

# Constitution and Standards Committee

Friday 8 February 2019

12.00 pm Quantock meeting room, Shire  
Hall training centre



To: The Members of the Constitution and Standards Committee

Cllr W Wallace (Chair), Cllr H Davies, Cllr M Dimery, Cllr D Loveridge, Cllr T Munt,  
Vicky Chapman, Robin Horton, Janice Middleton, Tim Ward and Wesley Wooding

Issued By Scott Wooldridge, Strategic Manager - Governance and Risk - 31 January 2019

For further information about the meeting, please contact Scott Wooldridge or 01823 357628 or  
[swooldridge@somerset.gov.uk](mailto:swooldridge@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](http://www.somerset.gov.uk/agendasandpapers)



**RNID typetalk**

# AGENDA

Item Constitution and Standards Committee - 12.00 pm Friday 8 February 2019

**\* 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 Democratic Services team.

3 **Minutes from the previous meeting - to follow**

The Committee is asked to confirm the minutes are accurate.

4 **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.

5 **Changes to Contract Procedure Rules and Standing Orders (Pages 5 - 66)**

To consider the report and recommendations from the Commercial and Procurement Team.

6 **Changes to Financial Regulations (Pages 67 - 96)**

To consider the report and recommendations from the Interim Director of Finance.

7 **Forward Work Programme (Pages 97 - 100)**

To consider the proposed work programme.

8 **Any other urgent items of business**

The Chairman may raise any items of urgent business.

## Guidance notes for the meeting

### 1. Inspection of Papers

Any person wishing to inspect Minutes, reports, or the background papers for any item on the Agenda should contact the Committee Administrator for the meeting on 01823 359045 or email: [democraticservices@somerset.gov.uk](mailto:democraticservices@somerset.gov.uk)  
They can also be accessed via the council's website on [www.somerset.gov.uk/agendasandpapers](http://www.somerset.gov.uk/agendasandpapers)

### 2. 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/>

### 3. Minutes of the Meeting

Details of the issues discussed, and recommendations made 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.

### 4. Public Question Time

If you wish to speak, please tell the Committee's Administrator by 5.00pm on the Monday before the meeting.

At the Chair of the Committee's invitation you may ask questions and/or make statements or comments about any matter on the Committee's agenda – providing you have given the required notice. 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. However, questions or statements about any matter on the Agenda for this meeting may be taken at the time when each matter is considered.

You must direct your questions and comments through the Chair. You may not take a direct part in the debate. The Chair will decide when public participation is to finish.

If there are many people present at the meeting for one particular item, the Chair 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.

## **5. Exclusion of Press & Public**

If when considering an item on the Agenda, the Committee may consider it appropriate to pass a resolution under Section 100A (4) Schedule 12A of the Local Government Act 1972 that the press and public be excluded from the meeting on the basis that if they were present during the business to be transacted there would be a likelihood of disclosure of exempt information, as defined under the terms of the Act.

## **6. Committee Rooms & Council Chamber and hearing aid users**

To assist hearing aid users the meeting rooms, have infra-red audio transmission systems. To use this facility, you need a hearing aid set to the T position.

## **7. Recording of meetings**

The Council supports the principles of openness and transparency. It allows filming, recording and taking photographs at its meetings that are open to the public - providing this 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 wishing to film part or all of the proceedings.

No filming or recording may 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 the Committee Administrator so that the relevant Chair can inform those present at the start of the meeting.

We would ask that, as far as possible, members of the public aren't 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 in County Hall 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.



Rockwell Green'. This followed receipt of a single response from the Wellington area but it was from a key local organisation – Wellington Town Council. The Town Council expressed strong support for the proposal.

- 44.2 Although the Committee indicated at the July meeting that it was prepared to consider supporting the Wellington and Rockwell Green proposal based on this single response, officers were asked to undertake a further round of public consultation on the proposal to see if any other local support could be established for the proposal. This report set out the outcome of that process.
- 44.3 This report didn't cover the other 3 electoral division name changes that were originally proposed as the Committee at its last meeting agreed not to recommend any changes to Council for consideration on the back of the consultation exercise. The Committee's conclusions on these proposals will be reported to Full Council for information.
- 44.4 Julian Gale introduced the report by outlining the following key points:
- Wellington and Rockwell Green – further public consultation had been completed and a number of local organisations including church groups came back with positive support for the divisional name change.
  - Proposal to take this forward to full council in November. This was supported by the Committee.

**The Committee resolved to take the Wellington and Rockwell Green proposal to Full Council in November for decision.**

45.0 **WHISTLEBLOWING POLICY – Item 6**

- 45.1 The report is designed to familiarise the Committee with the Council's Whistleblowing Policy and to ask for support for a focused piece of work with Senior Leadership Team and other staff to assess awareness of the Policy and its use.
- 45.2 At the Chair's invitation, Georgina Halford-Hall, Chief Executive of Whistleblowers UK asked a public question relating to Item 6. She outlined the following key points:
- In the review in 2013 – Somerset County Council did not make Whistleblowing targets.
  - The need to review the policy and apply good practice from others.
  - Georgina Halford-Hall suggested that she could assist the County Council with its review of the policy.
- 45.3 Julian Gale made the following points in response to Georgina Halford-Halls question.
- It was thought extremely beneficial to take up Georgina Halford-Hall

offer and meet with Whistle-blowers UK to consider their suggestions as part of reviewing the policy.

- There are some standards of conduct that are not in the Constitution in relation to officers.
- Section 4 set out the work that the Council would like to achieve going forward. There are links to a number of current initiatives.
- Working with HR colleagues and Senior Leadership Team to bring the review forward.

45.4 The following points were raised during discussion:

- There was a query on if there is a register of officers' interests as there is one for elected members. It was confirmed that officers' interests are recorded.
- Reference to the work being done to refresh the officers code of conduct at the same time.
- Aiming for the revised policy to come to the Committee in February 2019.
- Some concern that fraud is being brought forward as a whistle blowing situation - work is planned to look into this.
- Recognition that it can be daunting to be a whistle blower. There should be a visual flow chart to show staff what to do when there is something that they are not happy about.

**The Committee resolved to confirm support for the policy but in consultation with Whistle Blowing Uk review the policy and seek to take this forward to other committees for comment.**

46.0 **DISCLOSURE AND BARRING SERVICES (DBS) UPDATE – Item 7**

46.1 The report updated the Committee on the Council's progress in securing Disclosure and Barring Services (DBS) checks for County Councillors following revisions to the policy agreed at Full Council on 29 November 2017 and a previous update provided to the Committee on 3rd July 2018.

**The Committee noted this report.**

47.0 **REVIEW OF THE COUNCIL'S SCRUTINY ARRANGEMENTS – Item 8**

47.1 The report provided the Committee with details of a review which is being undertaken of the Council's scrutiny arrangements and that any recommendations arising from that review will be reported to the Committee during Spring 2019.

David Orr asked the following question:

1. A regrettable and unhappy incidence occurred when he had submitted a question for Adults and Health Scrutiny Committee and he was told that he was not able to ask a question at 5.00pm on the day before as his question had already been asked at a previous meeting. Request for a record of public questions and answers for committees to be published online.
2. Request that the deadline for public questions or statements be reduced to 2 days before a meeting as in some cases there are complicated papers to read before finalising a question.
3. That the Chair of each Scrutiny Committee is selected by the majority vote of the members of their committee.

46.2 Scott Wooldridge, Monitoring Officer, Somerset County Council answered Mr Orr's questions.

- The committee will be aware of the changes to public question time rules that were agreed by the Council in July 2018 following consideration by the Constitution & Standards Committee.
- For Scrutiny and Cabinet the questions are published on the webpage the day before the meeting. This helps members of public understand where their question sits in relation to other questions being asked. The new public question arrangements will be reviewed as part of the annual review of the Constitution and democratic arrangements in Spring 2019.
- Mr Orr's comments were acknowledged and would contribute to the review in Spring 2019.
- The appointment of the Chairs of the three Scrutiny Committees is a matter for full Council which also determines the membership to each committee.

