

| | | |
|------------------------------------|--|---------------|
| Title of Report: | Internal Audit - Quarter 2 Report | Item 4 |
| Report to be considered by: | Governance and Audit Committee | |
| Date of Meeting: | 5 th January | |
| Forward Plan Ref: | GAC1902 | |

Purpose of Report: To update the Committee on the outcomes of Internal Audit Work for quarter 2

Recommended Action: To note the outcomes of the Internal Audit work for quarter 2.

Reason for decision to be taken: Part of the quarterly reporting cycle.

Other options considered: None

Key background documentation: None

The proposals will also help achieve the following Council Plan Themes:

- CPT13 - Value for Money**
- CPT14 - Effective People**
- CPT16 - Excellent Performance Management**

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:
Improving the governance arrangements of the Council

| Portfolio Member Details | |
|---|---|
| Name & Telephone No.: | Councillor Keith Chopping - (0118) 983 2057 |
| E-mail Address: | kchopping@westberks.gov.uk |
| Date Portfolio Member agreed report: | 10 th November 2009 |

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

Implications

| | |
|--------------------------------------|---|
| Policy: | none |
| Financial: | none |
| Personnel: | none |
| Legal/Procurement: | none |
| Property: | none |
| Risk Management: | The report outlines areas of the Council where there are weaknesses in the system of internal control |
| Equalities Impact Assessment: | none |

Executive Summary

1. Introduction

- 1.1 The report outlines the results of the work of Internal Audit over the second quarter of 2009-10.

2. Proposals

- 2.1 Consider results of audits where the opinion is weak or very weak, and note the comments / update provided by the relevant Head of Service
- 2.2 Consider results of follow up audits where progress is felt to be unsatisfactory, and note the comments / update provided by the relevant Head of Service

3. Conclusion

- 3.1 No fundamental weaknesses were identified. One very weak audit was reported on. There were no unsatisfactory follow ups.

Executive Report

1. Introduction

- 1.1 The purpose of this report is to outline the key issues arising from the work of Internal Audit over the second quarter of 2009-10.
- 1.2 The report highlights the following:
- (1) any reports finalised in the last quarter where the overall opinion was weak or very weak.
 - (2) any follow up work with an unsatisfactory opinion.
 - (3) any wider audit issues that may affect Internal Audit or the Council
 - (4) the current position re resourcing of internal audit and the implications for completion of the annual audit plan.
- 1.3 A number of appendices are attached and provide more detail. These are:
- (1) A listing of audit work that is presently underway (Appendix A1 and A2)
 - (2) A listing of audits completed in the last quarter (ie Final report issued). The overall opinion is given with the number and severity of weaknesses identified. (Appendix B)
 - (3) A listing of follow up work that is in progress (Appendix C)
 - (4) A listing of follow up work completed in the last quarter, together with an opinion and a note of the number of recommendations that remain outstanding. (Appendix D)

2. Reports where the overall opinion was weak/very weak

- 2.1 Appendix B notes one audit that is rated as very weak. We have set out the concerns we have raised at the time of the audit with the Head of Service.

| | |
|--|---|
| | <p><u>Waterside Youth & Community Centre – Income Spot Check</u></p> <p>Report issued 21.09.2009</p> |
| | <p>The key control weaknesses identified in the review were:</p> <ol style="list-style-type: none"> a) a lack of procedural guidance for members of staff involved in the cash collection, recording and banking process; b) income is not recorded in the income ledgers until banking has occurred; c) receipts for income received are not issued in sequential order; d) daily cash sheets, activity logs are not always fully completed; e) banking is undertaken on an ad hoc basis, time permitting. The safe limit at the centre is £200, which we noted is regularly exceeded; f) there was found to be no segregation of duties in respect of the |

| | |
|--|---|
| | <p>counting, recording and banking of income; and g) income ledger records are not fully reconciled to activity cash sheets and banked income.</p> <p>As a result of the above control weaknesses at the time of our audit visit we were unable to reconcile cash held on site to income records maintained. At the time of the audit £2048.20 was held within the safe, but not recorded in the ledgers. Income ledger records were also found to demonstrate evidence of manual adjustments using correction fluid and pencil. Instances of un-banked income being utilised as petty cash were also noted.</p> |
|--|---|

| | |
|--|--|
| | <p>Head of Children’s Services (Karen Reeve) update / comments</p> |
| | <p>Immediately following the visit by Audit to the Waterside Centre an action plan was put into place to address the initial findings - prior to the receipt of a written report. The Youth Service manager tasked the Operational Manager with meeting with staff from Accountancy to review the financial procedures at the centre so as to ensure that they were compliant with the Financial regulations. Revised procedures were drafted within three working days (12th – 14th August) and a copy then sent to Audit for their comment. The Operational Manager then met with the Business coordinators at Waterside to ensure they were following the correct financial procedures.</p> <p>The Operational Manager has acknowledged that staff at the Waterside Centre were not fully adhering to the correct financial procedures and as a consequence a robust review of procedures was implemented. The Operational Manager has been meeting on a monthly cycle with the Business coordinators to ensure full compliance of procedures.</p> <p>A new Activity Team Manager has been appointed, starting in post at the beginning of November. This will provide a closer level of regular supervision to the staff at the Waterside.</p> |

3. Follow up work given an unsatisfactory opinion

3.1 None of the follow up audits carried out in this quarter were given an unsatisfactory opinion.

4. Staffing issues

4.1 Internal Audit has one vacancy at Senior Auditor level. This post is responsible for leading the FMSiS work, however this post is being held vacant to deliver managed vacancy savings.

4.2 By the end of the second quarter 40% of the audit plan had been completed. The projection for the year end is 80%.

Appendices

Appendix A1 – Current Audits
Appendix A2 – Issued audits
Appendix B – Completed Audits
Appendix C – Current follow ups
Appendix D – Completed follow ups

Consultees

Local Stakeholders: Not consulted
Officers Consulted: Head of Finance, Corporate Board
Trade Union: Not consulted

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| Directorate/Service/Audit Title | key risks being covered | Audit Plan/Year (planned report issue date) | Current Position of Work (revised report issue date) |
|---------------------------------|-------------------------|---|--|
|---------------------------------|-------------------------|---|--|

