

Constitution Committee

Tuesday 11 April 2017

10.00 am Luttrell Room - County Hall,
Taunton



To: The Members of the Constitution Committee

Cllr N Woollcombe-Adams (Chairman), Cllr J Denbee, Cllr A Gloak, Cllr J Parham and Cllr A Wedderkopp

Issued By Julian Gale, Strategic Manager - Governance and Risk - 3 April 2017

For further information about the meeting, please contact Julian Gale on 01823 357628 or JJGale@somerset.gov.uk

Guidance about procedures at the meeting follows the printed agenda.

This meeting will be open to the public and press, subject to the passing of any resolution under Section 100A (4) of the Local Government Act 1972.

This agenda and the attached reports and background papers are available on request prior to the meeting in large print, Braille, audio tape & disc and can be translated into different languages. They can also be accessed via the council's website on www.somerset.gov.uk/agendasandpapers



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AGENDA

Item Constitution Committee - 10.00 am Tuesday, 11 April 2017

*** Public Guidance notes contained in agenda annexe ***

1 Apologies for absence

2 Declarations of Interest

Details of all Members' interests in District, Town and Parish Councils will be displayed in the meeting room. The Statutory Register of Member's Interests can be inspected via the Community Governance team.

3 Minutes from the previous meeting

The Committee is asked to confirm the minutes of the meeting held on 8 November 2016 are accurate.

4 2016 November 8 Minutes fv (Pages 5 - 8)

5 Public Question Time

The Chairman will allow members of the public to present a petition on any matter within the Committee's remit. Questions or statements about any matter on the agenda for this meeting will be taken at the time when each matter is considered.

6 Changes to Contract Standing Orders (Pages 9 - 62)

To consider a report by Carly Wedderburn, Strategic Manager (People and Place) – attached

7 Review of the Constitution (Pages 63 - 68)

To consider a report by Julian Gale, Strategic Manager – Governance & Risk – attached.

8 Any other urgent items of business

The Chairman may raise any items of urgent business.

THE MEETING – GUIDANCE NOTES

1. Inspection of Papers

Any person wishing to inspect Minutes, reports, or the background papers for any item on the agenda should contact Julian Gale – tel: (01823) 357628 or email jjgale@somerset.gov.uk

They can also be accessed via the Council's website on www.somerset.gov.uk

2. Minutes of the Meeting

Details of the issues discussed and decisions taken at the meeting will be set out in the Minutes, which the Committee will be asked to approve as a correct record at its next meeting. In the meantime, details of the decisions taken can be obtained from Julian Gale – tel: (01823) 357628 or email jjgale@somerset.gov.uk

3. Public Question Time

At the Chairman's invitation you may ask questions and/or make statements or comments, or send in a written question about **any matter on the Committee's agenda**. You may also present a petition on any matter within the Committee's remit. **The length of public question time will be no more than 30 minutes in total.**

A slot for Public Question Time is set aside near the beginning of the meeting, after the minutes of the previous meeting have been signed.

Any person wishing to raise a matter under public question time must inform the meeting administrator by 12 noon **the (working) day before** the meeting. Contact Julian Gale – tel: (01823) 357628, or email jjgale@somerset.gov.uk

You must direct your questions and comments through the Chairman. You may not take direct part in the debate.

The Chairman will decide when public participation is to finish.

If there are many people present at the meeting for one particular item, the Chairman may adjourn the meeting to allow views to be expressed more freely.

If an item on the agenda is contentious, with a large number of people attending the meeting, a representative should be nominated to present the views of a group.

An issue will not be deferred just because you cannot be present for the meeting.

Remember that the amount of time you speak will be restricted, normally to

two minutes only.

4 **Members' Code of Conduct Requirements**

When considering the declaration of interests and their actions as a councillor, Members are reminded of the requirements of the Members' Code of Conduct and the underpinning Principles of Public Life: HONESTY; INTEGRITY; SELFLESSNESS; OBJECTIVITY; ACCOUNTABILITY; OPENNESS; LEADERSHIP. The Code of Conduct can be viewed at: <http://www.somerset.gov.uk/organisation/key-documents/the-councils-constitution/>

5. **Recording of meetings**

IMPORTANT NOTE FOR MEMBERS OF THE PUBLIC – FILMING, RECORDING AND TAKING PHOTOGRAPHS AT MEETINGS

The Council in support of the principles of openness and transparency allows filming, recording and taking photographs at its meetings that are open to the public providing it is done in a non-disruptive manner. Members of the public may use Facebook and Twitter or other forms of social media to report on proceedings and a designated area will be provided for anyone who wishes to film part or all of the proceedings. No filming or recording will take place when the press and public are excluded for that part of the meeting. As a matter of courtesy to the public, anyone wishing to film or record proceedings is asked to provide reasonable notice to Julian Gale, County Hall, Taunton, Somerset, TA1 4DY 01823 357628 jjgale@somerset.gov.uk so that the Chairman of the meeting can inform those present.

We would ask that, as far as possible, members of the public are not filmed unless they are playing an active role such as speaking within a meeting and there may be occasions when speaking members of the public request not to be filmed.

The Council will be undertaking audio recording of some of its meetings as part of its investigation into a business case for the recording and potential webcasting of meetings in the future.

A copy of the Council's Recording of Meetings Protocol should be on display at the meeting for inspection, alternatively contact the Committee Administrator for the meeting in advance.

CONSTITUTION COMMITTEE

Minutes of a meeting of the Constitution Committee held in the Hobhouse Room, County Hall, Taunton on Tuesday 8 November 2016 at 10.00am.

PRESENT

Cllr N Woolcombe-Adams (Chairman)
Cllr A Gloak
Cllr J Parham
Cllr A Wedderkopp
Cllr J Denbee

Officers:
J Gale
H Clarke

Apologies for absence: none

1. MINUTES OF THE MEETING HELD ON 27 OCTOBER 2015 - agenda item 2

The minutes of the meeting of the Committee held on 27 October 2015 were approved as a correct record.

2. DECLARATIONS OF INTEREST - agenda item 3

None.

3. PUBLIC QUESTION TIME - agenda item 4

None.

4. STATUTORY PROTECTION PROVISIONS FOR STATUTORY CHIEF OFFICERS – agenda item 5

The Committee considered the report of the Deputy Monitoring Officer, which recommended changes to the statutory protection arrangements to be applied where the Council proposed to dismiss one of its statutory officers (the Chief Executive, Section 151 Officer or Monitoring Officer). This would bring the Council's constitutional provisions into line with recent legislation.

The report also included associated amendments required or considered appropriate to the wider constitutional provisions relating to disciplinary action with regard to SLT Officers and including the Monitoring Officer.

The Committee acknowledged that the Council would have to change its processes in order to comply with the Regulations and that the decision to

do so had been deferred several times to obtain legal guidance.

The Committee was assured that the current constitutional provisions for a Special Members Panel would remain although with a more limited remit; this Panel would consider proposed dismissals in the first instance and would still retain powers to deal with all disciplinary issues, except the final stages of proposed dismissals. The Independent Persons Panel would only be able to make recommendations in relation to the proposed dismissal of a Chief Executive, Section 151 Officer or a Monitoring Officer and the final decision would remain with members at full Council.

Following further discussion, the Committee **RESOLVED** to:

Recommend Council to approve:

1. The revised statutory protection proposals set out in para 1.1.8 of the Deputy Monitoring Officer's report, to be applied where the Council proposes the dismissal of a post-holder holding the position of Chief Executive, Section 151 Officer or Monitoring Officer.
2. The associated amendments proposed to the wider constitutional provisions and arrangements relating to disciplinary action with regard to SLT officers and including the Monitoring Officer.
3. Amendments required to the Constitution as a result of the approval of 1 and 2 (as set out in Appendix A of the report).

Note: 3 above to include additional content for the Constitution to make it clear that any disciplinary / dismissal process in respect of a SLT Officer and the Monitoring Officer shall be subject to the Access to Information rules contained in the Constitution (wording to be approved by the Committee electronically in advance of the November Council meeting)

5. REVIEW OF THE CONSTITUTION – agenda item 6

The Monitoring Officer presented a report which covered the annual review of the Constitution (2015/16) and progress with the fundamental review of the Constitution.

Annual Review: The Council was required to reaffirm its Constitution annually at May Council meeting but had deferred this until November pending anticipated changes to the Corporate Parenting Board arrangements. As these changes had now been actioned, consequent amendments to the functions of the Scrutiny for Policies, Children & Families Committee (set out in Appendix A to the report) were proposed. Other changes agreed by this Committee over the course of the year, together with the recommended new arrangements regarding statutory protection for statutory officers, would be incorporated in the revised version of the Constitution, to be approved at Council on 30 November.

Fundamental Review of Elements of the Constitution

In addition to the retrospective annual review of the Constitution, the Committee was asked to consider recommendations for a forward-looking fundamental review, dealing with issues arising as a result of the County elections. This would inform decisions to be taken by the new Council regarding democratic arrangements and would be considered at the Council's AGM in May 2017.

Issues currently under review included the HR Policy Committee; the Officer Appeals Committee and the Appointments Panel and Appointments Committee. The Committee would also be asked to review Access to Information Rules and scrutiny arrangements in the spring.

The Committee asked for a further item to be included in the review to cover arrangements for bodies which report direct to Council but were not formal committees, such as the Police & Crime Panel. The intention behind this was to ensure that these bodies have a direct line of accountability and report to Full Council.

At this meeting, the Committee focussed on proposals for future standards arrangements. The Standards Committee had discussed the officer recommendations at its meeting on 28 October and had supported the option proposing that the Standards and Constitution Committees should be amalgamated to form a single Constitution & Governance Committee. Both current committees had reducing workloads due to changes in procedures and standards legislation; this option would result in a committee with a robust workload in which the Council's co-opted members could continue to play a meaningful role.

Members unanimously agreed to support this option in principle, subject to amendments (listed in (c) below) for recommendation to the new Council in May 2017.

The Committee **RESOLVED** to:

- a) Agree the changes to the list of functions of the Scrutiny for Policies, Children & Families Committee as set out in Appendix A of the agenda report.
- b) To note the progress with and plans for the fundamental review of key elements of the Constitution; including the amalgamation of the Standards and Constitution Committees, and to add the following item to the review:
 - include a separate section to cover bodies which report to Council but are not formal committees (eg the Corporate Parenting Board; Police & Crime Panel), and include a requirement for annual reports from these bodies to be made to Council if other mechanisms are not in place.

- c) To approve, in principle, the proposed amalgamation of the Standards and Constitution Committees to form a single Constitution and Governance Committee for recommendation to the new Council in May 2017. Principles to be applied to the proposed amalgamation were:
- Strict political balance was not required to applied to the elected membership of the Committee but that an appropriate level of representation should be given to the political groups according to their size whilst keeping the overall membership manageable
 - Membership of the new committee should include the current co-opted members of the Standards Committee as non-voting members,
 - The Chairman of the new committee should be appointed by the Committee itself.

6. **ANY OTHER BUSINESS**

None.

The meeting ended at 10.55am

Chairman

Somerset County Council
Constitution Committee – 11 April 2017

Changes to Contract Standing Orders

Lead Officer: Richard Williams, Commercial and Business Services Director
Author: Carly Wedderburn, Strategic Manager (People and Place),
Commercial and Procurement
Contact Details: CWedderburn@somerset.gov.uk

1. Summary

- 1.1.** The purpose of this report is to recommend the adoption of a refreshed and re-written set of Contract Standing Orders (the “Rules”) which incorporates amendments to the decision-making processes around waivers, the escalation procedures associated with breaches of the Rules, the procurement procedures to be followed according to the financial value of the contract and the incorporation of best practice procurement practices across the procurement cycle.
- 1.2.** There is an indirect link to the County Plan and the aims of the organisation, in designing processes that are proportionate to the decisions to be made. This will reduce the administrative burden on officers and increase the speed of decisions.
- 1.3.** General housekeeping of the current version of the Rules is proposed to reflect procurement legislation issued in 2015, known as the Public Contracts Regulations (the “Regulations”), relevant case law that is developing in this area and contemporary best practice in relation to procurement and contract management.

2. Recommendations

- 2.1. That the Constitution Committee endorse the proposed refreshed Contract Procedure Rules and Standing Orders (as detailed in Appendix 1), which have been set out with the purpose of:**
 - 1. restructuring the Rules to be more reader-friendly and adjusting the content to provide greater clarity for officers;**
 - 2. introducing a more collaborative approach between commissioners and the Commercial and Procurement Team, which has resulted in a re-written set of procedures;**
 - 3. providing greater clarity around the definition of an exemption from the Rules versus a waiver and a more streamlined process for lower value waivers;**
 - 4. introducing a more robust approach where there is a breach of the Rules;**
 - 5. raising the thresholds but having a tighter grip on the processes that must be followed at the various financial levels;**
 - 6. ensuring the content follows the most contemporary developments in procurement and contract management best practice and legislation;**
 - 7. taking a more comprehensive approach to the various stages of the procurement and commissioning cycle, including providing advice to officers in relation to pre-procurement and contract management activities; and**
 - 8. providing clarity to officers on issues related to procurement, but not**

previously given coverage within the Rules, such as State Aid and development agreements.