46.3 The following points were raised during discussion:

Whether the council keeps records of the questions that are submitted for committee meetings. It was confirmed it does.

Consideration needed to the publication of answers at Committee meetings in the public domain.

That consideration should be given to there being opportunities to have co-opted members on all the scrutiny committees.

**The Committee noted the review being undertaken of the Council's scrutiny arrangements and that it should receive a further report in Spring 2019 ahead of any recommendations being presented to the County Council meeting in May 2019.**



**47.0 FORWARD WORK PROGRAMME – Item 9**

The Monitoring Officer reported on the proposed future work programme and that this will be a standing item for each meeting. Attention was drawn to the scheduled business for the next meeting on 1<sup>st</sup> February 2019.

**48.0 ANY OTHER BUSINESS OF URGENCY – agenda item 10**

The Chair advised there were no other urgent items of business, he thanked all those present for attending the meeting and reminded everyone that the next meeting would be on 1<sup>st</sup> February 2018.

**The meeting ended at 11.45**

**Cllr William Wallace  
Chair of  
Constitution and Standards Committee**

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## **Changes to the Contract Procedure Rules and Standing Orders**

Lead Officer: Simon Clifford, Director of Corporate Affairs  
Author: Claire Griffiths, Head of Commercial and Procurement  
Contact Details: czgriffiths@somerset.gov.uk

### **1. Summary**

- 1.1.** The purpose of this report is to highlight an amendment to Section 43 Approval to Award, in light of the introduction of Somerset County Council's 10 Point Plan. In addition, the report details a number of minor amendments to ensure that the Contract Procedure Rules and Standing Orders (The Rules) remain current and meet our business needs.

### **2. Recommendations**

**2.1. That the Constitution and Standards Committee agree to;**

- a) endorse the proposed amendment to the 2017 Contract Standing Orders to ensure consistency of policy and procedure in respect of Officer thresholds for approval to award a Contract, Framework Agreement or Dynamic Purchasing System;**
- b) amend references throughout The Rules to the Director of Commercial and Business Services and replace them with the Director of Corporate Affairs to reflect organisation change;**
- c) update The Rules in line with the General Data Protection Regulations;**
- d) extend the requirement for publishing Tenders and Contracts to Grants in line with the Local Government Transparency Code 2015;**
- e) require all breaches of The Rules to be reported to Governance Board to provide oversight and transparency of associated risks that the Council may be exposed to prior and during a procurement procedure and in to contract delivery.**

- 2.2. Give delegated authority to the Monitoring Officer to make any changes necessary to the Contract Procedure Rules and Standing Orders as a result of the recommended amendments that are outlined in this report.**

**2.3. Formally adopt the amended Rules in to the Constitution.**

### **3. Background**

- 3.1.** Following a comprehensive review of Somerset County Council's Contract Standing Orders (The "Rules") it was agreed by Full Council to update them and incorporate the updated changes in to the Council's Constitution on 05 May 2017 as the Contract Procedure Rules and Standing Orders. The Rules were further amended and approved via the Council's Constitution and Standards Committee to reflect the Council's aspiration to pre-determine the evaluation criteria for its procurement activities on 06 October 2017.

- 3.2.** The Rules are subsequently reviewed on an annual basis to ensure they continue to fully reflect Somerset County Council’s approach to the Supply of Goods, Provision of Services and Execution of Works.
- 3.3.** As a result of the annual review undertaken in December 2018 by the Commercial and Procurement Team, a number of amendments have been identified.
- 3.4.** Most notable is the need to amend to Section 43 Approval to Award, considering the introduction of Somerset County Council’s 10 Point Plan, introduced in June 2018.
- 3.5.** The 10 Point Plan noted at that time that the funding challenge at Somerset County Council remained critical. With the funding available, the 10 Point Plan identified that the Council could not afford to do everything it had previously and must look at ways to bring spending down. As part of these measures a Spending Freeze was introduced;

‘Any spending decision over £10,000 must be reviewed with your director will be signed-off by the Director of Finance and Director of Corporate Affairs. Any spend that is non-statutory should be questioned; matters of safety will be prioritised. All staff who have responsibility for recommending and/or agreeing expenditure must consider whether the spend is necessary and, if so, what alternatives there might be.’

- 3.6.** This control of spending has been in place since for some time and has contributed to an improvement in the Council’s current financial position and this control remains in place.
- 3.7.** In view of it is recommended that Section 43 of The Rules is amended, which details Officer thresholds for awarding a Contract, Framework Agreement or Dynamic Purchasing;

**Approval to award**

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

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

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.'

- 3.8. Considering the 10 Point Plan, all Officer threshold values in The Rules need to be reduced to £10,000. The requirement for a Key/Non-Key Decision remains the same. This would mean the following revision to section 43:

Total Contract Value	Approval to award	Key Decision/Non Key Decision
<b>At and above £5,000,000</b>	Cabinet or, in case of urgent business need, <b>the Leader</b>	<b>Key Decision</b>
Over £500,000 but less <b>than £5,000,000</b>	Relevant SLT officer(s) or Cabinet <b>Member(s)</b>	<b>Key Decision</b>
Over £10,000 but less <b>than £500,000</b>	Relevant SLT officer(s)	<b>Non-Key Decision</b>
Up to and including <b>£10,000</b>	Officer scale 13 or above	<b>Non-Key Decision</b>

- 3.9. The review of The Rules also highlighted the need for a number of minor amendments, as follows;

- a) to amend references throughout The Rules to the Director of Commercial and Business Services and replace them with the Director of Corporate Affairs to reflect organisation change;
- b) to update The Rules in line with the General Data Protection Regulations;
- c) to extend the requirement for publishing Tenders and Contracts to Grants in line with the Local Government Transparency Code 2015;
- d) to require all breaches of The Rules to be reported to Governance Board to provide oversight and transparency of associated risks that the Council may be exposed to prior and during a procurement procedure and in to contract delivery.

#### 4. Consultations undertaken

- 4.1. Governance Board considered and endorsed the proposed changes as detailed in 3.9 above at its meeting on 9 January 2019. The Board also added the requirement to ensure The Rules aligned with the 10 Point Plan, as per 3.7 above.

#### 5. Implications

- 5.1. 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.

- 5.2. 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.
- 5.3. Financial: SCC has a statutory duty to ensure that it operates under the principle of Best Value.
- 5.4. HR: none.

## 6. Background papers

- 6.1. Appendix One – 10 Point Plan

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

## **The Financial Imperative 10-Point Plan – June 2018**

### **Introduction**

The funding challenge at Somerset County Council remains critical. With the funding we now have we cannot do everything we used to do so we must look at ways to bring our spending down and live within our means.

Financial sustainability is our single overriding priority and only by living within our means can we achieve our other priorities.

To achieve financial sustainability within this challenging climate, we need to respond to the situation in the same way we would an emergency. As such we have moved the management of our finances on to an emergency-footing and have set-up a structure to manage this.

The structure is referred to as the Financial Imperative work and includes five Key Lines of Enquiry (KLOEs), which will focus on Finance, Reviewing Existing & Potential Savings, Workforce, Data and Communications respectively.

The 10-Point Plan has been used to set our corporate approach, in previous years, and remains in place through 2018-19. However, it has now been aligned to the Financial Imperative work and adjusted to prioritise activities that will support the delivery of this priority work.

The financial challenge is a whole council problem that requires a whole council response therefore all employees are expected to familiarise themselves with this plan and implement it with immediate effect. Progress against this plan will feed into the weekly Strategic Leadership Team (SLT) meetings.

### **1) Review Existing Forecast – assumptions and projections of cost and income**

The Senior Leadership Team continues to discuss the forecast outturn for all services and what is possible. We are reliant on good forecasting to form an accurate picture of our finances and this can only come from your diligence and our finance staff to calculate, predict and cost appropriately. This is a fundamental part of good financial management, so please re-assess your budgets and determine what they will look like in light of recruitment restrictions, contract negotiations, reductions in spend etc.

### **2) Spending freeze**

Any spending decision over £10,000 must be reviewed with your director will be signed-off by the Director of Finance and Director of Corporate Affairs.