| |
|-------------------------|
| Corporate Audits |
|-------------------------|

| Finance | | | |
|--------------------|--|-------------------------------|---------------------------|
| Use of Consultants | <ul style="list-style-type: none"> • To ensure that the Council has an effective monitoring function in place for the use of consultants across the Council, which covers the following:- <ul style="list-style-type: none"> a) Sample checks are undertaken/recorded to ensure that Service areas are complying with the Council's procedures, and the checks cover the following; b) Issues of non compliance identified are flagged up at the appropriate level and remedial action taken where necessary; c) Records are maintained of individual queries received from managers together with the advice that was given; d) A training programme has been set up for managers covering the guidance/procedures for appointing/managing external consultants; e) The outstanding revisions to guidance highlighted in our most recent follow-up have been progressed. | 2009/10 (End of November) | Testing |
| General Ledger | <ul style="list-style-type: none"> • To ensure that day to day budget transaction processing is complete and accurate. We will also review the effectiveness of the data uploads from feeder systems onto Agresso. • To ensure that Agresso is being fully utilised in setting up and monitoring budgets. | 2009/10 (end of January 2010) | Terms of Reference issued |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| Chief Executive | | | |
|---|--|--|--------------------------------------|
| Finance | | | |
| National Fraud Initiative | <ul style="list-style-type: none"> Review of data matches highlighted by the Audit Commission's mandatory data matching exercise. | Ongoing (Audit Commission require results by January 2010) | Investigating matches (January 2010) |
| Procurement | <ul style="list-style-type: none"> To ensure that the Contract Rules of Procedure are compliant with legislation. To ensure that the awarding of tenders and contracts is undertaken in line with the Contract Rules of Procedure and that awarded contracts are effectively managed and monitored. To ensure that there is an up to date Central Supplier listing which is complete, current and appropriately authorised. | 2009/10 (end of December) | Planning |
| Policy & Communication/Legal and Electoral | | | |
| Management of the Constitution | <ul style="list-style-type: none"> To ensure that the Council has established a constitution that is in accordance with statutory requirements/good practice and that there are processes in place ensuring the effective management and maintenance of the Constitution in accordance with good practice guidelines (e.g. SOLACE/ Use of Resources). <p>This will involve reviewing the following areas:-</p> | 2009/10 (end of September 2009) | Ready for Review (November 2009) |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| | | | |
|---------------------------------|---|--------------------------------|---------------------------|
| | <ul style="list-style-type: none"> a) The Constitution includes all the relevant sections/chapters as required by legislation; b) The content of the individual sections/chapters is reviewed on a regular basis to ensure that the content is still valid/ relevant; c) There is clearly defined responsibility for each section/chapter of the Constitution and overall ownership of the document; d) 'Ad hoc' and routine review changes are appropriately approved and the documents are promptly and accurately updated and published using version control. | | |
| Benefits & Exchequer | | | |
| Housing Benefits | <ul style="list-style-type: none"> • To ensure that there is an effective framework in place for the administration of housing benefits which is in accordance with DWP guidance. • To ensure that there are reconciliations between rent rebates recorded on SX3 and payments made, together with a reconciliation between Council Tax Benefit recorded on the Council Tax system compared with the information recorded on the Housing Benefit System. | 2009/10 (end of December 2009) | Terms of Reference issued |
| Accounts Receivable | <ul style="list-style-type: none"> • To ensure that payment terms are supported by adequate documentation and the associated debt collection is monitored. • To ensure that there are effective procedures in place for the managing and monitoring of debts. • To ensure that the Cash Receipting System is reconciled to Agresso (Accounts Receivable Module) on a regular basis and the control account is reviewed and cleared on a regular basis. • To ensure that there is a formalised system for the approval and processing of write-offs from the Accounts Receivable System. | 2009/10 (December 2009) | Terms of Reference issued |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| Children & Young People | | | |
|---|--|---|--------------|
| Education | | | |
| Building Schools for the Future – St Bartholomew's Re Build | <ul style="list-style-type: none"> • Pre Contract <ul style="list-style-type: none"> 2.1.1 Design – copy / innovate 2.1.2 Method of procurement – contract type 2.1.3 Tender invitation 2.1.4 Tender evaluation 2.1.5 Financing – MTFS / Capital / BSF funding / Cash flow / Contingency. 2.1.6 Bond / insurance 2.1.7 Contractor management process 2.2.8 Forward look • Build stage <ul style="list-style-type: none"> 2.3.1 Governance arrangements update – records of meetings and decisions taken. Focus on clarity of accountability. Focus on risk management 2.3.2 Financial information 2.3.3 Valuations and interim payments 2.3.4 Price fluctuations 2.3.5 Variations 2.3.6 Claims 2.3.7 Forward look • Post Contract <ul style="list-style-type: none"> 2.1.8 Final Account 2.1.9 Post implementation review is carried out (not by audit) 2.1.10 Liquidated and ascertained damages applied as appropriate 2.1.11 Lessons learned. | A draft report will be issued to the Project Sponsor at the conclusion of each of the sections of the audit | Pre Contract |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| Community Services | | | |
|--|---|---------------------------------|---|
| Adult Services | | | |
| Assessment of Need /Purchase of Care (Learning Disability/Mental Health) | <ul style="list-style-type: none"> To ensure that the Council has an effective assessment framework in place that is in compliance with Legislation and Department of Health Guidance. To ensure that clients needs are assessed at the required frequency and that this information is recorded accurately and promptly on the Client database (RAISE), and is reflected in the level of care being provided. To ensure that there are standard procedures in place for the selection of providers, and that this takes into account value for money. | 2008/9 (end of February 2009) | <p>Audit put on hold – picked up again during the summer 2009</p> <p>Ready for review (November 2009)</p> |
| Carers Grant | <ul style="list-style-type: none"> To ensure that the Council has a Carers Grant Policy in place in line with legislation/guidance. To ensure that the procedures for administering the grant have been fully documented. To ensure that allocation of grant is in accordance with the policy, and that payments of grants are adequately recorded and monitored. | 2009/10 (end of September 2009) | Awaiting Review (November 2009) |
| Self Assessment/Personal Budgets | <ul style="list-style-type: none"> Advisory review – to assess/report on the draft procedures/guidance that has been prepared as part of the initial Pilot phase of the implementation of Self Assessment/Personal Budgets. | 2009/10 (November 2009) | In Progress |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| Environment | | | |
|---|--|--------------------------------|--|
| Waste Management Contract – Contract Management | <ul style="list-style-type: none"> To ensure that the Service has established an effective framework to monitor the Integrated Waste Management contract. To ensure that the Service has established processes for checking/monitoring the contractor's performance both in quantitative and qualitative terms. | 2009/10 (November 2009) | Testing |
| Building Control | <ul style="list-style-type: none"> To ensure that applications have been correctly recorded on the building control system in a timely manner, in accordance with statutory guidance and progression of applications is regularly monitored. To ensure that the fees charged are appropriate, requested in a timely manner and banked promptly. This will involve ensuring that fees charged are in accordance with the LGA Model Scheme and applied correctly for differing stages of building control. Prompt request of invoices, prompt collection of outstanding monies, and reconciliation of income are undertaken. | 2009/10 (end of February 2010) | Testing |
| Car Parks | <p>To ensure that:-</p> <ul style="list-style-type: none"> system is operated in accordance with West Berkshire Council's approved policies, standing orders and financial regulations; that all car parks income is collected, counted and banked promptly and in tact; that excess charges notices are appropriately issued and followed up, with any cancellations being supported by adequate and appropriate documentation; that season tickets and parking permits are issued in accordance with West Berkshire Council policies and procedures; | 2007/8 (end of October 2007) | Drafting report Put on hold testing re started in January 2009. (October 2009) |

Internal Audit Quarterly Report – List of work commenced

Appendix A1

Quarter 2

| | | | |
|--|---|--|--|
| | <ul style="list-style-type: none"> • there is an up to date inventory of car park equipment and maintenance is regularly undertaken. | | |
|--|---|--|--|

Internal Audit Quarterly Report – List of draft reports issued

Appendix A2

Quarter 2

| Directorate/Service | Audit Title | Audit Plan/Year (actual report issue date) | (expected finalisation date) |
|---------------------|-------------|--|------------------------------|
|---------------------|-------------|--|------------------------------|

Chief Executive

| | | | |
|------------------------|-------------------------|-------------------------|---------------|
| Benefits and Exchequer | Payroll/Travel Expenses | 2008/9 (August 2009) | October 2009 |
| Human Resources | Absence Management | 2008/9 (September 2009) | October 2009 |
| Property Services | Commercial Rents | 2008/9 (May 2009) | October 2009 |
| Property Services | Building Maintenance | 2008/9 (June 2009) | November 2009 |
| Policy & Communication | Members Expenses | 2009/10 (October 2009) | November 2009 |

Children & Young People

| | | | |
|-----------|-------------------|--------------------------|--------------|
| Education | School Admissions | 2009/10 (September 2009) | October 2009 |
|-----------|-------------------|--------------------------|--------------|

Community Services

| | | | |
|-------------------|------------|-----------------------|--------------|
| Cultural Services | Shaw House | 2008/9 (October 2009) | October 2009 |
|-------------------|------------|-----------------------|--------------|

**Internal audit quarterly report - List of completed audits
(2nd Quarter 2009/10)**

Appendix B

| <u>Directorate/Service</u> | <u>Audit Title</u> | <u>Date finalised</u> | <u>Overall Opinion</u> | <u>Agreed Recommendations (no.s per category of weakness and total)</u> | | | | |
|----------------------------------|--|-----------------------|------------------------|---|-------------|-------------|----------|-------|
| | | | | Total | Fundamental | Significant | Moderate | Minor |
| Chief Executive | | | | | | | | |
| Finance | General Ledger | 30/09/09 | Well Controlled | 1 | | | | 1 |
| Benefits and Exchequer | Housing Benefits | 21/09/09 | Well Controlled | 1 | | | 1 | |
| Benefits and Exchequer | Accounts Receivable | 07/08/09 | Well Controlled | 3 | | | | 3 |
| Benefits and Exchequer | Council Tax | 22/07/09 | Well Controlled | 4 | | | | 4 |
| Benefits and Exchequer | NNDR | 21/07/09 | Well Controlled | 6 | | | 3 | 3 |
| Children and Young People | | | | | | | | |
| Children's Services | Agency Staff | 2008/9 | Well Controlled | 3 | | 1 | 2 | |
| Children's Services | Waterside Youth Centre Income Spot Check | 21/09/ | Very Weak | 14 (not categorised) | | | | |
| Community Services | | | | | | | | |
| Cultural Services | Libraries Purchasing | 18/09/09 | N/A - Advisory | 17 | | | 8 | 9 |
| Environment | | | | | | | | |

NOTE

The overall opinion is derived from the number/significance of recommendations together with using professional judgement. The Auditor's judgement takes into account the depth of coverage of the review (which could result in more issues being identified) together with the size/complexity of the system being reviewed.

Internal Audit Quarterly Report – List of Follow up work commenced

Appendix C

Quarter 2

| Directorate/Service | Audit title |
|----------------------------------|---|
| Chief Executive | |
| Finance | Central Administration of Petty Cash/Imprest Accounts |
| Finance | Contract Letting |
| Finance | Webrisk |
| Human Resources | Recruitment |
| | |
| Children and Young People | |
| Education | Facilities Grant |
| Children's Services | Adventure Dolphin (Youth Services) |
| | |
| Community Services | |
| Housing and Performance | Social Work Fund Administration |
| | |
| Environment | |
| Countryside and Environment | Taxi Licensing |
| | |

**Internal audit quarterly report - List of completed Follow-ups
Quarter 2**

Appendix D

| <u>Directorate/Service</u> | <u>Audit Title</u> | <u>Date finalised</u> | <u>Overall Opinion of Report</u> | <u>Opinion – Implementation progress</u> | <u>No. of Agreed Recommendations</u> | <u>Recommendations not fully implemented (no.s per category and total)</u> | | | | |
|----------------------------------|-------------------------------|-----------------------|----------------------------------|--|--------------------------------------|--|-------------|-------------|----------|-------|
| | | | | | | Total | Fundamental | Significant | Moderate | Minor |
| Chief Executive | | | | | | | | | | |
| Finance | General Ledger | 30/09/09 | Well Controlled | Satisfactory | 7 | 5 | | | 3 | 2 |
| Benefits and Exchequer | Council Tax | 22/07/09 | Weak | Satisfactory | 18 | 8 | | | | 8 |
| Benefits and Exchequer | Housing Benefits | 21/09/09 | Well Controlled | Satisfactory | 11 | 1 | | | | 1 |
| Benefits and Exchequer | NNDR | 21/07/09 | Satisfactory | Satisfactory | 16 | 12 | | | 6 | 6 |
| I.C.T. | I.T. Asset Management | 29/07/09 | Very Weak | Satisfactory | 17 | 10 | | | 6 | 4 |
| Children and Young People | | | | | | | | | | |
| Community Services | | | | | | | | | | |
| Housing and Performance | Four Houses Corner Gypsy Site | 02/09/09 | Weak | Satisfactory | 18 | 5 | | | 3 | 2 |
| Environment | | | | | | | | | | |

| | | |
|------------------------------------|--|----------------|
| Title of Report: | Proposed changes to the Contract Rules of Procedure | Item 05 |
| Report to be considered by: | Council | |
| Date of Meeting: | 21 January 2010 | |
| Forward Plan Ref: | C1887 | |

Purpose of Report: To consider and approve the changes to the Contract Rules of Procedure.

Recommended Action: To delegate authority to the Head of Legal and Electoral Services in consultation with the Head of Finance to implement the changes to the Contract Rules of Procedure in Appendix 1.

