building for the express purpose of providing a service under contract to the Council.

12.7.8 Social Services - Children and Clients with Special Needs

Subject to 12.8.6 the Corporate Director (Children and Young People) shall have authority to approve exceptions to these Contract Rules of Procedure for individual spot purchases for residential care for children or clients with special needs, where urgency and service need are integral to the provision.

12.7.9 Educational Establishments

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or services the Headteacher or such persons as delegated by h must follow these rules and must seek advice from the Head of Finance or nominated Officer regarding the restrictions imposed by EU and UK legislation.

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or services up to a value of £10,000, the Headteacher/Governing Body may set lower financial thresholds in order to maintain tighter control.

In general terms where these rules refer to Head of Service these duties and responsibilities will become those of the Head Teacher/Governing Body.

12.7.10 Major Incident Plan

When a major incident is declared the Council's Major Incident Plan and/or Business Continuity Plan may be invoked. This in turn may lead to the need to incur additional unbudgeted expenditure. When this becomes necessary the Contract Rules of Procedure will be suspended and the Chief Executive, or an officer nominated by the Chief Executive, is then authorised to incur whatever expenditure is necessary in consultation with the Head of Finance.

A Corporate Director will act in the place of the Chief Executive if he/she is unavailable.

12.8 Engagement of Consultants

12.8.1 Definition

Consultants and advisors include any expertise, support, advice or formal consultancy that is obtained outside the Council for a fee or charge.

Consultants and advisors may be used in the following areas (and this list is not exhaustive):-

- Advice on value for money reviews and evaluating tenders
- Policy and Strategy reviews
- Organisational and service reviews
- Job evaluation
- Financial planning or analysis
- Feasibility studies
- Marketing and business planning
- Public relations
- Computer and IT strategy

- Managing change
- Senior staff recruitment, selection and training
- Individual staff management e.g. community care
- Project Management
- Specialist advice relating to architectural, design projects
- Construction and regeneration projects etc.

Temporary agency staff (for example, for social care work, to provide maternity cover, etc) are not consultants or advisors and should be procured using the corporate contract for agency staff.

12.8.2 Guidance

Corporate Procurement and Contracts Unit has produced Guidance on use of consultants and advisors. This can be obtained from that office. This incorporates a form which must be completed and signed by the relevant Head of Service.

12.8.3 Procurement Process

- All consultants and advisors must be procured under the applicable tendering Rules at 12.6 and 12.7.
- All consultants and advisors must enter into a written contract with the Council in a form to be approved by the Head of Legal and Electoral Services. Such contracts come under the contract for services under the Rules and appropriate procedures under 12.6 and 12.7 must be followed and recorded in writing.

12.8.4 General

A worker will always be employed on a contract of employment unless the circumstances of the engagement fully support an alternative arrangement. The Payroll Manager **must** be consulted because of the potential tax implications of these arrangements.

No consultants shall be engaged unless the costs can be met from the allocated budget for the scheme/project or contract. The costs do not need to be allocated specifically for employing consultants in the budget, any part of the budget may be used to employ consultants provided the overall budget is not exceeded.

12.8.5 Counsel

Within budget, the Head of Legal and Electoral Services shall have discretion to select Counsel, obtain Counsel's opinion and brief Counsel whenever it is considered expedient in the Council's interest to do so.

12.8.6 Evaluation against Predetermined Criteria

Tender bids will be evaluated against predetermined criteria relevant to the particular circumstances e.g.:

- Relevant/recent experience;
- Adequacy of resource/materials available;
- Quality of work;
- Reliability/timeliness;
- Comparable cost.

12.8.7 Appraisals of Work

Tenderers may be asked to submit appraisals of their work from other clients to assist in the evaluation.

12.8.8 Letter of Engagement/Contract

The letter of engagement/contract for services sent to the approved Consultant must contain all of the following clauses (unless exceptions are agreed by the Corporate Director). The Head of Legal and Electoral Services or nominated Officer will provide advice on the form of contract and negotiations and the Head of Finance or nominated officer will provide advice on financial risk issues.

12.8.9 Clauses for Letter of Engagement/Contract

- The Consultant must agree that all documents and materials produced as a result of their engagement under the contract are the property of the Council and that copyright in all documents and materials so produced vests with the Council.
- The Consultant will be responsible for the provision of all major items of equipment and materials necessary to complete the task.
- The Consultant will be free to engage others considered necessary to complete the task at his/her own expense – but such sub consultants must be approved by the Council and must have suitable professional indemnity insurance.
- The Consultant will be responsible for the correction of faulty or incomplete work at his/her own expense.
- The Consultant will be responsible for determining how the work will be done.
- The agreed fee will be paid upon satisfactory completion of the specified work (or in instalments upon complete stages as agreed).
- The Consultant will have no right to terminate the engagement until all contracted work is completed satisfactorily provided that the Council is not at fault in causing the termination.
- The Consultant will be personally liable for all claims against him/her emanating from, or connected with this engagement.

