

Governance and Audit Committee to be held on 21 March 2007 (continued)

To: Councillors Barbara Alexander (*Chairman*), John Chapman, Sue Farrant, Denise Gaines, Alexander Payton (*Vice Chairman*), Andrew Rowles and Emma Webster.

Officers: Shiraz Sheikh (Solicitor - Property and Commercial), David Holling (Head of Legal & Electoral Services), Ian Priestley (Service Head - Assurance), Charles Morris (Risk Manager), Shannon Coleman (Group Auditor), Julie Gillhespey (Group Auditor) and Vicky Wheatley (Policy & Research Officer).

Agenda

Part I

	Page No.
1. Apologies To receive apologies for inability to attend the meeting (if any).	
2. Minutes To approve as a correct record the Minutes of the meeting of this Committee held on 7 December 2006.	1 - 4
3. Declarations of Interest To receive any Declarations of Interest from Members.	Verbal
4. Training: The Comprehensive Performance Assessment – Use of Resources <i>Purpose: To continue the Committee's training programme.</i>	Verbal
5. Use of Resources <i>Purpose: To detail the Council's position regarding the Use of Resources including any action plans to deal with any shortcomings identified by the Audit Commission.</i>	5 – 17
6. Revised Contract Rules of Procedure <i>Purpose: To consider proposed changes to Part 12 of the Constitution – Contract Rules of Procedure.</i>	18 - 92
7. Risk Management Strategy <i>Purpose: To review and approve the work set out in the Risk Management Strategy.</i>	To Follow
8. The Quarterly Review of the Strategic Risk Register and Red Risks <i>Purpose: To receive information on actions designed to mitigate the red risks identified on the Strategic Risk Action Plan.</i>	To Follow
9. Risk Management Quartley Report. <i>Purpose: To consider and comment on the Risk Management Quarterly Report (October – December 2006).</i>	93 - 102
10. Internal Audit Plan <i>Purpose: To approve the Internal Audit work to be undertaken in 2007.</i>	To Follow
11. Annual Work Programme for the Committee <i>Purpose: To note the annual work programme and future meeting dates of the Committee.</i>	103 - 107

GOVERNANCE & AUDIT COMMITTEE

MINUTES OF THE MEETING HELD ON

7 DECEMBER 2006

Councillors: Barbara Alexander (*Chairman*) (P), John Chapman (AP), Sue Farrant (AP), Denise Gaines (AP), Alexander Payton (*Vice Chairman*) (P), Andrew Rowles (P) and Emma Webster (AP)

Also present: David Holling (Head of Legal and Electoral), Ian Priestley (Service Head - Assurance), Julie Gillhespey (Group Auditor), Shannon Coleman (Group Auditor), Charles Morris (Risk Manager), Gary Lugg (Head of Planning), Kevin Griffin (Head of ICT), Tom Herring (Corporate Contracts & Procurement Manager) and Vicky Wheatley (Policy & Research Officer).

PART I

26. APOLOGIES.

Apologies for inability to attend the meeting were received on behalf of Councillors John Chapman, Sue Farrant, Denise Gaines and Emma Webster.

27. PRESENTATION ON THE ROLE OF INTERNAL AUDIT.

The Committee received a presentation on the Internal Audit Process in Detail (Agenda item 4) delivered by Julie Gillhespey, Group Auditor. She reported that:

- Internal Audit followed the CIPFA Code of Practice for Local Government,
- There were 7 stages to an Audit review from identifying or defining the nature and scope of a review (Stage 1) to following up on the review (Stage 7),
- Stage 1 determined the scope and depth of an Audit Review and took into account key risks, time budget and consultation with the client,
- In stage 2 the control objectives, key risks of the process and draft terms of reference were determined,
- In stage 3 Audit identified expected controls which provide assurance for the control objectives identified,
- In stages 4 and 5 Audit prepared a ICQ (Internal Control Questionnaire), assessed the responses against expected controls and obtained evidence and recorded the results,
- Finally, in stages 6 and 7 Auditors evaluated the test results and drew conclusions. This included making recommendations for each control weakness identified. Final reports were only issued following agreement from the relevant Head of Service,
- 6 months following the report Audit reviewed whether their recommendations had been implemented. Audits of schools were not reviewed due to lack of resources.

RESOLVED that the presentation on the Audit Process in Detail be noted.

28. MINUTES.

The Minutes of the meeting held on 11 October 2006 were approved as a true and correct record and signed by the Chairman.

29. DECLARATIONS OF INTEREST.

There were no interests declared.

30. INTERNAL AUDIT – INTERIM REPORT.

The Committee considered an interim report on Internal Audit for the six months to 30 September 2006 (Agenda item 6) delivered by Ian Priestley, Service Head - Assurance. He reported that the CIPFA Code of Practice for Internal Audit in Local Government required Audit to make interim and annual reports on Internal Audit to the Council. Appendix A summarised the completed audits and opinions. Three follow up reviews were found to be of concern; Contract letting and monitoring follow-up, ICT post project implementation reviews and Planning obligations. As requested by the Chairman, the officers responsible for those areas had been invited to the meeting to provide further information.

Tom Herring, Corporate Contracts & Procurement Manager attended the meeting to discuss Contract letting and monitoring follow-up and answer Member's questions. He reported that the Contract Rules of Procedure had been amended to take into account Internal Audit's recommendations. The amended Procedure would be brought to a future Governance & Audit Committee followed by Council to be formally incorporated in the Constitution. Procurement would then work with Internal Audit to look at those services not following the procedure, although it was felt that most managers and services simply needed education or training on the contract rules of procedure. Tom Herring explained that he did not expect the number of contract variations to decrease as a result of the new procedure, only that the procedure would be followed correctly.

The Head of Planning, Gary Lugg, attended the meeting to discuss Planning obligations follow-up. He informed the Committee that Planning had improved their services recently but he had asked Internal Audit to review developer contributions. Following the audit a new process for collecting developer contributions had been introduced and an S106 Officer employed. As a result contributions had increased from £1.5 million to £8 million a year. Officers were now inundated with the administration and a number of other outstanding recommendations identified by Audit had not yet been implemented due to lack of resources. The Head of Planning was due to meet with the Group Auditor and Executive Member for Planning to discuss the outstanding recommendations and whether additional resources could be sought or work re-prioritised.

The Head of ICT, Kevin Griffin, attended the meeting as Audit had identified a weakness in carrying out post implementation reviews of IT systems. The Head of ICT explained that Project Management Methodology (PMM) had been introduced in July 2005 and following the Audit report he had worked to improve post implementation reporting. He referred the Committee to version 2.0 of the Council's PMM Overview which illustrated that ICT had implemented the recommendations of Audit and project closure reporting had been improved. The PMM Overview and guidance notes followed Prince 2 procedures and would be considered by the ICT Strategy Board.

RESOLVED that

1. The Interim Report of Internal Audit 2006 – 2007 be noted,
2. The updates on Red Opinions from the Head of Planning, Head of ICT and Corporate Contracts & Procurement Manager be noted,
3. The Governance & Audit Committee support an approach to the Executive that the possibility of providing the Planning department with additional resources for reconciling planning contributions be considered.

31. REVIEW OF INTERNAL AUDIT 2006 - 2007.

The Committee considered a Review of Internal Audit 2006 – 2007 (Agenda item 5) presented by Ian Priestley, Service Head – Assurance. Ian Priestley informed the Committee that the Accounts and Audit Regulations 2006 require the Council (Governance & Audit Committee) to carry out an annual review of the Internal Audit service as part of the review of the Council's internal control framework. Appendix A of the report provided the Committee with a detailed self assessment of Internal Audit based on the draft CIPFA Code of Practice for Internal Audit in Local Government 2006. A table on pages 6 – 7 detailed where action was required to meet the standard set out by the CIPFA Code.

The External Auditor would undertake a review of Internal Audit in early 2007, and the results would come to the Committee for consideration.

RESOLVED that the Review of Internal Audit and action plan be noted and approved.

32. STATEMENT OF INTERNAL CONTROL – STRATEGIC RISK REGISTER 2006-2007.

The Committee considered the Statement of Internal Control Strategic Risk Register 2006-07 (Agenda item 7) presented by Charles Morris, Risk Manager.

The Risk Manager confirmed that the issues raised by the Committee on 11 October 2006 had been implemented;

- The possible effects of the enlargement of the European Union had been added to the Register at 1.1b,
- Financial pressure of increasing home to school transport had been added to the Risk Register at 2.4e and 2.4f and,
- The Chief Executive and Leader had taken ownership of the Poor / Inappropriate Decisions Risk at 3.2.

The Risk Manager also asked the Committee to note further amendments and additions to the Risk Register:

- Abbotswood / Pinchington Lane (6.5b) had no score as it was part of the Waste PFI project which had its own Risk Register and was reviewed quarterly,
- The AWE Redevelopment (6.8c) had been reinserted in the Register in order that it be monitored,
- The re-building of St Bartholomew's School (6.8d) had been added as a new risk and would be scored in due course,
- Overspending (2.4d) was not considered to be a high (red) risk as the overspend was small in comparison to the total Council budget,
- Kennet Valley Park (6.8a) was considered to be a risk to the Council due to the size of the development an impact on Council services and resources would be expected,
- Health and Safety (Fire, legionella and asbestos) (3.9b) was considered to be a red risk as a survey of all Council properties was expected to take 3 years. Following the completion of the survey it was expected the risk would reduce to amber or green.

RESOLVED that the Statement of Internal Control Strategic Risk Register 2006/2007 be noted and approved subject to the following amendments:

1. The Risk at 4.3 be titled 'Failure to achieve IT value',
2. 2.4f 'Income targets not met' be re-numbered 2.4g.

33. REVIEW OF THE TERMS OF REFERENCE.

The Committee considered a review of their Terms of Reference (Agenda item 8) introduced by Ian Priestley, Service Head – Assurance. Ian Priestley informed the Committee that its terms of reference should be reviewed to reflect that it had been in existence for a year and CIPFA had issued further guidance on the role of Audit Committees. He added that it would be best practice to review the terms of reference annually.

The Committee considered the proposed revised terms of reference at paragraph 2.1 of the report and debated how independent the Committee should be of the Executive, as the current membership included an Executive and a Shadow Executive Member. The Head of Legal and Electoral Services, David Holling, advised the Committee that following CIPFA guidance the Leader and Chair of the

Overview & Scrutiny Commission were no longer Members of the Committee. Provided that the Executive and Shadow Executive Members were not the Chair or Vice Chair of the Governance and Audit Committee, this would be sufficient to satisfy the CIPFA guidance.

Ian Priestley explained that issues that the Head of Internal Audit could bring to the attention of the Committee, Chair or Vice Chair at any time during the year would be information items and would not slow up the work of the Committee. All items for decision would continue to be brought to a full Committee meeting and if necessary special meetings could be called by the Chair.

The Committee questioned how far the Governance and Audit Committee would provide 'effective challenge across the Council' and questioned whether this would conflict with the role of the Overview & Scrutiny Commission. The Head of Legal and Electoral Services explained that through Internal Audit the Commission would examine all aspects of the Council's work, but only challenge in certain areas. The Committee would therefore not conflict with the work of the Overview & Scrutiny Commission. The Committee requested that the Service Head – Assurance explore this issue further.

RESOLVED that the Committee approve and recommend to Council the revised terms of reference subject to the following amendments:

1. The general purpose of the Committee be amended to "The overall purpose of the Governance and Audit Committee is to provide effective challenge and independent assurance on risk management framework and associated internal control environment across the Council to members of the public, independently of the Executive",
2. The Committee request that the Service Head – Assurance explore the role of the Governance and Audit Committee in providing challenge, while not conflicting with the role of the Overview & Scrutiny Commission,
3. The Terms of Reference be reviewed annually by the Committee.

34. ANNUAL WORK PLAN.

The Committee discussed a draft annual work programme (Agenda item 9).

The Chairman suggested that the quarterly report on Risk Management be considered by the Committee and added to the work plan. The report included updated information on how individual services were progressing with their risk registered and summary details of insurance claims received.

RESOLVED that

1. The work plan for the Governance & Audit Committee be noted,
2. The Quarterly Report on Risk Management be added to the work plan,
3. The future meeting dates of the Committee be:
6.30pm, Wednesday 21 March 2007
6.30pm, Tuesday 26 June 2007
6.30pm, Tuesday 25 September 2007

(The meeting commenced at 6.30pm and closed at 8.20pm)

CHAIRMAN

Date of Signature:

Title of Report:	Use of Resources 2005-2006	Item 5
Report to be considered by:	Governance and Audit Committee	
Forward Plan Ref:		

Corporate Plan Priority:	D4 – Stronger governance
The proposals contained in this report will help to achieve the above Council Plan priority by:	
<ul style="list-style-type: none"> • Providing assurance on the use of resources by the Council 	

Purpose of Report: To update the Committee on the Council's Use of Resources score.

Recommended Action: To consider the results of the Use of Resources score.

Reason for decision to be taken: To consider the use of resources score and what information it requires, going forwards, to monitor and review the progress the Council is making in achieving improvements in the Use of Resources.

List of other options considered: None

Key background documentation: Use of Resources Judgement – Audit Commission

Contact Officer Details	
Name:	Ian Priestley
Job Title:	Service Head - Assurance
Tel. No.:	01635 519253
E-mail Address:	ipriestley@westberks.gov.uk

Use of Resources – 2005-2006

1 Introduction

- 1.1 The purpose of this report is to outline the results of the assessment carried out by the Audit Commission on the Council's Use of Resources so that the Committee can consider what actions may need to be taken to maintain and improve the score for the current year and beyond.
- 1.2 The attached judgement from the Audit Commission outlines very significant improvements over the previous year in the way the Council manages its resources.
- 1.3 Members of the Committee will be aware from the Key Lines of Enquiry, that the Audit Commission use to inform their judgement, that the work of the Governance and Audit Committee is assessed as part of the judgement. In addition the Committee has a broader remit to oversee the Use of Resources across the Council. This report is intended to help the Committee fulfil this role.