Reason for decision to be taken: Changes are required to implement consequential effects of the Public Contracts (Amendments) Regulations 2009 coming into force on the 20th December 2009 as a result of the EU Remedies Directive.

Other options considered: None

Key background documentation: Audit report on Contract Letting; Remedies Directive.

| | |
|--|---|
| The proposals contained in this report will help to achieve the following Council Plan Priorities: | |
| <input checked="" type="checkbox"/> | CPP1 – Support our communities through the economic recession – to alleviate the impact on different communities and individuals who find themselves out of work and/or disadvantaged |
| <input checked="" type="checkbox"/> | CPP3 – Reduce West Berkshire’s carbon footprint – to reduce CO ₂ emissions in West Berkshire and contribute to waste management, green travel, transportation and energy efficiency |
| The proposals will also help achieve the following Council Plan Themes: | |
| <input checked="" type="checkbox"/> | CPT5 - Cleaner and Greener |
| <input checked="" type="checkbox"/> | CPT13 - Value for Money |
| The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by: Improved governance, compliance and practices. | |

| Portfolio Member Details | |
|---|---|
| Name & Telephone No.: | Councillor Keith Chopping - (0118) 983 2057 |
| E-mail Address: | kchopping@westberks.gov.uk |
| Date Portfolio Member agreed report: | 08.12.2009 |

| Contact Officer Details | |
|-------------------------|--|
| Name: | Tom Herring |
| Job Title: | Corporate Contract and Procurement Manager |
| Tel. No.: | 01635 519645 |
| E-mail Address: | therring@westberks.gov.uk |

| Contact Officer Details | |
|-------------------------|--------------------------------------|
| Name: | Shiraz Sheikh |
| Job Title: | Solicitor (Contract and Procurement) |
| Tel. No.: | 01635 519456 |
| E-mail Address: | ssheikh@westberks.gov.uk |

Implications

- Policy:** This is a revised policy due to changes in legislation.
- Financial:** The changes to CRoP have been recommended by the Finance & Governance Officer Group and agreed by the Corporate Board.
- Personnel:**
- Legal/Procurement:** Changes are needed to improve working practices and take into account changes in legislation.
- Property:**
- Risk Management:** Changes are needed in order to avoid challenge under the amended Regulations for 20th December 2009.
- Equalities Impact Assessment:** The introduction of Equality Impact Assessments has been discussed previously with the Principal Policy Officer.

| | | |
|--|-------------------------------|---|
| 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 Overview and Scrutiny Commission or associated Task Groups within preceding six months | | <input type="checkbox"/> |
| Item is Urgent Key Decision | | <input type="checkbox"/> |

Executive Summary

1. Introduction

1.1 The Contract Rules of Procedure (the Rules) which form Part 12 of West Berkshire Councils Constitution are required to be updated due to the following reasons:

- to implement the **legislative** changes (in particular the Public Contracts (Amendment) Regulations 2009) and ensure the language used in the Rules is consistent with the current legislation:
- to implement Council's current policies;
- to implement recommendation contained in the WBC audit reports,;
- to better reflect working practices: and
- to implement a number of recommendations made by the Council's Finance & Governance Officer Group (FAGG) .

2. Proposals

It is recommended that the Council approves the attached Appendix 1 containing the Rules with amendments tracked. The following is a brief summary of the main changes that have been made to the Rules:

- 2.1 Section 12.1.9 requires the need for Heads of Service to carry out a sustainability impact assessment. This implements the Council's policy on sustainability.
- 2.2 Section 12.1.19 implements the EU treaty principles of non-discrimination, transparency and equality in tender competitions. It also requires the need for Heads of Service to carry out an equality impact assessment. This implements legislative provisions and Council's policy on equality.
- 2.3 Section 12.1.20 deals with financial leases and the need for such procurements to be authorised and recorded.
- 2.4 Section 12.3 implements new advertising thresholds from the European Union and generally updates the process requirements.
- 2.5 Section 12.6.1 and 12.6.2 clarifies the position with regard to responsibility and authority for entering into contracts.
- 2.6 Section 12.6.4 provides that the lower financial threshold be increased from £5,000 to £10,000.
- 2.7 The removal of approved supplier status and discontinuation of the approved supplier database and select lists. Previously section 12.5.
- 2.8 Sections 12.8.1 to 12.8.3 now clarify the procedure and the circumstances in which exceptions are allowed. This is particularly important in light of the new regulations.
- 2.9 .Section 12.8.6 gives guidance to the Corporate Directors on exercising their powers under 12.8.6.1 to 12.8.6.3, which relates to social care arrangements.

2.10 Section 12.8.7 now places an obligation for WBC controlled schools to follow the Rules. .

3. Conclusion

3.1 It is recommended that the amendments to the Contract Rules of Procedure as tracked in the annex are approved

Executive Report

4. Introduction

4.1 The Contract Rules of Procedure (the Rules) which form Part 12 of West Berkshire Councils Constitution are required to be updated due to the following reasons:

- to implement the **legislative** changes (in particular the Public Contracts (Amended) Regulations 2009) and ensure the language used in the Rules is consistent with the current legislation:
- to implement Council's current policies;
- to implement recommendation contained in the WBC audit reports; ,
- to better reflect working practices: and
- to implement a number of recommendations have been made by the Council's Finance & Governance Officer Group (FAGG) .

5. Proposals

It is recommended that the Council approves the attached Appendix 1 containing the Rules with amendments tracked. The following is a brief summary of the main changes that have been made to the Rules :

5.1 Section 12.1.9 requires the need for Heads of Service to carryout a sustainability impact assessment. This implements the Council's policy on sustainability.

WBC's Sustainable Procurement Policy defines Sustainable Procurement as 'a process whereby organisations meet their needs for goods, services, works and utilities in a way that achieves value for money on a whole life basis in terms of generating benefits not only to the organisation, but also to society and the economy, whilst minimising damage to the environment. Sustainable Procurement should consider the environmental, social and economic consequences of: design; non-renewable material use; manufacture and production methods; logistics; service delivery; use; operation; maintenance; re-use; recycling options; disposal; and suppliers' capabilities to address these consequences throughout the supply chain.'

5.2 Section 12.1.19 implements the EU treaty principles of non-discrimination, transparency and equality in tender competitions. It also requires the need for Heads of Service to carryout a equality impact assessment. This implements legislative provisions and Council's policy on equality.

5.3 Section 12.1.20 deals with financial leases and the need for such procurements to be authorised and recorded. Such leases are recorded on the Council's Balance Sheet and may have EU procurement rules implications.

5.4 Section 12.3 implements new advertising thresholds from the European Union and generally updates the process requirements. This is amended to provide consistency with the EU procurement rules

- 5.5 Section 12.6.1 and 12.6.2 clarifies the position with regard to responsibility and authority for entering into contracts.
- 5.6 Section 12.6.4 provides that the lower financial threshold be increased from £5,000 to £10,000.
- 5.7 The removal of approved supplier status and discontinuation of the approved supplier database and select lists is recommended was previously in section 12.5 of the Rules.

The Rules include references to approved supplier status; this is misleading as any contractor passing a PQQ process would be included on the data base regardless of whether they had actually contracted with WBC. The database is rarely used, as the information held is largely historic and is therefore not fully reliable as the basis of future decisions. The database also duplicates aspects of the Council's main Agresso supplier list.

FAGG recommend the removal of the blanket approved supplier status and discontinuation of the 'approved supplier database'. Section 12.5 of the Rules is to be rewritten to reflect that PQQs should only be used for the particular project for which they were sought. Suppliers will be encouraged to keep electronic copies of information they submit and update this for any new submissions. The Agresso supplier database has been amended to reflect the date a PQQ was completed.

- 5.8 Sections 12.8.1 to 12.8.3 now clarify the procedure and the circumstances in which exceptions are allowed. This is particularly important in light of the new regulations.
- 5.9 Section 12.8.6 gives guidance to the Corporate Directors on exercising their powers under 12.8.6.1 to 12.8.6.3 which relate to social care arrangements.
- 5.10 Section 12.8.7 now places an obligation for WBC controlled schools to follow the Rules.

6. Conclusion

- 6.1 It is the recommended that amendments to the Contract Rules of Procedure as tracked in the annex are approved.

Appendices

Appendix A - Part 12 the Contract Rules of Procedure (tracked as amended).