2.2. That the Constitution Committee makes its recommendation to Full Council that the Rules as amended in Appendix 1 and summarised in Annexe 1 below are formally adopted in to the Constitution by Full Council on 24 May 2017.

3. Background

3.1. SCC's Rules include the requirement to be reviewed regularly and in any case on an annual basis. The current version of the Contract Standing Orders state that they are effective from 30 October 2013. Whilst informal reviews and updates of the document have taken place since that date it was clear that a more formal review was required to reflect the changing environment of the Council and bring the Contract Standing Orders more in line with contemporary best practice, based on a comprehensive review of a number of other local authorities' (such as Cornwall, Devon, Dorset, Hampshire, Norfolk and Oxfordshire County Council's) Rules. This review has been undertaken by Commercial and Procurement Services in collaboration with finance, information governance, legal and commissioning managers and the refreshed version has been presented to and has received endorsement from both the Commissioning and Governance Boards.

3.2. Following this review a number of areas for improvement were determined, as detailed under section 2 Recommendations above. The purpose of such improvements are:

1. to give greater clarity to how Council officers must conduct their procurement activities;
2. to remove certain onerous restrictions and procedures;
3. to simplify certain processes;
4. to ensure that Officer can conduct their procurement activities in a way that ensures compliance with the Rules and the Regulations.

3.3. Whilst the review has resulted in a re-written set of procedures, it is relevant to highlight that the section entitled 'Approval to award' remains unchanged and as such the previously agreed scheme of delegation still applies.

4. Concise analysis

4.1. Upon reviewing the Rules it was felt that it was necessary to produce a refreshed version, which has resulted in a complete re-write of the Contract Procedure Rules and Standing Orders. This report will highlight all of the fundamental changes that have been made drawing specific attention instances where decision-making procedures have changed for officers or members.

4.2. Fundamental changes

- **Exemptions and waivers**

- to align the rules with the list of permitted exemptions held by Finance and clarify which activities are exempt and which require a formal waiver;
- to include a more specific list of permitted waiver grounds;
- to provide flexibility in the waiver procedure for over EU Threshold procurements and to introduce a streamlined waiver procedure with lower and higher threshold approval procedures; and
- to report higher value waivers through Governance Board.

- **Breaches**

- to strengthen our approach to breaches of the rules;
- to provide enforceable repercussions for breaches of the rules that have genuine consequences; and
- to report breaches through Governance Board.

- **Thresholds**

- to increase the thresholds and give greater distinction between the procurement process requirements at the various threshold levels; and
- to step back from previous Council decision taken regarding the Council's application of the Transparency Code on the basis of what is reasonable for the Council. This would facilitate our taking a more proportionate approach to our procurement activity, which the Commercial and Procurement Team (CPT) will be better able to support with fewer resources.

	Current		Proposed	
	Goods and Services	Works	Goods and Services	Works
Minimum of one quote	Up to £1,000		Up to and including £25,000	
Three written quotes	Between £1,000 and £10,000		Over £25,000 but less than £75,000	Over £25,000 but less than £150,000
Open tendering	Between £10,000 and £130,000	Between £25,000 and £130,000	Over £75,000 but less than the EU Threshold	Over £150,000 but less than the EU Threshold
EU compliant tendering	Over £130,000		At and above the EU Threshold (£164,176)	At and above the EU Threshold (£4,104,394)

4.3. It is important to note that there are specific procedures that Officers must

follow at each of these threshold levels, including at the lowest threshold. Officers will be required to seek existing contractual arrangements through which they can meet their needs before they will be able to actively seek a minimum of one quotation and in doing so, they must demonstrate best value.

4.4. Other changes

Further information has been provided in Annexe 1 to this report as to the technical changes that have been made as a consequence of legislative or best practice movements in the area of procurement and contract management and where it was felt that rewording the section would provide additional clarity for Council officers or a more comprehensive approach to the various stages of the procurement and commissioning cycle.

5. Consultations undertaken

- 5.1.** Consultation has taken place with a number of Council officers including representatives of the Commercial and Procurement, Information Governance, Corporate Finance, Corporate Records and Legal Services teams, on the basis that these were the officers and teams that will be the most affected and/or are those best able to offer advice and guidance in relation to specific sections of the document to be covered.

6. Implications

- 6.1.** Legal & Risk: the Contract Procedure Rules and Standing Orders set out the legal and procedural framework within which the Council manages its third party spend through the procurement of goods, services and works. It must be kept up to date and compliant with the relevant legislation and is an important part of the Council's Constitution.
- 6.2.** Impact Assessment: the Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts on equalities, sustainability, health and safety, or community safety as a result of this report.
- 6.3.** Financial: the proposed reduction in the thresholds, discussed more fully at section 4.2 of this report, is made on the basis of analysis of procurements completed via the Council's electronic tendering system covering the period of 01 April 2016 to date. What the analysis looked at was the number of contracts (in percentage terms) procured in accordance with the thresholds and their respective procurement processes under the current Rules as against the proposed thresholds. What the analysis showed was that nearly three-quarters of the contracts that we currently procure in accordance with the full rigour of the Public Contracts Regulations 2015 are done so unnecessarily due to the fact that the current threshold, which necessitates the application these procedures is significantly lower than that set by the European Commission as the EU Threshold.

The revised thresholds seek to redress that balance and would see something in the region of 50% of our contracts being advertised to the market, meaning that those that would be dealt with under a quotation

process would be made available to more SME and local suppliers. The financial implications are twofold: that greater access to our contracts by SME and local suppliers means a positive impact on the local economy, and that the Commercial and Procurement team would be able to redirect their efforts to procurement activities against which the team would be able to deliver greater benefit.

- 6.4.** HR: the proposed revisions to the sections covering Officer's breaches of the Rules provide a more robust and comprehensive approach to those issues that may be considered as breaches and the disciplinary procedures that would apply in dealing with such activity. The Rules also draw stronger reporting lines between the Governance Board and the Human Resources and Organisation Development Director as part of that procedure.

7. Background papers

- 7.1.** None.

ANNEXE 1

Section reference	Impact/benefit
5 Prevention of corruption and collusion	<ul style="list-style-type: none"> • To bring SCC in line with contemporary legislation and best practice around the topic • To provide SCC with a robust set of procedures for managing officers in breach of the Rules and/or Legislation
6 Conflicts of interest	<ul style="list-style-type: none"> • To bring SCC in line with best practice around the topic • To ensure that the Council's procurement activities are not compromised by the previous experiences of the officers involved
8 Market engagement	This is responding to officers' comments on the lack of clarity around the ways in which SCC should approach the market in the pre-procurement phase of the procurement/commissioning cycle
9 Pre-procurement authorisations	This will lead to more efficient procurement practices across the Council, less duplication of effort both across the Council and when considering external arrangements that are already in place that may adequately meet our needs and fewer individual contracts across the whole organisation
10 Total contract value	<ul style="list-style-type: none"> • To bring SCC in line with contemporary legislation on the topic • To provide greater clarity for officers
12 The procurement sourcing strategy	To ensure that SCC takes all relevant considerations in to account in the preparation of its procurement activities, including but not limited to the key commercial principles, risks and impacts and financial implications
13 Relevant legislation	To bring SCC in line with contemporary legislation on the topic
14 Relevant policy	To take a more robust approach to the application of wider Council policy to its procurement activities
15 Collaborative procurement	<ul style="list-style-type: none"> • To reduce the Council's exposure to risk through dysfunctional collaborative relationships • To ensure that the Council fully considers the benefits available to it through collaborative procurement
16-18 Framework Agreements; Dynamic Purchasing Systems and Use of Framework Agreements and Dynamic	<ul style="list-style-type: none"> • This is responding to a need for greater information and clarity in the Rules around these more complex procurement arrangements • To bring SCC in line with contemporary legislation and best practice on the topic

Purchasing Systems	
25 Selection criteria	To bring SCC in line with contemporary legislation and best practice on the topic
27 Most Economically Advantageous Tender	This is responding to the need for the Council to carefully consider its budget position when awarding contracts for goods, services and works
28 Performance bonds and parent company guarantees	<ul style="list-style-type: none"> To bring SCC in line with contemporary best practice on the topic To ensure that officers take proper account of the risks that the Council is exposed to in the course of its contracting activities
29 Terms and conditions of Contracts	To bring SCC in line with contemporary legislation on the topic
32. Submission, receipt and opening of Tenders	Whilst this has been the case in practice under the previous iteration of the Rules, it was not included in the drafting, so it has been updated to better reflect what is happening
34 Presentations, demonstrations and site visits	To reduce the Council's exposure to risk through the inappropriate use of such devices in the procurement process
35 Abnormally low bids	<ul style="list-style-type: none"> To reduce the Council's exposure to risk through the procurement process To bring SCC in line with contemporary legislation on the topic
36 Contracts exceeding the written estimate	<ul style="list-style-type: none"> To reduce the Council's exposure to risk through the procurement process To bring SCC in line with contemporary best practice on the topic To ensure that officers fully consider their needs at the outset of a procurement process
37 Clarification	<ul style="list-style-type: none"> This is responding to a need for greater information and clarity in the Rules around clarifying suppliers' bids To bring SCC in line with contemporary legislation and best practice on the topic
38 Post-Tender negotiation	<ul style="list-style-type: none"> This is responding to a need for greater information and clarity in the Rules around negotiating with suppliers once quotations and tenders have been received To bring SCC in line with contemporary legislation and best practice on the topic
39 Electronic auctions	To bring SCC in line with contemporary legislation and best practice on the topic

43 Signing of contract	<ul style="list-style-type: none">• This is responding to a need for clarity in the Rules• To bring SCC in line with best practice on the topic
46 Variation, extension, assignment and novation	<ul style="list-style-type: none">• This is responding to a need for greater information and clarity in the Rules around what is permitted in relation to making changes to contracts• To more closely align with Rules with contemporary legislation on the topic
47 Records of Tenders and Contracts	To more closely align with Rules with contemporary best practice on the topic
48 Contract manager	<ul style="list-style-type: none">• This is responding to a need for greater information and clarity in the Rules contract management• To more closely align with Rules with contemporary best practice on contract management
49 Contract operations manual and plan	As above
50 Risk management	<ul style="list-style-type: none">• To reduce the Council's exposure to risk through the lifetime of contracts• To more closely align with Rules with contemporary best practice on contract management
51 Payment; 52 Liquidated and ascertained damages and 53 Dispute	To specifically draw officers' attention to issues within contracts that they need to be aware of during the contract management phase of the procurement/commissioning cycle
57 State Aid and 58 Development Agreements	<ul style="list-style-type: none">• To reduce the Council's exposure to risk in relation to both of these items• To more closely align with Rules with the legislation and contemporary best practice on the issues

B – Contract Procedure Rules and Standing Orders

For the Supply of Goods, Provision of Services and Execution of Works

Made on XXX under section 135 of the Local Government Act 1972

CONTENTS		Page
	DEFINITIONS	4
	SECTION A: GENERAL INFORMATION	11
1.	Introduction	11
2.	Basic principles	12
3.	Officer responsibilities	12
4.	Procurement Officer responsibilities	13
5.	Member responsibilities	13
6.	Prevention of corruption and collusion	14
7.	Conflicts of interest	14
8.	Localism Act 2011	14
	SECTION B: PRE-PROCUREMENT	15
9.	Market engagement	15
10.	Pre-procurement authorisations	16
11.	Total Contract Value	16
12.	Thresholds	17
13.	The procurement sourcing strategy	18
14.	Relevant Legislation	19
15.	Relevant Policy	20
16.	Collaborative procurement	20
	SECTION C: THE PROCUREMENT PROCESS	21
17.	Framework Agreements	21
18.	Dynamic Purchasing Systems	22
19.	Use of Framework Agreements and Dynamic Purchasing Systems	23
20.	Standard Procurement Documents	23
21.	Procurement processes requiring one written Quotation	24
22.	Quick Quote	25
23.	Procurement processes requiring Invitations to Tender	26
24.	Procurement processes over the EU Threshold	27
25.	Light Touch Regime	28
26.	Selection Criteria	29
27.	Award Criteria	30
28.	Most Economically Advantageous Tender	30
29.	Performance bonds and parent company guarantees	31