- The Consultant will be personally responsible for all tax and National Insurance liabilities arising from the engagement.
- The Consultant must have professional indemnity insurance of a minimum of £5,000,000.
- The Consultant must comply with these Rules of Procedure (and for the purposes of the Code of Conduct referred to in the Council Rules of Procedure, they shall be deemed to be an “Officer”) subject to the modifications that the procedure to be followed in inviting and opening tenders shall be approved in advance by the appropriate Head of Service and the Head of Finance or nominated Officer.
- The Consultant must at any time during the carrying out of the contract, produce to the appropriate Head of Service or a designated representative, on request, all the records maintained by them in relation to the contract.
- The Consultant must on completion of a contract, transmit all records (or copies) to the appropriate Head of Service.

12.8.10 Commissioning Manager

The manager responsible for the running of the contract in the service area (“the Commissioning Manager”) will be responsible for monitoring progress of the contracted work.

The Commissioning Manager must report to his/her Head of Service if there are indicators that the work may not be completed within specified time limits or to quality standards.

12.8.11 Termination of Contract

Decisions to terminate a contract with a consultant before completion must only be taken in consultation the Contracts & Procurement Unit, Head of Legal and Electoral Services and the agreement of the Corporate Director. Similarly, a decision to withhold agreed payment on completion of contracted work, or at an agreed stage, can only be made by the Corporate Director in consultation with the Contracts & Procurement Unit and the Head of Legal and Electoral Services.

12.8.12 Invoices

Invoices from the Consultant must be verified by the Commissioning Manager as being within the agreed contract terms, and must be endorsed by the Head of Service or his/her delegated Officer before being submitted for payment.

12.9 Entering into a Contract

12.9.1 Contract Form

All contracts entered into by the Council must be in writing in a form approved by the Head of Legal and Electoral Services or his

delegated Officer. Standard Forms of Contract must be used wherever possible.

Where a Standard Form of contract cannot be used, or a Standard Form is to be amended, the Form of Contract shall be prepared/amended by the Head of Legal and Electoral Services or his delegated officer. All Forms of Contract must specify inter alia:

- (a) the services, supplies, work, materials, matters or things to be provided, had, or done;
- (b) the price to be paid, with a statement of discounts or other deductions;
- (c) the time or times within which the contract is to be performed;
- (d) provision for the payment of liquidated damages, where the contractor fails to complete the contract or complete within the authorised timescales (where applicable);
- (e) a clause empowering the Council to cancel the contract in circumstances of corruption, and to recover any loss resulting from such cancellation;
- (f) a requirement for compliance with current legislation relating to health and safety at work, sex, race and disability discrimination and in general equalities legislation. Following is a non-exhaustive list of equalities legislation;
 - Equal Pay Act 1970 (Amended)
 - Sex Discrimination Act 1975;
 - Race Relations Act 1976;
 - Data Protection Act 1984;
 - Disability Discrimination Act 1995;
 - Human Rights Act 1998;
 - Freedom of Information Act 2000;
 - Race Relations (Amendment) Act 2000;
 - Employment Equality (Religion or Belief) Regulation 2003;
 - Employment Equality (Sexual Orientation) Regulation 2003;
 - Race Relations Act 1976 (Amendment) Regulation 2003;
 - Civil Partnerships Act 2004;
 - Environmental Information Regulations 2004;
 - Gender Recognition Act 2004;
 - Disability Discrimination Act 2005;
 - Disability Discrimination Amendment Act 2005;

- The Employment Equality (Sex Discrimination) Regulations 2005;
 - Employment Equality (Age) Regulations 2006;
 - Equality Act 2006;
 - Racial and Religious Hatred Act 2006;
- (g) a clause requiring full indemnity of the Council (usually provided by Public Liability Insurance);
- (h) a clause requiring a performance bond (where applicable);
- (i) a clause requiring contractors to warrant that performance and functionality will not be affected by date or other information technology functions;
- (j) a clause which reflects the Council's environmental and sustainability policies (where appropriate);
- (k) a clause permitting the use of information for preventing and detecting fraud (where appropriate).
- (l) a clause requiring the contractor to supply sufficient information in a timely manner to enable the Council fully and properly to comply with requests for information under the Data Protection Act 1998, Freedom of Information Act 2000 and the Environmental Information Regulations 2004;
- (m) a clause requiring the contractor to keep details of the contractual arrangements confidential and not to disclose the same without the consent of the Council;
- (n) a clause requiring contractors to co-operate with enquiries by overview and standards committees, Ombudsmen, the Standards Board for England, the Council's internal and external auditors, Government departments and the European Commission and other legally-empowered persons;
- (o) a clause detailing the liabilities and responsibilities relating to workforce matters where the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply; and
- (p) in the case of the engagement of professional advisers, a requirement that the adviser shall at all times be fully covered by professional indemnity insurance and that, in relation to that contract, he or she shall confirm to the requirements of these Contract Rules of Procedure, the Council's Financial Rules of Procedure and any direction from the Council, the Executive, a Committee or duly authorised officer.

