

# Crawley Borough Council

## Minutes of General Purposes Committee

5 October 2009 at 7.30pm

### Present:

Councillor	R D Burrett (Chair)
Councillor	C R Eade (Vice-Chair)
Councillors	M L Ayling, ALI Burke, A C W Crane, D G Crow and L A Walker

### Officers Present:

Ann-Maria Brown	Head of Legal and Democratic Services
Mez Matthews	Democratic Services Officer

### Apologies for Absence:

Councillors R A Lanzer, A J E Quirk and J G Smith

### 7. Minutes

The minutes of the meeting of the Committee held on 29 June 2009 were approved as a correct record and signed by the Chair.

### 8. Members' Disclosure of Interests

No disclosures of interest were made.

### 9. Members' Allowances Scheme: Report of the Independent Review Panel

The Committee had considered the Report of the Independent Review Panel (LDS/7) at its meeting held on 16 March 2009 (minute 25 refers) and had asked the Panel to reconvene to reconsider its recommendation regarding the deletion of the Special Responsibility Allowances for the Vice-Chairs of the Development Control Committee and the Licensing Committee, with a specific request to consider whether those Special Responsibility Allowances should be reinstated at the same levels as that for the Vice-Chair of the Overview and Scrutiny Commission. The Committee had asked that the Panel interview the current holders of those posts as part of its consideration of the matter.

The minutes of the Members' Allowances Independent Review Panel meeting of 23 June 2009 now before the Committee detailed the Panel's recommendations in relation to the Special Responsibility Allowances for the Vice-Chairs of the Development Control Committee and the Licensing Committee.

As part of the latest interview process, the Panel had focussed on three areas of activity with regard to each Committee: statutory responsibility; consequences for the Council of making a poor decision (in terms of costs on appeal or public relations); and workload (ie. number of meetings, timescales and process).

The Panel was persuaded that all three of the above criteria applied to the Development Control Committee which met on a two/three weekly basis, and agreed that the responsibilities of the Vice-Chair were sufficient to warrant a Special Responsibility Allowance.

Although the Licensing Committee met the first two criteria, the Panel was of the view that the workload had currently diminished to the extent that the responsibilities of the Vice-Chair did not appear to be on a par with those of the Vice-Chair of the Development Control Committee. On the other hand, the Overview and Scrutiny Commission had no decision making powers but a very significant workload, and in light of this, the Vice-Chair of the Commission currently received a Special Responsibility Allowance. The Panel was therefore of the opinion that parallels could be drawn between the Vice-Chairs of the Overview and Scrutiny Commission and the Licensing Committee.

The allowances being recommended by the Panel were as follows, and it was recommended that these allowances be backdated to 1 April 2009:

Post	Special Responsibility Allowance
Vice-Chair of the Development Control Committee	£2380 (2008/09 allowance uplifted by 2%)
Vice-Chair of the Licensing Committee	£1166 (Same as the allowance for the Vice-Chair of the Overview and Scrutiny Commission)

The Panel decided to review these allowances as part of the 2010/11 review process.

The 2009/10 Members' Allowances Scheme provided for an allowance of £1133 to be paid to a Lead Member on a Scrutiny Review which, in effect, meant the Chairs of each of the Scrutiny Panels. Clarification was sought as to whether it was the intention of the Panel that this allowance should be payable to the Chair of the Performance Monitoring Scrutiny Panel. The Panel confirmed that they wished to recommend that the words 'Chair of a Scrutiny Panel' be substituted for the references to a Lead Member on a Scrutiny Review in the Scheme in order to clarify the position.

The Committee agreed that the Panel's recommended level of allowances for the Vice-Chairs of the Development Control Committee and the Licensing Committee were fair and was of the view that those allowances should be backdated to April 2009. The Committee was also in agreement that the Members' Allowances Scheme should be amended as per the Panel's recommendations to clarify the position relating to an allowance for the Chair of the Performance Monitoring Scrutiny Panel.

**RESOLVED**

1. That the Full Council be recommended to approve that the Special Responsibility Allowance for the Vice-Chair of the Development Control Committee be £2380; and that the Special Responsibility Allowance for the Vice-Chair of the Licensing Committee be £1166, and that these allowances be backdated to 1 April 2009.
2. That the Full Council be recommended to approve that the words 'Chair of a Scrutiny Panel' be substituted for the references to a Lead Member on a Scrutiny Review in the Members' Allowances Scheme.
3. That the Panel be thanked for the work they had undertaken.

**10. Changes to the Constitution**

The Committee considered changes to the Constitution and noted that the actions relating to function 71 of the Licensing Committee should be delegated to the Head of Regulatory Services.

**RESOLVED**

That the Full Council be recommended, that subject to any comments received from the Cabinet with regard to its functions, the amendments to the Constitution proposed in Appendix 1 to these minutes be agreed.

**11. Closure of Meeting**

With the business of the Committee concluded, the Chair declared the meeting closed at 7.42pm.

R D BURRETT  
**Chair**

# APPENDIX 1

## CHANGES TO THE CONSTITUTION

Function	Proposed amendment	Reason for amendment
* Article 4 – The Full Council – Page 16	Replace reference to the 'Property Strategy' within the list of Policy Framework Documents with the 'Asset Management Plan'.	To reflect that the Property Strategy has been combined with the Asset Management Plan.
Article 6 – Overview and Scrutiny Commission – Page 21	<p>Amend bullet points (11) and (13) of paragraph 6.1 to read as follows:</p> <p>(11) To discuss any local government matter or local crime and disorder matter <b>either</b> referred to the Commission <b>or otherwise</b>, to review or scrutinise such a matter and, where appropriate, make reports or recommendations to the Council or the Cabinet.</p> <p>(13) To discuss any local government matter or local crime and disorder matter <b>either</b> referred to the Commission <b>or otherwise</b>, where necessary referring the matter to a scrutiny panel to review or scrutinise and on receipt of the panel's report, to make reports or recommendations to the Council or the Cabinet where appropriate.</p>	<p>To reflect The Local Government and Public Involvement in Health Act 2007 (commencement No.1) (England) Order 2009.</p> <p><b>Amended wording in bold.</b></p>