30.	Terms and conditions of Contracts	31
31.	Protection of personal data	33
32.	Confidentiality of sensitive commercial information	33
33.	Submission, receipt and opening of Tenders	33
34.	Evaluation of Quotations and Tenders	33
35.	Presentations, demonstrations and site visits	34
36.	Abnormally low bids	34
37.	Contracts exceeding the written estimate	35
38.	Clarification	35
39.	Post-Tender negotiation	35
40.	Electronic auctions	36
41.	Freedom of Information Act 2000 and Environmental Information Regulations 2002	36
	SECTION D: CONTRACT AWARD	37
42.	Intention to award a Contract	37
43.	Approval to award	38
44.	Signing of Contract	38
45.	Letters of intent	39
46.	Early Termination of Contract	39
47.	Variation, extension, assignment and novation	39
48.	Records of Tenders and Contracts	42
	SECTION E: CONTRACT MANAGEMENT	42
49.	Contract manager	42
50.	Contract operations manual and plan	42
51.	Risk management	43
52.	Payment	43
53.	Liquidated and ascertained damages	43
54.	Dispute	43
55.	Exemptions	43
56.	Waivers	45
57.	Non-compliance to the Rules	45
	SECTION F: OTHER RELEVANT CONSIDERATIONS	46
58.	State Aid	46
59.	Development agreements	46

Contract Procedure Rules and Standing Orders for the Supply of Goods, Provision of Services and Execution of Works

DEFINITIONS

In these Rules the following words and expressions will have the following meanings assigned to them:

Defined term	Definition
Award Criteria	Shall mean the criteria by which the Contract is to be awarded to the successful Supplier
Award Decision	Shall mean the procedure by which the Officer is able to decide to award the Contract to a particular Supplier/s
Best Value	Shall mean the duty, which Part I of the Local Government Act 1999 places on local authorities, to secure continuous improvement in the way in which functions are exercised, having regard to a combination of economy, efficiency and effectiveness as implemented by the Council
Cabinet Member	Shall mean any councillor appointed to the Cabinet by the Leader of Council for the time being, or such Officer as they may duly authorise to act on their behalf or may be authorised to act on their behalf under the Council and Cabinet Scheme of Delegation
Call-off Contract	Shall mean a Contract awarded under a Framework Agreement or Dynamic Purchasing System
Candidate	Shall mean any and all suppliers participating or expressing an interest in participating in the Council's Quick Quotes, Quotations, PQQ and ITT activity
Competitive Dialogue	Shall mean as referred to in regulation 30 of the 14.1.a
Competitive Procedure with Negotiation	Shall mean as referred to in regulation 29 of the 14.1.a

Constitution	<p>Shall mean the constitutional document approved by the Council which:</p> <ul style="list-style-type: none"> • allocates decision making powers and responsibilities within the Council and with partners; • delegates authority to act through the Council and Cabinet Scheme of Delegation; and • regulates the behaviour of individuals and groups through rules of procedure, codes and protocols
Contract	<p>Shall mean a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which the Council engages a Supplier to provide Goods, Works or Services and where the context requires a Contract shall refer to an order made/call-off contract entered into under a Framework Agreement. All Contracts are let on behalf of the Council as a whole and no service, team, unit or other part of the Council has the legal capacity to enter independently into any Contract</p>
Contracting Authority	<p>Shall mean Somerset County Council or any entity over which Somerset County Council has control</p>
Contracts Finder	<p>Shall mean the web-based portal provided for the purpose of publicising contract opportunities under the EU Threshold by or behalf of the Cabinet Office</p>
Contracts Register	<p>Shall mean the Council's repository of Contracts as held on the Council's Electronic Tendering System</p>
Council	<p>Shall mean Somerset County Council</p>
Dynamic Purchasing System	<p>Shall mean as referred to in regulation 34 of the 14.1.a</p>
Electronic Tendering System	<p>Shall mean the system approved by the CPT for the purposes of conducting procurement activities electronically</p>
EU	<p>Shall mean European Union</p>
EU Threshold	<p>Shall mean the relevant threshold as set out in either:</p> <ol style="list-style-type: none"> 1. Regulation 9 of the Concessions Contracts Regulations 2016 where those rules apply; or otherwise

	2. Regulation 5 of the Public Contracts Regulations 2015
European Commission	Shall mean the body responsible for promoting the general interest of the EU by proposing and enforcing legislation as well as by implementing policies and the EU budget
Financial Instructions	Shall mean the Financial Regulations and Financial Procedures, and any subsequent guidance, outlining the Officer's responsibilities for financial matters as issued by the Section 151 Officer in accordance with the Constitution
Framework Agreement	Shall mean as given by regulation 33(2) of the 14.1.a
Goods	Shall mean physical products purchased or manufactured on request
Governance Board	Shall mean a Council Officer meeting which oversees the annual governance statement and keeps the Constitution and democratic arrangements fit for purpose. It must be noted that this is an advisory and not a decision-making meeting
Grant	Shall mean a direct non-commercial financial contribution, by way of donation, to a specific beneficiary to help achieve an objective in the public interest
Innovation Partnership	Shall mean as referred to in regulation 31 of the 14.1.a
Invitation to Tender (ITT)	Shall mean the document in the form required by these Rules to seek Tenders from Candidates
Key Decision	Shall mean a decision to be taken by the Council with an associated cost or savings value at or above £500,000
Leader of the Council	Shall mean the Councillor appointed by the Council to the position of Leader for the time being or any such Officer as they may duly authorise or may be authorised to act on their behalf under the Council and Cabinet Scheme of Delegation
Legal Services	Shall mean the Council's internal legal advisory department
Light Touch Regime	Shall mean the statutory procedure set out in the Regulations (Regulations 74 to 76) regulating the award of Contracts for services listed in Schedule 3 of the

	Regulations
Member	Shall mean any councillor appointed to the Council for the time being
Most Economically Advantageous Tender (MEAT)	Shall mean evaluation criteria that reflect the qualitative, technical and sustainable aspects of a Tender submission as well as price, which can be used when reaching a Contract award decision
Negotiated Procedure without Prior Publication	Shall mean as referred to in regulation 32 of the 14.1.a
Non-commercial Considerations	Shall mean factors that must not be taken in to account at the Award Decision stage, such as the introduction of Selection and Award Criteria that have not been disclosed out the outset of the procurement or that do not meet the principle of MEAT
Non-key Decision	Shall mean a decision to be taken by the Council with an associated cost or savings value of less than £500,000
Officer	Shall mean a person employed by the Council whose responsibility it is to commission or procure Goods, Services or Works or ensure that Officers that they have line or matrix management responsibility for commissions or procures Goods, Services or Works in accordance with these Rules; and Shall mean as Procurement Officer
OJEU	Shall mean the Official Journal of the European Union
Open	Shall mean as referred to in regulation 37 of the 14.1.a
Passport to Procurement	Shall mean the procurement training available via The Learning Centre
Pre-Qualification Questionnaire (PQQ)	Shall mean the first stage of a two-stage procurement process used to assess applications for inclusion in the shortlist of Candidates who will be invited to submit a final proposal in every Restricted procedure
Procurement Documents	Shall mean the documents provided to Candidates at the outset or during the procurement process, the purpose of which is to explain the procurement opportunity, the Selection and Award Criteria, the means of making an Award Decision, the submission requirements and the terms and conditions of contract
Procurement Officer	Shall mean a Council Officer that has

	completed the Passport to Procure training and which is employed to the CPT
Quick Quote	Shall mean the procurement process to be followed within the Council's Electronic Tendering System that allows the Officer to seek Quotations from a minimum of three Candidates
Quotation	Shall mean the document in the form required by these Rules to seek Quotations from Candidates
Relevant Contract	Shall mean a Contract to which these Rules applies, which includes: the supply or disposal of Goods; the hire, rental or lease of Goods or equipment, the provision of Works and the supply of works materials, the provision of Services, including consultancy services, the granting of Works Concessions or Services Concessions Contracts
Relevant Legislation	Shall mean the Acts of Parliament referred at section <i>Relevant Legislation</i> and the Treaty Principles and includes any new and amending legislation
Relevant Policy	Shall mean the policy referred to in section <i>Relevant Policy</i> and any documents superseding that referred to
Restricted	Shall mean as referred to in regulation 38 of the 14.1.a
Scheme of Delegation	(The Council and Cabinet Scheme of Delegation) shall mean the high level overarching scheme contained within the Constitution which set outs delegations to directors. (The Officer Scheme of Delegation) shall mean the scheme which sits underneath the Council and Cabinet Scheme of Delegation, but which is not contained within the Constitution, which sets out the level of delegations below the main scheme and covers Officer delegations
Section 151 Officer	Shall mean the Officer employed in the position of chief finance officer or such Officer as they may duly authorise to act on their behalf
Selection Criteria	Shall mean the Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to be

	invited to Tender, as set out in the Selection Questionnaire
Selection Questionnaire	Shall mean the questions to be asked of Candidates to assess their suitability as issued by the Crown Commercial Services, an executive agency of the Cabinet Officer
Services	Shall mean the supply of time, effort, and/or expertise instead of a tangible product
Services Concession Contract	Shall mean a Contract concluded in writing where the payment is simply that the concessionaire has the right to profit from the Works/Services that are the subject of the Contract
Social Value	Shall mean additional benefit to the community from a commissioning / procurement process over and above the direct purchasing of Goods, Services and outcomes
Standstill Period	Shall mean the minimum ten (10) day period between the notification date of unsuccessful Candidates and the date of contract award
State Aid	Shall mean any advantage granted by the Council through its resources on a selective basis to any organisations, the result of which could potentially distort competition in the EU
Supplier	Shall mean the successful Candidate
Sustainable Procurement	Shall mean the consideration of economic, social and environmental benefits within the procurement process
Tender	Shall mean the document in the form required by these Rules to seek Invitations to Tender from Candidates
The Learning Centre	Shall mean the Council's electronic training system
Total Contract Value	The whole of the value or estimated value (in money or equivalent value) for a single purchase or Contract
Transfer of Undertaking (Protection of Employment) ("TUPE")	Shall mean the legislation that applies where responsibility for the delivery of Works or Services for the Council is transferred from one organisation to another and where the individuals involved in carrying out the work are transferred to the new employer and which seeks to protect the rights of employees in such transfers

Works	Shall mean the construction of structures of all kinds, such as buildings, highways, bridges, as well as structural renovations, extensions, and repairs
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SECTION A: GENERAL INFORMATION

1. Introduction

- 1.1. These Contract Procedure Rules and Standing Orders (the “Rules”) are the Contracting Authority’s (the “Council”) rules for the buying, renting and leasing of Goods, Services and Works and apply to all Relevant Contracts made by the Council unless otherwise specified herein.
- 1.2. The aim of these Rules is to assist Officers in achieving best practice and lawful procurement, to ensure that the Council fulfils its duty of delivering Best Value for its council tax payers and excellent outcomes for its service users.
- 1.3. The Rules also provide a basis for fair competition by providing transparent and auditable procedures to protect the Council’s reputation from any suggestion of dishonesty or corruption.
- 1.4. These Rules apply to all Officers of the Council or any companies or organisations within the Council’s control. They are part of the Council’s Constitution and therefore Officers have a duty to ensure they have fully understood them and have sufficient authority prior to commencing any procurement or contracting activity (see section 10.).
- 1.5. Officers must also ensure that any persons or organisations acting on behalf of the Council fully comply with these Rules.
- 1.6. These Rules are mandatory and shall govern and regulate the Council’s procurement and contract award procedures. Officers must also refer to the Commercial and Procurement Team (“CPT”) for more detailed guidance throughout the procurement process.
- 1.7. The expectation is of compliance to these Rules and in any cases of doubt advice must be sought from the CPT. Failure to follow these Rules may be dealt with as a breach of the Council’s standards of conduct and in certain instances may be treated as gross misconduct and give rise to action under the Council’s disciplinary policy and procedure (see section 57. 57.).
- 1.8. If upon reading the Rules the Officer discovers a lack of clarity or wishes to ensure their comprehension and compliance, they must consult with the CPT for advice and guidance. The Officer shall not be excused from these Rules on grounds of a lack of understanding.

- 1.9. The administration, monitoring and governance of these Rules shall be the responsibility of the CPT.

2. Basic principles

- 2.1. All procurement and contracting activity and Contract and supplier management must:
- a. comply with these Rules and Financial Instructions;
 - b. achieve Best Value for public money spent;
 - c. be consistent with the highest standards of integrity;
 - d. comply with the Relevant Legislation (including the Council's statutory duties and powers);
 - e. comply with any relevant Council policies;
 - f. support the Council's corporate and departmental aims; and
 - g. ensure that Non-commercial Considerations do not influence the Award Decision.
- 2.2. All Contracts must comply with the following principles of EU and UK procurement law and policy (the "Treaty Principles"):
- a. free movement of Goods and Services;
 - b. non-discrimination;
 - c. openness and transparency
 - d. equal treatment for all; and
 - e. proportionality.