12.9.2 Contract Presentation

Contracts under £5,000 shall be in writing on an official order signed by the designated purchasing Officer.

Between £5,000 and £50,000 contracts and one-off purchases shall be in writing in the form of a contract approved by the Contracts & Procurement Unit unless it is a standard form of contract with a specification attached if necessary.

All contracts over £50,000 to EU threshold - the form of contract must be approved and signed by the Head of Legal and Electoral Services who shall retain all relevant contract documents. The Head of Legal and Electoral Services must witness the affixing of the common seal of the Council to any such contract.

EU and over - the form of contract must be approved and signed by the Head of Legal and Electoral Services who shall retain all relevant contract documents. All contracts over the EU threshold will be sealed.

12.9.3 Standard Clauses

Every contract shall include wherever possible the standard clauses set out in Form F020A (available from the Contracts & Procurement Unit).

In every written contract for the execution of work or the supply of goods, materials or services, a clause shall be inserted to secure that the Contractor shall be prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever, any portion of this contract without the written permission of the Council.

12.9.4 Sub-letting

Sub-letting of any parts of the contract except to the extent permitted in writing by the appropriate Head of Service shall be prohibited.

The contractor shall be responsible for the observance of this Regulation by sub contractors employed in the execution of the contract.

12.9.5 Provision for Liquidated Damages

Every contract which is estimated to exceed £50,000 in value or amount, and is for the supply of services, execution of works (or for the supply of goods or materials by a particular date or series of dates) shall provide for liquidated damages unless the Head of Legal and Electoral Services and/or the Head of Finance or nominated Officer determines that such a provision is not required. The amount to be specified in each such contract shall be determined by the Head of Service concerned in consultation with the Head of Legal and Electoral Services and the Head of Finance or nominated Officer.

12.10 Legal Considerations

12.10.1 Relaxation of Indemnities

No relaxation of full indemnities releasing the Council from all liability whether provided by public liability insurance or other instrument should be allowed unless authorised in writing by the Head of Legal and Electoral Services or the Risk Manager, the Head of Finance or nominated Officer.

12.10.2 Risk Assessments

Where a contract is estimated to exceed £50,000 in value or amount and is for the execution of works (or for the supply of goods or materials by a particular date or series of dates) the relevant Head of Service must undertake a risk assessment, in conjunction with the Head of Finance or nominated Officer to determine whether a Performance Bond or other suitable security should be required from the tenderers. This is to provide sufficient security for the due performance of the contract. A record of the risk assessment must be retained on the contract file for inspection.

Where it is felt necessary, such bonds required shall be for an amount equal to 10% of the value of the contract, and shall be taken up by the contractor with an insurance company, bank or other recognised financial institution approved by the Council. The bond shall be released on practical completion of the work.

12.10.3 Contractor's Indemnities and Tax

It is a general principal that all contracts must "hold harmless" West Berkshire Council, its Members and Officers, against any loss or claim, however caused, arising from any contract and/or its execution, and that the Contractor will indemnify West Berkshire Council against all losses/demands/claims howsoever arising.

12.10.4 Need for Insurance

Every contract should be assessed for risk. If the risk assessment identifies the need for insurance the Head of Service must:

- (a) in consultation with the Head of Finance or nominated Officer set adequate levels of insurance cover. This includes employer's liability, public liability and any other as determined by the needs of the particular contract;
- (b) in consultation with the Head of Finance or nominated Officer ensure that the required insurances are in fact held by the contractor and that the policies concerned are renewed, if necessary, during the period required;
- (c) in consultation with the Head of Finance or nominated Officer who must ensure the contractor's status under the Inland Revenue Construction Industry Tax Deduction Scheme (for construction contracts);

- (d) in consultation with the Head of Finance set a consultants' professional indemnity insurance (for Consultancy agreements), minimum £5,000,000 cover unless the Risk Manager feels that a greater amount is required if so determined by the risk assessment process.

12.10.5 Sealing of Documents

The Common Seal shall be in the Custody of the Head of Legal and Electoral Services and kept in a safe place at his/her discretion.

