

West Berkshire Council Constitution

Part 11

Contract Rules of Procedure

Document Control

Document Ref:	WB/P&C/MF/2008-11	Date Created:	May 2007
Version:	10	Date Modified:	April 2017
Revision due	Annual		
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Change History

Version	Date	Description	Change ID
1.1	Sept 2008	Amended to include up to date guidance on the use of consultants	
2	Jan 2010	Significant re-write in line with current legislation.	
3	April 2012	Changes to whole document as a consequence of the Senior Management Review	
4	December 2012	Significant re-write to bring in line with current law, practice and procedures. Also to streamline it.	
5	June 2014	11.11.3(a)	Delegated authority



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6	May 2015	11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.3.1 (b) and (f), 11.4.3, 11.4.4, 11.5.1, 11.5.2, 11.6.1, 11.6.2, 11.6.4, 11.7.2, 11.7.3, 11.8.1, 11.8.2 (deleted), 11.9.1, 11.9.2, 11.9.4, 11.9.5, 11.11.1, 11.11.2, 11.11.3, 11.11.4, 11.11.5, 11.11.6, 11.13.1, 11.13.2, 11.15.5, 11.16.2, 11.16. Implementation of the new Directives and Regulations	
7	July 2015	Amendments arising from the merge of the Governance and Audit and Standards Committee	11.14.3
8	September 2016	11.1.1, 11.1.2, 11.1.3, 11.1.4, 11.1.5, 11.1.6, 11.1.7, 11.1.8 (added), 11.1.9 (added), 11.2.1, 11.2.2, 11.2.3, 11.2.4, 11.3.1, 11.4.3, 11.4.4, 11.4.5, 11.5.1, 11.5.2, 11.6.1, 11.6.2, 11.6.3, 11.6.4, 11.6.5, 11.7.2, 11.7.3, 11.8.1, 11.8.2 (deleted), 11.9.1, 11.9.2, 11.9.3, 11.9.4, 11.9.5, 11.9.6 (deleted), 11.9.7 (deleted), 11.10.4 (deleted), 11.10.5 (deleted), 11.10.6 (deleted), 11.10.6 (deleted), 11.10.7 (deleted), 11.10.8 (deleted), 11.11, 11.11.1, 11.11.2, 11.11.3, 11.11.4, 11.11.5, 11.11.6, 11.12, 11.12.1, 11.12.2, 11.12.3, 11.12.4, 11.13, 11.13.1, 11.13.2, 11.14, 11.14.1, 11.14.2, 11.14.3, 11.15 (added), 11.16 (added)	
9	November 2016	11.4.4, 11.4.5, 11.11.2, 11.11.3, 11.11.7 and 11.11.8 to reflect the change from the Procurement Board to the Commercial Board	Delegated Authority
10	1 st April 2017	Changes throughout this Part of the Constitution to change Head of Finance to Head of Finance and Property post Senior Management Review	
<u>11</u>	<u>August 2018</u>	<u>Changes throughout this Part from Commercial Board to Procurement Board.</u> <u>Reports for contracts below £2.5m do not now need to go Corporate Board or Operations Board for information.</u>	<u>Council</u>

Any Acts, Rules or Regulations mentioned in the text of this document can be accessed on the Office of Public Sector Information website at:
<http://www.opsi.gov.uk/legislation/uk>

If you require this information in a different format, such as audio tape or in another language, please ask an English speaker to contact Moira Fraser on 01635 519045 who will be able to help.

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11.1 Application of Contract Rules of Procedure