Any spend that is non-statutory should be questioned; matters of safety will be prioritised. All staff who have responsibility for recommending and/or agreeing expenditure must consider whether the spend is necessary and, if so, what alternatives there might be.

### **3) Review of Staffing and Establishment Control**

The current establishment held in SAP is being reviewed with managers; thank you for your help with this.

This exercise has been run 3 times now. At the start of each review, the SAP establishment shows c. 400 vacancies across the authority. This is due to managers not reviewing their structures and not closing-down posts where these are no longer needed. This will start to have an impact on workforce planning at Somerset County Council, as we look at entry level roles, career pathways and succession planning. HR-OD and Finance will continue to work with managers on their current structures and where opportunities for releasing posts might lie. If you have any questions, please contact your HR advisor or finance manager.

It is the responsibility of all managers to ensure that their structures are accurate in SAP. It is imperative that the workforce structures in SAP match our finance reporting, therefore managers, HR-OD and Finance will work together to achieve this.

#### **4) Consideration of applications for Voluntary Redundancy (VR)**

A Voluntary Redundancy Programme will be opened for applications. Please be absolutely clear that we will only approve a VR application if the actual post or another post is closed or reconfigured to release an overall saving. Payroll will close the post based on the SAP number and Finance will remove the saving from budgets.

#### **5) A freeze on recruitment**

This will apply to all posts. Obviously, there will be a small number of exceptions and we will look to protect service critical roles and teams. I have also instructed Senior Leadership Team (SLT) colleagues to continue appointing apprentices to fill posts as necessary.

The recruitment protocol remains in place and full compliance is mandatory. The current process includes finance and strategic manager sign-off, which will continue. Final sign-off will be done by Chris Squire, Director of HR-OD, as part of the Workforce KLOE. Please do not assume that if posts are funded through grant funding, capital funding or through trading accounts that these posts are exempt from the recruitment freeze protocol. It is expected that we raise surpluses in traded areas by maintaining or growing income levels without having to increase costs. It is also expected that we should seek to charge to grants our reasonable costs or percentages if permitted which does not mean we have to replace staff if a vacancy occurs.

#### **6) Agency Spend**

Agency spend has reduced considerably over the past 18-months. We will continue to review posts filled by agency staff and how these are funded, recognising the need to safeguard frontline, service critical, and hard to fill posts that happen to be filled by temporary staff at this time. Clearly, we will also have to honour fixed term contracts.

#### **7) Off-Contract spend**

The Procurement team will continue to examine all off-contract spend and target reductions in discretionary areas of spend and challenge those that should be using existing contracts. Purchase orders over £1,000 will only be approved once procurement and finance have checked them.



## **8) Meetings with Key Providers**

Directors, commissioners and commercial & procurement managers will continue to meet with key service providers to SCC, to work collaboratively on the cost and structure of services.

## **9) Job Evaluations**

The Job Evaluation process sits with the HR Admin & Payroll team. Requests for job evaluations will now only be done as part of a restructure, new post or as part of properly constituted career progression (where that meets service need). The process will also insist on completed job descriptions and person specifications, with that responsibility remaining firmly with line managers. If you need advice, please talk with your HR advisor.

Requests for job evaluation will be monitored by the Workforce KLOE.

## **10) Culture**

Work on organisational and team culture at Somerset County Council will continue. We must not lose sight of the organisation that we want and need to be, the positive roles that colleagues perform and the focus on improving lives in Somerset. This will include how we lead and manage within our roles, understanding our professional accountabilities and behaviours; sound financial management and the spending of public money is a key part of this. A new People Strategy was launched at Cabinet on 11<sup>th</sup> June, following extensive consultation and conversations with colleagues across SCC on culture.

Pat Flaherty, Chief Executive

June 2018

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# **B – Contract Procedure Rules and Standing Orders**

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

Made on 6 October 2017 under section 135 of the Local Government Act 1972

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# 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, Selection Questionnaire 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"> <li>✓ allocates decision making powers and responsibilities within the Council and with partners;</li> <li>✓ delegates authority to act through the Council and Cabinet Scheme of Delegation; and</li> <li>✓ regulates the behaviour of individuals and groups through rules of procedure, codes and protocols</li> </ul>
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"> <li>1. Regulation 9 of the Concessions Contracts Regulations 2016 where those rules apply; or otherwise</li> </ol>

	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 an agreement or other arrangement between one or more contracting authorities and one or more economic operators which establishes the terms (in particular the terms as to price and, where appropriate, quantity) under which the economic operator will enter into one or more contracts with a contracting authority in the period during which the framework agreement applies
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 Procure	Shall mean the procurement training available via The Learning Centre
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 14. <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; and/or the first stage document 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
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

<p>Transfer of Undertaking (Protection of Employment) (“TUPE”)</p>	<p>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</p>
<p>Works</p>	<p>Shall mean the construction of structures of all kinds, such as buildings, highways, bridges, as well as structural renovations, extensions, and repairs</p>

## 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. *Pre-Procurement authorisations*).
- 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. *Non-compliance to the Rules*<sup>57.</sup>).
- 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 and key stakeholders 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<sup>[1]</sup>, 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 available and appropriate 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 is reported as a Non Key Decision Report.
- 10.2. Procurement processes may only be carried out once the Non Key Decision Reports has been countersigned by the appropriately empowered officer as set out in the Council's Scheme of Delegation.
- 10.3. The Officer must consult with the CPT prior to preparing the Non 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.

<b>Contract type</b>	<b>Total Contract Value</b>	<b>Procurement process</b>	<b>Advertising requirements</b>	<b>Process guidance</b>
Goods, Services	Up to and including	Must demonstrate Best Value by	None	<b>See section 21.</b>

and Works	£25,000	following the procurement process for lower value purchases		<b>Procurement process</b>
Goods and Services	Over £25,000 but less than £75,000	Quick Quote via the Council's Electronic Tendering System	Optional	<b>See section 22. Quick Quote</b>
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	<b>See section 23. Procurement processes requiring Invitations to Tender</b>
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	<b>See section 24. Procurement processes over the EU Threshold</b>

### 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 process for lower value purchases<sup>1</sup>**

- 21.1. For Contracts up to and including 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.

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<sup>1</sup> A flowchart is provided to aid understanding, page 48

- 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 process for lower value purchases*.
- 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<sup>2</sup>**

- 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 two stages within a procurement of this nature (Selection Questionnaire and ITT).
- 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:

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<sup>2</sup> A flowchart is provided to aid understanding, page 49

- 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<sup>3</sup>**

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 two stages within a procurement of this nature (Selection Questionnaire and ITT).

23.4. The advertisement must include:

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<sup>3</sup> A flowchart is provided to aid understanding, page 50

- 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<sup>4</sup>**

- 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

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<sup>4</sup> A flowchart is provided to aid understanding, page 51

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 Contracts 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 70:30 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. been presented with the Candidate's commercial information from CPT and consulted with a Procurement Officer;
  - 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 given as follows:

<b>Total Contract Value</b>	<b>Approval to award</b>	<b>Key Decision/Non Key Decision</b>
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	Non-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. For Contracts with a Total Contract Value of below than £75,000 for Goods and Services and £150,000 for Works they must always be signed by an Officer with the authority to do so under the Council's Scheme of Delegation. If the Officer with responsibility for the decision to enter the Contract is not available to sign the Contract then another Officer with the equivalent level of authority may sign the Contract or it can be signed by any Officer who has been duly authorised.
- 44.4. For Contracts with a Total Contract Value at or over £75,000 for Goods and Services and £150,000 for Works (except where section 44.6 of these Contract Procedure Rules and Standing Orders requires that the Contract must be sealed with the common seal of the Council) they must always be signed by two (2) Officers, one of which must have the authority to do so under the Council's Scheme of Delegation. If the Officer with responsibility for the decision to enter the Contract is not available to sign the Contract then another Officer with the equivalent level of authority may sign the Contract. The second signatory must be a Procurement Officer with the authority to do so under the Council's Scheme of Delegation or any Officer acting with appropriate delegated authority.
- 44.5. The Officer responsible for securing signatures must ensure that the person signing on behalf of the Supplier has the authority to bind it.
- 44.6. 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.
- 44.7. 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:
- a. any dispute that is unable to be resolved via consensual procedures, such as mediation or negotiation and therefore where adjudicative procedures, such as arbitration or litigation are required; and/or
  - b. any dispute that is likely to lead to a financial claim against SCC for a sum exceeding that set out as SCC's limitation of liability within the applicable Contract terms and conditions.