The Common Seal of the Council may be affixed to any document that has been approved by a resolution of the Council; or of the appropriate Committee or an Officer to which the Council or the Executive has delegated its powers on its behalf, provided that a resolution of the Council or of the appropriate Committee or Officer where that appropriate Committee or Officer has the appropriate authority authorising the acceptance of any tender, the purchase, sale, letting or taking of any property, the issue of stock, the presentation of any petition, memorial or address, the making of any rate, contract or order, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

Provided also that the Common Seal of the Council may be affixed to any:

- (a) Petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council opposes.
- (b) Mortgage in respect of a loan arranged by the Head of Finance or nominated Officer under the powers of Heads of Service approved by the Council.
- (c) Incomplete form of transfer for the duly authorised sale of securities by the Council as necessary for the purposes of dealing with stocks and shares in accordance with the Stock Transfer Act 1963.

12.10.6 Affixing of Seal

The affixing of the seal shall be attested in writing by the Head of Legal and Electoral Services, or an Officer duly designated by him/her in accordance with the delegated powers conferred by the Council. An entry of every sealing of a document shall be made and consecutively numbered in a book to be provided for the purpose and shall be signed by the person attesting the sealing.

12.10.7 Signature of Documents

Where any document will be a necessary step in legal proceedings on behalf of the Council it shall, unless any enactment otherwise requires or authorises or the Council shall have given the necessary authority to some other person for the

purpose of such proceedings, be signed by the Head of Legal and Electoral Services.

Where it becomes necessary to execute any document on behalf of the Council not required by law to be under Seal, the Head of Legal and Electoral Services or an Officer designated by him/her in accordance with the delegated powers conferred by the Council shall be deemed to have authority to sign such a document accordingly. A register of such documents shall be kept by the Head of Legal and Electoral Services or Officer duly designated by him/her.

12.11 Contract Administration

12.11.1 Payment by Instalments

Payments to contractors on account of contracts shall be made on a certificate issued by the Head of Service (or private architect, engineer or consultant where engaged by the Council) as appropriate or by another Officer nominated by him/her in writing for the purpose. Each payment must be checked by a colleague and the check should be evidenced by initialling. Within each Service an **independent** sampled check should be done, on a rotation basis, of 5% of interim payments.

12.11.2 Variation to Contracts

Subject to the provisions of the contract in each case every variation shall be authorised in writing by the Head of Service (or private architect, engineer or consultant) and Head of Finance or by another Officer nominated by him/her in writing for the purpose.

Any such extra or variation shall include the estimated additional cost arising from the variation and the method of payment to be applied i.e. contractual rates, agreed rates or reimbursable/daywork (please note that payment on a reimbursable/daywork basis should only be used when an item cannot be physically measured/quantified). When calculating the cost of variations cross referencing to Bill of Quantities rates or daywork sheets etc must be completed so as to provide a clear audit trail. Where rates used depart from those in the contract or others previously agreed notes should be made for the reason for their use.

Where the extra or variation, or total of extras or variations to date, exceed 10% of the contract sum or £50,000 whichever is the greater the approval of the Head of Finance or nominated Officer shall be required. Any variation with a financial implication should be discussed with the group accountant.

12.11.3 Final Certificate and Statement of Account

As soon as possible after practical completion and before issuing the final certificate under a contract, the Head of Service or consultant concerned shall obtain from the Contractor a full and

detailed final account contract statement in respect of the claim for the whole work, materials and things executed and delivered under the contract, with such receipted vouchers as may be necessary. Any adjustments made must be recorded and notes must be made of queries, discussions and actions taken during the process of calculating and agreeing the final account. The Head of Finance or nominated Officer shall be notified of the name of the account, the date the final sum is due, the final value of contract and the tender value.

The final certificate must be checked by the Head of Service or a person nominated by them and they should ensure that all defects have been actioned and documented.

The Head of Finance or nominated Officer may, to the extent he/she considers necessary, examine any final account contract statement and be entitled to make all such enquiries and receive such information and explanations as may be required in order to satisfy him/herself as to the accuracy of the account.

12.11.4 Claims from Contractors

Claims from contractors in respect of matters not clearly within the terms of any existing contract shall be referred to the Head of Legal and Electoral Services or nominated Officer and, where necessary, to the Head of Finance or nominated Officer for financial consideration before a settlement is reached.

12.11.5 Reporting of Final Contract Costs

A contract close-out report should be sent to the Corporate Contract and Procurement Manager detailing the contractors performance during the term of the contract.

The estimated final cost of a contract shall be reported to the Executive within four months of the issue of the practical completion certificate comparing the probable final and originally estimated costs, together with an explanation of any differences.

[Note: The Contracts & Procurement Unit can be contacted on (01635) 519860 or email procurement@westberks.gov.uk.]

12.11.6 Performance Management

Each Head of Service must ensure that consistent and robust monitoring takes place of all contracts in their Service and that this is fully recorded. Where possible a performance management clause must appear in all contracts at the time of procurement making performance management a contractual obligation.