- 11.1.1 These Contract Rules of Procedure (also referred to as the Contract Standing Orders) are made in accordance with the requirements of Section 135 of the Local Government Act 1972.
- 11.1.2 These Contract Rules of Procedure apply to purchases by or on behalf of the Council of works, supplies and services.
- 11.1.3 These Contract Rules of Procedure apply to all contracts including (but not limited to) purchase orders, consultancy agreements, service level agreements, software licenses, concessions and contractual arrangements entered into by or on behalf of the Council, except for the specific types of contracts and purchasing methods which are expressly excluded under the Procurement Legislation.
- 11.1.4 The Procurement Legislation referred to in these Contract Rules of Procedure includes the following:
- 11.1.5 The EU Directives, as follows:
- 11.1.6 Directive 2014/24/EU on public procurement, replacing Directive 2004/18/EC, for Public Sector Contracts;
- 11.1.7 Directive 2014/25/EU procurement by entities operating in water, energy, transport and postal services sectors, replacing Directive 2004/17/EC; and Directive 2014/23/EU on award of concession contracts, which does not directly replace any previous directive.
- 11.1.8 The Regulations, as follows:
- 11.1.9 Public Contracts Regulations 2015 (“PCR”)
- 11.1.10 Utilities Contracts Regulations 2016 (“UCR”)
- 11.1.11 Concessions Contracts Regulations 2016 (“CCR”)
- 11.1.12 as amended from time to time and all implementing the above EU Directives.
- 11.1.13 These Contract Rules of Procedure do not provide guidelines on the best way to purchase works, supplies and services. They seek to set out minimum requirements to be followed. Further information is provided by of guidance and updates on the Legal Services intranet pages, which accompany these Contract Rules of Procedure. This further information is made available and updated from time to time.
- 11.1.14 The Council has designated that the Head of Legal Services be the Monitoring Officer. The Council has designated the Head of Finance and Property be the S151 Officer. The Head of Legal Services shall be responsible for interpreting these Contract Rules of Procedure. All reference to Head of Legal Services hereafter includes any such officers nominated by the Head of Legal Services.
- 11.1.15 In the event where a Governing Body of a school, under the control of the Local Education Authority, intends to enter into a contract for works, supplies or services the Head teacher or such persons as delegated by them must follow these Contract Rules of Procedures.

- 11.1.16 In the event of a declaration of major incident 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 and Property. A Corporate Director will act in the place of the Chief Executive if they are unavailable.
- 11.1.17 Failure to comply with these Contract Rules of Procedure will be viewed by the Council as a breach of the Officers' Code of Conduct contained within Part 13 (Codes and Protocols) of this Constitution and may be considered a disciplinary matter.

11.2 Purpose of Contract Rules of Procedure

- 11.2.1 The purpose of these Contract Rules of Procedure is to provide a structure within which procurement decisions are made and implemented to ensure that the Council furthers its corporate objectives in an efficient manner leading to procurement of quality supplies, services and works.
- 11.2.2 These Contract Rules of Procedure protect the legal position of the Council in respect of compliance with the law and in its contractual dealings with external suppliers and contractors. They protect the interests of Members, Officers and the citizens of West Berkshire.
- 11.2.3 Every purchase, contract or official order for works, supplies or services made by the Council shall be for the purpose of implementing the Council's policies and must be made in accordance with the Council's duty of Best Value, Equality and Sustainable Commissioning.
- 11.2.4 When proposing to procure or making arrangements for procuring a service contract where the estimated value exceeds the EU Threshold (for Services) then consideration must be given as to how the procurement or contract might improve the economic, social and environmental wellbeing of West Berkshire, as required by the Public Services (Social Value) Act 2012

11.3 Tendering – Preliminaries

- 11.3.1 It is the responsibility of the Chief Executive, Corporate Directors, and Head of Services to ensure all purchases of supplies and services and works comply with:
- (a) all relevant statutory requirements;
 - (b) the relevant EU Rules including EU Treaty Principles and Directives.
 - (c) the Council Constitution including these Contract Rules of Procedure and Financial Rules of Procedure and Scheme of Delegation.
 - (d) any code, guidance or conditions approved by the Governance and Ethics Committee and/or the Executive and/or the Council to the exercises of powers delegated by them.
 - (e) any conditions attached by the Executive or the Council to the exercise of powers delegated by them.

- (f) the guidance and updates (available from time to time) on the Legal intranet pages (to include Consultancy Guides) and other policies and procedures of the Council as appropriate.

11.3.2 In the event of conflict between the above, the EU Rules will take precedence, followed by UK legislation, then (c), (d), (e), and (f) as above.

11.4 Authority

11.4.1 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.