2 Present arrangements for reviewing the use of resources

- 2.1 The oversight of use of resources sits with the D4 Programme Group led by John Ashworth – Corporate Director as project sponsor and Andy Walker – Head of Finance is the Project Manager.
- 2.2 In practice the four of the five areas of the judgement are managed by the Finance and Governance Group of officers, led by Andy Walker – Head of Finance and David Holling - Head of Legal & Electoral Services. Only the last the Value for Money element is directly led by the D4 Group.
- 2.3 Action plans are in place to improve all elements of the Use of Resources. The aim for the current year is to maintain an overall score of 3. There are two reasons for this:
 - The Audit Commission have tightened the criteria, making it harder to achieve higher scores.
 - The Audit Commission have moved the timescales for the assessment so that it matches the financial year. This has taken six months off the period the Council has to make further improvements. (Last year the Council had until October to make changes, this year till March).

3 Recommendation

- 3.1 The Committee should consider what information it requires, going forwards, to monitor and review the progress the Council is making in achieving improvements in the Use of Resources.

Use of Resources

Date

Last saved: 27/11/2006 15:19:00

DRAFT

Use of Resources Auditor Judgements

West Berkshire Council

- Audit Commission descriptor to be inserted by Publishing-

Document Control

Author John Bull, Joseph Holmes

Filename Use of Resources Auditor Judgements

Status of our reports

The Statement of Responsibilities of Auditors and Audited Bodies issued by the Audit Commission explains the respective responsibilities of auditors and of the audited body. Reports prepared by appointed auditors are addressed to members or officers. They are prepared for the sole use of the audited body. Auditors accept no responsibility to:

- any member or officer in their individual capacity; or
- any third party.

Copies of this report

If you require further copies of this report, or a copy in large print, in Braille, on tape, or in a language other than English, please call 0845 056 0566.

© Audit Commission 2006

For further information on the work of the Commission please contact:

Audit Commission, 1st Floor, Millbank Tower, Millbank, London SW1P 4HQ

Tel: 020 7828 1212 Fax: 020 7976 6187 Textphone (minicom): 020 7630 0421

www.audit-commission.gov.uk

Contents

Introduction	4
Use of resources judgements	5
Theme summaries	6
Financial reporting	6
Financial management	7
Financial standing	7
Internal control	8
Value for money	8
Appendix 1 – Criteria which will gain 'must have' status for the next assessment	10

DRAFT

4 Use of Resources Auditor Judgements | Introduction

Introduction

- 1 The annual Use of Resources (UoR) assessment evaluates how well councils manage and use their financial resources. The assessment focuses on the importance of having sound and strategic financial management to ensure that resources are available to support the Council's priorities and improve services, covering five themes.
- 2 This is the second year of carrying out the assessment and our work has focused on building on our previous year's work and updating it for any changes and improvements to the Council's arrangements.
- 3 Judgements will be made for each theme on the following scale which has been standardised by the Audit Commission across inspection and performance assessment frameworks.

Table 1 Standard scale used for assessments and inspections

1	Below minimum requirements – inadequate performance
2	Only at minimum requirements – adequate performance
3	Consistently above minimum requirements – performing well
4	Well above minimum requirements – performing strongly

- 4 The overall score for Use of Resources assessment will be reported to the Council by the Audit Commission on 1 December 2006.
- 5 In forming our assessment, we followed the methodology set out in the Use of Resources Guidance for Councils, 2006 assessment. In particular, in order to support scores of 3 and above, we need to consider whether relevant arrangements are 'embedded' that is, they have been operating consistently with clear outputs and having an impact. For scores of 4 (performing strongly) we are required to consider whether, in addition to meeting the descriptors/criteria, councils can demonstrate innovation or best practice that can be shared with other authorities. The descriptors/criteria at level 4 have been kept to a minimum so as to avoid them becoming unnecessarily prescriptive and limiting.
- 6 In relation to future assessments, as outlined in the CPA framework documents for 2006, the status of a number of criteria will change to 'must have status'. For information, these criteria have been summarised at Appendix 1. In order for the Council to sustain or to improve upon its current performance at the next assessment, it will need to take these criteria into consideration.
- 7 The five theme scores for West Berkshire Council are outlined overleaf. This summary sets out our key findings in relation to each theme and key areas for improvement.

Use of resources judgements

Table 2 Summary of scores at theme and KLOE level

Key lines of enquiry (KLOEs)	Score 2006	Score 2005
Financial reporting	2	2
1.1 The Council produces annual accounts in accordance with relevant standards and timetables, supported by comprehensive working papers.	2	2
1.2 The Council promotes external accountability.	3	2
Financial management	3	3
2.1 The Council's medium-term financial strategy, budgets and capital programme are soundly based and designed to deliver its strategic priorities.	3	3
2.2 The Council manages performance against budgets	3	3
2.3 The Council manages its asset base.	2	3
Financial standing	3	3
3.1 The Council manages its spending within the available resources.	3	3
Internal control	3	2
4.1 The Council manages its significant business risks.	4	3
4.2 The Council has arrangements in place to maintain a sound system of internal control.	3	1
4.3 The Council has arrangements in place that are designed to promote and ensure probity and propriety in the conduct of its business.	3	2
Value for money	3	2
5.1 The Council currently achieves good value for money.	3	2
5.2 The Council manages and improves value for money.	3	2

Theme summaries

- 8 There have been significant improvements since the 2005 UoR assessment, most notably in the internal control section. The Council has achieved some notable practise which will be placed onto the national Audit Commission website.
- 9 The key findings and conclusions for each of the five themes are summarised in Table 3.

Table 3 Summary of findings and conclusions by theme

Financial reporting	
Theme score 2	
Key findings and conclusions	
<p><i>There has been some progress made from 2005. The accounts presented for audit complied more fully with the SORP. There were still a number of non-trivial errors in accounts and some gaps in the working papers. A key officer involved in collating and presenting the accounts was off on long-term sick leave and this had a significant impact on the quality of the above issues. The review of the finance function being undertaken at present may address this for future years.</i></p> <p><i>We have noted the improvements in member scrutiny of the accounts and the explanatory notes presented to the members of the Governance and Audit Committee.</i></p>	
Improvement opportunities	
<p>KLOE 1.1 The Council produces annual accounts in accordance with relevant standards and timetables, supported by comprehensive working papers.</p>	<p>Improve quality and completeness of the working papers produced to support the financial statements.</p> <p>Ensure the draft financial statements are subject to supervisory review before presenting to audit.</p>
<p>KLOE 1.2 The Council promotes external accountability.</p>	<p>Need to publish annual report or similar document, which includes summary financial information including an explanation of key financial information, designed to be understandable and informative to members of the public and available in a wide variety of formats in order to meet local user needs.</p>

Financial management	
Theme score 3	
Key findings and conclusions	
<i>The Council's MTFS is linked to corporate objectives and are soundly based. There is a history of sound performance against budget at the Council with a robust budget monitoring system. The Council manages its asset base in a sound manner, though the introduction of whole-life costing should improve investment appraisals.</i>	
Improvement opportunities	
KLOE 2.1 The Council's medium-term financial strategy (MTFS), budgets and capital programme are soundly based and designed to deliver its strategic priorities.	Ensure post implementation reviews of major capital projects.
KLOE 2.2 The Council manages performance against budgets.	Ensure savings and efficiency targets are explicitly monitored by members of the Executive.
KLOE 2.3 The Council manages its asset base.	Implement the whole-life costing for investment and disposal decisions.
Financial standing	
Theme score 3	
Key findings and conclusions	
<i>The Council consistently maintains its spending within budget and has sound monitoring of reserves and balances in place. The improvement to the monitoring of reserves and balances at executive 'away days' has been noted. The traffic light system of reporting to Executive on financial health is sound.</i>	
Improvement opportunities	
KLOE 3.1 The Council manages its spending within the available resources.	Set and monitor challenging targets for areas of financial health for example, income collection.

8 Use of Resources Auditor Judgements | Theme summaries

<h2>Internal control</h2> <p>Theme score 3</p>	
<p>Key findings and conclusions</p> <p><i>The Council manages its significant business risk very well, and its risk awareness training to members has been highlighted as notable practise. A sound system of internal control is in place at the Council, the Governance and Audit Committee has improved the review of the Statement of Internal control and the general Assurance Framework. Progress has been made in the year on the Council's whistle blowing policy and more proactive approach to the NFI (National Fraud Initiative). Procedure notes have now been put in place for all major systems.</i></p>	
<p>Improvement opportunities</p>	
<p>KLOE 4.2 The Council has arrangements in place to maintain a sound system of internal control.</p>	<p>Ensure procedure notes are up-dated on a regular basis.</p>
<p>KLOE 4.3 The Council has arrangements in place that are designed to promote and ensure probity and propriety in the conduct of its business.</p>	<p>Ensure internal audit can demonstrate that counter fraud and corruption work is adequately resourced.</p>
<h2>Value for money</h2> <p>Theme score 3</p>	
<p>Key findings and conclusions</p> <p><i>The Council has been able to better demonstrate that (allowing for local context and policy decisions) costs compare favourably with other councils; costs are commensurate with performance and outcomes; and there is a strong alignment between policy decisions/ priorities and costs.</i></p> <p><i>There has been an increased breadth of comparative cost information that has been used to target some apparent high cost areas. There is a maturing value for money culture that has been facilitated by the council with clear leadership/ ownership of the vfm/ efficiency agenda and good management of costs and performance. The council has a demonstrable track record of delivering challenging efficiency savings through a range of approaches. The council has demonstrated strong / best practice procurement capacity that has improved value for money.</i></p>	

Value for money cont	
Improvement opportunities	
<p>KLOE 5.1 The Council currently achieves good value for money.</p>	<p>High cost in waste management services is matched by mixed performance. (However, it is anticipated that this will improve when the PFI contract is implemented. This service area as also shown improvement last year as a result of investment made by the council) The council has not yet implemented post project implantation reviews of capital schemes.</p>
<p>KLOE 5.2 The Council manages and improves value for money.</p>	<p>Cost information gaps for some service elements need to be addressed. Baseline information of vfm in all service areas needs to be completed so a systematic and targeted VFM review programme can be implemented. Learning from best practice in relation to vfm needs to systematically captured and shared. VFM indicators and targets need to developed and regularly reported at corporate and service level so a more direct link between expenditure and performance levels can be established and managed. The council needs to ensure that equity of service is consistently applied in all investment decisions. There needs to be a systematic corporate review of the impact of investment and procurement decisions.</p>

10 Use of Resources Auditor Judgements | Appendix 1 – Criteria which will gain 'must have' status for the next assessment

Appendix 1 – Criteria which will gain 'must have' status for the next assessment

New criteria in bold type ('must have') for 2006/07 assessment

- 1 This table summarises criteria that are currently included in the KLOE but are not in bold type and do not have 'must have' status, but which will have such status for the 2006/07 assessment.

KLOE	Summary of criteria
Financial reporting	
1.1	Requests for information from audit are dealt with promptly.
1.2	Summary financial information that meet the needs of a range of stakeholders is published.
Financial management	
2.1	There are arrangements for monitoring cash flow.
2.1	The medium-term financial strategy is communicated to staff and stakeholders.
2.2	Profiled financial monitoring reports are produced within ten days of the month-end.
2.2	The financial performance of significant partnerships is reviewed.
2.2	There is a training programme in place for members and staff on financial issues.
2.3	A member has been allocated portfolio responsibility for asset management and local performance measures in relation to assets have been developed.
Financial standing	
3.1	Collection and recovery of material categories of income is monitored.

Use of Resources Auditor Judgements | Appendix 1 – Criteria which will gain 'must have' status for the next assessment 11

KLOE	Summary of criteria
Internal control	
4.1	Appropriate staff are trained in risk management.
4.2	Criterion in relation to effective arrangements for internal financial control, for example, carrying out regular bank reconciliations and reconciliations of major feeder systems.
4.2	Standing orders, standing financial instructions and system procedure notes are reviewed and updated as appropriate.
4.2	Criterion at level two in relation to business continuity plans as required by the Civil Contingencies Act (2004).
4.2	Governance arrangements are in place for significant partnerships.
4.3	The Council is proactive in raising standards of ethical conduct among members and staff and can demonstrate that counter fraud and corruption work is adequately resourced.

DRAFT

Title of Report:	Contract Rules of Procedure	Item 6
Report to be considered by:	Governance and Audit Committee	
Forward Plan Ref:	N/A	

Corporate Plan Priority:	D1 – Performance improvement D2 – Building capacity through partnership and innovation D4 – Stronger governance
<p>The proposals contained in this report will help to achieve the above Corporate Plan priorities by: Ensuring that all the Council's Service Areas are provided with up to date contract rules which they need to follow in letting all contracts irrespective of their value. It helps the Council's staff to operate efficiently and effectively and to ensure high standards of conduct.</p>	

Purpose of Report:

To propose changes to Part 12 of the Constitution – Contract Rules of Procedure

Recommended Action:

To recommend that Council approves the changes to Part 12 of the Constitution – Contract Rules of Procedure and set out in the Appendix to this Report

Reason for decision to be taken:

- To ensure that the Council's Contract Rules of Procedure promote the most efficient and effective decision making processes
- To ensure that all Service Areas use up to date contract rules

List of other options considered:

N/A

Key background documentation:

- Part 12 Contract Rules of Procedure (current)
- Protocol for Member Involvement in Procurement Contracts ("the Protocol")
- Relevant extract from the Minutes of the Governance & Audit Committee dated 11th October 2006 approving the Protocol

Contact Officer Details	
Name:	Shiraz Sheikh
Job Title:	Officer / Solicitor
Tel. No.:	01635 519456
E-mail Address:	ssheikh@westberks.gov.uk

Implications

Policy: This proposal accords with the Council's policy of reviewing its Constitution and Structures to ensure that they continue to provide the most effective and efficient decision making possible.