## **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 *57. 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 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, fostering 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.
- m. Pension Fund administration and governance arrangements are separate from main Council affairs and consequently not all of the Contract Standing Order requirements to apply to the fund. Exclusions will in the main only apply to approvals and reporting whilst all other principals surrounding the Contract Standing Orders and statutory requirements will remain. Where exemptions apply, these will be stated in the Pension Fund Scheme of Delegation and updated and approved periodically, concurrent with these Contract Standing Orders.

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

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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 a single source of supply; 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**

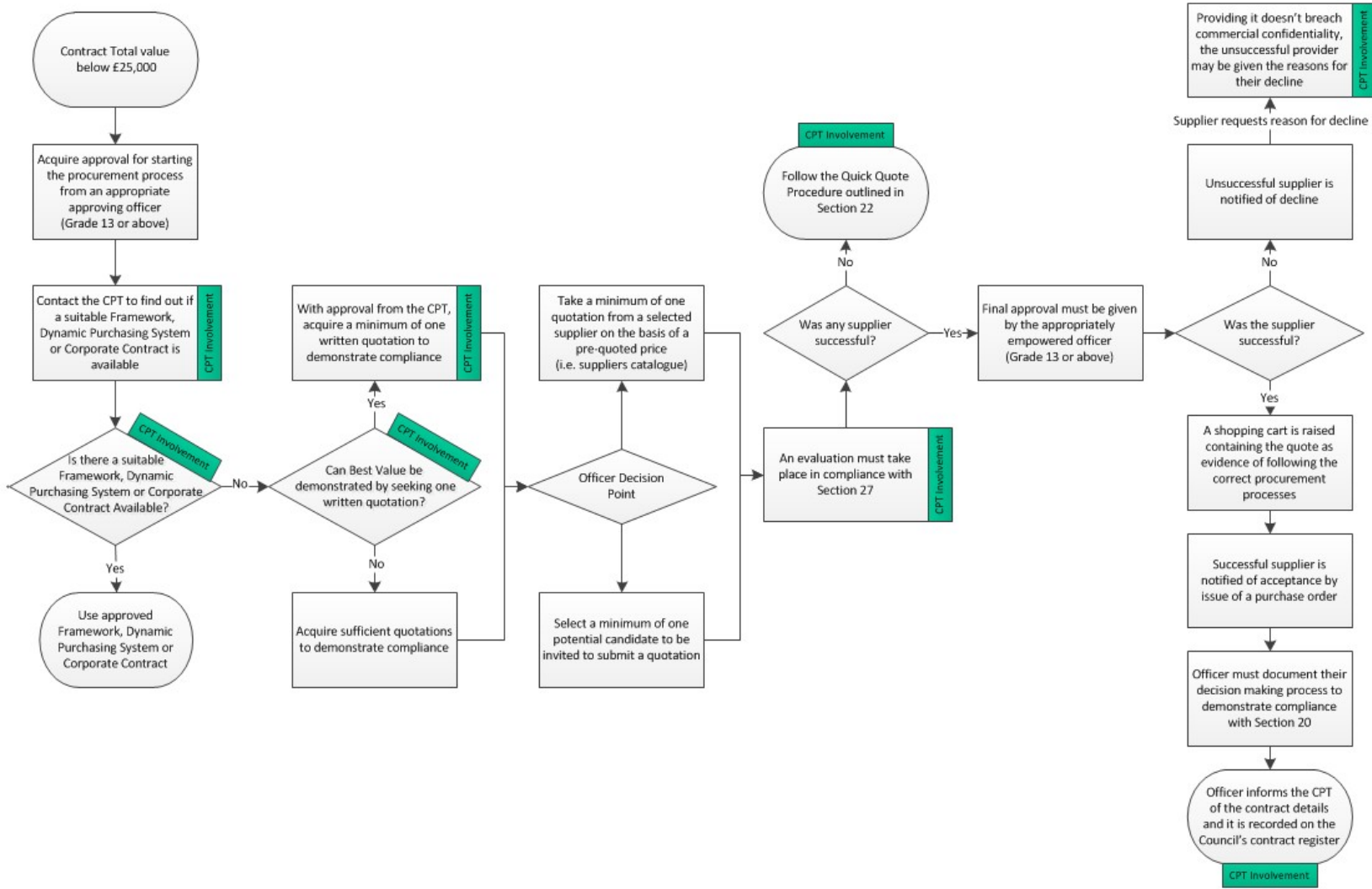
- 58.1. In all cases where there is a possibility of the Council providing State Aid the Officer must seek the advice of the CPT and Legal Services.

### **59. Development agreements**

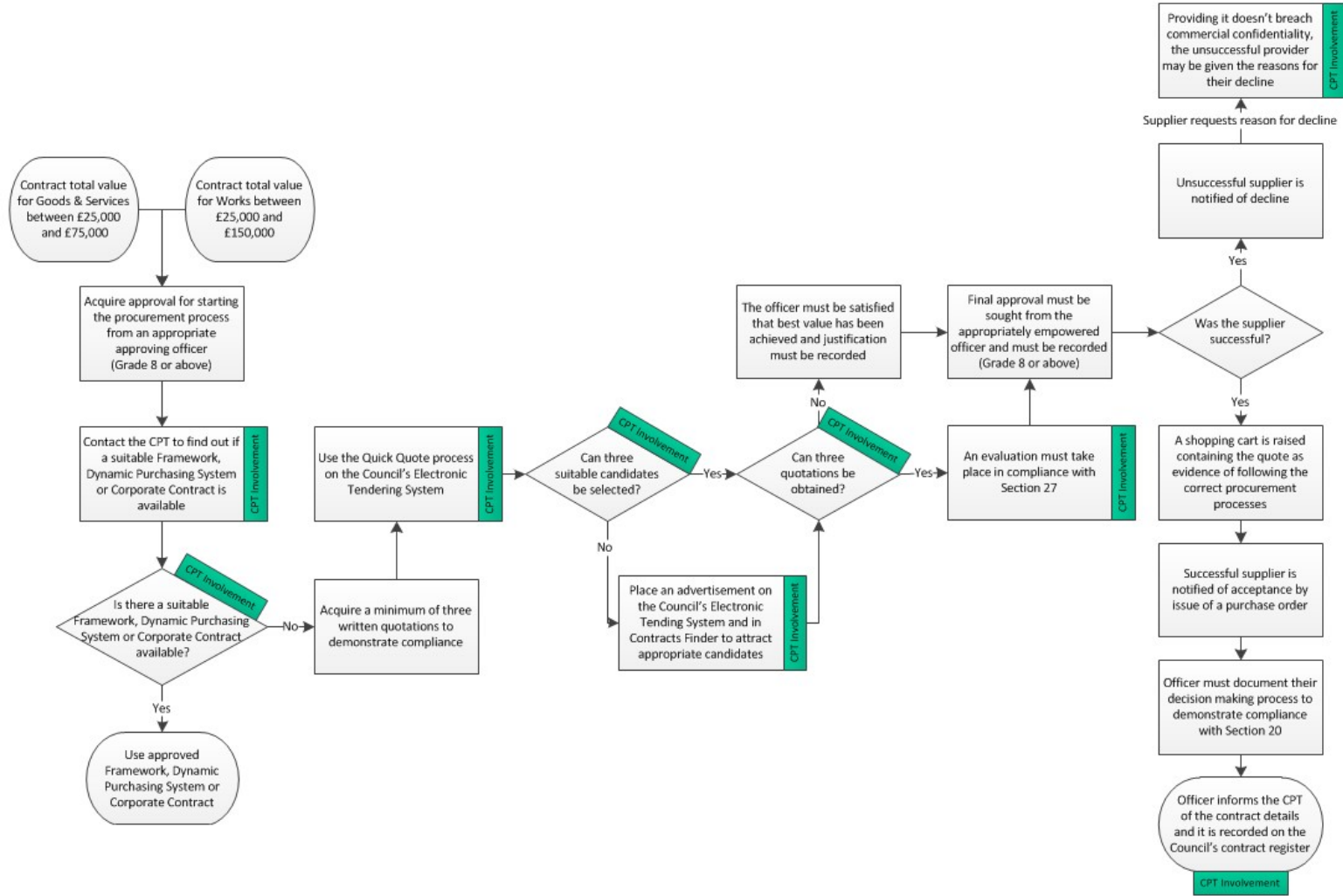
- 59.1. In all cases where there is a possibility of the Council entering a development agreement the Officer must seek the advice of the CPT and Legal Services.