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

- 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
- a decision by an officer exercising delegated powers.

11.4.3 Budgetary provision must exist before any contract can be entered into. This provision should be explicit in a budget approved by resolution of the Council. Where budgetary approval exists for a specific item within the Capital Programme further Member approval is generally not required.

11.4.4 For items outside of the Capital Programme (e.g. revenue) if the relevant Head of Service does not have the delegated authority then an approval or a resolution (as appropriate) is required as outlined in the table below (provided the expenditure can be met within budget) before the contract can be awarded:

Total Contract Value per annum*	Delegated decision or Resolution of:
£100,000 or less	Relevant Head of Service (or such officers as nominated by the Head of Service in writing) shall have delegated authority to award the contract.
£100,000 or more and less than £500,000	Relevant Head of Service (following recommendation of the S151 Officer and Head of Legal Services) shall have delegated authority to award the contract provided: <ul style="list-style-type: none"> a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by <u>Commercial Procurement Board</u>; and b) the report has been included as an "item for information" item for Corporate Board.
£500,000 or more and less than £2.5million	The award of these contracts shall require a "key decision"(as defined in Part 5.1.1 of the Constitution) delegated to be taken by relevant Head of Service in consultation with the relevant

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Total Contract Value per annum*	Delegated decision or Resolution of:
	<p>Portfolio Holder (following recommendation by the relevant Corporate Director, S151 Officer and Head of Legal Services) to award the contract provided:</p> <p>a) a written report by the relevant Head of Service (or such officers as nominated by the Head of Service in writing) has been provided and approved by <u>Commercial Procurement</u> Board; and</p> <p>b) the report has been included as an "Item for information" item for Corporate Board and to the Operations Board.</p> <p>c) b) such decision have been made in accordance with Part 5.3 (Call-In) and 5.4 (Forward Plan) of the Constitution.</p>
£2.5million or more	<p>These contracts shall require a key decision of the Executive following recommendation by S151 officer and Head of Legal Services. Executive shall receive a report from the relevant officer either recommending for the contract to be awarded or seeking delegated authority for the relevant Head of Service to award the contract in consultation with the relevant Portfolio Holder, s151 officer and the Head of Legal Services.</p>

* Total Contract Value is the calculation of the estimated value of procurement based on the total amount payable, net of VAT, including any renewals, extensions, any form of option and variation calculated in accordance with the Procurement Legislation. Please also refer to Paragraph 11.7.

- 11.4.5 All contracts over £50,000 in Total Contract Value will be reported to Commercial Procurement Board on at least a quarterly basis by the Heads of Services for review and scrutiny.

11.5 Tendering - Financial Thresholds & Procedures

- 11.5.1 Officers undertaking the procurement are responsible for ensuring that all persons awarded contracts for the supplies, services or works to the Council meet the Council's minimum standards of suitability, capability, legal status and financial standing. Where the contract is below the EU threshold for goods and services officers must not include a pre-qualification stage. However questions relating to a supplier's suitability assessment may be included provided such questions are relevant to the subject matter of the procurement and proportionate.
- 11.5.2 The financial value thresholds (exclusive of Value Added Tax) at which processes become mandatory are set out in the table below. The thresholds apply to contracts for works, supplies and services:

	Total Value £	Award Procedure	Advertising requirements
A	Less than 10,000	At least one quote must be sought from an appropriate source via the Procurement Portal.	None mandated.
B	10,000 or more and less than 100,000	Invitations to quote must be sent via the Procurement Portal to at least three appropriate sources, including at least one SME* or VCSE* organisation (where appropriate and possible) ¹ .	None mandated. However if advertising then information about the opportunity should be placed on Contracts Finder database.
C	100,000 or more and less than relevant EU threshold ²	Full competitive tender process applies and at least five written tenders must be sought via the Procurement Portal.	An advert should be placed on the Portal together with information on the Contracts Finder database
D	Relevant EU threshold ² or more	EU Procedures apply– full competitive tender process with at least five written tenders sought (where appropriate) via the Procurement portal.	An advert should be placed on the Official Journal of the European Union together with information on the Contracts Finder database.