Function	Proposed amendment	Reason for amendment
Article 6 – Overview and Scrutiny Commission – Page 21	<p>Add the following function of the Overview and Scrutiny Commission:</p> <p>To make reports and recommendations to the County Council or its Cabinet which relate to any local improvement target which:</p> <ul style="list-style-type: none"> <li>(a) Relates to a relevant partner authority, and;</li> <li>(b) Is specified in a local area agreement of the County Council.</li> </ul> <p>When doing so, the requirements of The Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009 apply.</p>	To reflect The Local Authorities (Overview and Scrutiny Committees) (England) Regulations 2009.
* Local Choice Functions – Page 60	<p>Amend paragraphs 4h(v), 4i, 4j(i), 4j(ii) and 4j(iii) to read as follows:</p> <p><u>Local Choice Function</u> 4. The discharge of any function relating to the control of pollution or the management of air quality.</p> <p><u>Decision Making Body</u> Cabinet.</p> <p><u>Membership</u> See 1(c) above.</p> <p><u>Delegation of Functions</u> <i>The following functions are delegated to the Head of Regulatory Services:</i></p> <ul style="list-style-type: none"> <li>(h) Formal cautioning, as an alternative to prosecution, in respect of offences under:</li> </ul>	<p>The Pollution Prevention and Control (England and Wales) Regulations 2000 have been replaced by the Environmental Permitting (England and Wales) Regulations 2007.</p> <p><b>Amended wording in bold.</b></p>

Function	Proposed amendment	Reason for amendment
* Local Choice Functions – Page 60 (continued...)	<p>(v) <b>Environmental Permitting (England and Wales) Regulations 2007.</b></p> <p>(i) The authorisation of inspectors under Section 108 of the Environment Act 1995 for the purposes of carrying out the duties of the Environmental Protection Act 1990, Parts I and IIA and the <b>Environmental Permitting (England and Wales) Regulations 2007.</b></p> <p>4j (i) Determination of permits under the <b>Environmental Permitting (England and Wales) Regulations 2007.</b></p> <p>(ii) Permitting of installations, issue of notices of the following types: requiring information, enforcement, variation, revocation and suspension of permit under the <b>Environmental Permitting (England and Wales) Regulations 2007.</b></p> <p>(iii) Prosecution of offences under the <b>Environmental Permitting (England and Wales) Regulations 2007.</b></p>	
* Responsibility for Council Functions – Page 71	<p>Add the following delegation:-</p> <p><u>“The following function is delegated to the Chief Executive</u></p> <p>To approve operational staffing changes at Head of Service and above (including numbers of posts, post types, job duties, grades, deployment of posts, redundancies, flexible retirement and retirement in the interest of efficiency of the service) to meet the operational needs of the service within the limits of the approved financial budget and Financial Procedure Rules, subject to compliance with Council policies and to no significant service implications.</p>	<p>This new delegation should be considered in conjunction with the amendments to pages 127 and 362.</p> <p>In effect, it extends the delegation regarding operational staffing changes to include (with certain exceptions) Heads of Service level and above.</p>

Function	Proposed amendment	Reason for amendment
* Responsibility for Council Functions – Page 71 (continued...)	<p>This delegation does not apply to the posts of Head of Paid Service, the Monitoring Officer or the Chief Finance Officer. Neither does it relate to dismissals on the grounds of conduct or capability – such dismissals are a function of the Appointments and Investigating Committee.</p> <p>In the case of operational changes at Head of Service level or above, consultation must take place with the Leader, the Cabinet Member for Continuous Improvement and Development and the appropriate Cabinet Member for the service area before exercising these delegated powers and, where the Leader or either of these Portfolio Holders has an objection to the proposals, or where the proposals do not meet the provisos relating to finance or policy outlined above, then the decision is reserved to Full Council.</p> <p>Where such operational changes relate to redundancy or retirement in the interest of efficiency of the service the requirements of Employment Procedure Rule 7(2) will apply (requiring that the Cabinet be given the opportunity to raise an objection)".</p>	<p>However, in the case of dismissals on the grounds of conduct or capability at Head of Service level or above, the decision will be one for the Appointments and Investigating Committee or, in certain circumstances, for the Council. These amendments have regard to the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.</p>
Functions of the Development Control Committee – Page 75	<p>Amend function 1(g) to read as follows:</p> <p><u>"The following functions are delegated to the Head of Regulatory Services</u> EXCEPT WHERE: (g) Requests for screening <b>and scoping</b> opinions of the local planning authority with respect to the Environmental Impact Regulations."</p>	<p>Update</p> <p><b>Amended wording in bold</b></p>

Function	Proposed amendment	Reason for amendment
Functions of the Licensing Committee – Page 98	<p>Amend function 44 to read as follows:</p> <p><u>“The following function is delegated to the Head of Regulatory Services</u>            Authorisation of any person to enter and inspect premises and take samples as appropriate in accompaniment with duly authorised <b>Regulatory Services</b> Staff to enable the effective enforcement of environmental legislation delegated to the Licensing Committee”</p>	<p>To reflect the change in management structure of the Environment and Housing Directorate.</p> <p><b>Amended wording in bold.</b></p>
Functions of the Licensing Committee – Page 106	<p>Amend function 71 to read as follows:</p> <p><u>Functions of the Licensing Committee under the Licensing Act 2003</u>            Determination of applications to vary premises licences/club premises certificates <b>including applications for minor variations to premises licences/club premises certificates.</b></p> <p><u>Delegation of functions to the Licensing Sub Committee (concurrently with the Licensing Committee)</u>            Determination of applications to vary premises licences/club premises certificates if representations have been made in respect of the application.</p> <p><u>Delegation of functions (concurrently with the Licensing Committee and Licensing Sub Committee)</u>  <u>The following functions are delegated to the Head of Regulatory Services:</u>            (a) Determination of applications to vary premises licences/club premises certificates where no representations have been</p>	<p>In July, 2009, changes to the Licensing Act 2003 were introduced with a view to enabling applications for some minor variations to premises licences and club premises certificates to be dealt with using a simplified process which is set out under Sections 41A–41C (premises licences) and 86A–86C of the Act (clubs). The process can be applied in circumstances where the licensing authority considers that none of the variations proposed could have an adverse effect on</p>



Function	Proposed amendment	Reason for amendment
Functions of the Licensing Committee – Page 106 (continued...)	<p>made in respect of that application.</p> <p>(b) The determination of applications to vary premises licences/club premises certificates where representations have been made but all parties, including the applicant and the maker(s) of the representation(s) agree to the determination of the application by the Head of Regulatory Services.</p> <p><b>(c) The determination of applications for minor variations to premises licences (in accordance with Section 41B of the Licensing Act 2003), and the determination of applications for minor variations to club premises certificates (in accordance with Section 86B of the Licensing Act 2003).</b></p>	<p>the promotion of any of the licensing objectives. It is proposed that this procedure should be delegated to the Head of Regulatory Services in accordance with statutory guidance (see part (c) of the delegation).</p> <p><b>Amended wording in bold.</b></p>
Functions of the Appointments and Investigating Committee – Page 127	<p>Amend function 3 to read as follows:</p> <p><b>“Functions of the Appointments and Investigating Committee</b></p> <p>Action in accordance with any disciplinary code or capability procedure approved by the Council in respect of the Directors of Community Services, Environment and Housing, and Resources and all Heads of Service (with the exception of the Monitoring Officer and the Chief Finance Officer), including dismissal on associated grounds, subject to the requirements of Employment Procedure Rule 7(2) (requiring that the Cabinet be given the opportunity to raise an objection).</p>	<p>These changes complement those made to page 71.</p> <p>These amendments have regard to the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.</p>