3. Officer responsibilities

- 3.1. The Officer is responsible for the procurement and contracting activity and Contract and supplier management and must:
- a. comply with and ensure that their Officers comply with these Rules and Financial Instructions;
 - b. comply with the Relevant Legislation;
 - c. ensure that any persons or organisations acting on behalf of the Council also fully comply;
 - d. take account of all necessary legal, financial, procurement, technical and any other professional advice; and
 - e. complete the Passport to Procure training available through The Learning Centre.
- 3.2. Prior to commencing a procurement or contracting activity the Officer must:
- a. consider options for delivery of the required Goods, Services or Works;
 - b. ensure that there is appropriate Council authority to procure and sufficient budgetary provision approved and in place;

- c. identify the size, scope, commercial principles, term and specification of the Goods, Services and Works required;
- d. check whether the Council already has an available and appropriate Contract in place in the Contracts Register, or an appropriate national, regional or other collaborative contract, Framework Agreement or Dynamic Purchasing System is available for use, by reference to the CPT;
- e. check whether any employee, either of the Council or of a service provider, may be affected by any transfer arrangement and ensure that any Transfer of Undertaking (Protection of Employment) (“TUPE”) issues are considered and obtain legal and HR advice;
- f. for procurement processes with a Total Contract Value at and above £25,000 the Officer must conduct the procurement activity in conjunction with a certified Procurement Officer of the CPT; and
- g. for procurement processes with a Total Contract Value at and above EU Threshold there must be an accompanying procurement sourcing strategy in line with section 13. *The procurement sourcing strategy.*

4. Procurement Officer responsibilities

- 4.1. All Officers employed within the CPT will complete the Passport to Procure training, which is available through the Learning Centre. Additional and specialist training may also be required in more specialist procurement roles.
- 4.2. Once the appropriate training has been completed those Officers will be:
 - a. certified as a Procurement Officer
 - b. approved to complete specific procurement activities.
- 4.3. Officers who have not undertaken the relevant training are not permitted to undertake procurement activity on behalf of the Council without prior consultation with a certified Procurement Officer.

5. Member responsibilities

- 5.1. The Member must:
 - a. comply with and ensure that Officers comply with these Rules and Financial Instructions;
 - b. comply with the Relevant Legislation;
 - c. ensure that any persons or organisations acting on behalf of the Council also fully comply;
 - d. take account of all necessary legal, financial, procurement, technical and any other professional advice; and
 - e. comply with the Members’ Code of Conduct.

6. Prevention of corruption and collusion

- 6.1. All Officers have a duty in law to avoid any form of behaviour that might distort or restrict competition, or call in to question the award of a Contract.
- 6.2. Officers must always comply with the Council's standards of conduct and must not offer, promise, give or receive any gift or reward in respect of the award or performance of any Contract.
- 6.3. Officers are advised that any inappropriate behaviour that is deemed contrary to the Bribery Act 2010, the Fraud Act 2006 and any amending legislation, and all legislation relating to money laundering may be dealt with as a breach of the Council's standards of conduct and in certain instances will be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure, such as dismissal. Such activity may also be reported to the police.
- 6.4. Officers are advised to take practical steps to reduce the risk of anti-competitive behaviour, as highlighted by the Office of Fair Trading:
 - a. include non-collusion clauses in Contracts;
 - b. ensure sufficient credible Candidates, where practicable;
 - c. identify and investigate for suspicious bidding patterns; and
 - d. keep notes of all discussions with Candidates.

7. Conflicts of interest

- 7.1. All Officers and Members involved in a procurement exercise must declare any conflicts of interests relating to the procurement activity where they, or their spouse or civil partner, or person with whom they are living as husband and wife or civil partner, have a vested interest that could conflict with the best interests of the Council.
- 7.2. Where a conflict of interest exists the Officer shall ensure that appropriate and sufficient mitigation(s) are put in place to ensure that such conflicts do not compromise the outcome of the procurement exercise.
- 7.3. Officers shall maintain a record of all declarations of interest and mitigations in a procurement exercise as notified by Officers and Members and shall return the declarations of interest record to the CPT. Further advice and guidance can be obtained from the CPT.

8. Localism Act 2011

- 8.1. Under the Localism Act 2011^[1], and any amending legislation, community organisations can submit to local authorities an expression of interest to run local services, commonly known as the Community Right to Challenge.
- 8.2. If such an expression of interest is accepted by the Council this will trigger procurement or contracting activity, which is subject to these Rules.

SECTION B: PRE-PROCUREMENT

9. Market engagement

- 9.1. The Officer may, prior to commencing the procurement process, consult potential Candidates in general terms about the nature, level and standard of the supply and Contract and seek market views and intelligence that can be used in the planning and conduct of the procurement process provided that this does not result in the violation of the Treaty Principles, prejudice any other interested supplier/s not consulted and/or have the effect of distorting competition, which might manifest itself as:
 - a. a conflict of interest;
 - b. evidence of collusion; or
 - c. a situation which it is incapable of being resolved as a result of providing information to other potential Candidates.
- 9.2. The Officer shall take appropriate measures to ensure that competition is not distorted during the procurement process, including:
 - a. communicating to all Candidates any relevant information provided to potential Candidates consulted as part of market engagement activities; and
 - b. fixing adequate time limits for the receipt of Tenders, once the procurement process has been commenced.
- 9.3. The Officer shall take advice from the CPT to ensure that the proposed method of engaging the market or particular potential Candidates does not preclude them from participating in any subsequent procurement activity so as to ensure that the approach does not undermine Best Value, lead to the award of a dissatisfactory Contract or increase the risk of a procurement legal challenge.
- 9.4. Suppliers consulted during market engagement activities shall only be excluded from the procurement process where there are no other means to ensure compliance with this section in its entirety. Potential Candidates must be given the opportunity to prove that their involvement in market engagement activities is not capable of distorting competition. Further advice can be obtained from the CPT.

10. Pre-procurement authorisations

- 10.1. Officers must ensure, before entering in to any process that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works, be it capital or revenue, that:
- a. adequate financial provision is included in the Council's approved revenue budget or capital programme and that such expenditure continues to be available in accordance with the Financial Regulations;
 - b. the Council does not already have an available and appropriate existing Corporate Contract, Framework Agreement or Dynamic Purchasing System;
 - c. there is no other Contract, Framework Agreement or Dynamic Purchasing Systems that has been procured on the Council's behalf:
 - (i) through collaboration with other public bodies, where a competitive process has been followed that complies with the rules of the lead organisation and any Relevant Legislation, but which does not necessarily comply with these Rules; or
 - (ii) by a regional or national contracting authority or buying consortia where the process has been conducted in compliance with any Relevant Legislation; and
 - d. the Council is not already undertaking a procurement process that is within the scope of the proposed procurement;
 - e. all proposed expenditure at and above the Total Contract Value of £75,000 for Goods and Services and £150,000 for Works is reported as a Non Key Decision Report;
 - f. all proposed expenditure at and above the Total Contract Value of £500,000 is reported as a Key Decision Report.
- 10.2. Procurement processes at and above the Total Contract Value of £75,000 for Goods and Services and £150,000 for Works may only be carried out once the Non Key Decision Reports or Key Decision Reports have been countersigned by the appropriately empowered officer as set out in the Council's Scheme of Delegation.
- 10.3. For procurement processes at and above the Total Contract Value of £75,000 for Goods and Services and £150,000 for Works the Officer must consult with the CPT prior to preparing the Non Key Decision Report or Key Decision Report.

11. Total Contract Value

- 11.1. The Total Contract Value is calculated as the whole of the value or estimated value of the Contract as follows:
- a. the total amount payable, exclusive of VAT, as estimated by the Council and including any additional options, lots, renewals and/or extensions;

- b. where the Contract period is indefinite or uncertain, the value shall be calculated on the basis that the Contract will be for a period of four years and be based on the value of contracts of the same or similar type awarded during the preceding period;
- c. the estimated value of a Framework Agreement or Dynamic Purchasing System shall be the total value, exclusive of VAT, of all of the Contracts that may be awarded against that Framework Agreement or Dynamic Purchasing System;
- d. the value of a Concession Contract shall be a best estimate of the financial value to the Contractor that shall be made over the life of the arrangement;
- e. the estimated value of an Innovation Partnership shall be the total value, exclusive of VAT, of the research and development activities to take place during all stages of the envisaged partnership, as well as the Goods, Services or Works to be developed and procured at the end of the envisaged partnership.

11.2. The general rules when calculating the Total Contract Value are as follows:

- a. purchases of the same or similar type must be aggregated wherever practicable. The value of the Contract shall not be calculated with the intention of excluding it from the scope of the Rules;
- b. where there is a common requirement across the Council, the Total Contract Value shall be the aggregate of all purchases across the whole Council;
- c. a Contract shall not be sub-divided with the effect of preventing it from falling within the scope of the Rules; and
- d. the estimated value shall be calculated as at the moment at which the advertisement is sent or when the Council commences the procurement procedure, whichever is later, unless;
- e. the estimated value at the point that a Concession Contract to which the Relevant Legislation applies is awarded is more than 20% higher than the previous estimate, in which case the higher value applies.

12. Thresholds

12.1. The table below sets out the Council's competition requirements. Where the Total Contract Value is within the range of values in the second column, the award procedure and advertising requirements in the third and fourth columns must be followed.

Contract type	Total Contract Value	Procurement process	Advertising requirements	Process guidance

Goods, Services and Works	Up to and including £25,000	Must demonstrate Best Value by obtaining a minimum of one written Quotation	None	See section 21. Procurement processes requiring one written Quotation
Goods and Services	Over £25,000 but less than £75,000	Quick Quote via the Council's Electronic Tendering System	Optional	See section 22. Quick Quote
Works	Over £25,000 but less than £150,000			
Goods and Services	Over £75,000 but less than the EU Threshold	Invitation to Tender via the Council's Electronic Tendering System	Open advertisement on the Council's Electronic Tendering System and in Contracts Finder	See section 23. Procurement processes requiring Invitations to Tender
Works	Over £150,000 but less than the EU Threshold			
Goods, Services and Works	At and above the EU Threshold	Invitation to Tender as per the Relevant Legislation and via the Council's Electronic Tendering System	Open advertisement on the Council's Electronic Tendering System, in Contracts Finder and in the OJEU	See section 24. Procurement processes over the EU Threshold

13. The procurement sourcing strategy

- 13.1. For procurement processes with a Total Contract Value in excess of the EU Threshold the Officer must consult with the CPT to develop the procurement sourcing strategy.
- 13.2. For those procurements falling within the Light Touch Regime, the EU Threshold for Goods and Services shall apply.
- 13.3. The procurement sourcing strategy must, as a minimum, appraise a proposed procurement in a manner commensurate with its complexity, risk and value, by:
 - a. taking into account the requirements from any relevant Best Value review;
 - b. taking in to account any lessons learned from any market engagement activities and/or audit findings;

- c. defining the key commercial principles, objectives of the procurement, taking into account user requirements and all Relevant Policy and Relevant Legislation;
- d. considering any related risks and impacts;
- e. considering the need to obtain specific assurances regarding any incumbent contractors business continuity plans and arrangements;
- f. appraising the need for the expenditure and its priority;
- g. considering all of the associated costs, to include initial purchase costs, operating and maintenance costs, costs of associated consumables, any associated training costs and the cost of disposal;
- h. taking in to account any tax or VAT issues that may arise;
- i. when the purchase of new Goods is proposed, assessing the alternative options for repair, re-use or recycling; and
- j. considering all means of achieving the anticipated outcomes.

13.4. The procurement sourcing strategy shall result in clear recommendations, as follows:

- a. the proposed scope, key commercial principles and the procurement route to be followed;
- b. the relevant evaluation criteria, including the MEAT ratios;
- c. the relevant timescales;
- d. the means by which the Contract shall be monitored and managed; and
- e. the resources required.

13.5. The procurement sourcing strategy shall be signed off by the Officer and CPT.

13.6. Where a change is required to a procurement sourcing strategy that has already been signed off, such changes shall be incorporated in as a variation to the original, agreed between the parties and signed off by the Officer and CPT.

13.7. A template procurement sourcing strategy can be obtained from the CPT.

14. Relevant Legislation

14.1. When planning and preparing all procurement and contracting activities the Officer shall have regard to the Relevant Legislation, including, but not limited to, the following:

- a. Public Contracts Regulations 2015 (PCR 2015); [\[2\]](#)
- b. Concession Contracts Regulations 2016 (CCR 2016); [\[3\]](#)
- c. Public Services (Social Value) Act 2012; [\[4\]](#)
- d. Freedom of Information Act 2000; [\[5\]](#)
- e. General Data Protection Regulation (GDPR) and the Data Protection Act 1998; [\[6\]](#)
- f. Equality Act 2010; [\[7\]](#)

- g. Modern Slavery Act 2015; [\[8\]](#)
- h. Transfer of Undertakings (Protection of Employment) Regulations 2006 [\[9\]](#); and
- i. any industry or sector specific legislation pertaining to the subject matter of the Contract.