*SME (means an enterprise falling within the category of micro, small and medium-sized enterprises) or *VCSE (means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives).

¹The Council cannot give preference to SME/ VCSE or local contractors/suppliers, as there are legislative constraints and such a policy would be incompatible with Best Value. However, the Council recognises that there can be barriers limiting or restricting the ability of such smaller suppliers to compete for Council business. The Council will seek to reduce the impact of such barriers, where it can do so legally, without discrimination, and without placing unacceptable levels of risk on the Council.

²There are three different EU thresholds for Works; Supply and Services; Social and Other Specific Services. The latest values are published on Legal intranet page as updated from time to time.

11.6 Tendering - Advertising

- 11.6.1 There is a general presumption in favour of competition. Subject to advertising requirement in paragraph 11.5.2 (Tendering- Financial Thresholds and Procedures)
- 11.6.2 all contract opportunities being advertised by the relevant Head of Service should be done so electronically on the Council's Procurement Portal to ensure that such opportunities also appear on the Contracts Finder database For opportunities relating to works, services and supplies which fall below the EU threshold a UK Government Certified national database can be used to select tenderers.

11.6.3 Subject to 11.6.1 (above) all contract opportunities which are:

- above the EU thresholds; and
- subject to the full application of EU Rules

must be advertised by notice in the Official Journal of the European Union ("OJEU notice") and Contracts Finder database prior to such advertisement appearing on any other advertising medium (such as trade journal etc.). Contracts Finder means a web-based portal provided by the Cabinet Office.

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

11.6.5 Where a contracts is above the EU financial threshold there are five main types of EU procedures available. These are Open procedure, Restricted procedure, Competitive procedure with negotiation, Competitive dialogue and Innovation partnership. Care must be taken to ensure that the correct and most appropriate procedure is used and advice is sought from Legal Services on the choice and use of EU procedure. OJEU notices must be approved and issued by Legal Services who will also assist in the conduct of the procurement.

11.7 Tendering - Contract Value & Aggregation

11.7.1 The contract value shall be the total cost of the supply, service or work to be procured over the contract term. The starting point for calculating the contract value for the purposes of these Contract Rules of Procedure is that the contract value shall be the genuine pre-estimate of the value of the entire contract excluding Value Added Tax. This includes all payments to be made, or potentially to be made, under the entirety of the contract and for the whole of the predicted contract period (including proposed extensions, variations and options).

11.7.2 There shall be no artificial splitting or disaggregation of a contract to avoid the application of the provisions of the Procurement Legislation and/or these Contract Rules of Procedure.

11.7.3 The Procurement Legislation can cover contracts, which are below the stated EU threshold, where they constitute repeat purchases and/or purchases of a similar type in a specified period. Officers responsible for the procurement should therefore seek advice on the application of the Procurement Legislation where they envisage that they may be required to make such purchases.

11.8 Tendering - Principles and Evaluation

11.8.1 All tendering procedures (including obtaining quotes), from planning to contract award and execution (seal or signature), shall be undertaken in a manner so as to ensure:

- sufficient time is given to plan and run the process;
- equal opportunity and equal treatment;
- openness and transparency;

- proportionality;
- probity;
- outcomes that deliver sustainability, efficiency and cost savings (where appropriate).

11.9 Tendering - Submission and Opening of Tenders

- 11.9.1 An electronic Invitation to Tender shall be issued by the Council for all contracts with an estimated value of £100,000, or more and tenders shall be submitted electronically via the Council's Procurement Portal.
- 11.9.2 The Council Procurement Portal and the Invitation to Tender must specify the format in which an electronic tender is submitted by tenderers and such tenders shall be stored in a secure portal account which is locked until the date and time specified for its opening.
- 11.9.3 No tender received after the time and date specified for its opening shall be accepted or considered by the Council unless the Head of Legal is satisfied that there are exceptional circumstances and the other tenders have not been opened.
- 11.9.4 The electronic opening of tenders submitted on the Procurement Portal shall be conducted by a Procurement or Legal Officer and the relevant Head of Service or their nominated representative.
- 11.9.5 Only in limited circumstances a tender process should be undertaken by hard copy submissions. In such cases written approval of the Head of Legal Services is required. The following circumstances shall apply:
- 11.9.6 The Invitation to Tender shall specify that such tenders should be returned to the relevant Head of Service; in an unmarked, plain and sealed envelope marked "Tender" followed by the subject matter to which it relates and:
- (a) Tenders should be kept unopened in a secured cabinet until the tender opening date; and
 - (b) The relevant Head of Services shall invite the appropriate Portfolio Holder and an officer from Legal Services to undertake the tender opening and shall complete a standard tender opening form as issued by Legal Services (available on the intranet) in order to avoid risk of challenge.