Function	Proposed amendment	Reason for amendment
Functions of the Appointments and Investigating Committee – Page 127 (continued...)	<p><b>Delegation of Functions</b></p> <p><u>The following function is delegated to the Chief Executive or an officer nominated by him/her:</u></p> <p>Action in accordance with any disciplinary code or capability procedure approved by the Council in respect of employees below the level of Head of Service including, as appropriate, the suspension, relegation and dismissal on associated grounds. The Chief Executive has currently nominated Heads of Service (or other senior nominated employees acting on their behalf) to undertake these functions on his behalf.”</p>	
* Responsibility for Cabinet Functions – Page 149	Replace reference to the ‘Property Strategy’ within the list of Policy Framework Documents with the ‘Asset Management Plan’.	To reflect that the Property Strategy has been combined with the Asset Management Plan.
* Environmental matters delegated to Cabinet Members and Officers – Page 154	<p>Amend function A7 to read as follows:</p> <p><u>“The following function is delegated to the Head of Regulatory Services</u></p> <p>Authorisation of <b>Regulatory</b> Services Staff or any other person in accompaniment with duly authorised <b>Regulatory</b> Services Staff to enter and inspect premises and take samples as appropriate to enable the effective enforcement of environmental legislation delegated to the Cabinet.”</p>	<p>To reflect the change in management structure of the Environment and Housing Directorate.</p> <p><b>Amended wording in bold.</b></p>

Function	Proposed amendment	Reason for amendment
Council Procedure Rules – Page 215	Amend the third sentence of Paragraph 8 (Quorum) to read as follows:  “The quorum for the Licensing Committee when dealing with matters under the Licensing Act 2003 <b>or the Gambling Act 2005</b> will be ten members.”	Update.  <b>Amended wording in bold.</b>
* Policy Framework Procedure Rules – Page 257	Replace reference to the ‘Property Strategy’ within the list of Policy Framework Documents with the ‘Asset Management Plan’.	To reflect that the Property Strategy has been combined with the Asset Management Plan.
* Cabinet Procedure Rules – Cabinet Portfolios – Page 273	Include the following under the responsibilities of the Cabinet Member for Continuous Improvement and Development:  “CAA improvement planning champion”	Update.
* Cabinet Procedure Rules – Cabinet Portfolios – Page 276	Remove the following from the responsibilities of the Cabinet Member for Environmental Services:  “CPA improvement planning champion”	Update.
Scrutiny Procedure Rules – Page 281	Amend paragraph 3 (Co-optees) to read as follows:  “The Overview and Scrutiny Commission shall be entitled to recommend to Council the appointment of additional people to serve on the Commission as non-voting co-optees. The Commission may appoint non-voting co-optees onto any of its panels. <b>The requirements of Regulation 3 of the Crime and Disorder (Overview and Scrutiny) Regulations 2009 apply to the co-option of members to a committee dealing with crime and disorder matters.</b> ”	To reflect The Crime and Disorder (Overview and Scrutiny) Regulations 2009.  <b>Amended wording in bold.</b>

Function	Proposed amendment	Reason for amendment
Scrutiny Procedure Rules – Page 282	Amend paragraph 8(c) to read as follows:  “The Commission may also review or scrutinise decisions made, or other action taken in connection with the <b>discharge by the responsible authorities of their crime and disorder functions.</b> <u>The Commission will meet for the purpose when it is considered appropriate but no less than once in every twelve month period.</u> ”	To reflect The Crime and Disorder (Overview and Scrutiny) Regulations 2009.  <u>Amended wording is underlined.</u>
Scrutiny Procedure Rules – Page 285	Add the following wording to the end of paragraph 12 (Attendance by Others):  “When carrying out its functions relating to crime and disorder, the attendance of an officer or employee of a responsible authority or of a co-opted person or body may be required in order to answer questions. Reasonable notice of the intended date of attendance must be given to that person.”	To reflect The Crime and Disorder (Overview and Scrutiny) Regulations 2009.
The Procurement Code – Page 329	Replace the Procurement Code with that attached as Appendix 1a.	To make the document easier to comprehend and to incorporate the use of an electronic tendering system.  <b>Amended wording in bold.</b>

Function	Proposed amendment	Reason for amendment
Employment Procedure Rules – Page 362	<p>Amend all references to the Appointments and Investigating Committee in Employment Procedure Rule 7 to read as follows:-</p> <p>“the Committee or officer discharging the function of dismissal”.</p>	<p>These changes complement the delegations on pages 71 and 127.</p> <p>These amendments have regard to the provisions of the Local Authorities (Standing Orders) (England) Regulations 2001.</p>
Committee Structure – Page 550	<p>Delete the following Policy Development Forums:</p> <ul style="list-style-type: none"> <li>▪ Community Services;</li> <li>▪ Corporate Resources;</li> <li>▪ Environment and Housing</li> </ul> <p>and replace with:</p> <ul style="list-style-type: none"> <li>▪ Community and Council</li> <li>▪ Environment and Economy</li> </ul>	<p>To reflect the new Policy Development Forum structure.</p>

\* These changes would also be considered by the Cabinet on 14 October 2009.

## **A BRIEF GUIDE TO THE PROCUREMENT CODE**

## **APPENDIX 1a**

Procurement Codes promote good purchasing practice and public accountability and deter corruption. Following the rules is the best defence against allegations that procurements have been made incorrectly or fraudulently.

The main purpose of this Procurement Code is to establish clear rules for the procurement of all goods, works and services for the Council.

The Code ensures a system of openness, integrity and accountability. The Code provides the framework that will lead to better value for money and give confidence that the Council is fulfilling its public obligations.

Officers responsible for procurements or disposals must comply with this Procurement Code which lays down minimum requirements. A more thorough procedure may be appropriate for a particular contract.

Officers must:-

- Ensure that there is an adequate approved budget to cover the full cost of the goods, services or works to be procured.
- Ensure that, where required, member approval for specific projects is obtained prior to committing expenditure.
- Follow the rules set out in the procurement code when procuring goods or services or ordering building work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract, as corruption is a criminal offence.
- Keep all bids confidential.
- Issue an order using the Council's Financial Management System unless a formal contract is in operation.
- Not enter into any leasing agreements or other forms of borrowing other than those arranged or approved by the Head of Finance and Procurement.