14.2. The aims and objectives outlined in the Relevant Legislation shall, where appropriate, be incorporated in to the procurement sourcing strategy, award methodology and terms and conditions of contract.

14.3. The Officer shall consult with the CPT for guidance when considering Sustainable Procurement and Social Value within their procurement and contracting activities.

15. Relevant Policy

15.1. When planning and preparing all procurement and contracting activities the Officer shall have regard to the Council's Relevant Policy and duties, including, but not limited to, the following:

- a. the County Plan;
- b. Value for Money Strategy;
- c. Sustainable Procurement;
- d. Social Value Policy;
- e. Fairness and Equality for All;
- f. Medium Term Financial Plan; and
- g. the relevant Service Plan.

15.2. The aims and objectives outlined in the Relevant Policy shall, where appropriate, be incorporated in to the procurement sourcing strategy, award methodology and terms and conditions of contract.

15.3. The Officer shall consult with the CPT for guidance when considering Sustainable Procurement and Social Value within their procurement and contracting activities.

16. Collaborative procurement

16.1. Where the Council takes the lead procurement role in a collaborative procurement these Rules shall apply, as a minimum.

16.2. No officer shall take part in or oblige the Council to take part or lead in a collaborative procurement without the prior agreement of the Head of Commercial and Procurement.

- 16.3. Where another public body takes the lead procurement role the rules of the lead organisation and any Relevant Legislation shall apply.
- 16.4. Where the Council enters in to any formal collaborative procurement arrangements any related collaboration agreement must protect the Council to a level proportionate to the complexity, risk and value involved, whilst at the same time providing the basis for the collaborative approach and delivery of Best Value. As a minimum the collaboration agreement should clearly state:
- a. the nature and extent of the arrangement;
 - b. legal roles and responsibilities;
 - c. arrangements for governance, accountability and dispute resolution;
 - d. the exit strategy;
 - e. the auditing arrangements;
 - f. the cost sharing mechanisms; and
 - g. the process for the induction of new partners.
- 16.5. Where the Council takes the lead procurement role in a collaborative procurement the Officer shall prepare such a collaboration agreement and ensure that it is countersigned by all partner organisations.
- 16.6. Where no such formal collaboration agreement exists the Officer must consider how the arrangements meet the requirements of these Rules, which must be documented and approved by the appropriately empowered officer as set out in the Council's Scheme of Delegation.

SECTION C: THE PROCUREMENT PROCESS

17. Framework Agreements

- 17.1. A Framework Agreement is an agreement between one or more contracting authorities (bodies governed by public law) and one or more suppliers, the purpose of which is to establish the terms governing Contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. Framework Agreements may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 17.2. The term of a Framework Agreement must not exceed four years. There must be one (single-provider framework), or more than two (2) (multi-provider framework) suppliers awarded a place on a Framework Agreement.

- 17.3. When the Council has concluded a Framework Agreement with more than one supplier or seeks to meet its requirements through an already established Framework Agreement a Contract may be awarded:
- a. by the application of the terms laid down in the Framework Agreement without re-opening competition; or
 - b. by 'further competition' between each capable supplier in full accordance with the Relevant Legislation.
- 17.4. The Officer may not select more than one Framework Agreement to procure a single Contract and only suppliers that appear on the Framework Agreement may be approached to provide the Contract.
- 17.5. Where expressly permitted by the Framework Agreement Contracts may be awarded beyond the life of a Framework Agreement provided that such Contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a Contract that significantly exceeded the life of the Framework Agreement where it was not common practice or expected by the market to do so or where a Contract is awarded for a significant period towards the end of the term of the Framework Agreement.
- 17.6. When a further competition takes place for Goods, Services or Works, that exceeds the EU Threshold the Standstill Period shall apply.

18. Dynamic Purchasing Systems

- 18.1. A Dynamic Purchasing System is similar to a Framework Agreement, save for the fact that it is operated as a completely electronic process, additional suppliers can be added throughout the life of the arrangement and the term can be for a period that is proportionate to the nature of the Goods, Services or Works to be procured under it.
- 18.2. Dynamic Purchasing Systems may be established by the Council, or by other public bodies, or public sector buying consortia, as arrangements through which the Council, along with other public bodies, may make specific purchases.
- 18.3. In opening up access to suppliers to the Dynamic Purchasing System the officer must:
- a. offer unrestricted, direct and full access to the Procurement Documents by electronic means at all times throughout the life of the Dynamic Purchasing System;
 - b. allow new applications to be submitted throughout the life of the Dynamic Purchasing System;

- c. complete the evaluation of a newly submitted application within ten days of its receipt;
- d. admit to the Dynamic Purchasing System all new suppliers that satisfy
- e. the Selection Criteria, and
- f. notify suppliers of their admission to the Dynamic Purchasing System or rejection of their application.

- 18.4. In awarding a Contract under the Dynamic Purchasing System the Officer must:
- a. place an advertisement for the Contract to all suppliers admitted to the Dynamic Purchasing System or to those admitted to a specific lot, where relevant;
 - b. seek Tenders from suppliers and award the Contract in accordance with the Relevant Legislation.

19. Use of Framework Agreements and Dynamic Purchasing Systems

- 19.1. Where a Framework Agreement or Dynamic Purchasing System has been approved as suitable by the CPT the Officer must use it for the making of the proposed purchase.
- 19.2. The use of a Framework Agreement or Dynamic Purchasing System may be appropriate where:
- a. Quotations or Tenders are regularly obtained for the same or similar types of Goods, Services or Works; and
 - b. it is not practical or appropriate that the Goods, Services or Works in question be aggregated into a single requirement and/or competed under one procurement; and
 - c. the Total Contract Value of the Goods, Services or Works, if aggregated, would exceed the EU Threshold.
- 19.3. Where the Council seeks to establish a Framework Agreement or Dynamic Purchasing System it shall be let and used in full accordance with the Relevant Legislation and terms of the Framework Agreement or Dynamic Purchasing System.

20. Standard Procurement Documents

- 20.1. The Officer must use standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents to conduct any procurement or contracting activity that will or may result in the incurring of any expenditure for the supply of Goods, Services or Works.

- 20.2. Standard Procurement Documents are stored and maintained by the CPT and can be obtained in consultation with a certified Procurement Officer.
- 20.3. Where it is necessary to vary the standard Procurement Documents or relevant Framework Agreement or Dynamic Purchasing System documents the Officer must consult with the CPT.
- 20.4. Where it is necessary to vary the standard terms and conditions of contract or relevant Framework Agreement or Dynamic Purchasing System documents the Officer must consult with Legal Services.

21. Procurement processes requiring one written Quotation

- 21.1. For Contracts at and above the Total Contract Value of £25,000, where there is a suitable Framework Agreement, Dynamic Purchasing System or corporate Contract approved by the CPT that Framework Agreement, Dynamic Purchasing System or corporate Contract shall be used, provided that such a course of action achieves the principles of Best Value.
- 21.2. Where no suitable Framework Agreement, Dynamic Purchasing System or corporate Contract is available then achieving Best Value is the primary objective and the Officer is required by these Rules to achieve a minimum of one written Quotation to demonstrate compliance.
- 21.3. Where compliance with the principle of Best Value cannot be demonstrated by seeking one written Quotation, the Officer shall seek more than one and sufficient to demonstrate compliance.
- 21.4. The Officer may choose to either:
 - a. place an order with the selected supplier on the basis of a pre-quoted price (such as in a supplier's catalogue) having satisfied themselves that the price to be paid represents Best Value; or
 - b. select a minimum of one potential Candidate to be invited to submit a Quotation.
- 21.5. Where the Officer is unable to select a potential Candidate and/or demonstrate Best Value the procedure set out at *section 22. Quick Quote* must be followed.
- 21.6. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the Council's standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these.

- 21.7. Unsuccessful Candidates shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.
- 21.8. The Officer must document their decision-making process to demonstrate compliance with this *section 21. Procurement processes requiring one written Quotation*.
- 21.9. The Officer must inform the CPT of the Contract details, such that a record can be made on the Council's Contracts Register.

22. Quick Quote

- 22.1. For Contracts over the Total Contract Value of £25,000 but less than £75,000 for Goods and Services or £150,000 for Works where there is a suitable Framework Agreement, Dynamic Purchasing System or corporate Contract approved by the CPT that Framework Agreement, Dynamic Purchasing System or corporate Contract shall be used.
- 22.2. Where no suitable Framework Agreement, Dynamic Purchasing System or corporate Contract is available then achieving Best Value remains the primary objective and the Officer is required by these Rules to achieve a minimum of three Quotations via the Quick Quote process on the Council's Electronic Tendering System.
- 22.3. Quotations must be sought inviting at least three Candidates registered on the Electronic Tendering System for that type of supply.
- 22.4. The Officer must not include a PQQ stage within a procurement of this nature.
- 22.5. In the event that no suitable Candidates can be found on the Council's Electronic Tendering System the Officer may choose to place an advertisement via the system and in Contracts Finder so as to attract appropriate Candidates to bid.
- 22.6. If the Officer cannot obtain three Quotations the Officer must satisfy themselves that they have achieved Best Value and must seek approval from the appropriately empowered officer as set out in the Council's Scheme of Delegation. Justification and approval to proceed must be recorded and available for inspection.
- 22.7. The Procurement Documents must include:
 - a. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;

- b. the specification;
- c. the pricing schedule;
- d. the ordering procedures;
- e. commercially confidential information schedules;
- f. completion requirements;
- g. the Selection Questionnaire;
- h. the Award Criteria;
- i. the submission requirements; and
- j. a named contract manager.

22.8. Acceptance will be notified to the successful supplier by issue of a Purchase Order. The Purchase Order must refer to the Council's standard terms and conditions of contract, except for where the complexity of the Contract requires more bespoke terms, in which case the Purchase Order shall make separate reference to these.

22.9. Unsuccessful Candidates shall be notified and, at their request, shall be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.

22.10. A Contract award record must be made on the Council's Contracts Register and Contracts Finder.

23. Procurement processes requiring Invitations to Tender

23.1. For Contracts over the Total Contract Value of £75,000 for Goods and Services or £150,000 for Works but less than the EU Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by the CPT that Framework Agreement or Dynamic Purchasing System shall be used.

23.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available the Officer is required by these Rules to invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System and in Contracts Finder.

23.3. The Officer must not include a PQQ stage within a procurement of this nature.

23.4. The advertisement must include:

- a. the time period within which interested parties may express an interest in Tendering; and
- b. the method by which such interest shall be expressed.

23.5. An Invitation to Tender shall be sent to all parties who have expressed an interest, specifying a reasonable period for Tenders to be returned.

- 23.6. The Procurement Documents must include:
- a. instructions to Candidates;
 - b. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;
 - c. form of tender;
 - d. certificate of non-collusion;
 - e. the specification;
 - f. the pricing schedule;
 - g. commercially confidential information schedules;
 - h. completion requirements;
 - i. the Selection Questionnaire;
 - j. the Award Criteria;
 - k. the submission requirements; and
 - l. a named contract manager.
- 23.7. The successful supplier and unsuccessful Candidates shall be notified of the outcome by issue of a letter sent electronically via the Council's Electronic Tendering System. Unsuccessful Candidates shall at their request be given the reason why they were unsuccessful without breaching the commercial confidentiality of other Candidates.
- 23.8. A Purchase Order must be raised.
- 23.9. A Contract award record must be made on the Council's Contracts Register and Contracts Finder.

24. Procurement processes over the EU Threshold

- 24.1. For Contracts at and above the EU Threshold where there is a suitable Framework Agreement or Dynamic Purchasing System approved by the CPT that Framework Agreement or Dynamic Purchasing System shall be used.
- 24.2. Where no suitable Framework Agreement or Dynamic Purchasing System is available the Officer is required by these Rules to invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System, in Contracts Finder and in the OJEU.
- 24.3. In most cases, the Open procedure, Restricted procedure or Competitive Procedure with Negotiation shall be used, but in certain specialist cases, the Negotiated Procedure without Prior Publication, Competitive Dialogue procedure or Innovation Partnership procedure shall apply. Advice on which procedure is appropriate to the specific case must be sought from the CPT in conjunction with Legal Services.

- 24.4. In all cases the Relevant Legislation shall be followed to conduct the procurement and contracting activity.
- 24.5. The Procurement Documents must include:
- a. instructions to Candidates;
 - b. the Council's standard terms and conditions of contract, the standard form of contract and/or bespoke terms;
 - c. form of tender;
 - d. certificate of non-collusion;
 - e. the specification;
 - f. the pricing schedule;
 - g. commercially confidential information schedules;
 - h. completion requirements;
 - i. the Selection Questionnaire;
 - j. the Award Criteria;
 - k. the submission requirements;
 - l. any other requirements as mandated by the Relevant Legislation; and
 - m. a named contract manager.
- 24.6. The successful supplier and unsuccessful Candidates shall be notified in accordance with the Relevant Legislation and a Standstill Period shall be observed.
- 24.7. A Purchase Order must be raised.
- 24.8. A Contract award record must be made on the Council's Contracts Register, in Contracts Finder and in the OJEU.