Legal: This proposal is in accordance with the Local Government Act 2000 and recent amendments to procurement and equalities legislations

Financial: Head of Finance does not consider there to be any financial implications arising out of this proposal. Although some of the changes arising out of this proposal may involve additional work these duties will be absorbed within the existing roles

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: <input checked="" type="checkbox"/>
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval	<input checked="" type="checkbox"/>	
Delays in implementation could have serious financial implications for the Council	<input type="checkbox"/>	
Delays in implementation could compromise the Council's position	<input type="checkbox"/>	
Considered or reviewed by OSC or associated Task Groups within preceding 6 months	<input type="checkbox"/>	
Item is Urgent Key Decision	<input type="checkbox"/>	

Supporting Information

1 Background

- 1.1 Part 12 of the Council's Constitution covers the Contract Rules of Procedure. In order to support the most efficient decision making processes possible, it is important that these are up dated regularly.
- 1.2 There are a number of changes proposed which are detailed below at paragraph 2 and underlined and coloured red in the attached annex. Minor changes are not detailed at paragraph 2 but are also underlined and coloured in red in the appendix.
- 1.3 These changes have been brought about after collaboration between the Legal & Electoral Services and the Contract & Procurement Unit of the Council

2 Proposed major amendments

- 2.1 Following the Council's Management restructure reference to certain services is incorrect and therefore it is necessary to amend references to:
 - Head of Resources and Commissioning to Head of Finance
 - Resources and Commissioning Unit to Contracts and Procurement Unit
- 2.2 Following recent changes of equalities legislation it has been necessary to include in any procurement arrangements references to the relevant legislation which requires the local authority to promote equalities
- 2.3 This Committee approved the Protocol for Member Involvement in all contracts over £50,000 and this needs to be referred to in the Contract Rules of Procedure in order to ensure that service units and members refer to it
- 2.4 The need for Project Appraisals has been identified and it is proposed that this is considered at the following three levels:-
 - On contracts under the value of £50,000, the service units have the **option** to carry out a project appraisal.
 - On contracts over the value of £50,000, and under the current European Union threshold of £144,000 approx, it is **recommended** that a project appraisal is in place.
 - On contracts over the current European Union level, it is a **mandatory** requirement on service units to carry out a project appraisal
- 2.5 There is also a need to implement legislative changes surrounding the advertising of public services, supply and works contracts. In order to comply with the EU competition policy and the Public Procurement Regulations 2006 it is proposed that the changes at 12.3.3 of the Contract Rules of Procedure be implemented. These are that all significant procurement is advertised on the European Union Journal regardless of contract value.

- 2.6 It is also proposed that new clauses be added to any form of contract which the Council enters into and these are listed in paragraph 12.10.1 (i) to (p) of the Appendix of this Report.
- 2.7 Any remaining changes are minor and are underlined and coloured red in the appendix which forms the revised Contract Rules of Procedure.
- 2.8 For ease of reference the major changes are contained at paragraphs 12.1.18, 12.3.3, 12.3.6, 12.3.7, 12.5.4, 12.6.5, 12.6.6, 12.10.1 (f) (i) (j) (k) (l) (m) (n) (o) (p), and 12.12.

Appendices

Appendix A – Current Part 12 Contract Rules of Procedure

Appendix B - Proposed amendments to Part 12 Contract Rules of Procedure

Appendix C – A Protocol for Member involvement in Procurement in Contracts valued over £50,000

Appendix D – Relevant Extract from the Governance & Audit Committee minutes

Consultation Responses

Local Stakeholders: N/A

Officers Consulted: David Holling; Jo Gread, Andy Walker, Tom Herring, Mike Sullivan

Trade Union: N/A



West Berkshire Council Constitution

Part 12 Contract Rules of Procedure

Contents

Part 12 – Contract Rules of Procedure

12.1	Introduction	7
12.1.1	Application of Rules of Procedure	7
12.1.2	Section 135 of the Local Government Act 1972	7
12.1.3	Statutes	7
12.1.4	Amendments	7
12.1.5	Purpose of Rules	7
12.1.6	Protection of the Council's Legal Position	8
12.1.7	Seeking Advice.....	8
12.1.8	The Council	8
12.1.9	Sustainable Sources	8
12.1.10	Monitoring Officer	8
12.1.11	Large Contracts.....	8
12.1.12	Preparation of Contracts	8
12.1.13	Provision of Appropriate Expenditure	9
12.1.14	Failure to Comply with Rules.....	9
12.1.15	Transfer of Undertakings (Protection of Employment) Regulations (TUPE)	9
12.1.16	Claim Arising from a Contract.....	9
12.1.17	Potential for Loss.....	9
12.1.18	Project Appraisal	9
12.2	Compliance with the Constitution.....	10
12.2.1	Compliance with Rules	10
12.2.2	Legislation	10
12.2.3	Formal Exemption	10
12.2.4	Non-Disaggregation of Contracts	10
12.2.5	Maintenance of Records	10
12.3	European Law	10
12.3.1	Seeking Advice.....	10
12.3.2	Public Procurement Regulations	11
12.3.3	Public Procurement Regulations - Process	11
12.3.4	Process Requirements	11
12.3.5	Procurement Regulations – General Provisions (?)	13
12.3.6	Periodic Indicative Notice (PIN).....	14
12.4	Prevention of Corruption	14
12.4.1	General	14
12.4.2	Member or Officer Interests.....	14
12.4.3	Statutory Provisions	14
12.5	Approved Supplier Database and Select Tender Lists	15
12.5.1	Introduction.....	15
12.5.2	Maintenance.....	15

12.5.3	Security	15
12.5.4	Use of the Approved Supplier Database – Refers to Section 4a.....	16
12.5.5	Application Form for Inclusion on the Approved Supplier Database and Select List	16
12.5.6	Evaluation of the Application for inclusion on the Approved and Select List	16
12.5.7	References	16
12.5.8	Financial Appraisals.....	17
12.5.9	Select List Details	17
12.5.10	Amendment and Review.....	17
12.5.11	Monitoring	18
12.5.12	Use of Consortia	18
12.5.13	Central Buying Consortium	18
12.6	Tendering - General Principles.....	18
12.6.1	Preliminaries to the Execution of a Contract	18
12.6.2	Contract Thresholds.....	18
12.6.3	Threshold 1 - Contract Values	19
12.6.4	Threshold 2 - Contract Values	19
12.6.5	Threshold 3 - Contract Values	19
12.6.6	Threshold 4 – Contracts over EU Threshold	19
12.6.7	Invitation to Tender	19
12.7	Tendering Procedures.....	19
12.7.1	Introduction	19
12.7.2	Instructions to Tenderers	20
12.7.3	Receipt of Tenders.....	20
12.7.4	Opening of Tenders – Refers to Sections 2b, 5 and 8	20
12.7.5	Tender Opening - Confidentiality and Security.....	21
12.7.6	Tender Evaluation – Refers to Section 9.....	21
12.7.7	Alterations to Tenders.....	21
12.7.8	Tenders Submitted for the Execution of Work.....	21
12.7.9	Acceptance of Tenders	22
12.8	Exceptions to Contract Rules of Procedure.....	22
12.8.1	General	22
12.8.2	Exceptions	22
12.8.3	Exception Criteria.....	23
12.8.4	Record Retention – Refers to Section 1.....	23
12.8.5	Contracts Register – Refers to Section 6.....	24
12.8.6	Social Services - Residential/Nursing Care.....	24
12.8.7	Social Services - Social Care Services	24
12.8.8	Social Services - Children and Clients with Special Needs.....	24
12.8.9	Educational Establishments	24
12.8.10	Peacetime Emergency Plan.....	25
12.9	Engagement of Consultants	25
12.9.1	General	25
12.9.2	Counsel.....	25
12.9.3	Evaluation Against Predetermined Criteria	25

12.9.4	Appraisals of Work	25
12.9.5	Letter of Engagement / Contract	25
12.9.6	Clauses for Letter of Engagement / Contract	26
12.9.7	Commissioning Manager	26
12.9.8	Termination of Contract	27
12.9.9	Invoices	27
12.10	Entering into a Contract	27
12.10.1	Contract Form	27
12.10.2	Contract Presentation	27
12.10.3	Standard Clauses	28
12.10.4	Sub-letting	28
12.10.5	Provision for Liquidated Damages	28
12.11	Legal Considerations	28
12.11.1	Relaxation of Indemnities	28
12.11.2	Risk Assessments	28
12.11.3	Contractor's Indemnities and Tax	29
12.11.4	Need for Insurance	29
12.11.5	Sealing of Documents	29
12.11.6	Affixing of Seal	30
12.11.7	Signature of Documents	30
12.12	Contract Administration	30
12.12.1	Payment by Instalments	30
12.12.2	Variation to Contracts	30
12.12.3	Final Certificate and Statement of Account	31
12.12.4	Claims from Contractors	31
12.12.5	Reporting of Final Contract Costs	31

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
- The Public Contracts Regulations 2006

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 firm 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 Resources and Commissioning or nominated Officer shall make arrangements for the provision of this advice. The Head of Legal and Electoral Services, Head of Resources and Commissioning or nominated Officer, the Head of Assurance and Resources and Commissioning staff (formerly known as the Contracts and Procurement Unit) can also advise on contract matters.

12.1.8 The Council

In these Contract Rules of Procedure the expression "the Council" shall be deemed to include reference to the Executive, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums 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, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums 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.

12.1.10 Monitoring Officer

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

12.1.11 Large Contracts

Where the Council is considering embarking upon a contract of substantial size, and is to do so by way of negotiation (whether by way of competitive tender or subsequent to tendering), it shall be the duty of the responsible Head of Service 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 Contracts

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 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 (TUPE)

All Heads of Service should consult with the Head of Legal and Electoral Services, the Service Head Human Resources and the Head of Resources and Commissioning 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 Resources and Commissioning 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

A full project appraisal is required for contracts above £100,000 in value (a factsheet on how to do a full project appraisal and what is expected is available from Resources and Commissioning).

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 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. 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 and Protection of Employment Regulations (TUPE) apply to many of the contracts placed by the Council and must be complied with. EU and UK legislation will always override the provisions of 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 Procurement 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. If a contract has never been in place, then the aggregate value shall be calculated as the total estimated spend over a period of three years.

12.2.5 Maintenance of Records

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

12.3 European Law

12.3.1 Seeking Advice

Advice must always be taken from Resources and Commissioning in respect of:

- applicability of the regulations to tendering;
- producing and advertising EU tender notices for publication in OJEC ("the European Journal");
- preparing tender documents;
- award criteria for tender selection;
- evaluation process and debriefing.

Advice from the Head of Legal and Electoral Services or Head of Resources and Commissioning may also be sought with regard to any of the above for which advice is not readily available.

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 Contract Regulations 2006 and cover the following categories of procurement:

- **Public Supply Contracts**

The procurement of goods by purchase, lease, hire, or rental.

- **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.

The above 3 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 Resources and Commissioning (*should this be Resources and Commissioning?*) or from the OGC website at www.ogc.gov.uk. The threshold values for 2005 were £153,376 for supplies and services and £3,834,411 for works contracts.

[Note: In relation to changes in European Thresholds on Procurement, the Head of Resources and Commissioning will notify Members by means of an article in the Members Bulletin. Officers will receive communications via a briefing note, an item in Reporter and the intranet.]

12.3.3 Public Procurement Regulations - Process

If the Public Contracts Regulations 2006 (set out in Rule 12.3.2 above) apply because the monetary contract exceeds the above mentioned limits the Authority must "call for competition" in the European Journal. No advert may be placed in any UK trade journal or newspaper prior to the despatch of the advert to be placed in the European Journal (which will be placed electronically by Resources and Commissioning). All public notices and advertisements issued by the Council in respect of procurement shall be approved by Resources and Commissioning 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 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. If the value of a contract is unknown, the regulations have specific criteria for calculating the value which requires an assessment of either the aggregate value that the Council expects to pay if the term of the contract is less than 48 months or if the term is more than 48 months or over an indefinite period the estimated monthly figure must be multiplied by 48. (please contact Head of Resources and Commissioning or nominated Officer for advice).
- (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 Resources and Commissioning or nominated Officer and/or the Head of Legal and Electoral Services. 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 and not more than twenty tenderers be invited to tender (subject to exceptions where the market is too small because of the specialised nature of the work).
- (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 Resources and Commissioning or nominate Officer and the Head of Legal and Electoral Services.
- (g) The award criteria will be "the most economically advantageous tender". The criteria must be set and sent out with the contract documentation together

with the weighting of the criteria that will be used. Where weightings cannot be provided, the award criteria must be provided in descending order of importance.

- (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 (37 days); and
 - (ii) the sending out of the invitation to tender and its return (40 days).

These timescales can be reduced if a PIN (Periodic Indicative Notice has been issued (see 12.3.6), the OJEU is sent electronically, or the tender documents are available electronically. Different timescales apply to different procedures. Resources and Commissioning must be consulted if you wish to use alternative procedures.

- (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 48 days of the date of award of the contract. Resources and Commissioning has a standard format for such notices (Form F015) and will send them on behalf of services where they are requested to do so. A copy of the advertisement must be forwarded to the Head of Resources and Commissioning or nominated Officer. Officers must follow the Contract Award Procedure issued by the Head of Resources and Commissioning and the Head of Legal and Electoral Services. This procedure is available from Resources and Commissioning and includes a 10 day cooling-off period between the time a decision is made on the winning tenderer and the award of contract. Unsuccessful tenderers must be notified of the tender results prior to contract award and given the opportunity for a debrief and to object to the Council's decision prior to the award of contract. (see note on the Alcatel judgement at Appendix A)

12.3.5 Procurement Regulations – General Provisions

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 each call-off is subject to a competitive tender.
- Framework agreements – establish terms and conditions that will apply to subsequent contracts (call-offs) without creating rights and obligations.

Resources and Commissioning will determine the use of these techniques in any procurement process. In all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Resources and Commissioning or nominated Officer and/or Heads of Legal and Electoral Services.

12.3.6 Periodic Indicative Notice (PIN)

At the commencement of each financial year, Heads of Service are required to examine projected major expenditure for all goods and services in the coming year and in respect of any project exceeding the EU thresholds as per Rule 12.3.2. They must inform the Head of Resources and Commissioning or nominated Officer by the end of March. The Head of Resources and Commissioning or nominated Officer will then ensure that a "Periodic Indicative Notice (PIN)" is published in the European Journal for all relevant categories. All projected major expenditure should be contained in the Council's Forward Plan.

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 or sub - committee 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 Approved Supplier Database and Select Tender Lists

12.5.1 Introduction

The 'Approved Supplier Database' is a database of suppliers who in response to a tender notice or advertisement have expressed an interest in supplying to the Authority. To be considered for 'Approved' status, a supplier must complete an application form as detailed in Rule 12.5.4 below. This is evaluated, references are obtained and a financial vetting process undertaken. If the evaluation meets or exceeds the Council minimum criteria, then "Approved" status is awarded.