11.10 Tendering – Evaluations of Quotes and Tenders

- 11.10.1 All quotes and tenders shall be evaluated in accordance with evaluation criteria notified in advance to those submitting quotes/tenders.
- 11.10.2 Tenders subject to the EU Rules shall be evaluated in accordance with the EU Rules. Advice from Legal Services should be sought on the selection and evaluation criteria.
- 11.10.3 Save in exceptional circumstances approved in advance by the relevant Head of Service all contracts shall be awarded on the basis of the quote or tender which is most economically advantageous and represents best value for money to the Council and not on the basis of lowest price.

11.11 Exclusions and Exceptions to Contract Rules of Procedure

11.11.1 Exclusions

11.11.2 The requirement to conduct a competitive procurement process is excluded in the following circumstances:

	Type of circumstance	Written record and approval
a)	the proposed contract is excluded under the Procurement Legislation.	Prior written approval from the Head of Legal Services is required.
b)	the proposed contract is being awarded under a Purchasing Scheme (refer to 11.12) of a type where a competition has already been undertaken on behalf of the Council or other public sector organisation; or	Prior written approval from the Head of Legal Services is required.
c)	the proposed contract is an extension to or a variation of the scope of an existing contract where the existing contract provides for such extension or a variation or where the variation is a modification permitted under the Procurement Legislation.	For contract value below £50,000 prior written approval from the Head of Legal Services and S151 Officer is required. For contract value greater than £50,000, approval of the Commercial Procurement Board , following the submission of an extension report to Commercial Procurement Board with recommendation from Head of Legal Services and S151 Officer
d)	the contract is for the following social care services: <ul style="list-style-type: none"> i. residential placements sought for an individual with a registered care provider of their choice; ii. supported living services sought for an individual with an appropriate care and support provider of their choice under the National Health Service and Community Care Act 1990; iii. individual school placements sought for a child with Special Educational Needs (SEN); 	Head of Service must ensure that a record of the reasons for the choice of provider is maintained on the individual's case notes. A record of the annual cumulative expenditure with each provider should be maintained by each directorate and made available for audit.

	Type of circumstance	Written record and approval
	iv. social care packages managed by or on behalf of individual clients under the personalisation agenda; v. where certain needs of an individual (either an adult or a child) require a particular social care package, which is only available from a specific provider. vi. residential placements sought for an individual under the Shared Lives scheme (or any equivalent scheme).	

11.11.3 In the interests of clarity where an exemption is applied all contracts with an annual or total value of more than £50,000 must be approved by Commercial Procurement Board. Please refer to 11.11.4.

11.11.4 Exceptions

11.11.5 Subject to 11.11.6 the requirement for the Council to conduct a competitive purchasing process for contracts in excess of £9,999, may be excepted or waived in the following circumstance:

- for contracts which are not subject to the EU Rules, the work, supply or service is required as a matter of urgency and a delay would be likely to lead to financial loss, personal injury or damage to property; or
- at the discretion of the relevant Corporate Director and/or the Chief Executive, acting lawfully, who may proceed in a manner most expedient for the efficient management of the Council with reasons recorded in writing.

11.11.6 Only the Head of Legal Services and/or the Head of Finance and Property (as S151 Officer) may grant a waiver or an exception to these Contract Rules of Procedure, subject to Exception Values and delegations below. An Officer, who seeks a waiver of Contract Rules of Procedure, shall do so only in advance and only in exceptional circumstances.