### The Corporate Procurement Strategy

The Council has adopted a Procurement Strategy which forms a key part of the commitment to delivering effective procurement. It should be read in conjunction with this Code and deals with the Council's approach to procurement arrangements including partnering contracts.

The purpose of the procurement strategy is to:-

- Ensure all Council procurement activity takes place in accordance with legislation and the Council's Constitution.
- Provide a strategic approach to procurement at corporate level with clear operational procedures that are understood throughout the Council.
- Assist in the realisation of financial and administrative savings emanating from planned and innovative procurement practices.

For further information or advice, concerning this Procurement Code, please contact the following officers:-

Procurement Manager:	x 8363
Principal Lawyer Contracts & Procurement:	x 8284
Audit Manager:	x 8384
Head of Legal and Democratic Services	x 8292

For advice regarding the approval of expenditure and other financial matters contact:

<b>Accountancy Services Manager</b>	<b>x 8409</b>
<b>Finance and Co-ordination Manager (for Community Services)</b>	<b>x 8527</b>

## Definitions and further information\*

\*These terms occur throughout this document as italics and are purely to act as an aide memoir to refer to this glossary and do not alter or infer any meaning to the text of the document.

Award Criteria	The criteria by which the successful quotation or tender is to be selected (see further the Procurement Code Paragraph 8).
Award Procedure	The procedure for awarding a contract as specified in the Procurement Code Paragraphs 13 and 14.
Best Value	The duty on local authorities to secure continuous improvement in the way in which their functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
Bond	An insurance policy. If the contractor fails to deliver what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (usually 10% of the contract value). A bond is intended to protect the Council against any additional costs arising from the contractor's failure or default.
Tenderer	Any person who asks or is invited to submit a quotation or tender.
Head of Service	The most senior officer in a Division of the Council
Director	The most senior officer in a Directorate of the Council (which at the date of adoption of this Procurement Code were the Director of Resources, Director of Environment and Housing and Director of Community Services) and the Chief Executive, in respect of the Chief Executive's Directorate.
Employees' Code	The code regulating conduct of officers which forms part of the Council's constitution.
Procurement Toolkit	The Procurement Toolkit prepared by the Director of Resources for guidance in conducting procurement activity.
Contracting Decision	Any of the following decisions: <ul style="list-style-type: none"><li>- withdrawal of an invitation to tender</li><li>- whom to invite to submit a quotation or tender</li><li>- shortlisting</li><li>- award of contract</li><li>- any decision to terminate a contract.</li></ul>
EU Procedure	The procedure required by the EU where the total expected procurement value of goods, works or services exceeds the relevant EU threshold.
EU Threshold	The financial threshold at which EU public procurement directives must be applied to a relevant Contract. Refer to the Procurement Toolkit for current EU thresholds.
Head of Finance and Procurement	Officer responsible for ensuring that adequate systems are in place to control spending and prevent fraud.
Financial Regulations	The financial regulations contained within the Constitution.
Invitation to Tender	Invitation to tender documents in the form required by the Procurement Code.
Line Managers	The officer's immediate manager or the officer designated by the Director to exercise the role reserved to the line manager by this procurement code.



Nominated Suppliers and Sub-contractors	Those providers specified in a main contract for the discharge of any part of that contract.
Non-commercial Considerations	The Council may wish to include certain policy considerations, such as workforce, environmental or social matters either in the scope of the goods, works or services which are being procured, the selection of the contractor, the award of the contract or in the execution of the contract. The Council can only take into account policy considerations to the extent that these are permitted by both domestic and European law, the key provisions of which are set out in Section 1 of the Procurement Tool Kit.
Officer	The officer designated by the Head of Service to deal with the contract.
Parent Company Guarantee	An agreement which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract, they can require the parent company to do so instead.
Portfolio Holder	A member of the Council's Cabinet with political responsibilities within their own portfolio.
Quotation	A quotation of price and any other relevant matter without the formal issue of an invitation to tender.
Relevant Contract	Any arrangement made by, or on behalf of, the Council for the carrying out of work or for the supply of goods, materials or services. These include arrangements for: <ul style="list-style-type: none"> <li>- the supply or disposal of goods</li> <li>- hire, rental or lease of goods or equipment</li> <li>- execution of works</li> <li>- third party contracts or call-off contracts awarded by another public sector body</li> <li>- the delivery of services, including those related to: <ul style="list-style-type: none"> <li>- the recruitment of staff</li> <li>- land and property transactions</li> <li>- financial and consultancy services.</li> </ul> </li> </ul> <p><i>Relevant Contracts</i> do <b>not</b> include contracts relating to:</p> <ul style="list-style-type: none"> <li>- the employment of staff</li> <li>- the engagement of Counsel</li> <li>- the acquisition, disposal, or transfer of land (for which <i>Financial Regulations</i> shall apply).</li> </ul>
Third Party Contracts, or Framework Agreements, or Call-Off Contracts	Contracts awarded by a third party which have been structured to allow authorised users to procure goods and services by quoting, to the contractors and suppliers, the appropriate contract reference details. The management and administration of the contract resides with the awarding authority. The use of these contracts may alleviate the necessity for staff to initiate their own tendering exercise.
Shortlisting	Where Tenderers are selected from a list of interested parties to submit a quotation or tender.
Tender	A Tenderer's proposal submitted in response to an invitation to tender.
Tender Record Book	The tender record book maintained by the Head of Legal and Democratic Services to record details of tenders received (see Procurement Code Paragraph 11.1.6).

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Total Value	<b>Relates to the TOTAL contract sum or the TOTAL amount of purchase. This means that any annual value must be multiplied by the number of years the contract is likely to be in operation for e.g. A purchase for £40,000 would fall under the £10,000 to £50,000 bracket, whereas a contract for £40,000 over a four year term would equal £160,000 and would therefore be subject to the EU Directives. It is not acceptable to either enter into separate contracts or select a method of calculating the total value in order to avoid or minimise the application of the Procurement Code. It is also not acceptable to lessen the contract term so that the contract falls into a lower threshold. When in doubt as to the length of a contract term, a four year period is assumed.</b>
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Terms appearing in the glossary are in italics and begin with a capital letter.

All costs stated in these Procurement Codes are exclusive of VAT, staff costs and fees.

## Section 1

### Scope of the Procurement Code

#### 1. BASIC PRINCIPLES

All procurements must:

- achieve best value for all public money spent
- be consistent with the highest standards of integrity
- ensure fairness and transparency in awarding contracts
- comply with all legal requirements
- ensure that *Non-commercial Considerations* do not influence any *Contracting Decision*
- support the Council's best value policies and its vision, principles and goals.