The 'Invitation to Tender List' is the shortlist of Approved Contractors/Suppliers who may be invited to compete for a particular contract or provision.

Select Tender Lists are used when a Service lets a multitude of contracts and are valid for a specific period, which falls below the EC Thresholds, and the cost of advertising each one in accordance with Rule 12.6.6 would not provide best value, Select Tender Lists must always be compiled from expressions of interest resulting from a published contract notice..

12.5.2 Maintenance

The Approved Supplier Database shall be compiled and maintained by Resources and Commissioning, on behalf of the Head of Resources and Commissioning or nominated Officer, under delegated powers via the Council's Scheme of Delegation to Officers.

Select Tender Lists will be compiled by Resources and Commissioning where expressions of interest have been made subject to a contract notice, or have been taken directly from the Approved List.

Managers in the relevant service areas will be consulted on the technical criteria and qualification required for inclusion on the Select Tender List.

The short list of tenderers shall be approved by the Head of Service concerned following consultation with Resources and Commissioning.

12.5.3 Security

The Approved Supplier Database and shall be maintained on a secure database by Resources and Commissioning on behalf of the Head of Resources and Commissioning or nominated Officer.

Resources and Commissioning shall retain all hard copy submissions from suppliers and evaluation details for a period of not less than three years. **Refers Section 3b.**

Select Tender List details will be issued to the relevant Service.

The Approved Supplier Database and Select Tender Lists are confidential to the Council and they must not be released for use outside of the Council without the prior approval of the Head of Resources and Commissioning or nominated Officer.

12.5.4 Use of the Approved Supplier Database – Refers to Section 4a

Prior to a Tender being issued for a Contract of anticipated value of £350,000 or above, it is the responsibility of the appropriate Head of Service, or nominated Officer, to ensure that suppliers have achieved Approved Supplier Status, by the successful completion of the pre-qualification questionnaire.

12.5.5 Application Form for Inclusion on the Approved Supplier Database and Select List

The application form for inclusion on an Approved and Select List is produced and updated by Resources and Commissioning on behalf of the Head of Resources and Commissioning. The application shall seek information on Contractors' economic, environmental and financial standing, technical ability and experience.

Additional Technical Information

If specific technical information is required prior to the tender stage, an additional questionnaire will be produced by the relevant Service and inserted as an appendix to the Application.

The Service will be responsible for the evaluation of the additional information.

The questions and evaluation criteria will be determined by the relevant Head of Service in consultation with Resources and Commissioning.

12.5.6 Evaluation of the Application for inclusion on the Approved and Select List

The evaluation of the Application shall be undertaken by Resources and Commissioning, on behalf of the Head of Resources and Commissioning or nominated Officer.

The evaluation shall be in accordance with the criteria agreed by the Head of Resources and Commissioning.

All evaluations will be consistent and all applicants treated fairly.

12.5.7 References

Resources and Commissioning, on behalf of the Head of Resources and Commissioning or nominated Officer, on receipt of the completed application form will obtain references and undertake personal enquiries by appropriate professional or technical Officers in order that an evaluation on each company's general suitability can be compiled and detailed on the Approved Supplier Database and/or a specific Select List.

At least two technical references will be required from every potential contractor. Technical competence is considered the key indicator of a contractor's suitability with any failure in this area warranting immediate exclusion from the Approved Supplier Database or a Select List.

Resources and Commissioning will retain all original references and evaluations on their file.

12.5.8 Financial Appraisals

Resources and Commissioning, on behalf of the Head of Resources and Commissioning or nominated Officer shall undertake financial vetting of all contractors prior to a contractor's inclusion on the Approved Supplier Database or Select List. The form of financial vetting shall be determined by the Head of Resources and Commissioning or nominated Officer who will decide the most appropriate option/s from:-

- the submission by a potential contractor of the last two years audited accounts which must include the balance sheet and profit and loss statement, to be reviewed by Financial Services; or
- a request to an organisation specialising in financial vetting to supply a credit rating/contract banding for potential contractors; or
- the submission of a banker's reference.

Resources and Commissioning, on behalf of the Head of Resources and Commissioning or nominated Officer, may at any time during the "life" of a Select List undertake financial appraisals to confirm a contractor's continuing financial suitability to be included on a list. Following each appraisal Resources and Commissioning may make a recommendation to the Council's Head of Resources and Commissioning or nominated Officer in relation to a given contractor's suitability to remain on the list. Alternatively, the Head of Resources and Commissioning or nominated Officer may revise the financial limits of work for which the Contractor shall be considered.

12.5.9 Select List Details

Select Lists shall contain details of all Approved Suppliers who have expressed an interest, and include the following:-

- contractor name, address and telephone numbers;
- scores awarded for evaluation of the Application and References;
- maximum level of annual spend which may be placed with the contractor;
- type (category) of work/service the contractor can perform;
- factors which must be taken into consideration prior to awarding a contract, e.g. requirement for stricter financial guarantees or increased levels of insurance;

12.5.10 Amendment and Review

Each record within the Approved List will be amended as required and reviewed at regular intervals not exceeding three years.

Select Lists must be reviewed at regular intervals, not exceeding three years.

The Contracts and Purchasing Unit, on behalf of the Head of Resources and Commissioning will undertake the amendments and reviews to the Approved List.

The Head of Service concerned will be responsible for advising Resources and Commissioning of the need to re-advertise for expressions of interest for Select Lists.

12.5.11 Monitoring

Resources and Commissioning on behalf of the Head of Resources and Commissioning or nominated Officer will carry out monitoring of the use of Select Lists, the monitoring will cover the frequency of selection of contractors/consultants and the types of contracts.

12.5.12 Use of Consortia

When entering into a framework contract managed by a Consortium of which the Council is a member, the supplier vetting is undertaken by the Authority taking the lead in accordance with their own Standing Orders.

12.5.13 Central Buying Consortium

Resources and Commissioning on behalf of the Head of Resources and Commissioning or nominated Officer also manages the Council's affiliation to the Central Buying Consortium.

The Head of Resources and Commissioning or nominated Officer will publish details of the goods and prices of the goods that are available through the Consortium. Officers must use the Consortium unless they can clearly demonstrate that the goods required can be purchased more cheaply elsewhere.

12.6 Tendering - General Principles

12.6.1 Preliminaries to the Execution of a Contract

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 appropriate committee where the expenditure is to be incurred in that year) or unless the alternative financial provision is made by the Council under the Financial Rules of Procedure (Part 11). 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 the Council and should be contained in the appropriate Forward Plan.

12.6.2 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 Resources and Commissioning 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 Resources and Commissioning or nominated Officer can approve that the annual value shall apply for threshold classification. The thresholds do not apply to Term Contracts which allows the letting of small contracts under the umbrella of the main contract.

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

12.6.3 Threshold 1 - Contract Values

Less than £5,000 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 £5,000 for works, goods and services, without inviting written quotations. The Head of Service or their delegated Officers must maintain written records of telephone quotations..

12.6.4 Threshold 2 - Contract Values

Between £5,000 and £50,000 – written quotations required.

The Head of Service or their delegated Officers must obtain a minimum of three written quotations.

The Central Buying Consortium should be used wherever possible – Rule 12.5.12.

12.6.5 Threshold 3 - Contract Values

£50,000.

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

12.6.6 Threshold 4 – Contracts over EU Threshold

These must be let as a competitive tender in accordance with E.U. Regulations. Please note statutory timetable and the need to consult with Resources and Commissioning 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 Procurement or nominated Officer.

12.6.7 Invitation to Tender

For contracts of £50,000 and over, tenderers must be selected from the approved and appropriate Select Tender Lists for the type and value of contract being let (where one exists) or in response to a public notice where there is no select list in place.

12.7 Tendering Procedures**12.7.1 Introduction**

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

12.7.2 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.

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.

12.7.3 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 shall be marked "late" and 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.

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

Opening of tenders under £100,000 must be recorded on the standard form (Form FO21). It is the responsibility of the Head of Service to ensure that a copy of that completed form is sent to Resources and Commissioning. Tenders must be opened by the relevant Head of Service or their nominated representative and one other Officer.

Opening of tenders over £100,000 must be recorded on the standard form (Form FO21). It is the responsibility of the Head of Service to ensure that a copy of that

completed form is sent to Resources and Commissioning. The Head of Service shall arrange the opening of the tender. The Head of Service shall complete the form. The opening is to be in presence of the Head of Service or a nominated representative and one other person. The Head of Resources and Commissioning or nominated Officer must always be invited to such tender openings.

Opening of tenders over £500,000 must be recorded the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of that completed form is sent to Resources and Commissioning. The tender opening should be 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, a representative of Resources and Commissioning and one other person from the service area. 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.

12.7.5 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.

12.7.6 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.

12.7.7 Alterations to Tenders

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

12.7.8 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 Resources and Commissioning for future reference.

12.7.9 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.

12.8 Exceptions to Contract Rules of Procedure

12.8.1 General

The Head of Resources and Commissioning or nominated Officer shall have authority to approve partial or full exceptions to these Rules. Contact should be made with Resources and Commissioning who will liaise with the Head of Resources and Commissioning. The exceptions are listed in Rule 12.8.3 below. All exceptions are subject to the provisions in Rule 12.8.2 below.

12.8.2 Exceptions

For contracts up to £50,000 the Head of Resources and Commissioning or nominated Officer must approve the exception.

For contracts between £50,000 and £250,000 the Head of Resources and Commissioning or nominated Officer will consult with the Head of Legal and Electoral Services and the appropriate Corporate Director.

For contracts between £250,000 and £500,000 the exception will be dealt with by way of recommendation to the Corporate Board after consultation with the Head of Resources and Commissioning or nominated Officer and with the Head of Legal and Electoral Services.

For contracts over £500,000 the Head of Resources and Commissioning or nominated Officer in consultation with the Head of Legal and Electoral Services will make a recommendation to the Executive.

12.8.3 Exception Criteria

- (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 technical reasons services, goods or proprietary items to be supplied can only be obtained from a limited number of sources in that a competitive tendering exercise cannot be undertaken.
- (c) Acquiring goods or services with different technical qualities would result in incompatibility or disproportionate technical difficulties.
- (d) The proposed contract is an extension of an existing contract where there is not an extension clause in the contract but subject to compliance with 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).
- (g) Contracts with professional persons in which the personal skill of those persons is of primary importance, and there would be no genuine competition.
- (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;
 - (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.
- (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.

12.8.4 Record Retention – Refers to Section 1

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 or 12 years if the Contract is under seal.

12.8.5 Contracts Register – Refers to Section 6

The Responsible Head of Service must formally notify the Head of Procurement of the award of all contracts above £30,000 in value.

The Head of Procurement shall use these data to maintain a Register of Contracts on Behalf of the Council.

12.8.6 Social Services - Residential/Nursing Care

The Corporate Director (Community Care and Housing) 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.

(Resources and Commissioning needs a copy of the decision for the exceptions file.)

12.8.7 Social Services - Social Care Services

The Corporate Director (Community Care and Housing) 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.

(Resources and Commissioning 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.

12.8.8 Social Services - Children and Clients with Special Needs

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

12.8.9 Educational Establishments

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or service over the value of £100,000, the Headteacher may follow the school's local Procurement Procedure but must seek advice from the Head of Resources and Commissioning 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 £100,000, the Headteacher may follow the school's local Procurement Procedure, where one exists.

12.8.10 Peacetime Emergency Plan

Whenever appropriate the Chief Executive is authorised to operate the Major Incident Plan in an emergency and to incur any necessary expenditure. At times when the Major Incident Plan is brought into operation these Contract Rules of Procedure are suspended. A Corporate Director will act in the place of the Chief Executive if a Chief Executive is not in post or he/she is unwell or unobtainable.

12.9 Engagement of Consultants

12.9.1 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.

12.9.2 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.

12.9.3 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.

12.9.4 Appraisals of Work

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

12.9.5 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 Resources and Commissioning or nominated Officer will provide advice on this issue.

12.9.6 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 Resources and Commissioning 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.

12.9.7 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.

12.9.8 Termination of Contract

Decisions to terminate a contract with a consultant before completion must only be taken in consultation Resources and Commissioning, 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 Resources and Commissioning and the Head of Legal and Electoral Services.

12.9.9 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.

12.10 Entering into a Contract

12.10.1 Contract Form

All contracts entered into by the Council must be in writing. 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 Resources and Commissioning in conjunction with the Head of Legal and Electoral Services. All Forms of Contract must include:

- (a) the 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) reference to compliance with current legislation with respect to Health and Safety at Work and the Sex Discrimination Act 1975; Race Relations Act 1976; the Disability Discrimination Act 1995 and the Data Protection Act 1984.
- (g) a clause requiring full indemnity of the Council (usually provided by Public Liability Insurance);
- (h) a clause requiring a performance bond (where applicable).

12.10.2 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 Resources and Commissioning unless it is a standard form of contract with a specification attached if necessary.

All contracts over £50,000 to E.U. 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.

12.10.3 Standard Clauses

Every contract shall include the standard clauses set out in Form F020A (available from Resources and Commissioning).

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.

12.10.4 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.

12.10.5 Provision for Liquidated Damages

Every contract which 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) shall provide for liquidated damages unless the Head of Legal and Electoral Services and/or the Head of Resources and Commissioning 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 Resources and Commissioning or nominated Officer.

12.11 Legal Considerations

12.11.1 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 Resources and Commissioning or nominated Officer.

12.11.2 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 Resources and Commissioning 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.

12.11.3 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 how so ever arising.

12.11.4 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 Resources and Commissioning 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 Resources and Commissioning 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 Resources and Commissioning 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 Resources and Commissioning 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.

[Note: If the Contractor has been through the vetting process and is on the Approved Supplier Database then some of these documents, renewable on an annual basis, may already be held by Resources and Commissioning.]

12.11.5 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 make 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 oppose.
- (b) Mortgage in respect of a loan arranged by the Head of Resources and Commissioning 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.

12.11.6 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.

12.11.7 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.

12.12 Contract Administration

12.12.1 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.

12.12.2 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) as may be appropriate 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. 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 Resources and Commissioning or nominated Officer shall be required.

12.12.3 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. The Head of Resources and Commissioning 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 Head of Resources and Commissioning 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.