11.11.7 Exception values and delegations

(a) For all contracts up to £49,999 the Section 151 Officer or nominated Officer must approve the exception.

~~(b)~~ For contracts between £50,000, and £5200,000, the Section 151 Officer or nominated Officer will consult with the Head of Legal Services and the appropriate Corporate Director provided an exception report has been approved by Commercial Procurement Board.

~~(c)(b)~~ For contracts between £200,000 and £500,000 the exception will be dealt with by way of recommendation to Corporate Board after consultation with the Section 151 Officer and with the Head of Legal

~~Services or such officer as nominated by them provided an exception report has been approved by the Commercial Board.~~

~~(d)~~(c) For contracts over £500,000 the Section 151 Officer and the Head of Legal Services or such officer as nominated by them will make a recommendation to the Executive provided an exception report has been prepared and approved by ~~Commercial~~Procurement Board and Corporate Board.

11.11.8 All exceptions or waivers to these Contract Rules of Procedure must be:

- fully documented;
- subject to a written exception report to be submitted in advance to ~~Commercial~~Procurement Board (for 11.11.3 b, c, d) by the relevant Head of Service or Corporate Director which shall include reasons for the exception or waiver which demonstrate that the exception or waiver is genuinely required;
- subject to approval by the Section 151 Officer who shall record they have considered the reasons for the waiver and that they are satisfied that the circumstances justifying the waiver are genuinely exceptional. Applications for waivers which are a result of poor contract planning will rarely be considered genuinely exceptional;
- relevant approval has been sought under 11.11.3.

11.11.9 For contracts subject to the EU Rules, any waiver or an exception from the requirement for competition must meet the conditions set out in the EU Rules in addition to the general requirements above.

11.12 Purchasing Schemes

11.12.1 An officer responsible for the procurement exercise may use Purchasing Schemes subject to the following conditions:-

11.12.2 An officer responsible for the procurement must seek advice in advance that:

- the Council is legally entitled to use the Purchasing Scheme;
- the purchases to be made do properly fall within the coverage of the Purchasing Scheme;
- the establishment and operation of each Purchasing Scheme is in compliance with the EU Rules (where they apply) and meets the Council's own requirements.

11.12.3 A "Purchasing Scheme" may include:

- Contractor prequalification lists/select lists;
- Framework arrangements (including those set up by the Government Procurement Service);
- Purchasing arrangements set up by central purchasing bodies and commercial organizations;
- Consortium purchasing;
- Collaborative working arrangements;
- Formal agency arrangements;

- E-procurement / purchasing schemes and methods;
- Other similar arrangements.

11.12.4 Where a Purchasing Scheme is used then there shall be a whole or partial exemption from the obligations under these Contract Rules of Procedures in respect of the choice and conduct of procedures. Advice should be sought from Legal Services prior to entering to such arrangements.

11.13 Reporting Requirements

11.13.1 A written report should be drawn by the relevant Head of Service for each contract that is awarded which is above EU threshold and subject to the Procurement Legislation. The Procurement Legislation places an obligation on the Council to document, for each procurement, key decision and steps taken and stages leading to the award of contracts. This report may be requested by the European Commission and/or the Cabinet Office and should be kept for a period of 3 years. A guidance note and template for such report ~~will be made~~ is available ~~by way of guidance and updates~~ on the Legal Services intranet pages which accompany these Contract Rules of Procedure.

11.13.2 In addition to the above, the relevant Head of Service should document the progress of all procurement procedures including ensuring sufficient information is kept to justify decisions such as communications with contractors and internal deliberations, preparation of procurement documents, any dialogue and negotiation, selection and award. Documentation must be kept for three years from the award of the contract.

11.14 Prevention of Corruption

11.14.1 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.

11.14.2 Where a Member or Officer of the Council has an interest in a contract or a proposed contract whether it is a disclosable pecuniary interest or otherwise and is also involved in the process of letting or managing of that contract, this interest must be registered with the Monitoring Officer who shall decide on whether that Member or Officer should be involved or not.