Consultees

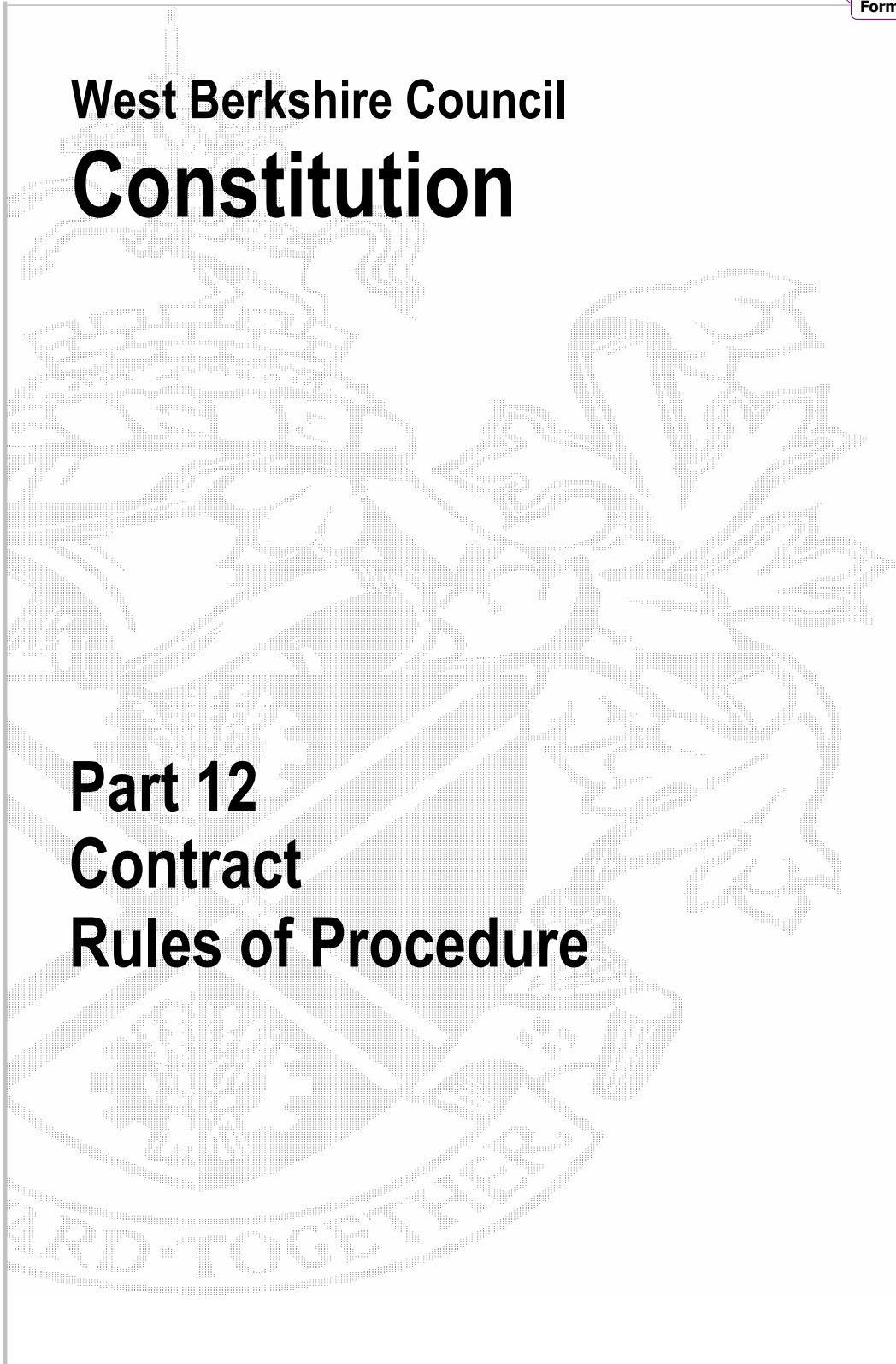
Local Stakeholders:

Officers Consulted: Andy Walker, David Holling, Ian Priestley, Steve Duffin, Shiraz Sheikh, Amanda Dennis

Trade Union:

West Berkshire Council Constitution

Part 12 Contract Rules of Procedure



12.5 Supplier Database and Select Tender Lists 15

12.5.1 Introduction..... 15

12.5.2 Security of Supplier Database 15

12.5.3 Application Form for inclusion on the Supplier Database..... 15

12.5.4 Evaluation of the Application for inclusion on the Supplier Database 15

12.5.5 Amendment and Review 155

12.5.6 Pre-Qualification Process 15

12.5.7 References 15

12.5.8 Financial Appraisals 15

12.5.9 Use of Consortia 15

12.5.10 Use of current information 16

12.6 Tendering - General Principles 15

12.6.1 Preliminaries to the Execution of a Contract 15

12.6.2 Contract Thresholds 15

12.6.3 Threshold 1 - Contract Values 16

12.6.4 Threshold 2 - Contract Values 16

12.6.5 Threshold 3 - Contract Values 16

12.6.6 Threshold 4 – Contracts over EU Threshold 16

12.6.7 Invitation to Tender 17

12.7 Tendering Procedures 17

12.7.1 Introduction..... 17

12.7.2 Instructions to Tenderers 17

12.7.3 Receipt of Tenders 17

12.7.4 Opening of Tenders – Refers to Sections 2b, 5 and 8 18

12.7.5 Tender Opening - Confidentiality and Security 18

12.7.6 Tender Evaluation – Refers to Section 9 18

12.7.7 Alterations to Tenders 18

12.7.8 Tenders Submitted for the Execution of Work 18

12.7.9 Acceptance of Tenders..... 19

12.8 Exceptions to Contract Rules of Procedure 19

12.8.1 General 19

12.8.2 Exceptions 20

12.8.3 Exception Criteria 20

12.8.4 Record Retention – Refers to Section 1 21

12.8.5 Contracts Register – Refers to Section 6 21

12.8.6 Social Services - Residential/Nursing Care 22

12.8.7 Social Services - Social Care Services 22

12.8.8 Social Services - Children and Clients with Special Needs 22

12.8.9 Educational Establishments 23

12.8.10 Peacetime Emergency Plan 23

12.9 Engagement of Consultants 23

12.9.1 Definition 23

| |
|--------------------------------------|
| Deleted: Approved |
| Deleted: 15 |
| Deleted: 14 |
| Deleted: 13 |
| Deleted: 15 |
| Deleted: 14 |
| Deleted: 13 |
| Deleted: Maintenance |
| Deleted: 15 |
| Deleted: 14 |
| Deleted: 13 |
| Deleted: Security . 151514 ... [3] |
| Deleted: 15151514 |
| Deleted: 15 |
| Deleted: 1 |
| Deleted: ¶ |
| Formatted ... [4] |
| Formatted ... [5] |
| Deleted: 15 |
| Deleted: 15 |
| Deleted: 15 |
| Deleted: 16 |
| Deleted: 15 |
| Deleted: 12.5.9 . Select Lis ... [6] |
| Deleted: 15 |
| Deleted: 16 |
| Deleted: 16 |
| Formatted ... [7] |
| Formatted ... [8] |
| Deleted: 12.6 |
| Deleted: 15 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 15 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 15 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 15 |
| Deleted: 16 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 16 |
| Deleted: 17 |
| Deleted: 17 |
| Deleted: 7 |

12.1 Introduction

12.1.1 Application of Rules of Procedure

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

12.1.2 Section 135 of the Local Government Act 1972

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

12.1.3 Statutes

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

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

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 robust procedures and

Deleted: firm

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

12.1.6 Protection of the Council’s Legal Position

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

12.1.7 Seeking Advice

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

Deleted: The Head of Finance or nominated Officer shall make arrangements for the provision of this advice.

Deleted: Officer, 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, or Regulatory Committees or any person or persons acting in accordance with delegated authority on behalf of the Council. The expression “the appropriate Committee” shall mean the Executive, Policy Development Commissions, Overview and Scrutiny Commission, Regulatory Committees responsible for the contract concerned.

12.1.9 Sustainable Sources

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

Deleted: sustainability

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

12.1.10 Monitoring Officer

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

12.1.11 Particularly Complex Contracts

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

Deleted: Large Contracts and

Deleted: Large Contracts

Deleted: Competitive Dialogue

Deleted: of substantial size,

Deleted: and is to do so by way of competitive dialogue

Deleted:

Deleted: (whether by way of competitive tender or subsequent to tendering),

Deleted:

12.1.12 Preparation of Contract Specification

Deleted: s

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:

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

12.1.13 Provision of Appropriate Expenditure

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

12.1.14 Failure to Comply with Rules

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

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

All Heads of Service should consult with the Head of Legal and Electoral Services, the Head of Human Resources and the Head of Finance or nominated Officer before any contract is entered into which affects the employment of the Council's staff or the potential transfer of staff to the Council. Statutory periods of consultation (which must be complied with) apply to all contracts affected by TUPE.

12.1.16 Claim Arising from a Contract

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

12.1.17 Potential for Loss

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

12.1.18 Project Appraisal

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

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

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

12.1.19 Equality in Procurement

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

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

12.1.20 Financial Leases

Financial leases are leases which need to be accounted for in the Council's Balance Sheet. When an officer wishes to enter into a Financial Lease that effectively creates a Council asset permission must be sought in advance from the Head of Finance.

12.2 Compliance with the Constitution

12.2.1 Compliance with Rules

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

12.2.2 Legislation

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

Formatted: Font color: Auto

Formatted: Heading 3, Indent: Hanging: 2.27 cm, No bullets or numbering, Tabs: Not at 1.25 cm

Deleted: transparent

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Deleted: ,

Formatted: Font: 12 pt, Not Bold

Deleted: li

Deleted: a

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Deleted: li

Formatted: Font: 12 pt, Not Bold

Deleted: i

Formatted: Font: 12 pt, Not Bold

Formatted: Font: 12 pt, Not Bold

Formatted: Indent: Left: 1.25 cm, No bullets or

Formatted: Font: Not Bold

Deleted: override the provisions

Deleted: of

12.2.3 Formal Exemption

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

12.2.4 Non-Disaggregation of Contracts

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

Deleted: 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

Deleted: .

12.2.5 Maintenance of Records

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

Deleted: Contract

Deleted: of Procedure

Deleted: Law

12.3 European Procurement Rules

12.3.1 Seeking Advice

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

Deleted:

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

Formatted: Bullets and Numbering

Deleted: 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.

12.3.2 Public Procurement Regulations

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

- Public Supply Contracts

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

- Public Works Contracts

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

- Public Service Contracts

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

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

12.3.3 Public Procurement Regulations – Advertising of Procurements

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

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

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

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

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

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

12.3.4 Public Procurement Regulations - Process Requirements

- (a) Estimates of contract value are net of VAT.
- (b) Aggregation rules apply so that a series of contracts for works of a similar character or services of the same type should be aggregated across the whole Council. [Care must be taken that this does not breach the aggregation rules of the EU Directives. Guidance must be sought on the aggregation rules from the Head of Legal and Electoral Services. See also 12.2.4.](#)

Deleted: 6

Deleted: 8

Deleted: 9

Deleted: 144,371

Deleted: 39,893

Deleted: supplies

Deleted: 3,611,319

Deleted: 497

Deleted: 393

Comment [SS1]: These will change on the 1st January 2009

Deleted: significant procurement is advertised in the

Deleted: Journal regardless of whether the contract value exceeds or falls below financial threshold limits

Deleted: To ensure an adequate 'call for competition' all

Deleted: significant

Deleted: procurements over £10,000 shall be advertised on the Council's website.