25. Light Touch Regime

- 25.1. Certain Services Contracts, as defined in the Relevant Legislation, are not subject to its full rigour. However, the Council will remain bound by the Treaty Principles and therefore Officers must ensure that the procedure used is compliant in all respects.
- 25.2. As a minimum the Officer must invite Tenders from any and all qualified Candidates by advertising the opportunity via the Council's Electronic Tendering System, in Contracts Finder and in the OJEU.
- 25.3. Where the Officer believes that their Contract falls within the Light Touch Regime they must consult with the CPT prior to commencing any procurement or contracting activity.

26. Selection Criteria

- 26.1. The Selection Questionnaire shall be used to assess a Candidate's ability to meet the Council's requirements or minimum standards of suitability, capability, legal status or financial standing.
- 26.2. Subject to this *section 26. Selection Criteria* for all Contract over the Total Value of £25,000 the Officer shall include the Selection Questionnaire within the Procurement Documents.
- 26.3. For Contracts with a Total Contract Value of less than or equal to £25,000 the Officer may choose to include the Selection Questionnaire within Quotations and may take advice from the CPT where necessary.
- 26.4. In any case where the Selection Questionnaire is used its use must be relevant and proportionate to the subject matter of the Contract (going no further than is needed to achieve the Council's objective). In particular, where the Total Contract Value is less than the EU Threshold, the Officer must make an assessment of the requirements of the Contract and decide how far it would be appropriate to use any or all of the questions in the Selection Questionnaire.
- 26.5. Where the Total Contract Value is at or above the EU Threshold the questions in Part 3 of the Selection Questionnaire are optional and should be used only if each such question is:
- a. relevant to the subject-matter of the procurement; and
 - b. proportionate.
- 26.6. Selection Criteria must not include:
- a. Award Criteria;
 - b. Non-commercial Considerations;
 - c. criteria that is not related and proportionate to the subject matter of the Contract.
- The Officer shall consult with the CPT for advice and guidance on the appropriate use of the Selection Questionnaire and Selection Criteria prior to issuing the Procurement Documents.
- 26.7. The selection of Candidates shall only be on the basis of the Selection Questionnaire and only where the Selection requirements are made available to potential Candidates within the Procurement Documents.
- 26.8. The Officer may reject Candidates that fail against the mandatory and discretionary criteria as detailed within the Selection Questionnaire only in conjunction with the CPT and Legal Services, where relevant.

27. Award Criteria

- 27.1. The Officer shall include the Award Criteria within the Procurement Documents.
- 27.2. The Award Criteria shall be used to assess a Candidate's ability to deliver the Council's requirements under the Contract, achieving Best Value.
- 27.3. The Contract shall be awarded to the Candidate whose Tender best meets the Award Criteria.
- 27.4. Contract Award must be made on the basis of MEAT, taking criteria that are proportionate to and linked to the subject matter of the Contract, which might include:
- a. quality, including technical merit, aesthetic and functional characteristics, accessibility, design for all users, social, environmental and innovative characteristics and trading and its conditions;
 - b. organisation, qualification and experience of staff assigned to performing the contract, where the quality of the staff assigned can have a significant impact on the level of performance of the contract;
 - c. after-sales service and technical assistance, delivery conditions such as delivery date, delivery process and delivery period or period of completion; and
 - d. whole life costs (the initial price, running costs, maintenance, disposal, etc. for the duration of the Contract).
- 27.5. The Officer shall consult with the CPT for advice and guidance on the appropriate use of the Award Criteria prior to issuing the Procurement Documents.
- 27.6. For Quotations up to and including Total Contract Value of £25,000 the successful supplier may be selected on the basis of lowest price.
- 27.7. The award of the Contract shall only be on the basis of the Award Criteria and only where the Award requirements are made available to potential Candidates within the Procurement Documents.

28. Most Economically Advantageous Tender

- 28.1. Award Criteria shall be comprised of both commercial and quality considerations, which shall be represented in the Procurement Documents as a ratio of 60:40 weighted in favour of price, although the Officer may vary the given ratio in favour of price.

- 28.2. Where the Officer wishes to vary the given ratio in favour of quality, the Officer must gain the approval of the CPT to do so.
- 28.3. Where the Officer and the CPT is unable to reach an agreement and therefore the Officer fails to gain the CPT's approval, the Officer must develop a business case justifying the deviation and obtain the approval of the Director of Commercial and Business Services.

29. Performance bonds and parent company guarantees

- 29.1. The Officer must consult the Section 151 Officer concerning whether a performance bond is needed where:
- a. the Total Contract Value is at or above £1,000,000; or
 - b. where it is proposed to make stage or other payments in advance of receiving the whole of the Contract and there is a concern about the stability of the Candidate.
- 29.2. The Officer must consult the Section 151 Officer concerning whether a parent company guarantee is needed where:
- a. the Total Contract Value exceeds the EU Threshold; or
 - b. the award of the Contract is based on the evaluation of the parent company or there is some concern about the stability of the Supplier.

30. Terms and conditions of Contracts

- 30.1. All Contracts, regardless of value, shall be accompanied either by the Council's:
- a. standard terms and conditions of contract; or
 - b. the standard form of contract; or
 - c. bespoke terms.
- 30.2. Whilst some of the terms of the Contract are able to be amended or deleted, the following is a list of all of the terms that are deemed to be mandatory and must therefore be included:
- a. no assignment of the Contract without the written consent of the Council;
 - b. no sub-contracting of the Contract without the written consent of the Council;
 - c. cancellation in the event that gratuities, inducements or any other type of consideration in relation to the Contract are offered to an employee, member or any persons or organisations acting on behalf of the Council;
 - d. compliance with all Relevant Legislation, including, but not limited to:
 - (i) Data Protection Act 1998
 - (ii) Freedom of Information Act 2000 and Environmental Information Regulations 2004
 - (iii) Fraud Act 2006

- (iv) The Equalities Act 2010
- (v) The Bribery Act 2010
- (vi) Modern Slavery Act 2015
- (vii) Legislation pertaining to money laundering;
- (viii) and any subsequent legislation that seeks to amend or replace the Relevant Legislation;
- e. a statement of the Council's obligations towards its transparency requirements under the Freedom of Information Act 2000;
- f. compliance to health and safety regulations;
- g. termination,
 - (i) in the event of bribery or corruption, the Contract must include a clause empowering the Council to terminate the Contract and to recover from the Supplier the amount of any loss resulting from such termination, and
 - (ii) for all Contracts in excess of the EU Threshold, the Contract must include the termination provisions set out in the Relevant Legislation;
 - (iii) to include on termination, the repatriation of personal data to the Council as the data controller;
- h. indemnity and Insurance;
- i. protection of personal data – including, where relevant, reference to export of data outside the European Economic Area (Privacy Shield USA) and/or the General Data Protection Regulation (GDPR);
- j. confidentiality of sensitive commercial information;
- k. dispute procedure;
- l. authorised users;
- m. governing law;
- n. prompt payment and the obligation for Suppliers to pay their sub-contractors promptly, in accordance with the Small Business, Enterprise and Employment Act 2015;
- o. employee vetting, where appropriate; and
- p. where the Contract is for the employment of persons or organisations acting on our behalf, a statement that obliges them to fully comply with these Rules, as per *section 1.5*.

- 30.3. Where the Contract provides for the appointment of a nominated sub-contractor the Officer will ensure that the terms and conditions of contract are passed to the main contractor in a way that ensure that they are responsible for ensuring that the nominated sub-contractor is subject to and meets the same requirements as the main contractor, including, but not limited to, the following:
- a. the mandatory clauses identified in these Contract Procedure Rules and Standing Orders;
 - b. supporting the local economy and promotion of local employment; and
 - c. vetting to Enhanced Disclosure level where required.

31. Protection of personal data

- 31.1. Officers must take all reasonable steps, including incorporation of clauses into Contracts with Suppliers, to ensure that the personal data of individuals is protected in accordance with the Data Protection Act 1998, allied legislation and Codes of Practice from the Information Commissioner's Office (ICO). Officers must ensure the Councils' obligations and risks, in respect of personal data, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Information Governance Team.

32. Confidentiality of sensitive commercial information

- 32.1. Officers must take all reasonable steps, including incorporation of clauses into Procurement Documents and Contracts with Suppliers, to ensure that the confidentiality of sensitive business information such as details of pricing and trade secrets are protected in accordance with the Relevant Legislation and guidance. Officers must ensure the Councils' obligations and risks, in respect of the business information of both the Council and Suppliers, are considered and indemnities are sought where appropriate. More information and guidance can be obtained from Legal Services and the Information Governance Team.

33. Submission, receipt and opening of Tenders

- 33.1. All Contracts at and above the Total Contract Value of £25,000 shall be submitted electronically through the Council's Electronic Tendering System.
- 33.2. Tenders received after the stated date and time shall not be accepted under any circumstances. For the purposes of these Rules the time will be deemed to be at the first stroke, e.g. noon shall be 12:00:00.
- 33.3. Submissions shall be verified and opened on the Council's Electronic Tendering System by an appropriately empowered Procurement Officer as set out in the Council's Scheme of Delegation.

34. Evaluation of Quotations and Tenders

- 34.1. All submissions received for Contracts at and above the Total Contract Value of £25,000 shall be evaluated in accordance with the pre-determined Selection and Award criteria, as set out in the Procurement Documents.
- 34.2. The Officer shall ensure that subject-matter experts or appropriately experienced Officers evaluate all submissions in accordance with the pre-determined Selection and Award criteria. For procurement processes with a Total Contract

Value at and above £25,000 the Officer engage with a certified Procurement Officer of the CPT for assistance in managing the evaluation procedure.

- 34.3. The Officer is obliged to check the arithmetic in compliant submissions. Where arithmetical errors are found they must be notified to the Candidate, who must be requested to confirm or withdraw their submission.
- 34.4. The Officer must notify all Candidates in writing simultaneously and as soon as possible of the intention to award the Contract. Where the Total Value of the Contract is in excess of the EU Threshold then the Relevant Legislation shall be adhered to in respect of the content of the letter and the Standstill Period.
- 34.5. Apart from the debriefing required or permitted by these Rules the confidentiality of submissions and the identity of Candidates must be preserved at all times and information about one Candidate's submission must not be supplied to another.
- 34.6. The results of the Tender evaluation must be recorded and retained on the Tender file.

35. Presentations, demonstrations and site visits

- 35.1. The default position should be not to use presentations or conduct site visits. If, however, it is required this must be declared as part of the Award Criteria in the Procurement Documents. Where there is an aspiration to hold a presentation, demonstration or site visit the Officer must consult the CPT for advice.
- 35.2. Where used, all Candidates must be invited to present or be included in any site visits and the Officer must prepare any questions to be asked of Candidates in accordance with the Treaty Principles and send to them in advance, unless presentations, demonstrations and site visits will be a key part of a complex procurement route, in which case the Officer may invite only shortlisted Candidates to participate (a complex procurement route shall mean a restricted, competitive procedure with negotiation, competitive dialogue or innovation partnership, as defined by the Relevant Legislation).

36. Abnormally low bids

- 36.1. The Officer may reject a Tender as being abnormally low, but only after they have first:
 - a. consulted with the CPT;
 - b. requested in writing an explanation from the Candidate for those parts of the Tender considered abnormally low;
 - c. taken account of the evidence provided in response to such a request;

- d. verified to the Candidate those parts of the Tender considered abnormally low;
- e. and only where the explanation provided by the Candidate does not satisfactorily account for the low price or costs proposed.

36.2. Where the Officer establishes that the Tender is abnormally low because the Candidate has obtained State Aid, the Tender will be rejected on that basis, but only after the Officer has first:

- a. consulted with the Candidate;
- b. consulted with Legal Services; and
- c. where the Candidate is unable to prove that the aid in question is compatible with the regulations governing State Aid.

36.3. Where the Officer rejects a Tender on the basis of its incompatibility with the State Aid regulations they will inform the European Commission, following consultation with the Legal Services and CPT.

37. Contracts exceeding the written estimate

37.1. Where the lowest Quotation or Tender obtained exceeds the threshold under which the procurement activity has been conducted the Officer must consult with the CPT for approval to proceed or restart the process.

38. Clarification

38.1. Seeking clarification of a Tender to Candidates is permitted with the approval of the CPT:

- a. in writing via the Council's Electronic Tendering System;
- b. at a meeting, provided that a written record is made of the meeting; and
- c. in a way that is fair, transparent and equal to all Candidates.

38.2. There must be no significant variation of the Procurement Documents or standard terms and conditions of contract following such clarification.