# Flowchart for the procurement process for lower value purchases

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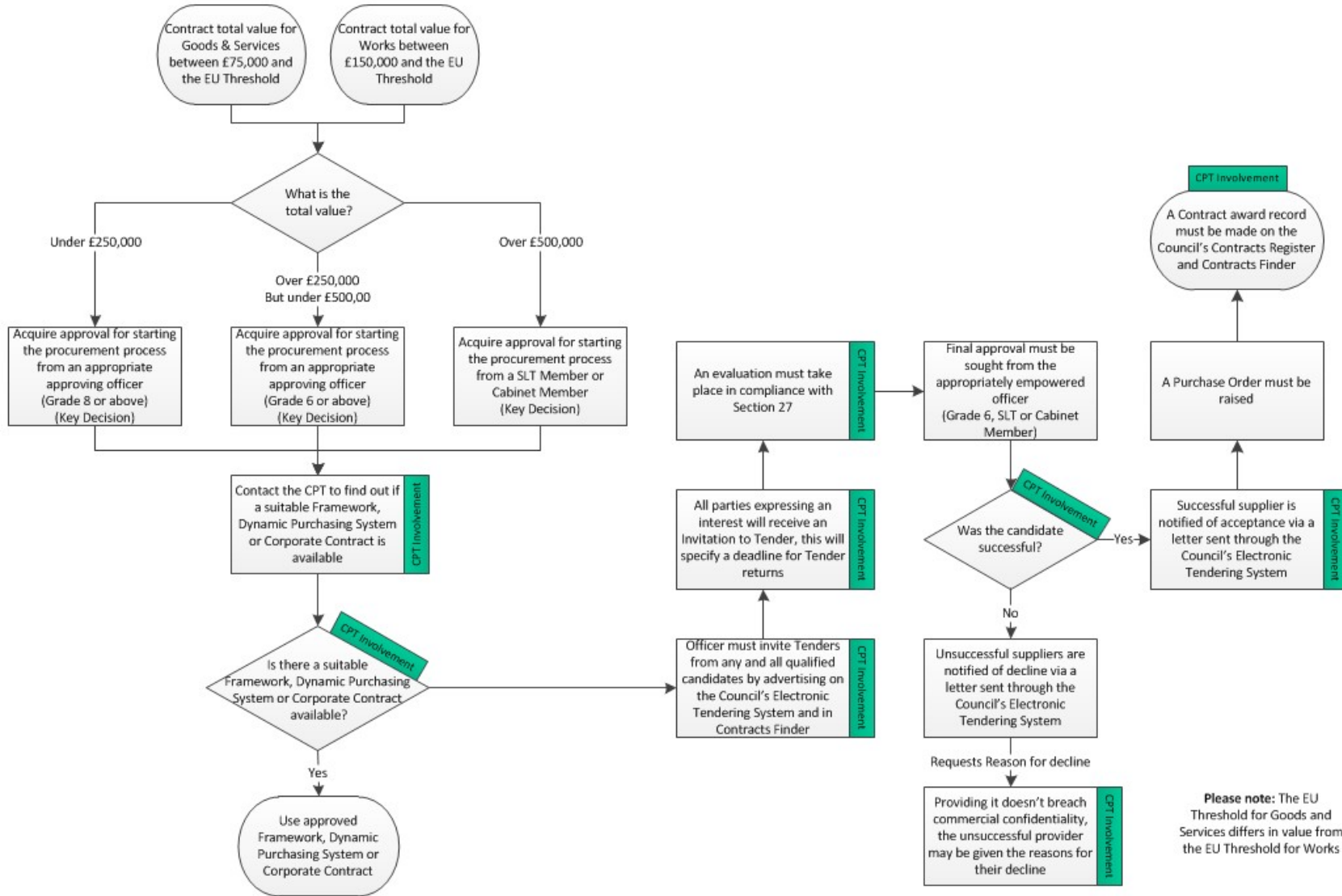


# Flowchart for Quick Quote

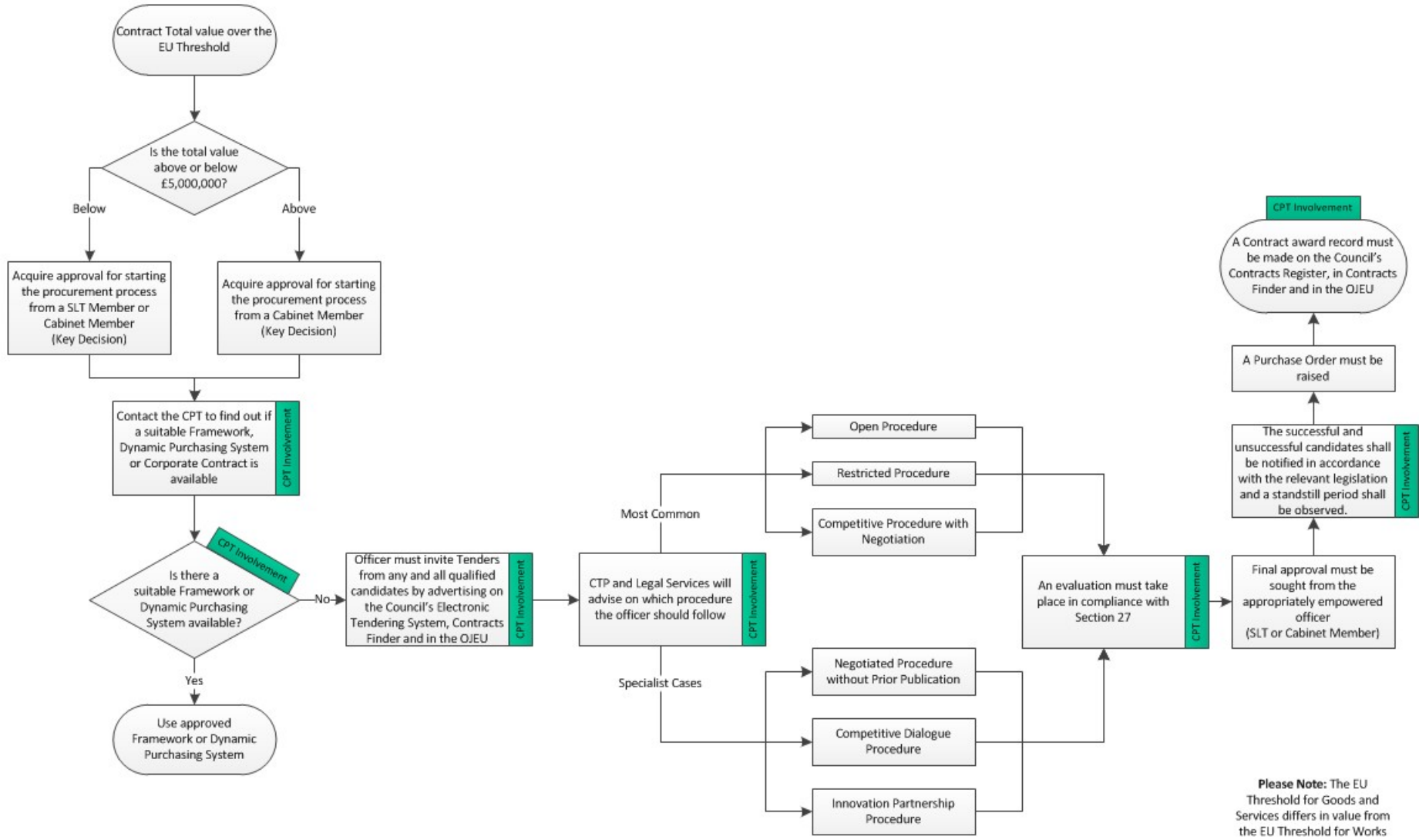


Flowchart for procurement process requiring Invitations to Tender

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# Flowchart for procurement process over the EU Threshold





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Somerset County Council  
Constitution and Standards Committee – 01 Feb 2019

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## **Annual Review of Financial Regulations**

Lead Officer: Peter Lewis, Interim Director of Finance  
Author: Martin Gerrish, Strategic Finance Manager and Peter Lewis,  
Interim Director of Finance  
Contact Details: pjlewis@somerset.gov.uk

### **1. Summary**

- 1.1. The purpose of this report is to provide assurance to members regarding the adequacy of the current Financial Regulations following a review by the Chief Finance Officer and Chief Internal Auditor, and to propose very minor amendments for clarity.