Deleted: other

Deleted: e.g.

Deleted: (which

Deleted:)

Deleted: 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

Deleted:)

Deleted: .

- (c) Although there are a number of procedures available under the EU procurement regulations, in all circumstances the Restricted Procedure shall be used unless approval is obtained from the Head of Finance and/or the Head of Legal and Electoral Services ~~or such Officer as nominated by them.~~ The Restricted Procedure is effectively “selective” tendering as prospective tenderers who express an interest in tendering are “screened” before being invited to tender. The ~~Restricted Procedure~~ requires not less than five ~~(provided there are five suitably qualified tenderers)~~ tenderers be invited to tender.
- (d) The ~~Regulations~~ cover the financial, technical, and economic qualifications, which should be taken into account in selecting those tenderers who will be invited to tender. Officers must be very careful not to impose conditions which could be considered anti-competitive and that a European tenderer could not satisfy, for example, a condition that the tenderer must have a local office or prior inclusion on the Approved Supplier database.
- (e) Officers are reminded that, in tender documentation, wherever appropriate, a contact shall require a minimum standard compliance with British Standard Specification of British Standard Code of Practice issued by the British Standards Institution or Public Authority Standard. The European equivalent standard must also be quoted and if there is no equivalent European standard then the words must be added “or other equivalent European standard will be accepted” or International standard recognised in another Member State. All contracts, so far as is practicable, shall require that goods and materials used in their execution shall have been produced in the UK, British Commonwealth or the European Community or any other Country having reciprocal trading agreements with the European Community. The Council cannot reject an offer from a contractor on the basis that materials, goods or services offered do not comply with any standards set out in the tender documents if the contractor can prove to the Council that what they are proposing will satisfy the requirements of the technical specification in an equivalent manner.
- (f) The practice of nominating suppliers, sub-contractors or consultants in technical specifications must be justified by the subject of the contract and accompanied by the words “or equivalent”. Approval for the use of this method must first be sought from the Head of Finance or nominated Officer and the Head of Legal and Electoral Services or nominated Officer.
- (g) The ~~basis of award will be either ‘lowest price’ or ‘the most economically advantageous tender.’~~ The basis of the award must be set out in the Official Journal of European Union notice. Where the most economically advantageous tender is the basis of the award then the criteria, which will be used to assess, must be set out either in the Official Journal of European Union or the tender documentation. Please refer to 12.7.6.
- (h) It is essential that Officers allow sufficient time for replies and vetting of tenders and evaluation of tenders. The procurement regulations provide minimum time periods which will also need to be built into the procurement programme. Timescales for the Restricted Procedure are the time between:
 - (i) the advert in the European Journal and the return of expressions of interest ~~(30 days or 37 days depending on the method of dispatch);~~ and

Deleted: or nominated Officer

Deleted: r

Deleted: p

Deleted: and not more than twenty

Deleted: (subject to exceptions where the market is too small because of the specialised nature of the work or the procurement is a large framework agreement)

Deleted:)

Deleted: .

Deleted: r

Deleted: criteria

Deleted: “

Deleted: ”

Deleted: The criteria must be set and sent out with the contract documentation together with the weighting of the criteria that will be used.

Deleted: (37 days)

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

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

(i) When expressions of interest are returned the Officers involved in the tendering exercise will have to leave sufficient time to analyse replies with regard to financial requirements and other technical and economic qualifications for selection. It is also important to ensure that the Officers who need to be involved in analysing the tenders are made aware of the timetable for the letting of the contract as early in the process as possible.

(j) Where a contract that has been advertised is then let, the Head of Service concerned must ensure that a "Contract Award Notice" is sent to the European Journal within prescribed timescales of the date of award of the contract. The Contracts & Procurement Unit must be notified when a contract award has been made and will send a 'Contract Award Notice' to the OJEU electronically. There are notification requirement under the Public Contracts (Amendment) Regulations both to the successful and the unsuccessful tenderers. There are also "standstill" period requirements under the Regulations, Please seek further advice and guidance from the Head of Legal and Electoral Services or their nominated Officer.

(k) Where presentations or interviews are to be used as part of the evaluation procedure for tenders this must be communicated to tenderers within the tender documents. Presentations and interviews should not be used to moderate the entire tender scores. Those officers, members and other stakeholders evaluating the interview or presentation should be informed that they are not selecting the supplier but are only marking that particular element of the tender. Evaluation Guidance and a presentation checklist are available from the Corporate Contract and Procurement Unit.

12.3.5 Procurement Regulations – Procurement techniques

The Procurement Regulations provide for the following procurement techniques:

- Electronic Auctions – a repetitive process involving an electronic device for the presentation of new prices once tenders have been evaluated.
- Dynamic Purchasing Systems – an electronic framework agreement where indicative bids to enter into the framework can be made at any time and which call-off is subject to a competitive tender.
- Framework agreements – is an agreement or other arrangement between one or more contracting authorities and one or more economic operator (e.g. providers) which established terms (in particular the terms as to price and where appropriate, quantity) under which economic operators will enter into one or more contracts with a contracting authority in the period during which the framework applies.

Deleted: PIN (

Deleted: Different

Deleted: apply to different

Deleted: . The Contracts & Procurement Unit must be consulted if you wish to use alternative procedures

Deleted: 48 days

Deleted: 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

Deleted: Unsuccessful tenderers

Deleted: are entitled by law to be told the lowest price tendered, the name of the successful tenderer, the successful tenderers scores and their own scores and a summary of the merits of the successful bid. (also see note on the Alcatel judgement at Appendix A)

Deleted: and the percentage allocated should not exceed 10% of total available sc

Deleted: ore.

Deleted: re

Deleted: ¶
(l) . Officers raising new suppliers, requisitions or authorising purchase orders must do so before any formal go-ahead is given to a supplier and certainly before any work is started or goods supplied.. This enables time for best value checks to be done, advice about suppliers to be given, compliance checks to be made against these Contract Rules of Procedure and allows true commitments to be made against Council budgets. 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

Deleted: General Provisions

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

The Contracts & Procurement Unit will determine the use of these techniques in any procurement process.

There are four main competitive procurement procedures under the Regulations:

- Restricted Procedure
- Open Procedure
- Competitive Dialogue
- Negotiated Procedure

in all circumstances Restricted Procedure shall be used unless approval is sought from the Head of Legal & Electoral Services.

Formatted: Indent: Left: 1.25 cm

Deleted: including Competitive Dialogue

Formatted: Bullets and Numbering

Formatted: Bulleted + Level: 1 + Aligned at: 1.89 cm + Tab after: 2.52 cm + Indent at: 2.52 cm

Formatted: Indent: Left: 1.27 cm

Deleted: 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.

12.3.6 Prior Information Notice (PIN)

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

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

Deleted: will then ensure

Deleted: is

12.4, not used

12.5 Prevention of Corruption

12.5.1 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.

12.5.2 Member or Officer Interests

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

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

12.5.3 Statutory Provisions

The following statutory provisions govern contracts and other matters:

Deleted: <#>Supplier Debriefing
Supplier Debriefing shall be offered to all unsuccessful bidders on all procurements

Formatted: Heading 2, Indent: Left: 0 cm, Tabs: Not at 1.25 cm

Deleted: more than

Deleted: over £50,000 in value. 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.¶ 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: Bullets and Numbering

Formatted: Indent: First line: 1.25 cm

Formatted: Bullets and Numbering

Deleted: or

Formatted: Bullets and Numbering

- 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.

12.6 Tendering - General Principles

12.6.1 Preliminaries

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

(a) legal requirements;

(b) EU Directives

(c) the Council Financial Rules of Procedure

(d) any code, guidance or conditions approved by the Governance & Audit Committee, the Executive or the Council to the exercises of powers delegated by them.

12.6.2 Authority

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

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

- (i) a decision or resolution (in accordance with the Council's Constitution) of the Executive, an authorised Member of the Executive or one of its committees or sub committees; or
- (ii) a decision by an officer exercising delegated powers.

(c) 12.1.13.provisions have been adhered to.

47

Deleted: <#>Approved ... [9]

Deleted: 'Approved

Deleted: Supplier Databa ... [10]

Deleted: who in response ... [11]

Deleted: that have expres ... [12]

Deleted: To be considere ... [13]

Deleted: ¶

Deleted: The 'Invitation to ... [14]

Deleted: Details of suppli ... [15]

Deleted: used when a Se ... [16]

Formatted ... [17]

Deleted: ¶

Deleted: Maintenance¶ ... [18]

Deleted: . ¶

Deleted: ¶

Deleted: <#>Security of ... [19]

Deleted: Approved

Deleted: Supplier Database

Deleted: and

Deleted: shall be maintair ... [20]

Deleted: three

Deleted: s

Deleted: one year for all ... [21]

Deleted: . ¶

Deleted: Select Tender L ... [22]

Deleted: The

Deleted: Approved

Deleted: Supplier Database

Deleted: and Select Tend ... [23]

Deleted: is confidential to ... [24]

Deleted: they

Deleted: must not be rele ... [25]

Deleted: Use of the App ... [26]

Deleted: ¶

Deleted: <#>Approved

Deleted: <#>Supplier Database

Deleted: <#>and Select List

Deleted: <#>¶ ... [28]

Deleted: The

Deleted: an application fr ... [29]

Deleted: an Approved an ... [30]

Deleted: the Supplier Dat ... [31]

Deleted: The application ... [32]

Deleted: ¶

Deleted: <#>Approved a ... [34]

Deleted: <#>Supplier Da ... [35]

Deleted: ¶

Deleted: 12.5.6 Pre-Qua ... [36]

Formatted ... [37]

Deleted: application form

Deleted: Pre-Qualificatio ... [38]

Deleted: obtain

Deleted: check the receipt of

Deleted:

Deleted: references and u ... [39]

... [40]

... [41]

... [42]

... [43]

... [44]

... [45]

... [46]

... [47]

12.6.3 Contract Thresholds

Formatted: Bullets and Numbering

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

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

Deleted: The thresholds do not apply to Term Contracts which allows the letting of small contracts under the umbrella of the main contract

Deleted: B

Deleted: V

12.6.4 Threshold 1 - Contract Values

Formatted: Bullets and Numbering

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

Deleted: 5

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

Deleted: 5

12.6.5 Threshold 2 - Contract Values

Formatted: Bullets and Numbering

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

Deleted: 5

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

Deleted: 50

Deleted: 000

Deleted: Contracts must be advertised if they exceed £10,000 in value. Where an advertiser generates more than three expressions of interest, officers must either must allow all suppliers to quote or record the basis and reasons why a lower number were allowed to quote.