#### 2. OFFICER RESPONSIBILITIES

##### 2.1. **Officers**

- 2.1.1. The *Officer* responsible for the procurement must comply with this code, *Financial Regulations, Employees Code of Conduct* and with all UK and European Community legal requirements.
- 2.1.2. The *Officer* must keep the records required by the Procurement Code Paragraph 15.
- 2.1.3. *Tender* procedures must be conducted in accordance with procedures set out in the *Invitation to Tender*.
- 2.1.4. *Officers* must ensure that agents, consultants and contractual partners acting on their behalf also comply with these requirements.
- 2.1.5. *Officers* must take all necessary legal, financial and professional advice.
- 2.1.6. The *Procurement Code* must be strictly adhered to and is the minimum requirement. More thorough procedures and practices may be appropriate for particular contracts.

##### 2.2. **Directors**

Directors must:

- 2.2.1. Ensure that their staff comply with the Procurement Code.

2.2.2. Ensure a register is kept of:

- All contracts completed by signature (rather than the Council's Seal).
- All contracts forwarded to the Head of Legal and Democratic Services for completion by seal.
- Exemptions granted under the Procurement Code Paragraph 3.

**3. EXEMPTIONS**

- 3.1. The requirements for obtaining tenders or quotations can be waived under the following arrangements. No exemption can be used if the EU Procedure applies. No exemptions may be made retrospectively. If an exemption is agreed it will still be necessary to complete the contract administration procedures such as contract formation and the checking of insurances.
- 3.2. An exemption can be applied for when one or more of the following criteria specifically applies to the proposed contract.
- 3.2.1. There are reasons why there would not be a genuine competition and no reasonable and satisfactory alternative is available or
- 3.2.2. A contract is required as a matter of genuine urgency or
- 3.2.3. It is not reasonably practicable to invite tenders or
- 3.2.4. It is not in the best interests of the Council or
- 3.2.5. The specification for goods and services is of a specialised nature which only a limited number of suppliers can meet and that tenders will be invited from all suitable suppliers.
- 3.3. All exemptions, and the reasons for them, must be recorded using the exemption form on the intranet and in the Procurement Toolkit. The officer seeking the exemption must provide clear evidence why the contract matches one or more of the criteria set out above. Approval must be sought from the relevant Head of Service as well as the Head of Finance and Procurement. Once approved by the Head of Finance and Procurement, all exemptions must be sent to Legal and Democratic Services who will provide a copy for the Corporate Management Team and to the relevant Cabinet Member for information.

**4. RELEVANT CONTRACTS**

- 4.1. All *Relevant Contracts* must comply with the Procurement Code.
- 4.2. All *Third Party Contracts* or *Call-Off Contracts* must comply with the Procurement Code except Paragraphs 3, 6, 9, 10, 11, 12, 16.

## Section 2

### Conducting a Procurement

#### 5. STEPS PRIOR TO PROCUREMENT

Before beginning a procurement **exercise**, the Officer responsible for it must follow the Procurement Tool Kit **or consult the Procurement department**.

**For all procurements above the value of £50,000 a Procurement Project Start Up form must be completed and the Procurement Team will transfer the information into Covalent for monitoring by the Corporate Procurement Board and/or the Corporate Management Team.**

#### 6. COMPETITION REQUIREMENTS FOR PROCUREMENT, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

The Officer must calculate the estimated and *Total Value* of the procurement.

The following procedures apply where there are no other procedures that take precedence. If in doubt, *Officers* must seek, in writing, the formal advice of the Head of Legal and Democratic Services.

##### 6.1. Procurement - competition requirements

Where the *Total Value* for a purchase is within the values in column A below, the *Award Procedure* in column B must be followed. Shortlisting shall be undertaken by the person or persons specified in column C.

##### Goods and Services Contracts

<b>A</b> <b>Estimated Total Value</b>	<b>B</b> <b>Award Procedure</b>	<b>C</b> <b>Shortlisting - see the Procurement Code Paragraph 10</b>
Under £10,000	Before a purchase order is issued the relevant officer shall either obtain competitive quotations or be satisfied that the Council is obtaining value for money. Where available a corporate contract must be used.	<i>Officer</i>
£10,001-£50,000	Three written quotations to be reviewed by at least two Officers. Where available a corporate contract must be used.	<i>Officer and Line Manager</i>
£50,000.01-EU Threshold (see Procurement Toolkit for current threshold values)	<i>Invitation to Tender</i> by advertisement on the Council's website and by advertisement or other media which achieves a similar penetration of potential <i>Tenderers</i> to at least five <i>Tenderers</i>	<i>Officer, Line Manager and Head of Finance and Procurement</i>
<i>Above EU Threshold</i> (see <a href="#">Procurement Toolkit</a> )	<i>EU Procedures</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement on the Council's website	<i>Officer, Line Manager, Head of Finance and Procurement and Head of Legal and</i>

for current threshold)	and by advertisement or other media which achieves similar penetration of potential <i>Tenderers</i> to at least five <i>Tenderers</i>	<i>Democratic Services</i> - see the Procurement Code Paragraph 10.1.
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### Works Contracts

<b>A Estimated Total Value</b>	<b>B Award Procedure</b>	<b>C Shortlisting - see the Procurement Code Paragraph 10</b>
Under £10,000	Before a purchase order is issued the relevant Officer shall either obtain competitive quotations or be satisfied that the Council is obtaining value for money. Where available a corporate contract must be used.	<i>Officer</i>
£10,001-£50,000	Three written quotations to be reviewed by at least two Officers. Where available a corporate contract must be used.	<i>Officer and Line Manager</i>
£50,000.01- <i>EU Threshold</i> (see Procurement Toolkit for current threshold values)	<i>Invitation to Tender</i> to at least four tenderers. The selection of potential tenderers via the use of Constructionline or other Council approved list*	£50,000 - £500,000 - <i>Officer, Line Manager and Head of Finance and Procurement</i>
<i>Above EU Threshold</i> (see <a href="#">Procurement Toolkit</a> for current threshold)	<i>EU Procedures</i> or, where this does not apply, <i>Invitation to Tender</i> by advertisement on the Council's website and by advertisement or other media which achieves similar penetration of potential <i>Tenderers</i> to at least five <i>Tenderers</i>	£500,000 – <i>EU Threshold</i> – <i>Officer, Line Manager and Head of Finance and Procurement.</i>
		<i>Officer, Line Manager, Head of Finance and Procurement and Head of Legal and Democratic Services</i> - see the Procurement Code Paragraph 10.1.
* approved lists must be agreed by the Procurement Board. The list must be compiled by means of a sufficiently advertised, transparent and open procedure. Details of the list must be stated on the Council's website along with details of how to get onto the list.		

- 6.2. Where it can be demonstrated that there are insufficient qualified *Tenderers* to meet the competition requirement all suitably qualified *Tenderers* must be invited to tender.
- 6.3. The *Officer* must retain evidence to demonstrate how *best value* and price has been obtained.