### **2. Recommendations**

#### **2.1. That the Constitution and Standards Committee;**

- a) **Notes the formal review of Financial Regulations by senior Finance staff, and the conclusion that the Regulations remain fit for purpose, subject to small clarifications as set out below.**
- b) **Approve the Financial Regulations as attached.**

### **3. Background**

- 3.1. Financial Regulations are of critical importance to the County Council as they govern which officers and members can take actions and decisions that could impact significantly on the financial standing and resources of the local authority. They bind officers, members and anyone acting on behalf of the Council and are mandatory. The importance of maintaining strict Financial Regulations, (together with the suite of supplementary guidance and requirements they refer to), is increasingly necessary given the difficult financial circumstances that all local authorities are experiencing.
- 3.2. Whilst the Financial Regulations set out responsibilities and powers of a number of officer roles and even members, their key role is to define the role of the Chief Finance Officer. Members are reminded that this is a statutory role under section 151 of the Local Government Act 1972 and this authority cannot be overridden.
- 3.3. Best practice and the County Council require that an annual review is carried out to ensure that the Financial Regulations are up to date. This review was carried out by senior finance staff in January and has shown that they remain fit for purpose as part of the Constitution. Due regard has been had during this process for the previous comments made by our external auditor, Grant Thornton on our financial position, such as around reserves.

- 3.4.** Small technical amendments have been made to update details, such as job titles and those of committees. Throughout the document, the term Chief Financial Officer has now been used, as this is a specific meaning that refers to the statutory role, regardless of what the actual Job Title of the postholder becomes in the future.
- 3.5.** Small changes to the text have been made for clarity only, and there has been **no changes to who is entitled to make financial decisions, or to the financial thresholds that apply.**

However, clarifications proposed include:-

A.21 To state explicitly the role of the Somerset Waste Board alongside other Committees.

A.25 To update Financial Regulations with regard to the newly agreed Deputy section 151 officer.

B.7 / B.12 / B18 To clarify the role of Scrutiny as part of the budget preparation processes and budget reporting.

B.20 / B.22 To clarify that the Chief Finance Officer remains responsible for determining the prudent level of general reserves required, based on his or her professional judgement, and also has to approve the establishment of any new earmarked reserves.

C. 2 To acknowledge the role of the Audit Committee in the day-to-day monitoring of risk management activities.

C.10 To acknowledge the previous Council decision to “opt in” to the national PSAA scheme for the appointment of our external auditors.

C.22 To emphasise on the need for SLT to maintain staffing levels in strict accordance with both the approved establishment and their delegated budgets

D.2 / D. 4 To strengthen the right of the Chief Finance Officer to require the use of corporate finance systems and to approve (or not) any alternative systems proposed.

D. 13-15 To emphasise the need for trading units to recover all their costs and breakeven on their activities and the need for strong business cases for their establishment and continuation.

#### **4. Consultations undertaken**

- 4.1.** Senior finance officers undertaking the review consulted with the Monitoring Officer to provide assurance and ensure compliance.

## **5. Implications**

- 5.1.** Given that there are no substantial changes to the Financial Regulations as a result of this review, there are no Legal, Risk, Impact Assessment or HR risks arising.

Conversely, there are risks to the Council if the recommended Financial Regulations are not updated as proposed.

## **6. Background papers**

- 6.1.** None

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# A – FINANCIAL REGULATIONS

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## INTRODUCTION

### FINANCIAL REGULATIONS

- 1.1 Somerset County Council has adopted the Leader and Cabinet form of political structure. Details of the Leader and Cabinet arrangements are summarised in Section 5 of Part 1 of the Constitution.
- 1.2 These Regulations reflect the CIPFA / SOLACE Statement on Good Governance.
- 1.3 Part 1 of the Constitution details:
  - (a) The decision-making responsibilities of the Council, Council Committees and Senior Officers of the Council in relation to Council decisions.
  - (b) The decision-making responsibilities of the Leader, the Cabinet collectively, Cabinet Members, joint executive arrangements and Officers of the Council under the authority of the Leader. Underpinning these arrangements there is the Officers' Scheme of Delegation detailing delegations from Senior Officers to other officers of the Council.
- 1.4 The establishment and the strict adherence to sound financial management policies is an integral part of the Scheme; part of this process is the establishment of both Financial Regulations, which set out the financial policies of the County Council and a series of key controls to ensure that they are adhered to. In exceptional circumstances only, approval may be sought to the temporary waiver of the requirements from the Council or Leader of the Council.
- 1.5 CIPFA has produced a model set of Financial Regulations that reflect best practice and provide a practical source of advice to assist the 'modern' County Council. These Financial Regulations are based on that model.
- 1.6 The Financial Regulations provide clarity about the accountabilities of bodies and individuals –particularly:
  - The Leader of the Council
  - The Cabinet
  - Members of the Cabinet;
  - Members of a Scrutiny Committee;
  - Members of the Audit Committee;
  - The Chief Executive (as the Head of Paid Service);
  - The Chief Finance Officer (Section 151 officer under the Local Government Act 1972;
  - The Strategic Manager – Governance & Risk (as the Monitoring Officer); and
  - The Senior Leadership Team
- 1.7 Each of the Financial Regulations sets out the overarching financial responsibilities, and the County Council itself is required to approve them.

## **FINANCIAL PROCEDURES**

1.8 In addition to the Regulations, the County Council has approved Financial Procedures; which are available on the Intranet site, from the Chief Finance Officer or the Finance Service Managers. Each section of the Financial Procedures follows the format set out below:

- why is this important? - this sets the context for the financial procedures;
- key controls - this explains the key internal controls which set the framework for ensuring financial regulations are operating effectively;
- responsibilities of the Chief Finance Officer;
- responsibilities of the Senior Leadership Team and
- Responsibilities of All Officers and anyone acting on behalf of the County Council

## **FINANCIAL GUIDANCE**

1.9 The Chief Finance Officer will issue advice and guidance to support the Financial Regulations and procedures which Members, Officers and others acting on behalf of the County Council are similarly required to follow. This is available on the intranet site or from Finance Service Managers

1.10 The Chief Finance Officer will determine the scope of any financial guidance he or she deems necessary to issue. This will include the circumstances in which the guidance applies (such as the 10 Point Plan), and which officers are obliged to act (such as the roles set out in the Income Code of Practice).

## **OTHER REGULATORY DOCUMENTS**

1.11 Beyond the scope of this document, the County Council links the Financial Regulations with other internal regulatory documents forming part of the County Council's Constitution. These identify accountabilities for specific functions, and procedural notes on the conduct of Council and other meetings; on access to information; on contracts; on the acquisition / disposal of land and buildings; and the employment of Officers; as well as the Codes of Conduct for Members; together with various other protocols.

1.12 Services may also attach their own more detailed financial procedures, guidance and instructions, provided that these do not contradict Financial Regulations, Financial Procedures or any other guidance issued by the Chief Finance Officer.