12.12.4 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 for consideration of the authority's legal liability and, where necessary, to the Head of Resources and Commissioning or nominated Officer for financial consideration before a settlement is reached.

12.12.5 Reporting of Final Contract Costs

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: Resources and Commissioning can be contacted on (01635) 519411 or email the Helpdesk.]

Appendix A (12.3.4 (l) refers)**ALCATEL JUDGEMENT – IMPLICATIONS FOR CONTRACT AWARD PROCEDURE**

The Government has announced that, with immediate effect, all procurements subject to the full EU procurement regime must be subject to a mandatory standstill period of at least 10 days between declining unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful tenderers the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

The announcement follows the UK acceptance of a decision made by the European Court of Justice in the Alcatel case. The new procedure requires that as soon as the award decision has been made:

1. As soon as possible after a decision has been made, unsuccessful tenderers must be notified individually in writing, confirming:
 - (a) the award criteria,
 - (b) where appropriate the unsuccessful tenderers score against those criteria,
 - (c) where appropriate the winning score,
 - (d) and the name of the successful bidder.

The 10 day calendar day standstill period begins from the day after the notification is issued. It is recommended letters are always emailed or faxed to avoid disagreements about when they are actually received. If the last day of the standstill period falls on a non-working day the period must be extended to the next working day.

2. Tenderers may request in writing reasons as to why they were unsuccessful. If this request is made by midnight at the end of the 2nd working day of the standstill period this information must be dispatched at least 3 full working days before the end of the standstill period. This information must include the characteristics and relative advantages of the successful tenderer. If the information can not be provided within this timescale, the 10 day period will need to be extended.

NB Commercially sensitive details eg pricing must NOT be divulged during debriefing. Advice on debriefing is available from either Resources & Commissioning or Legal Services.

3. Where the request for information is not received by the end of the 2 working day period the information must be provided within 15 days. There is no requirement to extend the standstill period if a request is made after the 2 working day period.
4. A letter to the successful tenderer can also be sent at the same time as letters are sent to unsuccessful tenderers. The letter must be prepared

in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them.

5. If no legal challenge has been launched by the end of Day 10, the contract award letter may be issued or contract signed and sent off to the successful tenderer.
6. If a legal challenge is threatened, you must consult the Head of Legal and Electoral Services and then await the outcome of the application to the court before concluding the contract.
7. A contractor who is unsuccessful at the initial stages of the tender (PQQ) can also make a request in writing for information. This information must be provided within 15 calendar days and will need to include the reason why the contractor was not successful and any reason for the Council's decision that the contractor did not meet technical specifications or performance by an equivalent means to that set out in the tender documents.
8. Please note that paragraphs 1, 2 and 3 do not apply to an award of a contract under a framework agreement (but will apply to the award of a framework agreement itself) or a dynamic purchasing system. There are slightly amended requirements if you use the open procedure and Resources and Commissioning or Legal should be consulted in this instance.

In the meantime or in any case of doubt consult the Head of Resources and Commissioning or Head of Legal and Electoral Services

Martin Cawte
Head of Resources and Commissioning
January 2006

David Holling
Head of Legal & Electoral Services

West Berkshire Council Constitution

Part 12 Contract Rules of Procedure

Edited by: Shiraz Sheikh, Officer/Solicitor

Contents

Part 12 – Contract Rules of Procedure

- 12.1 Introduction**
 - 12.1.1 Application of Rules of Procedure
 - 12.1.2 Section 135 of the Local Government Act 1972
 - 12.1.3 Statutes
 - 12.1.4 Amendments
 - 12.1.5 Purpose of Rules.....
 - 12.1.6 Protection of the Council's Legal Position
 - 12.1.7 Seeking Advice.....
 - 12.1.8 The Council
 - 12.1.9 Sustainable Sources
 - 12.1.10 Monitoring Officer.....
 - 12.1.11 Large Contracts.....
 - 12.1.12 Preparation of Contracts
 - 12.1.13 Provision of Appropriate Expenditure.....
 - 12.1.14 Failure to Comply with Rules.....
 - 12.1.15 Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)
 - 12.1.16 Claim Arising from a Contract.....
 - 12.1.17 Potential for Loss.....
 - 12.1.18 Project Appraisal.....
- 12.2 Compliance with the Constitution**
 - 12.2.1 Compliance with Rules.....
 - 12.2.2 Legislation
 - 12.2.3 Formal Exemption
 - 12.2.4 Non-Disaggregation of Contracts.....
 - 12.2.5 Maintenance of Records
- 12.3 European Law**
 - 12.3.1 Seeking Advice.....
 - 12.3.2 Public Procurement Regulations
 - 12.3.3 Public Procurement Regulations - Advertising of Procurements.....
 - 12.3.4 Process Requirements
 - 12.3.5 Procurement Regulations – General Provisions (?)
 - 12.3.6 Prior Information Notice (PIN)
 - 12.3.7 Supplier Debriefing
- 12.4 Prevention of Corruption.....**
 - 12.4.1 General
 - 12.4.2 Member or Officer Interests.....
 - 12.4.3 Statutory Provisions
- 12.5 Approved Supplier Database and Select Tender Lists**
 - 12.5.1 Introduction

Deleted: Process

Deleted: eriodic Indicative

Deleted: June 2006

- 12.5.2 Maintenance
- 12.5.3 Security.....
- 12.5.4 Use of the Approved Supplier Database – Refers to Section 4a
- 12.5.5 Application Form for Inclusion on the Approved Supplier Database and Select List.....
- 12.5.6 Evaluation of the Application for inclusion on the Approved and Select List.....
- 12.5.7 References
- 12.5.8 Financial Appraisals.....
- 12.5.9 Select List Details
- 12.5.10 Amendment and Review.....
- 12.5.11 Monitoring.....
- 12.5.12 Use of Consortia.....

Deleted: 12.5.13 . Central Buying Consortium .

12.6 Tendering - General Principles

- 12.6.1 Preliminaries to the Execution of a Contract.....
- 12.6.2 Contract Thresholds
- 12.6.3 Threshold 1 - Contract Values
- 12.6.4 Threshold 2 - Contract Values
- 12.6.5 Threshold 3 - Contract Values
- 12.6.6 Threshold 4 – Contracts over EU Threshold.....
- 12.6.7 Invitation to Tender

12.7 Tendering Procedures

- 12.7.1 Introduction.....
- 12.7.2 Instructions to Tenderers
- 12.7.3 Receipt of Tenders
- 12.7.4 Opening of Tenders – Refers to Sections 2b, 5 and 8.....
- 12.7.5 Tender Opening - Confidentiality and Security
- 12.7.6 Tender Evaluation – Refers to Section 9
- 12.7.7 Alterations to Tenders.....
- 12.7.8 Tenders Submitted for the Execution of Work
- 12.7.9 Acceptance of Tenders.....

12.8 Exceptions to Contract Rules of Procedure.....

- 12.8.1 General.....
- 12.8.2 Exceptions
- 12.8.3 Exception Criteria
- 12.8.4 Record Retention – Refers to Section 1
- 12.8.5 Contracts Register – Refers to Section 6.....
- 12.8.6 Social Services - Residential/Nursing Care
- 12.8.7 Social Services - Social Care Services.....
- 12.8.8 Social Services - Children and Clients with Special Needs.....
- 12.8.9 Educational Establishments.....
- 12.8.10 Peacetime Emergency Plan.....

12.9 Engagement of Consultants.....

- 12.9.1 General.....
- 12.9.2 Counsel

Deleted: June 2006

- 12.9.3 Evaluation Against Predetermined Criteria.....
- 12.9.4 Appraisals of Work.....
- 12.9.5 Letter of Engagement/Contract.....
- 12.9.6 Clauses for Letter of Engagement/Contract.....
- 12.9.7 Commissioning Manager.....
- 12.9.8 Termination of Contract.....
- 12.9.9 Invoices.....

12.10 Entering into a Contract

- 12.10.1 Contract Form.....
- 12.10.2 Contract Presentation.....
- 12.10.3 Standard Clauses.....
- 12.10.4 Sub-letting.....
- 12.10.5 Provision for Liquidated Damages.....

12.11 Legal Considerations.....

- 12.11.1 Relaxation of Indemnities.....
- 12.11.2 Risk Assessments.....
- 12.11.3 Contractor's Indemnities and Tax.....
- 12.11.4 Need for Insurance.....
- 12.11.5 Sealing of Documents.....
- 12.11.6 Affixing of Seal.....
- 12.11.7 Signature of Documents.....

12.12 Contract Administration

- 12.12.1 Payment by Instalments.....
- 12.12.2 Variation to Contracts.....
- 12.12.3 Final Certificate and Statement of Account.....
- 12.12.4 Claims from Contractors.....
- 12.12.5 Reporting of Final Contract Costs.....

Deleted: Section Break (Continuous)

Deleted: June 2006

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.

Formatted: Bullets and Numbering

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 firm procedures and controls exist for the invitation, evaluation, acceptance, managing and monitoring of contracts throughout the Council.

Deleted: June 2006

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 Finance or nominated Officer shall make arrangements for the provision of this advice. The Head of Legal and Electoral Services, Head of Finance or nominated Officer, can also advise on contract matters.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: the Head of Assurance and Resources and Commissioning staff (formerly known as the Contracts and Procurement Unit)

12.1.8 The Council

In these Contract Rules of Procedure the expression "the Council" shall be deemed to include reference to the Executive, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums 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, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees or Area Forums 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.

12.1.10 Monitoring Officer

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

12.1.11 Large Contracts

Where the Council is considering embarking upon a contract of substantial size, and is to do so by way of competitive dialogue (whether by way of competitive tender or subsequent to tendering), it shall be the duty of the responsible Head of Service 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.

Deleted: negotiation

Deleted: including knowledge of European Union Law.

Deleted: .

Inserted: including knowledge of European Union Law.

12.1.12 Preparation of Contracts

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.

Deleted: .

Deleted: t

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.

Deleted: June 2006

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.
- Contract value greater than £50,000 and less than EU threshold – recommended.
- Contracts value exceeding EU threshold – mandatory.

Deleted: Service

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: A full project appraisal is required for contracts above £100,000 in value (a factsheet on how to do a full project appraisal and what is expected is available from Resources and Commissioning).

Deleted: ,

Deleted: ,

Inserted: , appraisals

Deleted: ,

Inserted: options

Inserted: , business cases shall be carried out as follows:¶
 Contract value less than £50,000 – optional.¶
 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).

Deleted: s

Formatted: Indent: Left: 1.25 cm, Hanging: 1.25 cm, Tabs: 2.5 cm, List tab + Not at 2.87 cm

Formatted: Bullets and Numbering

Deleted: June 2006

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).

12.2 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 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 override the provisions of these rules.

Deleted: and

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)).

Deleted: Procurement

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. If a contract has never been in place, then the aggregate value shall be calculated as the total estimated spend over a period of three years.

12.2.5 Maintenance of Records

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

12.3 European Procurement Law

12.3.1 Seeking Advice

Advice must always be taken from Head of Finance or nominated Officer in respect of:

Deleted: Resources and Commissioning

* applicability of the regulations to tendering;

Formatted: Bullets and Numbering

* producing and advertising EU tender notices for publication in OJEU ("the Official Journal of the European Union");

Deleted: OJEC

Deleted: Journal

* preparing tender documents;

Deleted: June 2006

- _____ award criteria for tender selection;
- _____ evaluation process and debriefing.

Advice from the Head of Legal and Electoral Services or Head of Finance may also be sought with regard to any of the above for which advice is not readily available.

Deleted: Resources and Commissioning

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 Contract Regulations 2006 and cover the following categories of procurement:

- _____ Public Supply Contracts

The procurement of goods by purchase, lease, hire, or rental,

- _____ 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 2006 were £144,371 for supplies and services and £3,611,319 for works contracts.

Formatted: Bullets and Numbering

Deleted: 6.

Formatted: Bullets and Numbering

Formatted: Bullets and Numbering

Deleted: Resources and Commissioning

Deleted: 5

Deleted: 153,376

Deleted: 3,834,411

Deleted: .

Deleted: [Note: in relation to changes in European Thresholds on Procurement, the Head of Resources and Commissioning will notify Members by means of an article in the Members Bulletin. Officers will receive communications via a briefing note, an item in Reporter and the intranet.]

Deleted: -

Deleted: Process

Deleted: If the Public Contracts Regulations 2006 (set out in Rule 12.3.2 above) apply because the monetary contract exceeds the above mentioned limits the Authority must "call for competition" in the European Journal. No advert may be placed in any UK trade journal or newspaper prior to the despatch of the advert to be placed in the European Journal (which will be placed electronically by Resources and Commissioning). All public notices and advertisements issued by the Council in respect of procurement shall be approved by Resources and Commissioning who will maintain a register of all advertisements placed.

Deleted: 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.

Deleted: June 2006

12.3.3 Public Procurement Regulations – Advertising of Procurements

The Public Contracts Regulations 2006 require that all significant procurement is advertised in the European Journal regardless of whether the contract value exceeds or falls below financial threshold limits.

To ensure an adequate 'call for competition' all significant procurements shall be advertised on the Council's website. Consideration should also be given to placing adverts in other appropriate media e.g. 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 (which 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 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. If the value of a contract is unknown, the regulations have specific criteria for calculating the value which requires an assessment of either the aggregate value that the Council expects to pay if the term of the contract is less than 48 months or if the term is more than 48 months or over an indefinite period the estimated monthly figure must be multiplied by 48. (please contact Head of Finance, or nominated Officer for advice).
- (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, or nominated Officer and/or the Head of Legal and Electoral Services. 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 and not more than twenty tenderers be invited to tender (subject to exceptions where the market is too small because of the specialised nature of the work).
- (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.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: stasndard

Deleted: 0

Deleted: June 2006

- (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 award criteria will be "the most economically advantageous tender". The criteria must be set and sent out with the contract documentation together with the weighting of the criteria that will be used.
- (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 (37 days); and
 - (ii) the sending out of the invitation to tender and its return (40 days).