12.6.6 Threshold 3 - Contract Values

Between £50,000 and EU threshold.

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

Formatted: Bullets and Numbering

Deleted: M

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.]

12.6.7 Threshold 4 – Contracts over EU Threshold

Formatted: Bullets and Numbering

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

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

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

12.6.8 Invitation to Tender

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

Formatted: Bullets and Numbering
Deleted: approved and appropriate Select Tender Lists for the type and value of contract being let (where one exists) or in
Deleted: 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 unless the Head of Legal & Electoral Services considers the circumstances to be exceptional.

Deleted: .

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.

Deleted: .

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 or are delivered to the incorrect address shall be marked accordingly and then shall be retained securely unopened by the relevant

Deleted: "late" or returned to the incorrect address
Deleted: and
Deleted:

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 over £50,000 must be recorded on the standard form (Form F021). It is the responsibility of the Head of Service to ensure that a copy of the completed form is sent to Finance. The tender opening is arranged by the Head of Service. The opening is to be in the presence of the Head of Service, or a nominated representative, an elected Member, and a representative of Finance. The Head of Service shall complete the tender opening form.

Deleted: . The opening is to be in the presence of the Head of Service

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 the Contracts & Procurement Unit 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

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

Formatted: Font: Bold

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

An application for an exception to the Rules will not be granted without a cogent reason. A lack of time caused by inadequate forward planning is not a cogent reason and will not permit an exception to the Rules. If an application is granted, the appropriate Director and/or the Head of Service responsible for the contract must demonstrate that the price obtained is not in excess of the market price and that the contract represents best value for money.

Deleted: 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.

12.8.2 Exception values and delegations

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

- Deleted: s
- Deleted: 50
- Deleted: 000
- Deleted: £250,000

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

Deleted: £250,000

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

Deleted: or nominated Officer

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

Deleted: or nominated Officer in consultation with

12.8.3 Exceptional circumstances

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

- Deleted: Exception Criteria
- Formatted: Normal, Indent: Left: 0 cm, First line: 0 cm, Tabs: Not at 1.25 cm
- Formatted: Font color: Auto

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

- Deleted: or proprietary items to be supplied
- Deleted: a limited number of sources in that a competitive tendering exercise cannot be undertaken.
- Deleted: with different technical qualities
- Deleted: .
- Deleted: extension
- Deleted: of an existing contract where there is not an extension clause in the contract but subject to compliance with

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

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

12.8.4 Record Retention

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

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

Formatted: Font: (Default) Arial, Font color: Auto

Formatted: Normal, Indent: Left: 0 cm, First line: 0 cm, Don't adjust space between Latin and Asian text, Don't adjust space between Asian text and numbers, Tabs: Not at 2.5 cm

Deleted: - Refers to Section 1

Deleted: Refers to Section 6

12.8.5 Contracts Register –

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

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

Deleted: the

Deleted: Centre of Excellence

12.8.6 The relevant Corporate Director approving the exceptions below at 12.8.6.1, 12.8.6.1 and 12.8.6.3 must do so with caution and where appropriate seek legal advice. These services usually fall into Part B of the Public Contracts Regulations 2006 which means that they are not subject to the full application of the Rules. However the onus is on the Council to seek to ensure that such contracts are not of interest to other member states and each contract need to be looked at on a case by case basis. If there is a lot of repeat purchasing of similar types of services or even where a single package is of high value then such contracts could be of inter member state interest and must be advertised in the Official Journal of the European Union. Additionally there is an obligation to comply with the requirement of the Public Contracts (Amendment) Regulations 2009 which includes the placing of a transparency notice in the Official Journal of European Union. Furthermore there is a need to demonstrate value for money in public expenditure.

- Formatted: Font: 12 pt
- Formatted: Indent: Left: 0 cm, Hanging: 1.25 cm, Outline numbered + Level: 3 + Numbering Style: 1, 2, 3, ... + Start at: 1 + Alignment: Left + Aligned at: 0 cm + Tab after: 1.27 cm + Indent at: 1.27 cm, Tabs: 1.25 cm, Left + Not at 1.27 cm
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt
- Formatted: Font: 12 pt

12.8.6.1 Social Services - Residential/Nursing Care

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

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

- Deleted: Social Services
- Formatted: Heading 4, Indent: Left: 0 cm, First line: 0 cm, Tabs: Not at 1.25 cm
- Formatted: Bullets and Numbering
- Deleted: T
- Deleted: Care and Housing

12.8.6.2 Social Services - Social Care Services

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

(The Contracts & Procurement Unit need 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.

- Formatted: Heading 4, Indent: Left: 0 cm, First line: 0 cm, Tabs: Not at 1.25 cm
- Formatted: Bullets and Numbering
- Deleted: T
- Deleted: Care and Housing

12.8.6.3 Social Services - Children and Clients with Special Needs

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

- Formatted: Heading 4, Indent: Left: 0 cm, First line: 0 cm, Tabs: Not at 1.25 cm
- Formatted: Bullets and Numbering
- Deleted: T

12.8.7 Educational Establishments

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

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

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

- Formatted: Bullets and Numbering
- Deleted: over the value of £100,000, the
- Deleted: a
- Deleted: y
- Deleted: school's local Procurement Proce
- Deleted: dure but
- Deleted: 0
- Deleted: follow the school's local Procurement Procedure, where one exists

12.8.8 Major Incident Plan

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

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

- Formatted: Bullets and Numbering
- Deleted: Peacetime Emergency
- Deleted: 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
- Deleted: Section 151 Officer

12.9 Engagement of Consultants

12.9.1 Definition

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

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

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

- Deleted: <sp>
- Deleted: Best Value R

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

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

12.9.2 Guidance

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

12.9.3 Procurement Process

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

12.9.4 General

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

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

Deleted: <sp>

12.9.5 Counsel

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

12.9.6 Evaluation against Predetermined Criteria

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

- Relevant/recent experience;
- Adequacy of resource/materials available;
- Quality of work;

- Reliability/timeliness;
- Comparable cost.

12.9.7 Appraisals of Work

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

12.9.8 Letter of Engagement/Contract

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

Deleted: Head of Finance or nominated Officer and

Deleted: is

12.9.9 Clauses for Letter of Engagement/Contract

- The Consultant must agree that all documents and materials produced as a result of their engagement under the contract are the property of the Council and that copyright in all documents and materials so produced vests with the Council.
- The Consultant will be responsible for the provision of all major items of equipment and materials necessary to complete the task.
- The Consultant will be free to engage others considered necessary to complete the task at his/her own expense – but such sub consultants must be approved by the Council and must have suitable professional indemnity insurance.
- The Consultant will be responsible for the correction of faulty or incomplete work at his/her own expense.
- The Consultant will be responsible for determining how the work will be done.
- The agreed fee will be paid upon satisfactory completion of the specified work (or in instalments upon complete stages as agreed).
- The Consultant will have no right to terminate the engagement until all contracted work is completed satisfactorily provided that the Council is not at fault in causing the termination.
- The Consultant will be personally liable for all claims against him/her emanating from, or connected with this engagement.
- The Consultant will be personally responsible for all tax and National Insurance liabilities arising from the engagement.
- The Consultant must have professional indemnity insurance of a minimum of £5,000,000.
- The Consultant must comply with these Rules of Procedure (and for the purposes of the Code of Conduct referred to in the Council Rules of Procedure, they shall be deemed to be an “Officer”) subject to the modifications that the procedure to be followed in inviting and opening tenders shall be approved in advance by the appropriate Head of Service and the Head of Finance or nominated Officer.

- The Consultant must at any time during the carrying out of the contract, produce to the appropriate Head of Service or a designated representative, on request, all the records maintained by them in relation to the contract.
- The Consultant must on completion of a contract, transmit all records (or copies) to the appropriate Head of Service.

12.9.10 Commissioning Manager

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

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

12.9.11 Termination of Contract

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

12.9.12 Invoices

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

12.10 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 the Head of Legal and Electoral Services or his delegated officer. All Forms of Contract must specify interalia:

- (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;

Deleted:
Deleted: Contracts & Procurement Unit in conjunction with

- (f) a requirement for compliance with current legislation relating to health and safety at work, sex, race and disability discrimination and in general equalities legislation. Following is a non-exhaustive list of equalities legislation;
- Equal Pay Act 1970 (Amended)
 - Sex Discrimination Act 1975;
 - Race Relations Act 1976;
 - Data Protection Act 1984;
 - Disability Discrimination Act 1995;
 - Human Rights Act 1998;
 - Freedom of Information Act 2000;
 - Race Relations (Amendment) Act 2000;
 - Employment Equality (Religion or Belief) Regulation 2003;
 - Employment Equality (Sexual Orientation) Regulation 2003;
 - Race Relations Act 1976 (Amendment) Regulation 2003;
 - Civil Partnerships Act 2004;
 - Environmental Information Regulations 2004;
 - Gender Recognition Act 2004;
 - Disability Discrimination Act 2005;
 - Disability Discrimination Amendment Act 2005;
 - The Employment Equality (Sex Discrimination) Regulations 2005;
 - Employment Equality (Age) Regulations 2006;
 - Equality Act 2006;
 - Racial and Religious Hatred Act 2006;
- (g) a clause requiring full indemnity of the Council (usually provided by Public Liability Insurance);
- (h) a clause requiring a performance bond (where applicable);
- (i) a clause requiring contractors to warrant that performance and functionality will not be affected by date or other information technology functions;
- (j) a clause which reflects the Council's environmental and sustainability policies (where appropriate);
- (k) a clause permitting the use of information for preventing and detecting fraud (where appropriate).
- (l) a clause requiring the contractor to supply sufficient information in a timely manner to enable the Council fully and properly to comply with requests for information under the Data Protection Act 1998, Freedom of Information Act 2000 and the Environmental Information Regulations 2004;

- (m) a clause requiring the contractor to keep details of the contractual arrangements confidential and not to disclose the same without the consent of the Council;
- (n) a clause requiring contractors to co-operate with enquiries by overview and standards committees, Ombudsmen, the Standards Board for England, the Council's internal and external auditors, Government departments and the European Commission and other legally-empowered persons;
- (o) a clause detailing the liabilities and responsibilities relating to workforce matters where the Transfer of Undertakings (Protection of Employment) Regulations 2006 apply; and
- (p) in the case of the engagement of professional advisers, a requirement that the adviser shall at all times be fully covered by professional indemnity insurance and that, in relation to that contract, he or she shall confirm to the requirements of these Contract Rules of Procedure, the Council's Financial Rules of Procedure and any direction from the Council, the Executive, a Committee or duly authorised officer.