## BACKGROUND

2.1 Somerset County Council is one of the larger local authorities in England. It has a population of approximately 535,000 and an area of some 350,000 hectares. It provides a diverse range of services to its residents. It works in partnership with four District Councils (from 1<sup>st</sup> April 2019), some 260 parish / town councils and other organisations.

2.2 The County Council has an overall responsibility for the well-being of the County and provides the following main services:

- children & young people's services
- education
- social care services
- strategic planning
- roads and highways
- traffic and transportation
- subsidised public transport
- libraries
- waste disposal
- waste recycling
- trading standards
- registration of births, deaths and marriages
- street lighting
- public rights of way
- museums
- countryside management
- environmental management
- public health



## STATUS OF FINANCIAL REGULATIONS

- 3.1 Financial Regulations provide the framework for managing the County Council's financial affairs, and are required to be approved by the County Council itself. They apply to every Member and Officer of the County Council, and anyone acting on behalf of the County Council. Contravention is a serious matter and could lead to disciplinary action being taken. These Regulations reflect the Council's 'executive' arrangements which are the responsibility of the Leader to decide.
- 3.2 These Regulations identify the financial responsibilities of the County Council; the Leader, the Cabinet collectively, individual Cabinet Members, the Scrutiny Committees, the Audit Committee, the Chief Executive, the Monitoring Officer, the Chief Finance Officer and the Senior Leadership Team. Delegations from the Senior Leadership Team of Officers are detailed in the Officers' Scheme of Delegation which is maintained by the Monitoring Officer. These regulations apply equally to responsible bodies such as school governors.
- 3.3 The Chief Finance Officer maintains a continuous review of the Financial Regulations and advises the County Council and / or the Leader of any additions or changes that are required. He or she also reports, where appropriate, breaches of the Financial Regulations to the County Council, or the Leader as appropriate.
- 3.4 The County Council's detailed Financial Procedures setting out how the Regulations will be implemented are available on the council's intranet site.
- 3.5 The Chief Finance Officer issues guidance to underpin the Financial Regulations which Members, Officers and others acting on behalf of the authority are required to follow. Contravention could lead to disciplinary proceedings. Guidance on financial matters is available on the intranet and on procurement issues on the Procurement intranet site.
- 3.6 The Senior Leadership Team are responsible for ensuring that all Officers in their service areas are aware of their responsibilities under Financial Regulations and other internal regulatory documents, and that they comply with them.
- 3.7 However, all Members and Officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised and provides value for money.
- 3.8 In exceptional circumstances, the County Council and the Leader (for relevant elements) may approve the temporary waiver of any of the Financial Regulations or Procedures.

## **4 FINANCIAL REGULATION A:**

### **FINANCIAL MANAGEMENT**

#### **Introduction**

A.1 Financial management covers all financial accountabilities in relation to the running of the authority, including the Policy Framework, the Medium Term Financial Plan (MTFP) and the Budget.

#### **Overview of financial accountabilities in relation to:**

##### ***The County Council***

A.2 The County Council determines its internal constitutional arrangements, the Policy Framework and Budget within which the Leader and Cabinet decision-making process operates. It sets the level of Council Tax Precept and determines issues relating to the control of its borrowing requirements. It appoints the Leader of the Council. Together with the Leader, the County Council is responsible for monitoring compliance with policies and the framework of accountability and controls. The framework is set out in its Constitution. However, the scrutiny of Key Decisions is undertaken by the Scrutiny Committees.

A.3 Part 1 of the Council's Constitution sets out responsibilities and procedures for the recording and reporting of decisions taken, including Key Decisions as defined under the Local Government Act 2000.

A.4 In addition, the County Council determines the administrative arrangements for the Local Government Pension Scheme; the Scheme is maintained for all its relevant employees and those of other appropriate bodies within its area. The day-to-day administrative arrangements have been delegated to the Chief Finance Officer.

##### ***The Leader***

A.5 The Leader decides the Cabinet arrangements of the Council. This includes:-

- Deciding the application of 'Key Decision' legislative requirements
- Appointing a Cabinet and a Deputy Leader
- Deciding the functions of the Cabinet and individual members of the Cabinet
- Deciding the Cabinet decision-making arrangements including delegations to officers.

A.6 The Leader has also retained specific functions in relation to the detail of budget processes as outlined later in these Regulations.

##### ***The Cabinet***

A.7 The Leader has decided that the Cabinet shall be responsible for proposing to the County Council the Policy Framework, the Medium Term Financial Plan, the Budget and Annual Precept and for delivering services and discharging functions in accordance with the Policy Framework and Budget.

- A.8 The Leader has also delegated Cabinet decision-making responsibilities to the Somerset Waste Board, the Traffic Regulation Order Sub-Committee, jointly to two or more Cabinet Members, individual Cabinet members and Officers.
- A.9 Together with the County Council, the Cabinet is responsible for monitoring compliance with policies, and the framework of accountability and control.

### **Cabinet Members**

- A.10 Cabinet Members, acting under delegated authority from the Leader and in accordance with Financial Regulations and Procedures, can, within the conditions set by the Cabinet Scheme of Delegation, approve Decisions in conjunction with the relevant Senior Leadership Team officer and the Chief Finance Officer to:-
- Spend budgets within the overall cash-limited approvals of the relevant service area.
  - Agree virements between service blocks that do not exceed agreed delegated limits (see Appendix A for current thresholds)
  - Approve bids for funds from external bodies with no financial limit, provided that suitable on-going revenue provision for the consequences is available where necessary and with the agreement of the Chief Finance Officer.

This includes the ability for two or more Cabinet Members to take joint Key decisions

### **Committees:**

*- Scrutiny for Policies and Place Committee, Scrutiny for Policies, Adults and Health Committee, and Scrutiny for Policies, Children and Families Committee.*

- A.11 These Committees are responsible for scrutinising Key Decisions before or after they have been implemented, and for undertaking on a regular and systematic basis the review of service performance, including the use of financial resources. In addition, the Committees are responsible for responding to requests from Members for the review of specific issues. Arising from their reviews or on request from the Leader, the Cabinet, or a Cabinet Member, the Committees are also responsible for making recommendations on future policy options.

*- Audit Committee*

- A.12 This Committee has overall responsibility for internal audit; however, in turn, it has delegated the day-to-day responsibility for this to the Chief Finance Officer. The Director consults the Committee as necessary on the content of the annual audit plans of both the internal and external auditors. The Committee is responsible for monitoring the delivery of both plans and any additional audit work undertaken during the year; it also reviews the internal auditor's annual report and the external auditor's statutory management letters, and makes recommendations for appropriate further action. In addition, the Committee considers the outcomes of any fraud investigations and the action taken.
- A.13 The Committee is also responsible for reviewing on-going risk management, and may also initiate reviews of the adequacy of financial procedures and internal

controls, including the adequacy of the audit function, and recommend to the Cabinet future policy options; as part of these reviews, The Senior Leadership Team may be required to account to the Committee for their actions or those of their staff.

- A.14 The Committee approves the formal annual Statement of Accounts, the Value For Money audit and Annual Governance Statement and considers matters arising from the Accounts Audit.

*- Constitution and Standards Committee*

- A.15 The Constitution and Standards Committee promotes and maintains high standards of conduct amongst Members. In particular, it advises the Council on the adoption of the Members' Code of Conduct, for its operation and its updating. The Committee also investigates complaints made against Members where referred by the Monitoring Officer and has a role in the consideration of the Council's governance framework. The Committee comprises 5 elected members and 5 co-opted non-voting members.

- A.16 It also updates individual parts of the Constitution as required and recommends an updated Constitution annually to Council for approval.

*Pensions Committee*

- A.17 This Committee discharges the Council's functions as administering authority of the Somerset Pension Fund (the Fund).