38.3. Where a clarification results in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered.

39. Post-Tender negotiation

39.1. Discussions with Candidates after submission of a Tender and before the award of a Contract with a view to obtaining adjustments in price, delivery or content must be the exception rather than the rule.

- 39.2. The Officer must seek approval from the CPT to proceed to post-Tender negotiation.
- 39.3. Any approved negotiation must be conducted in line with the relevant Legislation and Treaty Principles.
- 39.4. Negotiations must be conducted by a team of at least two Officers, one of whom must be from a team or department independent to that leading the negotiations, preferably a member of the CPT. Where the second Officer chosen to participate in the negotiations is not a member of the CPT, the Officer must request the CPT's approval of the proposed personnel.
- 39.5. Wherever practicable Officers must ensure that there are recorded minutes of all post-Tender negotiation meetings and that both parties agree actions in writing, which will assist the Council in significantly reducing the risk of successful legal challenges on the grounds of discriminatory negotiation.
- 39.6. Where a post-Tender negotiation results in a fundamental change to the specification or terms and conditions of contract the Contract must not be awarded but re-tendered.

40. Electronic auctions

- 40.1. Electronic auctions may be used as part of the procurement process as a means of driving additional commercial benefits and as part of the Award Criteria.
- 40.2. The use of electronic auctions must be specified within the Procurement Documents and the Award Criteria associated with the auction must be clearly defined.
- 40.3. Where the Council uses an electronic auction to enable Candidates to adjust their Tender price in the light of information from the Tender prices submitted by competing Candidates then all such alterations to Candidates' pricing will be accepted as permitted by the auction process.

41. Freedom of Information Act 2000 and Environmental Information Regulations 2002

- 41.1. There is a presumption that contractual information should be made available for disclosure if requested in accordance with the Freedom of Information Act 2000 and allied legislation unless a relevant exemption is engaged. However, Officers should be aware of; the potentially anti- competitive implications of disclosing detailed contractual information in the period around a procurement process

taking place, and the confidentiality specifically applied to some business information identified in some Contract documentation.

- 41.2. Before responding to requests for information the Officer must seek guidance from the Information Request Team, Information Governance Team and Legal Services.

SECTION D: CONTRACT AWARD

42. Intention to award a Contract

- 42.1. For Contracts over the EU Threshold, Officers must allow Candidates a mandatory minimum Standstill Period of ten (10) calendar days for electronic Tenders from notification to all Candidates before entering into a contractually binding agreement with the successful Supplier(s). It is most important that any communication with the preferred Candidate(s) does not constitute a Contract award, conditional or otherwise.
- 42.2. Following any Standstill Period, if appropriate, an OJEU award notice must be placed by the CPT.
- 42.3. All Candidates must be simultaneously notified in writing of the award and all letters to informing them of the outcome of the Tender must comply with the Relevant Legislation.
- 42.4. Additional written or verbal debriefing must not be offered to Candidates. Where debriefing is requested by Candidates the Officer must seek advice from the CPT before responding to the request.
- 42.5. Any complaints, correspondence threatening challenge or formal court proceedings challenging the decision, received from unsuccessful Candidates or other third parties must be immediately submitted to the CPT and Legal Services for review and response.
- 42.6. A Standstill Period is not necessary for Tenders below the EU Threshold or where they have been subjected to the Light Touch Regime. However, the Officer may use their discretion and include such a period as is required. Such discretion shall only be granted where the Officer has consulted with the CPT. Where the CPT advises that an Standstill Period is necessary to minimise the risk of a legal challenge, the Officer will include the period in the procurement process. In any case, all Candidates must be simultaneously notified in writing of the outcome of the Tender.

42.7. Where an unsuccessful Candidates requests debrief information the Officer may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the Officer to do so for under EU Threshold Tenders.

43. Approval to award

43.1. Approval to award a Contract, Framework Agreement or Dynamic Purchasing System can only be approved as follows:

Total Contract Value	Approval to award	Key Decision/Non Key Decision
At and above £5,000,000	Cabinet or, in case or urgent business need, the Leader	Key Decision
Over £500,000 but less than £5,000,000	Relevant SLT officer(s) or Cabinet Member(s)	Key Decision
Over £250,000 but less than £500,000	Officer scale 6 or above	Key Decision
Over £25,000 but less than £250,000	Officer scale 8 or above	Non Key Decision
Up to and including £25,000	Officer scale 13 or above	Non Key Decision

43.2. Where approval is sought to award a Framework Agreement or Dynamic Purchasing System, approval may also be sought to award the subsequent Call-off Contracts as part of the same decision report. Where this is not observed, Officers must seek approval to award Call-off Contracts exceeding the EU Threshold.

44. Signing of Contract

44.1. Officers must ensure that all the necessary permissions are in place (e.g. funding commitments, licences, and leases) before the Contract is entered into.

44.2. All Contracts made on behalf of the Council must be in writing and cannot be made by an email. Officers must ensure that:

- a. for Contracts up to and including the Total Contract Value of £25,000 a Purchase Order referring to the Council's standard terms and conditions of contract; or
- b. for Contracts over the Total Contract Value of £25,000 a Purchase Order and a signed Contract, is in place before any Goods, Services or Works are requested or allowed to begin.

- 44.3. Contracts must only be signed by two (2) Officers with the delegated authority to do so under the Council's Scheme of Delegation.
- 44.4. The Officer responsible for securing signatures must ensure that the person signing on behalf of the Supplier has the authority to bind it.
- 44.5. A Contract must be sealed with the common seal of the Council where:
- a. the Council may wish to enforce the Contract more than six (6) years after its end (e.g. construction works); or,
 - b. the price paid or received under the Contract is a nominal price and does not reflect the value of the goods, services or works; or
 - c. the Total Value is at and above £500,000.
- 44.6. Where Contracts are completed by each side adding their formal seal, the fixing of the Council's seal must be witnessed by or on behalf of the County Solicitor. Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal and a final completed original copy must be returned to Legal Services for storage. The seal must not be affixed without the appropriate authority in accordance with the Council's Constitution.

45. Letters of intent

- 45.1. Letters of Intent shall only be used in exceptional circumstances and may only be signed by Officers with delegated authority to do so under the Council's Scheme of Delegation. Such exceptional circumstances shall only be determined by the CPT in conjunction with Legal Services and as such the Officer must seek advice on their acceptable use.

46. Early Termination of Contract

- 46.1. The date on which the Contract will terminate, and the terms on which the Contract may be terminated early (e.g. for breach of Contract) must be clearly described within the Contract.
- 46.2. Contracts may only be terminated early in accordance with their terms and conditions of contract, with approval in accordance with the Council's Scheme of Delegation.

47. Variation, extension, assignment and novation

- 47.1. Variation
- a. A variation to a Contract may involve:
 - (i) a change to the specification,

- (ii) a one-off item of work or particular service, or
 - (iii) change in terms affecting the Contract.
- b. Variations must not exceed the scope, financial value or duration of the advertised Contract.
- c. Where the Officer considers that a proposed variation may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the CPT.
- d. Variations to Contracts must be approved and signed by the relevant officers in accordance with the Council's Scheme of Delegation.

47.2. Extension

- a. Extensions of Contracts may only be made where:
 - (i) there is budgetary provision; and
 - (ii) Best Value can be clearly demonstrated; and
 - (iii) for Contracts below the EU Threshold:
 - the extension is within the scope (description of Goods, Services or Works, duration and Total Contract Value); and
 - there is a provision stipulated in the original Contract for an extension;
 - the extension does not cause the Total Contract Value to exceed the relevant EU Threshold; or
 - a waiver request form is completed where no specific provision exists in the Contract;
 - (iv) for Contracts at or over the EU Threshold:
 - the extension is within the scope (description of Goods, Services or Works, duration and Total Value) of the original Contract; and
 - the original Contract Notice advertised and the Contract permits the extension.
- b. Where the Officer considers that a proposed extension may materially change or exceed the specification, price or duration of a Contract, advice must be obtained from the CPT.
- c. Extensions to Contracts must be approved and signed by the relevant officers in accordance with the Council's Scheme of Delegation.

47.3. Assignment and Novation

- a. In the event of the Officer becoming aware that a Supplier is entering into a change of control, insolvency, bankruptcy, receivership or liquidation the Officer must inform the CPT and Legal Services immediately. The Supplier shall only be permitted to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior written consent of the Council. The Council reserves the right to decline a Supplier that is deemed to be not suitable. If a suitable alternative is not identified the Contract must be re-Tendered.

47.4. General

- a. Any approved variation or extension must be by deed or Contract variation, which will be contractually binding on both parties.
- b. Variations, extensions, assignments and novations must only be signed by officers with the delegated authority to do so by reference to the Council's Scheme of Delegation.
- c. For Contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in additional costs exceeding 10% of the original contract value or £75,000 (whichever is the greater) shall be subject to the prior approval of an appropriately empowered Officer under the Council's Scheme of Delegation in consultation with the CPT and Legal Services.
- d. For Contracts with a Total Contract Value exceeding the EU Threshold, any variation or extension to a Contract which in aggregate results in:
 - (i) additional costs exceeding 20% of the original contract value or £150,000 (whichever is the greater);
 - (ii) a significant delay in the time for completion; or
 - (iii) significant risks not initially identifiedthis shall be reported at the earliest opportunity to the relevant Cabinet Member and/or Section 151 Officer (where there is a financial implication) and shall be subject to their approval in conjunction with an appropriately empowered Officer under the Council's Scheme of Delegation.
- e. The Officer responsible for securing the signature/s must ensure that the person signing on behalf of the Supplier has authority to bind it.
- f. The Officer is responsible for ensuring that all variations, extensions, assignments and novations are stored with the original signed and dated Contract.

48. Records of Tenders and Contracts

- 48.1. The Officer must keep and maintain records in respect of each Tender and Contract (such records should include the materials pertaining to all of the stages of the procurement cycle: from the time the project begins prior to procurement until the point at which the Contract is signed or a decision is made not to award a Contract).
- 48.2. The Officer shall ensure that original and signed copies of the Contract and Tenders received are safely stored and accessible in the event of a procurement audit or where reference to it needs to be made for contract management purposes. Where electronic versions of Tenders and Contracts are made they shall be stored in the Council's electronic storage and management system.
- 48.3. A Contracts Register shall be held by the CPT with details of Contracts, Framework Agreements or Dynamic Purchasing Systems entered into by the Council. It will be the responsibility of the Officer to ensure that details of Contracts, Framework Agreements or Dynamic Purchasing Systems are provided to the CPT for entering onto the Contracts Register.
- 48.4. The Officer must ensure that originals and copies of all Tender and Contract documentation adhere to the Council's retention schedule.

SECTION E: CONTRACT MANAGEMENT

49. Contract manager

- 49.1. A contract manager must be appointed for all new Contracts and named in the Procurement Documents and Contract.
- 49.2. Contracts shall be managed in accordance with best practice (please refer to the Council's Contract Management Toolkit) in the area of supplier relationship and contract management and contemporary advice and guidance provided by the Commercial Contract Management Team.

50. Contract operations manual and plan

- 50.1. Officers shall ensure that all Contracts with a Total Contract Value over the EU Threshold have a suitable written contract operations manual and plan in place before signing the Contract, which shall be prepared to a level of detail proportionate to the risk and value of the Contract.
- 50.2. As a minimum the contract manager shall monitor the Contract in respect of:

- a. performance;
- b. compliance with the specification and terms and conditions of contract;
- c. cost and Best Value;
- d. user satisfaction;
- e. financial standing;
- f. insurances; and
- g. licenses and permissions to complete the Contract.

51. Risk management

- 51.1. For all Contracts with a Total Contract Value over the EU Threshold the contract manager must maintain a risk register during the contract period highlighting the risk and mitigation strategy for the Contract and, for identified risks, must ensure contingency or risk mitigation measures are in place.

52. Payment

- 52.1. The contract manager shall make arrangements for the Supplier to receive payment in accordance with the terms and conditions of contract.

53. Liquidated and ascertained damages

- 53.1. Liquidated and ascertained damages must be deducted for all periods of delay in line with the terms and conditions of contract.