11.14.3 In the case of ownership of shares Members should seek advice from the Head of Legal Services as to the current level of share ownership accepted by the Governance and Ethics Committee or any such successor authority as being de minimus for the purposes of declarations of interest.

11.15 Entering into a Contract

11.15.1 There should be written evidence of all purchases, including electronic evidence.

11.15.2 All contracts entered into by the Council must be in writing in a form approved by the Head of Legal Services or their delegated officer. Where a standard form of contract is used, or a standard form is to be amended, the form of contract shall be prepared/amended by the Head of Legal

Services or his delegated officer. The Head of Legal Services shall retain all relevant contract documents.

11.15.3 The relevant Head of Service must formally notify the Head of Legal Services (or nominated officer) of the award of all contracts with the relevant data for the purpose of it being recorded on the Council Contract Register.

11.15.4 Every contract shall include wherever possible the standard clauses set out in Standard Form of Agreement issued and updated from time to time by the Head of Legal Services or their nominated officer and available from Legal Services.

11.15.5 As a minimum, where appropriate, all contracts shall include clauses which set out:

- the works, supplies (goods), services, material, matters or things to be carried out or supplied;
- the time within which the contract is to be performed. Quality requirements and/or standards which must be met;
- requirements on the contractor to hold and maintain appropriate insurance;
- what happens in the event that the contractor fails to comply with its contractual obligations (in whole or in part);
- requirements on the contractor to comply with all relevant equalities and health and safety legislation;
- that the Council shall be entitled to cancel the contract and recover losses in the event that the contractor does anything improper to influence the Council to give the contractor any contract or commits an offence under the Bribery Act 2010.
- payment obligations which require that:
 - (a) any payment due from the Council is made no later than 30 days from the date on which the relevant invoice is regarded as valid and undisputed; and
 - (b) any subcontract imposes obligations similar to those required above (a) and an obligation that the subcontractor is required to impose such obligations in any further subcontract.
- All contracts shall include relevant specifications and/or briefs/technical requirements which are prepared taking into account the need for effectiveness of delivery, quality, sustainability and efficiency (as appropriate).

11.16 Legal Consideration

11.16.1 *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 Services and the Head of Finance and Property or nominated Officer.

11.16.2 *Risk Assessment & Performance Bond:* Where a contract is estimated to exceed £500,000, in value or amount and is for the execution of works (or

for the supplies or services by a particular date or series of dates) the relevant Head of Service should consider requiring a performance bond (for an amount equal to 10% of the value of the contract) from the contractor. The bond must be in a form approved by Legal Services and must be included in the Invitation to Tender. This is to provide sufficient security for the due performance of the contract. If a performance bond is considered not necessary then the relevant Head of Service must:

- (a) undertake a risk assessment in writing; and
- (b) seek approval from the Head of Finance and Property; and
- (c) keep a copy the risk assessment on the contract file for inspection.

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

- in consultation with the Head of Finance and Property 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;
- in consultation with the Head of Finance and Property 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;
- in consultation with the Head of Finance and Property or nominated Officer who must ensure the contractor's status under the Inland Revenue Construction Industry Tax Deduction Scheme (for construction contracts);
- in consultation with the Head of Finance and Property set an appropriate level of professional indemnity insurance for each specific contract that require professional and/or design services. This should not be a standard level but be assessed on a case by case basis.

11.16.4 *Sealing:* All contracts above the value of £49,999 shall be sealed. The affixing of the seal shall be attested and witnessed in writing by the Head of Legal Services, or an Officer duly designated by them 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.

The Common Seal shall be in the Custody of the Head of Legal Services and kept in a safe place at their 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.

The Common Seal of the Council may be affixed to any:

- petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council opposes;
- mortgage in respect of a loan arranged by the Head of Finance and Property or nominated Officer under the powers of Heads of Service approved by the Council;
- 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.

11.16.5 *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 Services.

11.16.6 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 Services or an Officer designated by them 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 Services or Officer duly designated by them.

11.16.7 *Counsel:* Within budget, the Head of Legal Services (or nominated officer) shall have discretion to select Counsel, obtain Counsel whenever it is considered expedient in the Council's interest to do so.