- 6.4. An Officer must not enter into separate contracts nor select a method of calculating the Total Value in order to avoid or minimise the application of these Procurement Codes.
- 6.5. Where the EU Procedure is required, the Officer must consult the guidance on the EU procurement rules in the Procurement Tool Kit and formally consult with the **Procurement Team** to issue a European procurement notice and to determine the method of conducting the procurement.
- 6.6. Assets for disposal must be sent to public auction where it is considered that best value is likely to be obtained. In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets other than land must be formally agreed with the Head of Finance and Procurement.
- 6.7. Best Value and partnership arrangements are subject to all UK and EU procurement legislation and must follow this Procurement Code. If in doubt, Officers must seek the formal advice of the Head of Legal and Democratic Services.
- 6.8. Tenders or quotations will not be invited or considered from individual Council employees, business partnerships in which a Council employee is a partner, Companies in which a Council employee is a paid director or any business where a Council employee has an interest which exceeds a nominal value of £25,000 or one hundredth of the total issued share capital.

## **7. PRE-TENDER MARKET RESEARCH AND CONSULTATION**

- 7.1. The *Officer* responsible for the procurement:
  - may consult potential suppliers prior to the issue of the *Invitation to Tender* in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters provided this does not prejudice any potential *Tenderer*, but
  - may not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Tenderers* or distort competition, and
  - should seek advice from the Head of Legal and Democratic Services and/or the Procurement Manager, where necessary.

## **8. QUALITY STANDARDS AND AWARD CRITERIA**

- 8.1. The *Officer* must ascertain what are the relevant or equivalent, European, British or international standards which apply to the subject matter of the contract. The *Officer* must include those standards that are necessary to properly describe the quality standards required. The Head of Legal and Democratic Services must be formally consulted before any *Officer* decides to use standards other than European standards in a procurement covered by the EU Procedure.
- 8.2. The *Officer* must define and document the *Award Criteria* which is appropriate to the procurement, before tenders are sought. The *Award Criteria* must be designed to secure an outcome giving best value for money for the Council. The basic criteria shall be:

- 'most economically advantageous' offer (where considerations other than purchase price also apply).
- 'lowest price' where payment is to be made by the Council. This criteria must only be used following consultation with the Head of Legal and Democratic Services and the Procurement Manager.
- 'highest price' if payment is to be received, or

If the "most economically advantageous offer" is adopted, it must be further defined by reference to relevant sub-criteria. For detailed information the Officer must refer to the relevant section of the Procurement Tool Kit.

8.3. *Award Criteria* must not include:

- *Non-commercial Considerations*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*
- matters which are anti-competitive within the meaning of the Local Government Act 1988.

## 9. INVITATIONS TO TENDER/QUOTATIONS

9.1. All *Invitations to Tender* shall include the following:

- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the Tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose which may include the obtaining of insurance cover).
- (c) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion. Officers should refer to the relevant section of the Procurement Tool Kit.
- (d) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- (e) Unless defined in a prior advertisement, a definition of the Award Criteria in objective terms and if possible in descending order of importance.
- (f) A stipulation that any Tenders submitted by fax or other electronic means shall not be considered **unless the procurement route has been agreed as an e-tender using the Council's approved e-tendering solution.**
- (g) The method by which any arithmetical errors discovered in the submitted tenders are to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa (see also the Procurement Code Paragraph 13.2).
- (h) **A clause that no tender will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*.**
- (i) **Information about the Council's obligations under the Freedom of Information Act and the opportunity for the supplier to submit an exemption under the Act for what it deems to be commercially sensitive information.**

- 9.2. All Invitations to Tender or Quotation must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see the Procurement Code Paragraph 17).
- 9.3. The Invitation to Tender or Quotation must state that the Council is not bound to accept any Quotation or Tender.
- 9.4. All *Tenderers* invited to submit a *Tender* or *Quotation* must be issued with the same information at the same time and subject to the same conditions. Should any further information be issued this must be given to all *Tenderers* on the same basis. **This must be issued through the Council's approved e-tendering system in the case of electronic tenders.**
- 9.5. **Where the Council's approved e-tendering solution has been used, all tender documents and supporting information must be available to suppliers electronically.**

## 10. SHORTLISTING

- 10.1. Any *Shortlisting* must have regard to financial and technical standards relevant to the contract. Special rules apply in respect of the *EU Procedure*. **Please consult the Procurement Team for advice.**

The *Officers* responsible for *Shortlisting* are specified in the Procurement Code Paragraph 6.1.

## 11. SUBMISSION, RECEIPT AND OPENING OF TENDERS

### 11.1. Hard Copy Postal Receipt

#### 11.1.1. Period for *Tenderers*' response:

*Tenderers* invited to respond must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender* consistent with the urgency of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*.

The *EU Procedure* and law relating to *Best Value* lay down specific time periods.

For further information **consult the Procurement Team.**

#### 11.1.2. All *Quotations* below a total value of £50,000 must be returned to the *Officer*.

#### 11.1.3. All *Tenders* over a total value of £50,000 must be returned to the Head of Legal and Democratic Services in a sealed pre-printed envelope issued to *Tenderers* with the Invitation to Tender documents. The pre-printed envelope must indicate the subject matter and the date for return.

#### 11.1.4. The Head of Legal and Democratic Services shall be responsible for the safekeeping of all *Tenders* until opening. Receipt of each *Tender* must be:

- date-stamped
- initialled by the receiving *Officer*
- logged immediately upon receipt In the *Tender Record Book*.

11.1.5. The Head of Legal and Democratic Services must ensure that all *Tenders* are opened at the same time when the period for their submission has ended. *Tenders* must be opened in the presence of two Council representatives who may include officers and/or members (other than the Officer managing the process).

11.1.6. Upon opening, a record of the value of the Tender or Quotation must be recorded in the Tender Record Book. The summary must be initialled on behalf of the Head of Legal and Democratic Services.

11.1.7. **No tender or quotation will be considered unless it is received by the date and time stipulated in the *Invitation to Tender* unless the Head of Legal and Democratic Services is satisfied that there is evidence of it having been despatched in sufficient time to have arrived before the closing date and time.**

## 11.2. Electronic Receipt

11.2.1. **Where the procurement route has been agreed as an e-tender using the Council's approved e-tendering solution.**

11.2.2. **All information must be submitted via the e-tendering solution by the date and time stipulated in the *Invitation to Tender*.**

11.2.3. **All tenders will be sorted electronically by the e-tendering provider in a secure inbox until opened after the deadline in accordance with 11.1.5 and 11.1.6.**

## 12. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION

12.1. Providing clarification of an Invitation to Tender to potential or actual *Tenderers* or seeking clarification of a Tender whether in writing or by way of a meeting is permitted.