These timescales can be reduced if a PIN (Prior Information Notice has been issued (see 12.3.6), the OJEU is sent electronically, or the tender documents are available electronically. Different timescales apply to different procedures. The Contracts & Procurement Unit must be consulted if you wish to use alternative procedures.
- (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 48 days 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. Officers must follow the Contract Award Procedure issued by the Head of Finance and the Head of Legal and Electoral Services. This procedure is available from the Contracts & Procurement Unit and includes a 10 day cooling-off period between the time a decision is made on the winning tenderer and the award of contract. Unsuccessful tenderers must be notified of the tender results prior to contract award and given the opportunity for a debrief and to object to the Council's decision prior to the award of contract. (see note on the Alcatel judgement at Appendix A).

Deleted: Resources and Commissioning

Deleted: Where weightings cannot be provided, the award criteria must be provided in descending order of importance.

Deleted: eriodic Indicative

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning has a standard format for such notices (Form F015) and will send them on behalf of services where they are requested to do so. A copy of the advertisement must be forwarded to the Head of Resources and Commissioning or nominated Officer.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: -

Formatted: Bullets and Numbering

Deleted: June 2006

12.3.5 Procurement Regulations – General Provisions

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 – establish terms and conditions that will apply to subsequent contracts (call-offs) without creating rights and obligations.

Deleted: ach

The Contracts & Procurement Unit will determine the use of these techniques in any procurement process. In all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Finance or nominated Officer and/or Head of Legal and Electoral Services.

Deleted: Resources and Commissioning

Formatted: Indent: Left: 0.62 cm

Deleted:

Deleted: Resources and Commissioning

Deleted: s

Deleted: eriodic Indicative

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.

Deleted: At the commencement of each financial year, Heads of Service are required to examine projected major expenditure for all goods and services in the coming year and in respect of any project exceeding the EU thresholds as per Rule 12.3.2. They must inform the Head of Resources and Commissioning or nominated Officer by the end of March. The Head of Resources and Commissioning or nominated Officer will then ensure that a "Periodic Indicative Notice (PIN)" is published in the European Journal for all relevant categories. All projected major expenditure should be contained in the Council's Forward Plan.

Heads of Service must provide a procurement programme (indicating contract values) to the Head of Finance or nominated Officer by the end of March. The Head of Finance or nominated Officer will then ensure that a "Prior Information Notice" (PIN) is 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.

12.3.7 Supplier Debriefing

Formatted: Heading 3, Indent: Left: 0 cm, Hanging: 1.25 cm, Tabs: 1.25 cm, Left

Supplier Debriefing shall be offered to all unsuccessful bidders on all procurements more than £50,000. For procurements above EU thresholds this must be within the 10 day mandatory 'cooling off' period between the decision to award a contract and the actual award of a contract to a successful bidder.

Formatted: Indent: Left: 1.25 cm, First line: 0 cm, Tabs: 1.25 cm, Left

The adoption of the OGC supplier debriefing guidance is recommended in order to achieve consistency. Further advice on this process is available from the Contract & Procurement Unit.

Formatted: Font: 12 pt, Not Bold

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 or sub - committee 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.

Deleted: June 2006

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.

Formatted: Bullets and Numbering

12.5 Approved Supplier Database and Select Tender Lists

12.5.1 Introduction

The 'Approved Supplier Database is a database of suppliers who in response to a tender notice or advertisement have expressed an interest in supplying to the Authority. To be considered for 'Approved' status, a supplier must complete an application form as detailed in Rule 12.5.4 below. This is evaluated, references are obtained and a financial vetting process undertaken. If the evaluation meets or exceeds the Council minimum criteria, then "Approved" status is awarded.

Deleted: I

The 'Invitation to Tender List' is the shortlist of Approved Contractors/Suppliers who may be invited to compete for a particular contract or provision.

Select Tender Lists are used when a Service lets a multitude of contracts and are valid for a specific period, which falls below the EU Thresholds, and the cost of advertising each one in accordance with Rule 12.6.6 would not provide best value, Select Tender Lists must always be compiled from expressions of interest resulting from a published contract notice.

Deleted: C

Deleted: I

Deleted: .

12.5.2 Maintenance

The Approved Supplier Database shall be compiled and maintained by the Contracts & Procurement Unit, on behalf of the Head of Finance, or nominated Officer, under delegated powers via the Council's Scheme of Delegation to Officers.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Select Tender Lists will be compiled by the Contracts & Procurement Unit where expressions of interest have been made subject to a contract notice, or have been taken directly from the Approved List.

Deleted: June 2006

Managers in the relevant service areas will be consulted on the technical criteria and qualification required for inclusion on the Select Tender List.

The short list of tenderers shall be approved by the Head of Service concerned following consultation with the Contracts & Procurement Unit.

Deleted: Resources and Commissioning

12.5.3 Security

The Approved Supplier Database shall be maintained on a secure database by the Contracts & Procurement Unit on behalf of the Head of Finance or nominated Officer.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

The Contracts & Procurement Unit shall retain all hard copy submissions from suppliers and evaluation details for a period of not less than three years.

Deleted: Resources and Commissioning

Deleted: Refers Section 3b.

Select Tender List details will be issued to the relevant Service.

The Approved Supplier Database and Select Tender Lists are confidential to the Council and they must not be released for use outside of the Council without the prior approval of the Head of Finance or nominated Officer.

Deleted: Resources and Commissioning

12.5.4 Use of the Approved Supplier Database – Refers to Section 4a

Prior to a Tender being issued for a Contract of anticipated value of £50,000 or above, it is the responsibility of the appropriate Head of Service, or nominated Officer, to ensure that suppliers have achieved Approved Supplier Status, by the successful completion of a pre-qualification questionnaire. Such questionnaires will be issued and processed by Finance.

Deleted: Prior to a Tender being issued for a Contract of anticipated value of £350,000 or above, it is the responsibility of the appropriate Head of Service, or nominated Officer, to ensure that suppliers have achieved Approved Supplier Status, by the successful completion of the pre-qualification questionnaire

The pre-qualification of suppliers may also be extended to those for contracts of less than £50,000 in value by use of an abridged version of the standard pre-qualification questionnaire.

Deleted: .

Inserted: .

Deleted: .

12.5.5 Application Form for Inclusion on the Approved Supplier Database and Select List

The application form for inclusion on an Approved and Select List is produced and updated by the Contracts & Procurement Unit on behalf of the Head of Finance. The application shall seek information on Contractors' economic, environmental and financial standing, technical ability and experience.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Additional Technical Information

If specific technical information is required prior to the tender stage, an additional questionnaire will be produced by the relevant Service and inserted as an appendix to the Application.

The Service will be responsible for the evaluation of the additional information.

The questions and evaluation criteria will be determined by the relevant Head of Service in consultation with the Contracts & Procurement Unit.

Deleted: Resources and Commissioning

12.5.6 Evaluation of the Application for inclusion on the Approved and Select List

The evaluation of the Application shall be undertaken by the Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: June 2006

The evaluation shall be in accordance with the criteria agreed by the Head of Finance.
All evaluations will be consistent and all applicants treated fairly.

Deleted: Resources and Commissioning

12.5.7 References

The Contracts & Procurement Unit, on behalf of the Head of Finance, or nominated Officer, on receipt of the completed application form will obtain references and undertake personal enquiries by appropriate professional or technical Officers in order that an evaluation on each company's general suitability can be compiled and detailed on the Approved Supplier Database and/or a specific Select List.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

At least two technical references will be required from every potential contractor. Technical competence is considered the key indicator of a contractor's suitability with any failure in this area warranting immediate exclusion from the Approved Supplier Database or a Select List.

The Contracts & Procurement Unit will retain all original references and evaluations on their file.

Deleted: Resources and Commissioning

12.5.8 Financial Appraisals

The Contracts & Procurement Unit, on behalf of the Head of Finance, or nominated Officer shall undertake financial vetting of all contractors prior to a contractor's inclusion on the Approved Supplier Database or Select List. The form of financial vetting shall be determined by the Head of Finance, or nominated Officer who will decide the most appropriate option/s from:

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

- the submission by a potential contractor of the last two years audited accounts which must include the balance sheet and profit and loss statement, to be reviewed by Financial Services; or

Formatted: Bullets and Numbering

- a request to an organisation specialising in financial vetting to supply a credit rating/contract banding for potential contractors; or

- the submission of a banker's reference.

The Contracts & Procurement Unit, on behalf of the Head of Finance, or nominated Officer, may at any time during the "life" of a Select List undertake financial appraisals to confirm a contractor's continuing financial suitability to be included on a list. Following each appraisal the Contracts & Procurement Unit may make a recommendation to the Council's Head of Finance, or nominated Officer in relation to a given contractor's suitability to remain on the list. Alternatively, the Head of Finance, or nominated Officer may revise the financial limits of work for which the Contractor shall be considered.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

12.5.9 Select List Details

Select Lists shall contain details of all Approved Suppliers who have expressed an interest, and include the following:

- contractor name, address and telephone numbers;
- scores awarded for evaluation of the Application and References;
- maximum level of annual spend which may be placed with the contractor;
- type (category) of work/service the contractor can perform;

Formatted: Bullets and Numbering

Deleted: June 2006

- _____ factors which must be taken into consideration prior to awarding a contract, e.g. requirement for stricter financial guarantees or increased levels of insurance;

12.5.10 Amendment and Review

Each record within the Approved List will be amended as required and reviewed at regular intervals not exceeding three years.

Select Lists must be reviewed at regular intervals, not exceeding three years.

The Contracts & Procurement Unit, on behalf of the Head of Finance, will undertake the amendments and reviews to the Approved List.

The Head of Service concerned will be responsible for advising the Contracts & Procurement Unit of the need to re-advertise for expressions of interest for Select Lists.

Deleted: and
Deleted: urchasing
Deleted: Resources and Commissioning
Deleted: Resources and Commissioning

12.5.11 Monitoring

The Contracts & Procurement Unit, on behalf of the Head of Finance, or nominated Officer will carry out monitoring of the use of Select Lists, the monitoring will cover the frequency of selection of contractors/consultants and the types of contracts.

Deleted: Resources and Commissioning
Deleted: Resources and Commissioning

12.5.12 Use of Consortia

When entering into a framework contract managed by a Consortium of which the Council is a member, the supplier vetting is undertaken by the Authority taking the lead in accordance with their own Standing Orders.

12.6 Tendering - General Principles

12.6.1 Preliminaries to the Execution of a Contract

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 appropriate committee where the expenditure is to be incurred in that year) or unless the alternative financial provision is made by the Council under the Financial Rules of Procedure (Part 11). 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 the Council and should be contained in the appropriate Forward Plan.

Deleted: <#>Central Buying Consortium] Resources and Commissioning on behalf of the Head of Resources and Commissioning or nominated Officer also manages the Council's affiliation to the Central Buying Consortium.]]
 The Head of Resources and Commissioning or nominated Officer will publish details of the goods and prices of the goods that are available through the Consortium. Officers must use the Consortium unless they can clearly demonstrate that the goods required can be purchased more cheaply elsewhere.
Formatted: Heading 3, Indent: Left: 0 cm
Formatted: Font: 12 pt, Not Bold

12.6.2 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. The thresholds do not apply to

Deleted: Resources and Commissioning
Deleted: Resources and Commissioning
Deleted: June 2006

Term Contracts which allows the letting of small contracts under the umbrella of the main contract.

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

12.6.3 Threshold 1 - Contract Values

Less than £5,000 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 £5,000 for works, goods and services, without inviting written quotations. The Head of Service or their delegated Officers must maintain written records of telephone quotations.

12.6.4 Threshold 2 - Contract Values

Between £5,000 and £50,000 – written quotations required.

The Head of Service or their delegated Officers must obtain a minimum of three written quotations.

12.6.5 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.]

12.6.6 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.]

Deleted: The Central Buying Consortium should be used wherever possible – Rule 12.5.12.

Deleted: Between £50,000 and EU threshold . These must be let as a competitive tender with Member involvement and advertised or taken from the Approved Supplier Database or appropriate Select List. A minimum of five tenders 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.

Formatted: Left, Indent: Left: 1.25 cm, Tabs: 1.25 cm, Left

Deleted: .

Deleted: .

Deleted: Resources and Commissioning

Deleted: Procurement

Deleted: June 2006

12.6.7 Invitation to Tender

For contracts of £50,000 and over, tenderers must be selected from the approved and appropriate Select Tender Lists for the type and value of contract being let (where one exists) or in response to a public notice where there is no select list in place.

12.7 Tendering Procedures

12.7.1 Introduction

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

12.7.2 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.

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.

12.7.3 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 shall be marked "late" and 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.

Deleted: June 2006

12.7.4 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. 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.

12.7.5 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.

12.7.6 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.

12.7.7 Alterations to Tenders

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

12.7.8 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.

Deleted: Opening of tenders under £100,000 must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of that completed form is sent to Resources and Commissioning. Tenders must be opened by the relevant Head of Service or their nominated representative and one other Officer.¶
Opening of tenders over £100,000 must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of that completed form is sent to Resources and Commissioning. The Head of Service shall arrange the opening of the tender. The Head of Service shall complete the form. The opening is to be in presence of the Head of Service or a nominated representative and one other person. The Head of Resources and Commissioning or nominated Officer must always be invited to such tender openings.¶
Opening of tenders over £500,000 must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of that completed form is sent to Resources and Commissioning. The tender opening should be 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, a representative of Resources and Commissioning and one other person from the service area. The Head of Service shall complete the tender opening form.¶

Deleted: June 2006

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.

Deleted: Resources and Commissioning

12.7.9 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.

12.8 Exceptions to Contract Rules of Procedure

12.8.1 General

The Head of Finance, or nominated Officer shall have authority to approve partial or full exceptions to these Rules. Contact should be made with the Contracts & Procurement Unit who will liaise with the Head of Finance. The exceptions are listed in Rule 12.8.3 below. All exceptions are subject to the provisions in Rule 12.8.2 below.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

12.8.2 Exceptions

For contracts up to £50,000 the Head of Finance, or nominated Officer must approve the exception.

Deleted: Resources and Commissioning

For contracts between £50,000 and £250,000 the Head of Finance, or nominated Officer will consult with the Head of Legal and Electoral Services and the appropriate Corporate Director.

Deleted: Resources and Commissioning

For contracts between £250,000 and £500,000 the exception will be dealt with by way of recommendation to the Corporate Board after consultation with the Head of Finance, or nominated Officer and with the Head of Legal and Electoral Services.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

For contracts over £500,000 the Head of Finance, or nominated Officer in consultation with the Head of Legal and Electoral Services will make a recommendation to the Executive.