54. Dispute

- 54.1. The contract manager shall consult with the Head of Commercial and Procurement and Legal Services when they become aware that any significant dispute or claim may arise in relation to a Contract.
- 54.2. No liability shall be accepted without the approval of the Officer with the delegated authority to do so under the Council's Scheme of Delegation and as set out at *section 43. Approval to award*.
- 54.3. For the purposes of this *section 54. Dispute* significant shall mean

55. Exemptions

- 55.1. These Rules apply to all Relevant Contracts made by or on behalf of the Council except for:
- a. Grants which the Council may receive or make except where the Grant is the form of payment for a Contract for Services where the Council specifies the output or outcomes to be delivered. However, it must be

noted that the Officer cannot simply choose to treat procurement as a Grant to deliberately avoid the application of these Rules. Any Officer found to be conducting their procurement activity shall be subject to rule *Non-compliance to the Rules*

- b. acquisition, disposal or transfer of any interest in land;
- c. Goods, Works or Services procured in a genuinely unforeseeable emergency (e.g. natural disasters such as flooding or fires, immediate changes to legislation) because of a need to respond to events that were beyond the genuine control of the Council. For Contract of this nature that exceeds the EU Threshold the Officer shall consult the CPT as soon as is practical. Any such Contract entered into by the Council must not be for a term of more than six (6) months. It must be noted that not allowing sufficient time to Tender shall not be considered an emergency;
- d. Contracts for direct employment;
- e. Contracts for the execution of mandatory works by statutory undertakers, such as utilities providers;
- f. Contracts between entities within the public sector where such Contracts are to be awarded in accordance with Regulation 12 of the Public Contracts Regulations 2015 or Regulation 17 of the Concession Contracts Regulations 2016 and providing that the Officer has first obtained the advice of the CPT and Legal Services as to the application of the Relevant Legislation;
- g. Contracts which have been procured on the Council's behalf, which have been approved for use by the CPT;
- h. dealings in the money market or obtaining finance;
- i. Contracts for the appointment of legal counsel or expert witnesses in litigation, arbitration, conciliation or in the preparation of such, but not in transactional or advisory work;
- j. arrangements with Ofsted for the inspection of a school;
- k. Contracts for national subscription services and/or data license agreements where the Contract Council's needs are only capable of being met by one Supplier and where the Contract assists the Council in meeting its statutory duties;
- l. Contracts to cover residential and nursing care which the Council has a duty to provide under the relevant legislation, if in the opinion of the Section 151 Officer in conjunction with the CPT, it is considered to be in the Council's interests and demonstrates Best Value.

55.2. All exemptions shall be reported to and recorded by the CPT and shall be authorised by the appropriately empowered Officer under the Council's Scheme of Delegation. For Contracts at and above £75,000 for Goods and Services and £150,000 for Works where an exemption is necessary all such exemption reports shall be reported to the Governance Board.

55.3. Such exemptions are not necessarily exempt from the application of the specific requirements of the Relevant Legislation and specific advice must be sought from the CPT and Legal Services where the Officer is in doubt.

56. Waivers

56.1. Whilst the requirements of these Rules are intended to be followed in respect of all Relevant Contracts the requirement to undertake a competitive tendering exercise may be waived by the CPT and/or Governance Board in the following highly exceptional circumstances:

- a. life or death – there is a significant chance that the life or health of officers, members or the public will be put at real risk;
- b. increased costs / loss of income – the Council will incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council);
- c. limited markets – supply of the product or service is demonstrably restricted to one or few businesses; or
- d. reputation – the Council would be criticised for failing to act promptly.

56.2. For Contracts less than £75,000 for Goods and Services and £150,000 for Works where a waiver is necessary the Officer must complete the relevant waiver request form and seek the approval of an appropriately empowered officer under the Council's Scheme of Delegation and the CPT.

56.3. For Contracts at and above £75,000 for Goods and Services and £150,000 for Works where a waiver is necessary the Officer must complete the relevant waiver request form and seek the approval of an appropriately empowered officer under the Council's Scheme of Delegation, Section 151 Officer and the Director of Commercial and Business Services. All such waiver requests shall be reported to the Governance Board.

56.4. The Officer is responsible for ensuring that the waiver request forms are duly completed and signed prior to the award of a Contract.

56.5. No waiver shall be granted for Contracts over the EU Threshold unless expressly permitted the CPT and Legal services. The officer shall contact the CPT for advice under these circumstances.

57. Non-compliance to the Rules

- 57.1. Officers are required to comply with the Rules at all times.
- 57.2. Officers shall report non-compliance to the Rules to the Governance Board. Governance Board shall be responsible for determining the course of action to be taken in the event of non-compliance.
- 57.3. Where, in consultation with the CPT and Legal Services, it is determined that the breach can be remedied by taking appropriate steps or measures the Officer shall comply with the proposed course of action.
- 57.4. Where the breach has given rise to, or is likely to give rise to illegality or maladministration the Governance Board shall notify the Monitoring Officer.
- 57.5. In the event of illegality or maladministration the Governance Board will determine that the Officer is also in breach of the Council's standards of conduct, which under certain circumstances may be treated as gross misconduct and give rise to action under the Council's disciplinary policy and procedure.
- 57.6. Where the breach gives rise to disciplinary action the Governance Board shall notify the Human Resources and Organisational Development Director.
- 57.7. In the event that these Rules are not complied with, this will not invalidate any Contract entered into by or on behalf of the Council, except where the Relevant Legislation provides to the contrary.

SECTION F: OTHER RELEVANT CONSIDERATIONS

58. State Aid

- 58.1. In all cases where there is a possibility of the Council providing State Aid the Officer must seek the advice of the CPT and Legal Services.

59. Development agreements

- 59.1. In all cases where there is a possibility of the Council providing State Aid the Officer must seek the advice of the CPT and Legal Services.

Somerset County Council
Constitution Committee - 11 April 2017

Report of the Monitoring Officer – Review of the Constitution

Lead Officer & Author: Julian Gale, Strategic Manager - Governance & Risk
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1. Summary

1.1. This report covers progress with the fundamental review of the Constitution.

2. Recommendations

2.1. **The Committee is recommended to note the progress with the fundamental review. At this stage the only recommendations proposed in the name of the Committee relate to the proposed amalgamation of the Constitution and Standards Committees. This was discussed at your last meeting and is brought back to the Committee for further review as part of this report.**

3. Background

3.1 Fundamental Review of Elements of the Constitution

3.1.1 At the Committee's last meeting a report was considered setting out the intended elements of a review of the Constitution which was to span the pre and post -election periods and lead to the adoption of a revised Constitution by the Council post the elections. An update on the position reported last time is set out below. *The update is in italics.*

3.1.2 The key elements of the fundamental review are:

- A review of the HR Policy Committee including the meetings with the trade unions. *This has received initial consideration by the HR Policy Committee and has been put on hold until post-election as it was considered more appropriate for the new Council to consider the options and make decisions.*
- A review of the officer appeals process including the role of the Officer Appeals Committee. *This has also received initial consideration by the HR Policy Committee and has been put on hold until post-election as it was considered more appropriate for the new Council to consider the options and make decisions.*
- The process for the appointment of Chief Officers and in particular the Appointments Panel and Appointments Committee arrangements. This was undertaken the HR Policy Committee and resulted in recommendations to the November Council for some changes which were agreed. The changes were relatively minor and the Monitoring Officer subsequently made some amendments to the wording of the

relevant part of the Constitution. *The changes amounted to including an option for the Appointments Panel to meet virtually as an option and a change in the maximum number of members required for an Appointments Committee. The Panel is not a public meeting and its role is to review terms and conditions of a Chief Officer post when a vacancy occurs and agree the appointment process. The additional flexibility agreed will allow speedy resolution of this part of the process if required. The reduction in the maximum size of the Appointments Committee that is responsible for Chief Officer appointments from 8 members to 5 reflects the fact that 5 is considered sufficient to make an appointment based on previous practice and allows appropriate political representation. It also reflects the fact that elected members are often involved in these appointments in more informal ways.*

- The Standards Committee arrangements – see section 3.1.5 onwards below.
- The Access to Information Rules. *It has been planned to review these rules in the spring but other priorities have meant that there has been no capacity to undertake this piece of work. The intention is to return to this piece of work in the autumn.*

Review of the Council's scrutiny arrangements. *This work has been progressed through a specific piece of work undertaken by the Scrutiny for Policies, Children & Families Committee reviewing its operation since its establishment midway through the quadrennium. The Committee will be formally considering the review report at its April meeting to help inform the decisions of the new Council. In addition to this an informal discussion has been held recently with the three scrutiny committee chairmen to review the scrutiny processes to inform future decisions. This discussion focussed on the number of Committees and meetings per year which the chairs were comfortable with and support from officers where they would welcome additional officer capacity to support the work of the committees particularly around policy review and development. No structural concerns were raised in this discussion.*

- 3.1.3** At your last meeting you added the following item to the review to include a separate section to cover bodies which report to Council but are not formal committees (eg the Corporate Parenting Board; Police & Crime Panel), and include a requirement for annual reports from these bodies to be made to Council if other mechanisms are not in place for them to be held to account. This request will be picked up in the revised Constitution and including specific additions to the functions of the Full Council meeting. The Committee will be pleased to know that I am taking on responsibility for the support of the Avon and Somerset Police and Crime Panel from 1st October 2017 from Bristol City Council and I have already raised the issue of the Panel's accountability with the Panel's current Chairman, Nigel Ashton, Leader of North Somerset Council. He understands the point and is keen to

improve communications with the Councils that constitute the Panel so we should see some rapid improvements on this issue during the autumn.

3.1.4 In addition to the above, work has started on a review of the operation of the Regulation Committee. This will be undertaken following the election with the new Committee and will cover the Committee's functions, delegations to officers and the Planning Code of Practice.

3.1.5 Future standards arrangements.

Members will recall the discussion at the last meeting about the future of the Standards and Constitution Committees and the Committee's recommendation that the two committees should be combined to create a single Governance and Standards Committee. You specified the following principles to be applied to the proposed amalgamation:

- Strict political balance was not required to be applied to the elected membership of the Committee but that an appropriate level of representation should be given to the political groups according to their size whilst keeping the overall membership manageable
- Membership of the new committee should include the current co-opted members of the Standards Committee as non-voting members,
- The Chairman of the new committee should be appointed by the Committee itself.

Your recommendations echoed those of the Standards Committee at that stage except for the recommendations in respect of the elected membership of the Committee. On this point the Standards Committee would prefer political proportionality requirements not to be applied to membership of the new Committee.

3.1.6 At that stage it was noted that the Standards Committee would be returning to this subject at its March 2017 meeting to review the practices of other councils prior to confirming its recommendations to Council.

3.1.7 To aid the Standards Committee's considerations, the Monitoring Officer reviewed the current arrangements of other County Councils and continued discussions with the Somerset district council Monitoring Officers.

3.1.8 The outcome of this research is summarised below:

1. Prior to 2011 the statutory requirement for each Council to have a standards committee meant a consistent approach to arrangements. Since 2011 a variety of approaches have developed to meet local requirements and structures. This reflects the position in Somerset where different approaches have emerged.
2. Councils have retained elected member involvement in standards issues in a variety of ways. This is required given the common approach of 'hearing panel' arrangements to deal with serious alleged breaches.
3. The variety of approaches can be summarised under the following headings

- Retain a separate Standards Committee. Some councils' have retained a separate Committee but only in a minority of cases are these meeting on a regular basis and these tend to have a wider range of corporate responsibilities than is the case with our Committee. Examples include responsibility for Council complaints and compliments, responsibility for officer conduct, and for considering internal and external audit reports. Some council's standards committees are meeting very infrequently which echoes the Somerset position that there is little formal business to be considered.
- Amalgamate 'standards' business with wider constitutional business or audit business in a single committee. The latter arrangement is by far the most common although Cambridgeshire County Council has a Constitution and Ethics Committee which seems to cover the functions that were proposed for a combined committee here in the previous discussions.

3.1.9 The 'expanded' Audit Committee option

The Standards Committee considered the Audit Committee expansion option as on the face of it the Audit, Constitution and Standards Committees cover common ground to the extent that they have the good governance of the Council as their central focus. The Audit Committee is one of the 'main committees' of the Council and has an expansive remit which focuses on ensuring that the Council operates within a framework of robust governance, risk management and control. This framework seeks to ensure that service delivery is strong; that it delivers value for money; and that it safeguards public funds. The Audit Committee is already one of the main committees and has a busy work programme meeting at least 8 times a year. The Standards Committee members agreed with the officers' conclusion that expanding the Audit Committee was not the right option for the County Council. Their fear was that the Standard Committee business would get lost in the bigger committee and that the wish to maintain co-opted member input into the committee would be lost within the larger politically balanced membership. The Standards Committee therefore agreed to reaffirm its recommendation for a combined Constitution and Governance Committee to cover the work of the existing Constitution and Standards Committees.

- 3.1.10** The Constitution Committee is invited to review its conclusions on this matter from its last meeting in the light of this further commentary and decide whether any changes to its recommendations from its last meeting are necessary.

4. Implications

- 4.1.** Legal & Risk: The Council's Constitution sets out the key legal framework within which the Council takes decisions and fulfils its functions and responsibilities. It needs to be kept up to date and legally compliant.
- 4.2.** Impact Assessment: The Council's duty under Section 149 of the Equality Act 2010 is to have "due regard" to the matters set out in relation to equalities when considering and making decisions on the provision of services. There are no direct impacts on equalities, sustainability, health and safety, or community safety as a result of this report.

4.3. Financial: No impact.

4.4. HR: No impact.

5. Background papers

5.1. None

Note: For sight of individual background papers please contact the report author.

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