12.2. Post-Tender Negotiation means negotiations with any tenderer after submission of a *Tender* and before the award of the contract with a view to obtaining adjustments in both price and content. It must not be conducted in an *EU Procedure* where this might distort competition particularly with regard to price.

Where Post-Tender negotiations result in a fundamental change to the specification or contract terms the contract must not be awarded but re-tendered.

12.3. If Post-Tender Negotiations are necessary after a single-stage Tender or after the second stage of a two-stage Tender, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the most economically advantageous Tender or the lowest price. Officers appointed by the Director to carry out Post-Tender Negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

## 12.4. PROCEDURE

12.4.1. Post-Tender Negotiation must only be conducted in accordance with any guidance issued by the Head of Legal and Democratic Services.

12.4.2. The Head of Legal and Democratic Services must be formally consulted:

- wherever it is proposed to enter into Post-Tender Negotiation, and

- about whether negotiation is to be with all *Tenderers*.

12.4.3. Post-Tender Negotiations must be conducted by a team of at least two officers.

### **13. EVALUATION AND AWARD OF CONTRACT**

Apart from the notification required or permitted by the Procurement Code Paragraph 13.4:

- confidentiality of *Tenders*, *Quotations* and the identity of *Tenderers* must be preserved at all times
- information about one *Tenderer's* response must not be given to another *Tenderer*.

13.1. Contracts must be evaluated and awarded in accordance with the *Award Criteria*.

13.2. The arithmetic content in compliant *Tenders* must be checked. If arithmetical errors are found they should be notified to the *Tenderer*, who should be requested to confirm or withdraw their *Tender*, in writing. Alternatively, if the rates in the *Tender*, rather than the overall price, were stated within the Invitation to *Tender* as being dominant, an amended *Tender* price may be requested to accord with the rates given by the *Tenderer*.

13.3. The Officer shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

13.4. Where requested by an unsuccessful *Tenderer* the *Officer* should debrief, and explain the reasons why they were unsuccessful and the characteristics and relative advantage of the successful *Tenderer*, as appropriate. This should normally include:

- how the *Award Criteria* were applied
- where appropriate the prices or range of prices submitted, in either case not correlated to *Tenderers' names*, and
- the names of *Tenderers* where there were three or more *Tenderers*.

The same information may be given to those who responded in any pre-tender selection process.

No other information should be given without taking the formal advice of the Head of Legal and Democratic Services.

13.5. If requested, the *Officer* shall within 15 calendar days give the notification information required by the Procurement Code Paragraph 13.4 to *Tenderers* who were deselected in the pre-tender *Shortlisting* process.

### **14. CONTRACT AWARD**

14.1. Acceptance of *Tenders* for any approved expenditure or for the disposal of assets other than land is delegated to:-

14.1.1. The relevant Head of Service for tenders up to £200,000 (or up to £500,000 in the case of *Tenders* for building repairs) where there is an adequate and approved budgetary provision.

14.1.2. To the Head of Service/Director in consultation with the relevant *Portfolio Holder* for Tenders between £200,001 and £400,000 (or between £500,000 and £1m in the case of Tenders for building repairs) (subject to the call-in procedure under the Procurement Code Paragraph 14.2) provided that:

- this procurement code has been complied with
- the most economically advantageous Tender is accepted
- there is an approved budget for the items to which the Tender relates and this has been confirmed, in writing, by the Head of Finance and Procurement
- the Tender and all other costs associated with the procurement to which the Tender relates are within the approved budget
- any necessary, written, approval has been obtained including ministerial and member approval relating to matters of policy.

In all other cases, a Tender may only be authorised for acceptance by the Cabinet or, in the case of urgency, by the relevant Head of Service in conjunction with the Head of Finance and Procurement after consultation with the relevant Portfolio Holder, or in their absence the Chair of the Cabinet.

<b>Estimate Contract Value £</b>	<b>To be awarded by:</b>
Up to 200,000 (or up to 500,000 in the case of Tenders for building repairs)	Head of Service
200,001 to 400,000 (or 500,000-1m in the case of Tenders for building repairs)	Head of Service/Director in consultation with the relevant Portfolio Holder (subject to call-in under 14.2).
400,001 plus (or 1m plus in the case of Tenders for building repairs)	Cabinet.

#### 14.2. Call in Procedure

Acceptance of tenders between £200,001 and £400,000 (or between £500,000 and £1m in the case of tenders for building repairs) is subject to call-in under the Council's Scrutiny Procedure Rule 13(a) to (i). See Section 3 of the Procurement Toolkit and/or refer to the Head of Legal and Democratic Services for further advice

### 15. RECORDS AND DEBRIEFING CANDIDATES

15.1. Where the *Total Value* is more than £10,000 the following documents must be retained in a secure and easily retrievable format.

- invitations to quote and quotations received
- Invitation to tender and tenders received
- a written record of any exemptions under the Procurement Code Paragraph 3.2 and the reasons for it
- any *Contracting Decision* and the reasons for it
- the *Award Criteria*
- any pre-tender market research
- clarification and post-tender negotiation (to include minutes of meetings)

- the contract documents if applicable
  - the post-contract evaluation and monitoring documentation
  - written records of all communications with all *Tenderers* and with the successful Tenderer throughout the period of the contract
- 15.2. Written records required by this standing order must be kept for a minimum of six years (12 years if the contract is under seal) after the final settlement of the contract. However, documents which relate to unsuccessful Tenderers may be electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.
- 15.3. The contract documents, if applicable, must be forwarded to Legal and Democratic Services for indexing and secure storage.
- 15.4. All Tenderers must be notified simultaneously in writing and as soon as possible of any *Contracting Decision*.

If a Tenderer requests the reasons for a *Contracting Decision*, the *Officer* must give the reasons in writing within 15 calendar days of the request.

## 16. ADVERTISING AND APPROVED LISTS

- 16.1. The appropriate Director shall be responsible for ensuring that all persons or bodies invited to quote or tender for the supply of goods, services or works to the Council have been suitably assessed. The assessment process shall establish that the potential suppliers have appropriate:
- economic standing
  - financial standing
  - legal capacity
  - technical ability and capacity to fulfil the requirements of the Council.
- 16.2. This may be achieved by selecting tenderers from:
- (a) Constructionline **(in the case of contracts)**, or
  - (b) Standing lists of providers, maintained by the Council or on its behalf or by other public sector bodies, and compiled following responses to a public advertisement, or
  - (c) A shortlist of contractors assessed from expressions of interest in a particular contract submitted in response to a public advertisement **(and advertised on the Council's website and supply2gov portal)**, or
  - (d) By using a competitive process utilising *Third Party Contracts* or **Framework Agreements**.
- 16.3. All proposed contracts that are expected to exceed the appropriate *EU Threshold* must be advertised by the Head of Legal and Democratic Services in the Official Journal of the European Union or by using a competitive process utilising *Third Party Contracts*.