12.10.2 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.

12.10.3 Standard Clauses

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

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

12.10.4 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.

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 Finance 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 Finance or nominated Officer to determine whether a Performance Bond or other suitable security should be required from the tenderers. This is to provide sufficient security for the due performance of the contract. A record of the risk assessment must be retained on the contract file for inspection.

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

12.11.3 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.

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

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 making of any rate, contract or order, or any other matter or thing, shall be a sufficient authority for sealing any document necessary to give effect to the resolution.

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

- (a) Petition to be presented to Parliament against the promotion of any Bill or confirmation of any Provisional Order which the Council 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.

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.

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

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

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

12.12.3 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.

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

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

12.12.4 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 or nominated Officer and, where necessary, to the Head of Finance or nominated Officer for financial consideration before a settlement is reached.

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) 519860 or email procurement@westberks.gov.uk.]

12.12.6. Performance Management

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

Deleted: and Corporate Contract and Procurement Manager for consideration of the authority's legal liability

Deleted: 411

Deleted: the

Deleted: Helpdesk

Deleted: r

Deleted:
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:¶
 <#>As soon as possible after a decision has been made, unsuccessful tenderers must be notified individually in writing, confirming:¶
 <#>the award criteria,¶
 <#>where appropriate the unsuccessful tenderers score against those criteria,¶
 <#>where appropriate the winning score,¶
 <#>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.¶
 <#>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.¶
 <#>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.¶
 <#>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.¶
 <#>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.¶
 <#>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.¶
 <#>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 wh(... [50]

| | | |
|--|----------------------|----------------------------|
| Page 2: [1] Formatted | therring | 03/11/2009 10:10:00 |
| Normal, Indent: First line: 2 cm | | |
| Page 2: [2] Formatted | therring | 03/11/2009 10:10:00 |
| Font: Arial Narrow | | |
| Page 3: [3] Deleted | therring | 03/11/2009 10:26:00 |
| Security 151514 | | |
| 12.5.4 Use of the Approved Supplier Database – Refers to Section 4a15151414 | | |
| 12.5.5 Application Form for Inclusion on the Approved Supplier Database and Select List 151514 | | |
| Page 3: [3] Deleted | therring | 03/11/2009 10:26:00 |
| . | | |
| Page 3: [3] Deleted | therring | 03/11/2009 10:26:00 |
| 6 | | |
| Page 3: [3] Deleted | therring | 29/12/2008 16:10:00 |
| Approved and Select List | | |
| Page 3: [4] Formatted | therring | 03/11/2009 10:27:00 |
| Heading 2, Indent: Left: 1 cm, First line: 1 cm | | |
| Page 3: [5] Formatted | therring | 03/11/2009 10:27:00 |
| Font: 12 pt, Not Bold | | |
| Page 3: [5] Formatted | therring | 03/11/2009 10:27:00 |
| Font: 12 pt, Not Bold | | |
| Page 3: [6] Deleted | therring | 29/12/2008 16:14:00 |
| 12.5.9 Select List Details 15151615 | | |
| 12.5.10 Amendment and Review 15151616 | | |
| 12.5.11 Monitoring 15151616 | | |
| Page 3: [6] Deleted | therring | 03/11/2009 10:29:00 |
| 12 | | |
| Page 3: [7] Formatted | therring | 03/11/2009 10:30:00 |
| Normal, Indent: First line: 2 cm | | |
| Page 3: [8] Formatted | therring | 03/11/2009 10:29:00 |
| Font: Arial Narrow | | |
| Page 15: [9] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |

Supplier Database and Select Tender Lists

Introduction

The

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [10] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

Supplier Database is a database of suppliers

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [11] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

who in response to a tender notice or advertisement

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [12] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

that have expressed an interest in supplying to the Authority and have been subsequently appointed.

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [13] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

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.

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [14] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

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

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [15] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

Details of suppliers that have been appointed following a pre qualification process will be added to the Supplier Database by the Contract and Procurement Unit and the date of pre-qualification recorded on that database.

The use of Select Tender Lists are now discouraged and where possible these should be replaced with Framework Agreements in accordance with the Public Contract Regulations 2006.

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [16] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

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.

| | | |
|--------------------------------|-----------------|----------------------------|
| Page 15: [17] Formatted | therring | 29/12/2008 14:52:00 |
|--------------------------------|-----------------|----------------------------|

Font: Bold, Font color: Auto

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [18] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

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.

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.

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

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [19] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

Security of Supplier Database

The

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [20] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

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

The Contracts & Procurement Unit shall retain all hard copy pre-qualification submissions from suppliers and evaluation details for a period of not less than

Page 15: [21] Deleted Shiraz Sheikh 04/12/2009 12:32:00

one year for all unsuccessful bidders. For successful bidders these Pre Qualification documents will be retained for the duration of the contract plus six years on ordinary contracts or plus twelve years if the contract is under seal.

Page 15: [22] Deleted Shiraz Sheikh 04/12/2009 12:32:00

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

Page 15: [23] Deleted Shiraz Sheikh 04/12/2009 12:32:00

and Select Tender Lists are

Page 15: [24] Deleted Shiraz Sheikh 04/12/2009 12:32:00

is confidential to the Council and

Page 15: [25] Deleted Shiraz Sheikh 04/12/2009 12:32:00

must not be released for use outside of the Council without the prior approval of the Head of Finance or nominated Officer.

Page 15: [26] Deleted Shiraz Sheikh 04/12/2009 12:32:00

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.

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.

Page 15: [27] Deleted Shiraz Sheikh 04/12/2009 12:32:00

Application Form for Inclusion on the

Page 15: [28] Deleted Shiraz Sheikh 04/12/2009 12:32:00

Officers must complete

Page 15: [29] Deleted Shiraz Sheikh 04/12/2009 12:32:00

an application form for the inclusion of any new suppliers on

Page 15: [30] Deleted Shiraz Sheikh 04/12/2009 12:32:00

an Approved and Select List

Page 15: [31] Deleted Shiraz Sheikh 04/12/2009 12:32:00

the Supplier Database. This should be done prior to giving any indication to a new supplier that they are to be awarded a contract. Officers within a service need to have the form authorised by the relevant Head of Service or authorised officer.

This form is produced and updated by the Contracts & Procurement Unit on behalf of the Head of Finance and must be returned to that unit.

Page 15: [32] Deleted **Shiraz Sheikh** **04/12/2009 12:32:00**

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 the Contracts & Procurement Unit

Page 15: [33] Deleted **Shiraz Sheikh** **04/12/2009 12:32:00**

Evaluation of the Application for inclusion on the

Page 15: [34] Deleted **Shiraz Sheikh** **04/12/2009 12:32:00**

Approved and Select List

Page 15: [35] Deleted **Shiraz Sheikh** **04/12/2009 12:32:00**

Supplier Database

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

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.

Amendment and Review

Each record within the Supplier Database will be amended as required and 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 Supplier Database.

Page 15: [36] Deleted **Shiraz Sheikh** **04/12/2009 12:32:00**

12.5.6 Pre-Qualification Process

In two stage procurement exercises, over £50,000 in value, potential suppliers will need to initially complete a Pre-Qualification Questionnaire. It is the responsibility of the appropriate Head of Service, or nominated Officer, to ensure that suppliers have pre-

qualified, by the successful completion of this pre-qualification questionnaire. Managers in the relevant service areas will be consulted on the technical criteria and qualification required in the Pre-Qualification Questionnaire.

In stage two the 'Invitation to Tender List' is a shortlist is compiled of Contractors/Suppliers who may be invited to compete for a particular contract or provision and have successfully completed the Pre-Qualification stage..

All such questionnaires will be issued and processed by the Contract and Procurement Unit.

The Contract and Procurement Unit will be responsible for recording and all expressions of interest, receipt of all Pre-Qualification Questionnaires and the names of suppliers that are invited to tender on a project spreadsheet

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

12.5.7 References

The Contracts & Procurement Unit, on behalf of the Head of Finance or nominated Officer, on receipt of the completed

| | | |
|--------------------------------|-----------------|----------------------------|
| Page 15: [37] Formatted | therring | 30/12/2008 10:21:00 |
|--------------------------------|-----------------|----------------------------|

Font: 14 pt

| | | |
|--------------------------------|-----------------|----------------------------|
| Page 15: [37] Formatted | therring | 29/12/2008 15:50:00 |
|--------------------------------|-----------------|----------------------------|

Font color: Auto

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [38] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

Pre-Qualification Questinnaire will

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [39] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

references and undertake personal enquiries by appropriate professional or technical Officers in order that an evaluation on each company's general suitability

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [40] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

can be compiled and detailed on the Approved Supplier Database and/or a specific Select List

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [41] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

..