12.8.3 Exception Criteria

- (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.

Deleted: June 2006

- (b) For technical reasons services, goods or proprietary items to be supplied can only be obtained from a limited number of sources in that a competitive tendering exercise cannot be undertaken.
- (c) Acquiring goods or services with different technical qualities would result in incompatibility or disproportionate technical difficulties.
- (d) The proposed contract is an extension of an existing contract where there is not an extension clause in the contract but subject to compliance with 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).
- (g) Contracts with professional persons in which the personal skill of those persons is of primary importance, and there would be no genuine competition.
- (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;
 - (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.
- (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.

12.8.4 Record Retention – Refers to Section 1

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 or 12 years if the Contract is under seal.

12.8.5 Contracts Register – Refers to Section 6

Deleted: The Responsible Head of Service must formally notify the Head of Procurement of the award of all contracts above £30,000 in value.¶ The Head of Procurement shall use these data to maintain a Register of Contracts on Behalf of the Council.

Deleted: June 2006

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 and the South East Centre of Excellence.

12.8.6 Social Services - Residential/Nursing Care

The Corporate Director (Community Care and Housing) 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 need a copy of the decision for the exceptions file.)

Deleted: Resources and Commissioning
Deleted: s

12.8.7 Social Services - Social Care Services

The Corporate Director (Community Care and Housing) 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 need a copy of the decision for the exceptions file.)

Deleted: Resources and Commissioning
Deleted: s

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.

12.8.8 Social Services - Children and Clients with Special Needs

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.

12.8.9 Educational Establishments

Where a Governing Body of a school intends to enter into a contract for works, supply of goods or service over the value of £100,000, the Headteacher may follow the school's local Procurement Procedure but must seek advice from the Head of Finance, or nominated Officer regarding the restrictions imposed by EU and UK legislation.

Deleted: Resources and Commissioning

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 £100,000, the Headteacher may follow the school's local Procurement Procedure, where one exists.

Deleted: June 2006

12.8.10 Peacetime Emergency Plan

Whenever appropriate the Chief Executive is authorised to operate the Major Incident Plan in an emergency and to incur any necessary expenditure. At times when the Major Incident Plan is brought into operation these Contract Rules of Procedure are suspended. A Corporate Director will act in the place of the Chief Executive if a Chief Executive is not in post or he/she is unwell or unobtainable.

12.9 Engagement of Consultants

12.9.1 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.

12.9.2 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.

12.9.3 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.

Formatted: Bullets and Numbering

12.9.4 Appraisals of Work

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

12.9.5 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 Finance or nominated Officer and Head of Legal and Electoral Services or nominated Officer will provide advice on this issue.

Deleted: Resources and Commissioning

12.9.6 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

Formatted: Bullets and Numbering

Deleted: June 2006

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.

Deleted: Resources and Commissioning

12.9.7 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.

Deleted: June 2006

12.9.8 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.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

12.9.9 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.

12.10 Entering into a Contract

12.10.1 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 Contracts & Procurement Unit in conjunction with the Head of Legal and Electoral Services. All Forms of Contract must specify inter alia:

Deleted: Resources and Commissioning

Deleted: include

- (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) (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;

Deleted: reference to compliance with current legislation with respect to Health and Safety at Work and the Sex Discrimination Act 1975; Race Relations Act 1976; the Disability Discrimination Act 1995 and the Data Protection Act 1984.†

Formatted: Indent: Left: 2.5 cm, Hanging: 1 cm, Tabs: 3.5 cm, List tab + Not at 2.87 cm

Formatted: Bullets and Numbering

- * 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;

Deleted: June 2006

- 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); Deleted: .
- (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 Deleted: June 2006

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.

12.10.2 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.

Deleted: Resources and Commissioning

Deleted: .

Deleted: .

12.10.3 Standard Clauses

Every contract shall include 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.

Deleted: Resources and Commissioning

12.10.4 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.

12.10.5 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.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

12.11 Legal Considerations

12.11.1 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

Deleted: June 2006

authorised in writing by the Head of Legal and Electoral Services or the Risk Manager, the Head of Finance, or nominated Officer.

Deleted: Resources and Commissioning

12.11.2 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.

Deleted: Resources and Commissioning

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.

12.11.3 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.

Deleted:

Deleted:

12.11.4 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.

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

[Note: If the Contractor has been through the vetting process and is on the Approved Supplier Database then some of these documents, renewable on an annual basis, may already be held by the Contracts & Procurement Unit]

Deleted: Resources and Commissioning.

12.11.5 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

Deleted: June 2006

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.

Deleted: e

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 oppose.
- (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.

Deleted: Resources and Commissioning

12.11.6 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.

12.11.7 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.

12.12 Contract Administration

12.12.1 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.

Formatted: Font: Bold

12.12.2 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

Deleted: June 2006

consultant) and Head of Finance or by another Officer nominated by him/her in writing for the purpose.

Deleted: as may be appropriate or

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.

Deleted: Resources and Commissioning

12.12.3 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.

Deleted: Resources and Commissioning

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.

Deleted: Resources and Commissioning

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.

12.12.4 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 and Corporate Contract and Procurement Manager for consideration of the authority's legal liability and, where necessary, to the Head of Finance or nominated Officer for financial consideration before a settlement is reached.

Deleted: &

Deleted: Resources and Commissioning

12.12.5 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) 519411 or email the Helpdesk.]

Deleted: Resources and Commissioning

Deleted: June 2006

12.12.6. Performance Manager

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.

Formatted: Indent: Left: 0 cm, Hanging: 1.25 cm, Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 6 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.51 cm + Indent at: 1.51 cm, Tabs: 1.25 cm, Left

Formatted: Indent: Left: 1.25 cm, Tabs: 1.25 cm, Left

Formatted: Font: Not Bold

Deleted: June 2006

Appendix A (12.3.4 (l) refers)

ALCATEL JUDGEMENT – IMPLICATIONS FOR CONTRACT AWARD PROCEDURE

The Government has announced that, with immediate effect, all procurements subject to the full EU procurement regime must be subject to a mandatory standstill period of at least 10 days between declining unsuccessful tenders and the actual award of contract. This standstill period is to allow unsuccessful tenderers the opportunity to challenge an award decision. Successful objections made during the standstill period could ultimately lead to award decisions being overturned.

The announcement follows the UK acceptance of a decision made by the European Court of Justice in the Alcatel case. The new procedure requires that as soon as the award decision has been made:

1. As soon as possible after a decision has been made, unsuccessful tenderers must be notified individually in writing, confirming:
 - (a) the award criteria,
 - (b) where appropriate the unsuccessful tenderers score against those criteria,
 - (c) where appropriate the winning score,
 - (d) and the name of the successful bidder.

The 10 day calendar day standstill period begins from the day after the notification is issued. It is recommended letters are always emailed or faxed to avoid disagreements about when they are actually received. If the last day of the standstill period falls on a non-working day the period must be extended to the next working day.

2. Tenderers may request in writing reasons as to why they were unsuccessful. If this request is made by midnight at the end of the 2nd working day of the standstill period this information must be dispatched at least 3 full working days before the end of the standstill period. This information must include the characteristics and relative advantages of the successful tenderer. If the information can not be provided within this timescale, the 10 day period will need to be extended.

NB Commercially sensitive details e.g. pricing must NOT be divulged during debriefing. Advice on debriefing is available from either the Contracts & Procurement Unit or Legal Services.

3. Where the request for information is not received by the end of the 2 working day period the information must be provided within 15 days. There is no requirement to extend the standstill period if a request is made after the 2 working day period.
4. A letter to the successful tenderer can also be sent at the same time as letters are sent to unsuccessful tenderers. The letter must be prepared in consultation with legal services and cannot indicate to the contractor that you will enter into a contract with them.
5. If no legal challenge has been launched by the end of Day 10, the contract award letter may be issued or contract signed and sent off to the successful tenderer.

Formatted: Font: Not Bold

Formatted: Font: Not Bold

Deleted: Resources & Commissioning

Deleted: June 2006

- 6. If a legal challenge is threatened, you must consult the Head of Legal and Electoral Services and then await the outcome of the application to the court before concluding the contract.
- 7. A contractor who is unsuccessful at the initial stages of the tender (PQQ) can also make a request in writing for information. This information must be provided within 15 calendar days and will need to include the reason why the contractor was not successful and any reason for the Council's decision that the contractor did not meet technical specifications or performance by an equivalent means to that set out in the tender documents.
- 8. Please note that paragraphs 1, 2 and 3 do not apply to an award of a contract under a framework agreement (but will apply to the award of a framework agreement itself) or a dynamic purchasing system. There are slightly amended requirements if you use the open procedure and the Contracts & Procurement Unit or Legal should be consulted in this instance.

In the meantime or in any case of doubt consult the Head of Finance, or Head of Legal and Electoral Services.

Andy Walker

David Holling

Head of Finance

Head of Legal & Electoral Services

January 2006

Deleted: Resources and Commissioning

Deleted: Resources and Commissioning

Deleted: Martin Cawte

Deleted: Resources and Commissioning

Deleted: June 2006

A protocol for member involvement in procurement in contracts valued over £50,000

Background

Following agreement by the Executive Committee of the Council in May 2005 officers were asked to develop a protocol outlining how Member involvement can be ensured in procurement decisions over £50,000 in value.

Principles

The protocol is based upon the following principles:

- 1) The protection of the personal integrity of Council members and officers.
- 2) Ensuring the financial and probity interests of the Council are protected
- 3) Ensuring decisions are based on complete and sound financial information and advice from appropriate professional staff
- 4) Ensuring decisions are in accordance with the Council's agreed processes and standards
- 5) Protecting the Council, its members and officers from undue pressure or inappropriate contact from contractors and parties with a commercial interest in a transaction
- 6) Delivering a swift and efficient process that will not prejudice the needs of West Berkshire citizens and delivery of the statutory duties of the Council
- 7) Empowering officers to act appropriately in emergency circumstances

The Council's Constitution- The Constitution sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these decisions are efficient, transparent and accountable to local people. Some of these processes are required by law, while others are a matter for the Council to choose.

Download a full copy of the Constitution from the West Berkshire Council Website at www.westberks.gov.uk

European Tendering Legislation- For up to date guidance on the community rules on the public procurement of services, please click on: http://europa.eu.int/comm/internal_market/publicprocurement/docs/guidelines/services_en.pdf.

Public supply and service contracts with a total value over £144,371 are subject to the European Community rules as are Public Works Contracts with a value of over £3,611,319.

Member Involvement

Both the Portfolio Holder or the Shadow Portfolio Holder from a service have an open invitation to be involved in any procurement over £50,000. To facilitate this process both the Portfolio Holder and Shadow Portfolio Holder must review the Service Procurement Planner (see Appendix A) provided by the relevant Head of Service at the beginning of each financial year and indicate in which procurement exercises they wish to be involved, and to what extent. The form breaks down the procurement process in line with the stages indicated in the current Project Management Methodology.

Once agreement has been reached the Service Procurement Planner must be signed, copied and forwarded to the Corporate Contract and Procurement Manager.

Should procurements over £50k be identified later in the financial year these will be added to the forward plan, be discussed with the Portfolio Holder and Shadow Portfolio Holder and an amended Service Procurement Planner must be signed and sent to the Corporate Contract and Procurement Officer.

The procurement exercises identified in the Planner should be used to initiate member involvement at the right time. Where members have indicated they wish to be involved it is assumed they will follow the process through from that stage right through to the completion of the Authorisation Form.

Authorisation process

Should a Portfolio Holder or Shadow Portfolio Holder not wish to be involved actively in a particular procurement exercise, they can either, indicate they do not want to be involved at all, or opt to be informed of the decision made at Gate 3 and asked for their agreement on the Authorisation Form (see Appendix B).

When an Authorisation Form is issued, both members will have five working days from the date of submission (which will be sent electronically and as hard copy to Market Street) to approve or reject the proposal. In the event there is no response in this time the contract will commence as proposed.

Where the proposal is rejected by either party, the appropriate party will complete the appropriate part of the Authorisation Form and contact the officer involved to detail their concerns with the proposal and agree an alternative approach. Every effort will be made to accommodate both the Portfolio Holder and Shadow Portfolio Holder's views, however in case of conflict the Portfolio Holder's view will prevail

Both the Portfolio Holder and Shadow Portfolio Holder will notify the officer involved in writing if they are likely to be unavailable for any period of time and will allocate an alternative named member to oversee the process. If a deputy has not been arranged the officer should send the Authorisation Form to the Group Leader or their deputy.

Annual Review

This protocol will be reviewed on an annual basis by all parties concerned to ensure the principles of member involvement are met to the satisfaction of the stakeholders.

Exclusions

The process outlined above will not apply to emergency situations. What constitutes an emergency for a particular service needs to be agreed between the HoS and the respective Portfolio Holder and Shadow Portfolio Holders.

Please note that this protocol does not apply to Adult Social Care for which service a service specific and pre-existing protocol is in place.

Appendix A
Service Procurement Planner for..... **Year.....**

Contract	1	2	3	4	5	6	7	8
Contract Title								
Estimated Value								
Start date								
Completion date								
Gate 0 Strategic assessment – business need identification and outline brief preparation	A							
Gate 1 Business justification – options appraisal completion and preferred option identification	B							
Gate 2 Procurement approach – approach to procurement identification (before advertising)	C							
Gate 3 Investment decision – identification of preferred supplier	D							
PH and SPH authorisation only. See form in Appendix B	E							
PH and SH do not wish to be involved	F							

Please indicate which procurement and at what stage you would like to be involved. Should members not wish to be involved in a particular contract they can be informed of the decision made at Gate 3 above and asked to sign their agreement on the form attached as Appendix B or alternatively indicate that they do not wish to be involved in this particular transaction. Please see flow diagram for clarification of options A to F.