## Section 3

### Contract and Other Formalities

#### 17. CONTRACT DOCUMENTS

17.1. All *Relevant Contracts* shall be in writing.

17.2. All *Relevant Contracts*, irrespective of value, shall clearly specify:

- the works, goods or services required
- the price to be paid, any discounts or other deductions and the arrangements for payment
- the time, or times, within which the contract is to be performed.

The Council's official order form or standard terms and conditions issued by a relevant professional body must be used where applicable.

17.3. In addition, every *Relevant Contract* or purchase over £30,000 must also as a minimum state clearly:

- that the contractor may not assign or sub-contract without prior written consent
- any insurance requirements **such as employer's liability and public liability**
- health and safety requirements
- ombudsman requirements

**and, where relevant:**

- data protection and freedom of information requirements
- that charter standards are to be met
- **equality and diversity requirements (conformance with policy and legislation)**
- **sustainability and environmental considerations (conformance with policy and legislation)**
- (where agents are used to let contracts) that agents must comply with the Council's Procurement Code relating to contracts
- a right of access to relevant documentation and records of the contractor for monitoring and audit purposes.

17.4. The formal advice of the Head of Legal and Democratic Services must be sought for the following contracts:

- where the *Total Value* exceeds £100,000
- those involving leasing arrangements
- those which are complex in any other way
- where it is proposed to use a supplier's own contract terms and conditions.



### 17.5. Contract formalities

17.5.1. Agreements shall be completed as follows (subject to delegated financial limits as agreed between the relevant Head of Service and the Head of Finance and Procurement for appropriate officers):

Estimated Total Value	Method of Completion	By
Up to £25,000	Signature	<i>Line Manager as delegated by appropriate Head of Service.</i>
£25,001-£100,000	Signature	<i>The appropriate Head of Service</i>
Above £100,000	<i>Sealing</i>	Head of Legal and Democratic Services

All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of a Director. An award letter is insufficient.

#### 17.5.2. Signature

The *Officer* responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

#### 17.5.3. Sealing

Where contracts are completed by each side adding their formal seal, such contracts shall be signed by at least two authorised signatories.

Every Council sealing will be consecutively numbered, recorded and signed by the persons witnessing the seal. The seal must not be affixed without the authority of the Cabinet or a *Head of Service or Director* acting under delegated powers. A contract must be sealed where:

- the Council wishes to enforce the contract for more than six years after its end, or
- where the *Total Value* is expected to exceed £100,000.

## 18. BONDS AND PARENT COMPANY GUARANTEES

18.1. The *Officer* must consult the Head of Finance and Procurement:

18.1.1. about whether a *Parent Company Guarantee* is necessary when a *Tenderer* is a subsidiary of a parent company, and:

- the *Total Value* exceeds £300,000, or
- the award is based on evaluation of the parent company, or
- there is some concern about the financial stability of the *Tenderer*, and

18.1.2. about whether a *Bond* is needed:

- where the *Total Value* exceeds £300,000, or
- where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the financial stability of the *Tenderer*.

## 19. PREVENTION OF CORRUPTION

19.1.

- The *Officer* must comply with the *Employees' Code of Conduct* and must not invite or accept any gift or reward in respect of the award or performance of any contract.
- High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in the Procurement Code Paragraph 19.2.
- Employees of the Council shall not use any contract or other procurement arrangement entered into by the Council for their own personal use, benefit or gain other than with the prior written approval of the Head of Finance and Procurement.

19.2. The following clause must be put in every written Council contract:

The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (b) commit an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

Any clause limiting the Contractor's liability shall not apply to this clause.

## 20. DECLARATION OF INTERESTS

- 20.1. If it comes to the knowledge of a member or an employee of the Council that a contract in which he or she has a financial **or personal** interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Legal and Democratic Services. The Head of Legal and Democratic Services shall report such declarations to the appropriate committee.
- 20.2. Such written notice is required, irrespective of whether the monetary interest is direct or indirect. An indirect financial interest is distinct from a direct financial interest in as much as it is not a contract to which the member or employee is directly a party.
- 20.3. A shareholding in a body not exceeding a total nominal value of £1,000 or 1% of the nominal value of the issued share capital (whichever is the less) is not a financial interest for the purposes of this standing order.
- 20.4. The Head of Legal and Democratic Services shall maintain a record of all declarations of interests notified by members and officers.

- 20.5. The Head of Legal and Democratic Services shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct.

## Section 4

### General

#### 21. POST-CONTRACT MONITORING AND EVALUATION

- 21.1. During the life of the contract the *Officer* must monitor
- performance
  - compliance with specification and contract conditions
  - the cost of the contract against budgetary provision
  - any *Best Value* requirements
  - user satisfaction and risk management.
- 21.2. Where the *Total Value* of the contract exceeds £100,000, the *Officer* must make a written report evaluating the extent to which the procurement need and the contract objectives were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to reletting of the subsequent contract.

#### 22. APPOINTMENT OF CONSULTANTS

The selection and engagement of consultant architects, engineers and surveyors or other professional consultants shall be subject to this procurement code.

Consultants shall be required to provide evidence of and maintain professional indemnity policies to the satisfaction of the relevant *Head of Service* for the periods specified in the respective agreement.

#### 23. CONTRACT EXTENSION

- 23.1. Any contract that expressly provides for extension may be extended in accordance with its terms or, subject to the Procurement Code Paragraph 23.2, extended by negotiation, provided that the officer is satisfied that Best Value will be achieved and the extension is reasonable in all the relevant circumstances.
- 23.2. Where the contract terms do not expressly provide for extension, contracts subject to the *EU procedures* may only be extended in exceptional circumstances. Legal advice should be sought as appropriate.
- 23.3. Approval for contract extension for any approved expenditure is delegated to:
- 23.3.1. The relevant Head of Service for contract values up to £200,000
- 23.3.2. To the relevant *Portfolio Holder* for contract values between £200,001 and £400,000

In all other cases a Contract may only be extended with the agreement of the Cabinet or, in the case of urgency, by the relevant Head of Service in conjunction with the Head of Finance and Procurement after consultation with the Chair of the Cabinet and Chief Executive.

**24. CONTRACT TERMINATION**

Contracts may be terminated by the appropriate Head of Service early by agreement prior to the expiry date or in accordance with the Termination Provisions set out in the contract. Legal advice should be sought before terminating any contract.

**25. REVIEW AND AMENDMENTS OF THE PROCUREMENT CODE**

This Procurement Code shall be reviewed and updated on a regular basis, not less than annually. The amended Procurement Code shall be agreed and adopted by the full Council.