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

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [42] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

Approved Supplier Database or a Select List

| | | |
|------------------------------|----------------------|----------------------------|
| Page 15: [43] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|------------------------------|----------------------|----------------------------|

tender process.

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

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

| | | |
|-----------------------|---------------|---------------------|
| Page 15: [44] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|-----------------------|---------------|---------------------|

inclusion on the Approved Supplier Database or Select Lis

| | | |
|-----------------------|---------------|---------------------|
| Page 15: [45] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|-----------------------|---------------|---------------------|

.. 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:

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.

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.

12.5.9

| | | |
|-----------------------|---------------|---------------------|
| Page 15: [46] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|-----------------------|---------------|---------------------|

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;

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.

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.

| | | |
|-----------------------|---------------|---------------------|
| Page 15: [47] Deleted | Shiraz Sheikh | 04/12/2009 12:32:00 |
|-----------------------|---------------|---------------------|

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.

12.5.10 Use of current information

The information provided by suppliers as part of the the Pre-Qualification Process is usually related to a particular contract and may only be valid for short periods of time therefore this information should not relied upon in further/future procurement exercises.

In an effort to reduce administration and make Council contracts more accessible suppliers are therefore encouraged to retain their Pre-Qualification submissions, preferably electronically, and update/customise the information on future submissions. If the new project occurs within one year of the original submission and utilises the same references and Insurance documents guidance should be sought from the Contract and Procurement Unit.as to whether they can be re-used.

| | | |
|-------------------------|----------|---------------------|
| Page 15: [48] Formatted | therring | 30/12/2008 10:29:00 |
|-------------------------|----------|---------------------|

Font: Bold

| | | |
|-----------------------|---------------|---------------------|
| Page 15: [49] Deleted | Shiraz Sheikh | 04/12/2009 12:44:00 |
|-----------------------|---------------|---------------------|

to the Execution of a Contract

| | | |
|-----------------------|---------------|---------------------|
| Page 32: [50] Deleted | Shiraz Sheikh | 08/12/2009 12:24:00 |
|-----------------------|---------------|---------------------|

-----Page Break-----

Appendix A (12.3.4 (I) 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:

As soon as possible after a decision has been made, unsuccessful tenderers must be notified individually in writing, confirming:

the award criteria,
where appropriate the unsuccessful tenderers score against those criteria,
where appropriate the winning score,
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.

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.

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.

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.

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.

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.

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.

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

| | | |
|------------------------------------|--|---------------|
| Title of Report: | Proposed Changes to the Constitution - Ward Member Speaking Rights at Planning Meetings | Item 6 |
| Report to be considered by: | Council | |
| Date of Meeting: | 21 January 2009 | |
| Forward Plan Ref: | C1997 | |

Purpose of Report: To propose changes to the Council's constitution to amend the procedures in respect of speaking rights for Ward Members at planning meetings.

Recommended Action: To amend paragraphs 7.13.3 and 7.13.4 of West Berkshire Council's Constitution to include speaking rights for Ward Members and align them with the speaking rights of the other parties accorded this right.

Reason for decision to be taken: To formalise the opportunity for Ward Members (who are not a Member of the Planning Committee) to speak at Planning Committees.

Other options considered: None

Key background documentation: Local Government Act 2000
Local Government and Public involvement in Health Act Standards Committee (England) Regulations 2008

The proposals will also help achieve the following Council Plan Themes:

- CPT4 - High Quality Planning**
 CPT14 - Effective People

The proposals contained in this report will help to achieve the above Council Plan Priorities and Themes by:
Enhancing the decision making process

| Portfolio Member Details | |
|---|--|
| Name & Telephone No.: | Councillor Graham Jones - Tel (01235) 762744 |
| E-mail Address: | gjones@westberks.gov.uk |
| Date Portfolio Member agreed report: | 17 December 2009 |

| Contact Officer Details | |
|-------------------------|-----------------------------|
| Name: | Moira Fraser |
| Job Title: | Democratic services Manager |
| Tel. No.: | 01635 519045 |
| E-mail Address: | mfraser@westberks.gov.uk |

Implications

- Policy:** There are no policy implications
- Financial:** There are no financial implications associated with this report. Any travelling or subsistence claims from Ward Members will be met from existing budgets.
- Personnel:** There are no personnel implications
- Legal/Procurement:** This amendment if approved will require the Constitution to be amended
- Property:** None
- Risk Management:** None
- Equalities Impact Assessment:** Not required

| | | |
|--|-------------------------------|---|
| 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 Overview and Scrutiny Commission or associated Task Groups within preceding six months | | <input type="checkbox"/> |
| Item is Urgent Key Decision | | <input type="checkbox"/> |

Executive Summary

1. Introduction

- 1.1 The Council's Constitution currently makes provision for members of the public (including the applicant or their agent, objectors, supporters and parish/town council representatives) to speak during the consideration of any planning application at a West Berkshire Council Planning meeting provided that they give notice of their intention to speak to the Head of Planning and Trading Standards by 4.00pm on the day prior to the meeting.
- 1.2 The Constitution in paragraph 7.13.3 sets out the procedure and order of representations which is to be followed at the meeting. Paragraph 7.13.4 notes that the time allowed for speeches in respect of each of the groups shall not exceed five minutes or such a longer period as the Chairman may allow. There is currently no express permission in the Constitution which affords the Ward Member(s) an opportunity to address Planning Committees although they do have speaking rights at Licensing Hearings.
- 1.3 The Code of Conduct for Members of West Berkshire Council which was adopted by the Council on the 21 June 2007 under paragraph 12(2) (Effect of prejudicial interests on participation) states that:
- "Where you have a prejudicial interest in any business of your authority, you may attend a meeting (including a meeting of the overview and scrutiny committee of your authority or of a sub-committee of such a committee) but only for the purpose of making representations, answering questions or giving evidence relating to the business, provided that the public are also allowed to attend the meeting for the same purpose, whether under a statutory right or otherwise"*
- 1.4 It should be noted however that Regulation 12(2) only applies if a Ward Member has a personal and prejudicial interest in an application and has declared that interest at the meeting where members of the public have a right to speak.
- 1.5 Two recent planning meetings have highlighted the need to amend the Constitution. Following those meetings, officers received a request from Members to review the constitution to give express speaking rights to Ward Members.

2. Proposals

- 2.1 It is therefore proposed to amend paragraphs 7.13.3 and 7.13.4 of the Constitution to include Ward Members as one of the groups of people who are expressly afforded speaking rights at planning meetings.

3. Conclusion

- 3.1 Officers are therefore taking forward a recommendation to the Council's Governance and Audit Committee (05 January 2010) and then to full Council (Extraordinary Meeting on 21 January 2010) that the constitution be amended to permit Ward Members speaking rights at both Area and District Planning

Committees which will reflect the Licensing position to ensure consistency between the two.

Appendices

Appendix A - Extract from Regulatory and Other Committees Rules of Procedure

Consultees

Local Stakeholders: None

Officers Consulted: Gary Lugg, Gary Rayner, Derek Carnegie, David Pearson, David Holling, Liz Patient, Sharon Armour, Andy Day

Trade Union: Not consulted

Part 7 Regulatory and Other Committees

Planning Applications

7.13.1 Speaking Rights

Members of the public shall be entitled to speak during the consideration of any application for any approval or consent required under Town and Country Planning legislation in accordance with Rules 7.13.2 to 7.13.5 below.

7.13.2 Notifying Head of Service

Any member of the public who wishes to speak shall notify the Head of Planning and Trading Standards by 4.00 p.m. on the day prior to the meeting.

7.13.3 Procedure

The following procedure shall apply in respect of each item where any of the aforementioned persons are present:

- Introduction of item by Officers;
- Representations by Parish/Town Council representative;
- Members' questions to Parish/Town Council representative;
- Representations by objector(s);
- Members' questions to objector(s);
- Representations by supporter(s);
- Members' questions to supporter(s);
- Representations by applicant or agent.
- Members' questions to applicant or agent;
- **Representation by Ward Member (if not on the Committee)**
- **Members' questions to Ward Member (if not on the Committee)**
- Consideration of application by Members.

[Note: Questions raised as part of the above process may only be asked to clarify a statement made and not to introduce new business.]

7.13.4 Time Allowed

The total time allowed for speeches in respect of each of the following groups of speakers shall not exceed five minutes or such longer period as the Chairman may allow with the consent of the Council, Committee or Sub-Committee:

- Parish/Town Council representative;
- Objectors;
- Supporters;

- Applicant or agent;
- **Ward Member (if not on the Committee)**

Where more than one objector to or supporter of an application wishes to speak the Chairman may if he/she considers it convenient and conducive to the despatch of the business of the meeting require that a spokesperson be appointed to represent the views of the objectors or supporters as the case may be.

7.13.5 Continuation of Meeting

Meetings of Committees and Sub-Committees shall not normally continue past 10.00pm. If, however, the Chairman believes that business can be concluded by 10.30pm, a Motion under Rule 7.6.2 (Motions which may be moved without notice) must be moved and supported by a majority of those Members present. All meetings will conclude by 10.30pm at the latest.

7.13.6 Suspension or Variation

The Chairman may:

- suspend the operation of Rule 7.13.4 above (Time Allowed) during the consideration of any application or for the remainder of the meeting if he/she considers it necessary so to do for the purpose of maintaining order at the meeting; or
- vary the order of representations if he/she considers that it is convenient and conducive to the despatch of the business and will not cause any prejudice to the parties concerned.

7.13.7 Referencing-up

Subject to Procedure Rules 7.3.4 (Referencing-up) and 7.3.5 (Exceptions), the Area Planning Committees may refer a planning application to District Planning Committee for determination. Recommendations from Area Planning Committees considered by the Development Control Manager and/or his representative to have a possible conflict with a policy that would undermine the Development Plan or the Local Development Framework, there is a district wide public interest or there is a possibility for claims for significant costs against the Council, will be referred to the District Planning Committee; or

Following a vote on the matter/ application where the majority of Members of an Area Planning Committee so resolve will be referred to the District Planning Committee.