Signed by Portfolio Holder Signed by Shadow Portfolio Holder

Signed by Head of Service
 N.B. This form needs to be included in the Service Plan and a copy forwarded to the Corporate Contract and Procurement Manager



APPENDIX B- PORTFOLIO & SHADOW PORTFOLIO HOLDER AUTHORISATION FORM

NAMES AND ADDRESSES OF THE PARTIES:

The Purchaser:
 West Berkshire Council,
 Council Offices,
 Market Street,
 Newbury.
 RG14 5LD

The Supplier selected:

("the Purchaser")
 Tel. No: 01635 519092
 Fax. No: 01635 519939

("the Supplier")
 Tel. No:
 Fax. No:

PROCUREMENT PROCEDURE FOLLOWED:

Procurement Options Considered (delete accordingly):

Tender: Yes/No

Alternative Quotes: Yes/No
 (If yes indicate the number of and range of prices quoted):

Cost breakdown attached? Yes/No
 (If more detail required please attach a separate sheet)

Funding Source	Amount (£)
----------------	------------

AUTHORISATION SIGNATURE:

Authorised to proceed by the Portfolio Holder:

Authorised to proceed by the Shadow Portfolio Holder:

SIGNED:.....

SIGNED:.....

NAME:.....

NAME:.....

DATE:.....

DATE:.....



APPENDIX B- PORTFOLIO & SHADOW PORTFOLIO HOLDER AUTHORISATION FORM

If rejected by the Portfolio Holder or Shadow Portfolio Holder please complete.

(Please detail your concerns along with a proposal for alternative action)

Large empty rectangular area for detailing concerns and proposals for alternative action.

SIGNATURE:

Rejected by the Portfolio Holder:

SIGNED:.....
 NAME:.....
 DATE:.....

Rejected by the Shadow Portfolio Holder:

SIGNED:.....
 NAME:.....
 DATE:.....

Relevant extract from the Minutes of the Governance & Audit Committee dated 11th October 2006 approving the Protocol

24. A PROTOCOL FOR MEMBER INVOLVEMENT IN PROCUREMENT IN CONTRACTS VALUED OVER £50,000.

The Committee considered A Protocol for Member Involvement in Procurement in Contracts Valued Over £50,000 (Agenda item 8) presented by Tom Herring, Corporate Contracts & Procurement Manager.

Tom Herring explained that in May 2005 the Executive had requested a protocol outlining how Member involvement could be ensured in procurement decisions over £50,000 in value. In the protocol, at the beginning of each financial year Heads of Service would identify expected procurements for the year ahead in a Service Procurement Planner. Portfolio Holders and Shadow Portfolio Holders would review this and indicate in which procurement exercises they wished to be involved in, and to what extent.

The report included recommendations of the Resource Management Task Group. Portfolio and Shadow Portfolio holders would have 5 working days to approve or reject a proposal. If they were unavailable, the proposal would be sent to the Leader or Leader of the Opposition.

The protocol included all capital projects, emergency procurements (when possible) and placements in special schools.

The Committee asked that procurement proposals are sent to Members in their Member's Bags as well as electronically, and followed up with a telephone call.

RESOLVED that

1. A protocol for member involvement in procurement in contracts valued over £50,000 be approved subject to the amendment below,
 - a) Officers be requested to send procurement requests by e-mail and in Members bags, and telephone Members when necessary.

Title of Report:	Risk Management Third Quarter Report – 2006-07	Item 9
Report to be considered by:	Governance and Audit Committee	
Forward Plan Ref:		

Corporate Plan Priority:	D4 - Stronger governance
The proposals contained in this report will help to achieve the above Corporate Plan priority by: Strengthening the internal control framework of the Council.	

Purpose of Report: To support the Statement of Internal Control by identifying the Strategic Risks and associated action plan

Recommended Action: To consider and comment on the quarterly report

Reason for decision to be taken: To ensure that the Council's strategic objectives are met and that any associated risks with achieving them are identified and appropriately managed.

List of other options considered: None

Key background documentation:

- Risk Management Strategy
- Strategic Risk Register / Action Plan

Contact Officer Details	
Name:	Charles Morris
Job Title:	Risk Manager
Tel. No.:	01635 519310
E-mail Address:	crmorris@westberks.gov.uk

Supporting Information

1. Background

- 1.1 The Chairman, Cllr Barbara Alexander, asked that the Risk Management quarterly report be included on the agenda for future meetings of the Governance & Audit Committee.
- 1.2 The purpose of the quarterly report is to provide a summary of the current position relating to risk management and insurance / claims issues. (Attached).
- 1.3 Corporate and Management Boards consider the report on a quarterly basis. This forms part of a quarterly monitoring process, which includes reports from other areas of the Authority.
- 1.4 Future reports will not include Business Continuity items; these will be integrated in to the reports from Emergency Planning / Civil Contingency, to avoid duplication.

Appendices

Appendix A - Risk Management Quarterly Report (October – December 06)

Consultation Responses

Local Stakeholders:	Not Consulted
Officers Consulted:	Corporate Board / Management Board / Risk Strategy Group
Trade Union:	None



Risk Management

Quarterly Report

October – December 2006

Key Issues

National

- Risk Pooling: The London Boroughs of Harrow and Brent are considering forming the first Local Authority "Pool" from 1 April 2007

Recent Court Cases include:

- (Highways – Lampposts) Where a lamppost had unexpectedly fallen across the road, a highway authority that has a reasonable inspection system could not reasonably have been aware that the lamppost was about to fall, was not liable to the claimant whose vehicle collided with it.
- (Protective Equipment – Footwear) Equipment provided to employees to protect them from likely hazards in the course of their work must comply with PPE regulations.

**A summary of court cases from Zurich Municipal's Court Circular magazine is the subject of a separate report.*

Local

- Strategic Risk Register / Action Plan reviewed by Corporate / Management Boards and Governance & Audit Committee on a rolling three month basis
- Use of Resources judgement – score of 4 (The council manages its significant business risks). The risk awareness training to members was highlighted as notable practice.
- Risk Strategy group formed which replaces the former JCC. This is a more strategic co-ordinating role covering a broad range of risk related activities. New group is chaired by Councillor Barbara Alexander and meets for first time on 19 January.
- With effect from 1 November 2006 the deductible on liability losses was increased from £25,000 to £100,000 for each claim. This is paid from the insurance provision / fund. Property claims remain with a deductible of £250,000.
- Highways Maintenance Programme / Transport Policy in place. HM Government rated this as good.

Recommendations For Corporate Board

- Separate paper on Risk Pooling was discussed at Management Board on 11 January 2007 and further information is to be supplied.

Work Programme 2006/2007 to Date

Key Performance Indicators

1. Risk Management

Project Risk

- Three monthly reviews of Project risk management workshops continue.
- Workshops will be carried out on other major contracts as they are identified - Tilehurst Learning Centre took place in September

Strategic Risk Register

- The Strategic Risk Register has been revised and continues to be reviewed quarterly by Corp Board
- Items shown as a "Net" red from the strategic risk register are included in the corporate plan.

2. Business Continuity Planning

- The Corporate Business Continuity Management Policy has been approved by Management Board and published to all staff on the Intranet.
- The corporate Business Continuity Manual is in the process of being produced and has been reviewed by the CE in November prior to discussion and table top exercise in February for CB.
- The majority of Critical Service BCPs are now drafted and being reviewed by teams a number have been exercised and are now being reviewed for final publications
- The four Directorate level plans are also being drafted incorporating local issues, critical service plans and the relevant elements of the corporate manual.

Work is continuing with the Civil Contingency team to ensure consistency and compatibility with Emergency Planning and the Major Incident Plan. A joint contact list will be maintained and discussions are underway for joint crisis management procedures, exercises and briefing.

Recommendations For Corporate Board

- Corporate Board to encourage Project Sponsors / Project Managers to be proactive in the reviews of project risk registers. Action Plans require review.
- Corp Directors to remind HOS that operational risk registers and action plans must be reviewed at SMT's on a quarterly basis. The risk registers should be aligned to the service area's objectives / service plans.
- Operational Risk Action Plans to be reviewed on a quarterly basis by Corporate Directors at 1-2-1's
- Heads of Service Assurance Statements are due for completion for 06/07. Corp Directors to remind HOS

Traffic light Indicators Quarter 3

Service Area	Risk Registers	Q Review	Action Plans	Training	BCP
Chief Executives					
Benefits & Exchq					
Customer Services					
Finance					
HR					
ICT					
Legal & Electoral					
Policy & Comm					
Property					
Public Protection					
Highways & Transp					
Countryside & Waste					
Planning					
C&YP					
Education					
Children's Services					
Comm & Quality	Included in above				
Community Services					
Community Care					
Older People					
Housing					
Cultural Services					

Red Indicators – The two Services rated as Red is due to a nil response to the quarterly return. This matter will be resolved during the current quarter, per Corp Director Environment.

Amber Indicators - HOS need to review Risk Registers and Action Plans on at least a quarterly basis. Risk Manager will work with those HOS to improve Amber indicators during current quarter.

BCP Indicator – in future this will be form part of the report from Emergency Planning as there is currently some duplication of information.

** More detailed explanations will be included in future reports.

Training

- Project risk registers are reviewed on a rolling 3-month basis.
- The annual review with the risk manager of operational risk registers and action plans is part of the risk management-training programme for HOS and their management teams. (HOS should review on a quarterly basis -)
- Corporate Board training event took place in September 2006
- Half Day Training Sessions for 3-4 tier managers took place on 16 November. (Feed back was positive. Further sessions planned for first quarter in 2007
- Training session for Education due took place on 4 January 2007
- Risk management training for more junior staff available

Recommendations For Corporate Board

- Encourage HOS to communicate / cascade training information to managers

Title of Report:	Governance and Audit Work Programme	Item 11
Report to be considered by:	Governance and Audit Committee	
Forward Plan Ref:		

Corporate Plan Priority:	D4 – Stronger governance
The proposals contained in this report will help to achieve the above Corporate Plan priority by:	
<ul style="list-style-type: none"> • Outlining a programme of work for the Committee 	

Purpose of Report:	To note the programme of work and future meeting dates of the Committee.
Recommended Action:	To note the work programme and future meeting dates.
Reason for decision to be taken:	To note the work programme and future meeting dates.
List of other options considered:	None
Key background documentation:	

Contact Officer Details	
Name:	Ian Priestley
Job Title:	Service Head - Assurance
Tel. No.:	01635 519253
E-mail Address:	ipriestley@westberks.gov.uk

Supporting Information

1 Introduction

- 1.1 The purpose of this report is to outline the work and meeting dates of the Committee for the coming year, including a list of training items at the start of each meeting.
- 1.2 In addition it is likely that the Committee will have a number of issues to consider in relation to the Council's Constitution. These will be timetabled to fit these planned meetings.

Appendices

Appendix A – Governance & Audit Committee Work Programme

**GOVERNANCE & AUDIT COMMITTEE
WORK PROGRAMME (2006/2007)**

Updated on 24/11/2006

Topic	Detail	Lead Officer	Date of Committee
Training Programme	Use of Resources block of the CPA	Andy Walker	21 March 2007
Use of Resources	Details of the Council's position re the Use of Resources, including action plans to deal with any shortcomings identified by the Audit Commission. The Committee to approve any action plan that may be required.	Andy Walker	21 March 2007
Internal Audit Plan	Details of Internal Audit work to be undertaken in the coming year. Committee to approve the plan	Ian Priestley	21 March 2007
Risk Management Strategy	Annual review and renewal of the Council's Risk Strategy. The Committee to review the Strategy and approve the work set out in the strategy	Charles Morris	21 March 2007
Strategic Risk Register	Quarterly review of the Council's Strategic Risk Register. Committee to comment, and acting as critical friend, agree or suggest changes to the register and ensure that relevant Members of the Executive are delivering the agreed action plan.	Charles Morris	21 March 2007
Training Programme	Presentation on the Accounts Process, including the purpose of the Statement	Simon Freeman	26 June 2007
Statement of Accounts	Review of the statement of Accounts, as required by the Audit Commission the review must be carried out by 30 th June by "those charged with Governance". The Committee, with the Leader, Portfolio Holder and Leader of the Opposition review and approve the statements	Simon Freeman	26 June 2007
Statement of Internal Control – Report of the Monitoring Officer	Annual report of the Monitoring Officer to provide assurance that the Internal Control Framework is sound, in support of the Statement of Internal Control. The Committee to approve the report	David Holling	26 June 2007

**GOVERNANCE & AUDIT COMMITTEE
WORK PROGRAMME (2006/2007)**

Updated on 24/11/2006

Topic	Detail	Lead Officer	Date of Committee
Statement of Internal Control – Report of the s151 Officer	Annual report of the s151 Officer to provide assurance that the Internal Control Framework is sound, in support of the Statement of Internal Control. The Committee to approve the report	Andy Walker	26 June 2007
Statement of Internal Control – Report of the Head of Internal Audit	Annual report of Internal Audit to provide assurance that the Internal Control Framework is sound, in support of the Statement of Internal Control. The Committee to approve the report	Ian Priestley	26 June 2007
Statement of Internal Control – Heads of Service Assurance Statements	Annual report of the review of Assurance Statements and Service Risk Registers by Corporate Board, to provide assurance that the Internal Control Framework is sound, in support of the Statement of Internal Control. The Committee to approve the report	Ian Priestley	26 June 2007
Strategic Risk Register	Quarterly review of the Council's Strategic Risk Register. Committee to comment, and acting as critical friend, agree or suggest changes to the register and ensure that relevant Members of the Executive are delivering the agreed action plan.	Charles Morris	26 June 2007
Statement of Internal Control	Annual Statement of Internal Control. The Committee to review the Statement prior to it being signed by the Leader and Chief Executive	Ian Priestley	26 June 2007
Training Programme	Presentation on Anti Fraud and Corruption work undertaken by the Council in respect of Housing Benefits and the National Fraud Initiative	Karen Greenaway Julie Gillhespy	25 September 2007
Annual Governance Report	The annual Governance Report of the Audit Commission for 2006/07. The Committee to receive the report before the 30 th September	Mick West (Audit Commission)	25 September 2007
Annual Review of the Council's Anti Fraud and Corruption policies and procedures	Annual update of the Anti Fraud and Corruption Policies, including the Confidential Reporting Code, and Anti Money laundering Policies.	Ian Priestley	25 September 2007

**GOVERNANCE & AUDIT COMMITTEE
WORK PROGRAMME (2006/2007)**

Updated on 24/11/2006

Topic	Detail	Lead Officer	Date of Committee
Strategic Risk Register	Quarterly review of the Council's Strategic Risk Register. Committee to comment, and acting as critical friend, agree or suggest changes to the register and ensure that relevant Members of the Executive are delivering the agreed action plan.	Charles Morris	25 September 2007