*- Other Committees*

- A.18 Regulatory functions, such as planning and licensing, are the responsibility of the Full Council (the Local Government Act 2000 does not allow them to be executive functions) but the Council has delegated these functions to the Regulation Committee and to Officers.
- A.19 The HR Policy Committee determines, monitors, reviews and amends staffing policies and practices to secure the best use and development of the council's staff, including the power to deal with all matters relating to staff terms and conditions and to act as the Council's Remuneration Committee for Chief Officers (ie Senior Leadership Team Officers.)
- A.20 The Somerset Health and Wellbeing Board is a committee of the Council with responsibility for agreeing the Joint Strategic Health Needs Assessment and the Somerset Health and Wellbeing Strategy. The Board also has responsibility for overseeing the commissioning of public health services in Somerset.
- A.21 The Somerset Waste Board has delegated powers in relation to the Council's statutory functions as Waste Disposal Authority. The Board is a Joint Committee of Somerset County Council, Mendip District Council, Sedgemoor District Council, South Somerset District Council and Somerset West & Taunton Council.

***The statutory officers:***

***- Chief Executive***

A.22 The Chief Executive is the Head of Paid Service and is responsible for the corporate and overall strategic management of the County Council as a whole. He or she must report to, and provide information for the County Council, the Leader, the Cabinet, Cabinet Members, Scrutiny and other Committees. Also, he or she is responsible for establishing a framework for management direction, style and standards, and for monitoring the performance of the organisation. In addition, he or she is also responsible, together with the Monitoring Officer, for the system of recording Council and executive decisions.

***- Chief Finance Officer***

A.23 The Chief Finance Officer exercises the statutory duties in relation to the financial administration and stewardship of the County Council. This statutory responsibility cannot be overridden. The statutory duties arise from:

- Section 151 of the Local Government Act 1972;
- Local Government Finance Act 1988;
- The Local Government and Housing Act 1989;
- The Accounting and Audit Regulations 1996 and onwards
- Any relevant case law pertaining to the above

A.24 He or she is responsible for:

- The proper administration of the County Council's financial affairs;
- Setting and monitoring compliance with financial management standards;
- Advising on the corporate financial position and on the key financial controls necessary to secure sound financial management;
- Preparing the draft Medium Term Financial Plan which incorporates the annual Revenue Budget and the Capital Investment Programme;

Advising Council on the requirements to be observed in the setting of the Revenue Budget and the fixing of the Precept;

- The preparation of the annual Statement of Accounts
- Treasury management; and
- Acceptance of Grant Conditions pursuant to Section 151 of the Local Government Act 1972 and has the power to enter into binding financial agreements including, but not limited to, applying for grants or making grant claims and accepting conditional or non-conditional grants and committing the County Council to repay grants in the event that the terms and conditions are not met.

A.25 The Council has appointed the Strategic Finance Manager – Adults, Health and Children's as a formal Deputy Section 151 Officer to act in his or her stead where necessary in all areas of Section 151 responsibility. The Chief Finance Officer will also, from time to time, give more formal delegated authority to suitably qualified and experienced Finance Service Managers for specific projects and tasks, where they will be the financial lead Officer for the authority in his or her stead.

A.26 Under Section 114 of the Local Government Finance Act 1988, the Chief Finance Officer is required specifically to report to the County Council and the Leader and the external auditor if the County Council or one of its Officers:

- has made, or is about to make, a decision which involves incurring unlawful expenditure;
- has taken, or is about to take, an unlawful action which has, or would result in a loss or deficiency to the County Council; or
- is about to make an unlawful entry in the County Council's accounts; or
- if it appears to him that the expenditure of the authority incurred (including expenditure it proposes to incur) in a financial year is likely to exceed the resources (including sums borrowed) available to it to meet that expenditure

*- Monitoring Officer*

A.27 The Monitoring Officer is responsible for promoting and maintaining high standards of overall conduct, and therefore provides support to the Constitution and Standards Committee, the Council and the Senior Leadership Team. The Monitoring Officer is also responsible for the Council's democratic arrangements, the Constitution and for reporting any actual or potential breaches of the law, or instances of maladministration either to the County Council directly or via the Cabinet.

*- Chief Executive's Management Team  
(known as the Senior Leadership Team – SLT)*

A28 The Senior Leadership Team is the Senior Officers' body which brings together directors responsible for:

- a) Commissioning (assessing customer needs, designing and then achieving appropriate outcomes in terms of service delivery whether delivered by the public, private or civil society sectors)
- b) Support and customer services (to support and developing the business)
- c) Operations: (responsible for in-house service delivery)

The list of posts that comprise SLT is set out in 'Definitions' in Part 1, Section 1 of the Constitution.

A29 SLT:

- a) Instigates and develops policy proposals;
- b) Prepares the Medium Term Financial Plan and the Asset Management Plan;
- c) Ensures the delivery of the County Plan and Business Plan within approved budgets and for the effective delivery of the Council's services
- d) Ensures compliance with the Council's approved governance and policy frameworks including Financial Regulations and the Contracts Procedure Rules
- e) Delegates the management of service area budgets through the Commissioning Directors to the relevant Operations Directors

- f) Co-ordinates and manages the use of the Council's staff and property resources to ensure optimum deployment and their use to meet the Council's changing business needs
- g) Directs and monitors the performance of the organisation in applying the approved policies;
- h) Is responsible for the effective delivery of the services through the Operations Directors within the agreed budget and policy framework
- i) Refers issues of concern to the Leader / Cabinet / Cabinet Members for determination.
- j) Ensures that the Council meets its statutory requirements in the areas which they have delegated responsibility.

The Council may, from time to time, appoint interim postholders to any of the SLT or statutory roles, with the same responsibilities and powers for decision-making purposes.

- A.30 SLT has regular meetings with the Cabinet to progress key strategic policy issues prior to consideration by the Cabinet. Any specific decision making will be through the Chief Executive in accordance with SCC's governance procedures.

#### **Other financial accountabilities in relation to:**

##### *Key spending decisions*

- A.31 Key Decisions must be publicised in advance. Key Decisions and some Non-Key Decisions and the reasons for them are published on the Council's website.
- A.32 The Leader is responsible for the protocols that provide the framework within which 'executive' decisions are taken by members and officers. These protocols are detailed in the relevant parts of Sections 5 and 8 of Part 1 of the Constitution. In exercising delegated authority the individual Member/Officer must take account of both legal and financial liabilities as well as risk management issues which may arise from the decision.
- A.33 The Chief Finance Officer in consultation with SLT Officers, advises the Leader or County Council if the financial implication of a proposal or of a decision already taken under delegated authority is, or is likely to be considered, contrary to, or not wholly in accordance with, the approved Policy Framework, Medium Term Financial Plan or Budget. In this context this may result from a Member or Director:
- initiating a new policy (without prior approval);
  - committing expenditure or other resources in future years in excess of the approved plan level;
  - agreeing transfers of budget approvals (virements) in excess of the limits within delegated authority; or
  - causing the total expenditure financed from County Council tax, grants and corporately held reserves to increase, or to decrease by more than a specified amount.
- A.34 The Leader will refer to Council for decision any matter where a Cabinet Member wishes to make a decision which is contrary to or not wholly in accordance with the

approved Annual Budget or to any of the Plans or Strategies agreed by the Council, or within any virement limits set by the Council.

- A.35 Cabinet Members/SLT Officers are responsible for consulting with the Chief Finance Officer on any matter which is liable to affect the County Council's finances materially either favourably or adversely, before any commitments are incurred, and for advising the Leader accordingly.
- A.36 The Monitoring Officer advises the County Council, the Leader, the Cabinet, individual Cabinet Members, and Officers regarding who has the authority within the County Council to take a particular decision regarding financial issues.

#### *Revenue Budget monitoring*

- A.37 The Chief Finance Officer provides financial information to enable SLT Officers acting as 'summary budget holders', to monitor effectively their cash-limited budgets.
- A.38 SLT Officers within their own service areas control income and expenditure against their cash-limited budget and monitor their service delivery and financial performance targets. They must take any action necessary to avoid exceeding their financial allocation; this may, in exceptional circumstances, include the seeking of additional budget allocations.
- A.39 The Chief Finance Officer monitors the performance of SLT Officers in controlling income and expenditure against their cash-limited budget allocation and he or she must report details of variances on a regular basis to SLT Officers and, as appropriate, to Members.

#### *Virement and Supplementary Estimates.*

- A.40 The County Council agrees procedures for the transfer of approvals (virement) between budget headings and approves supplementary estimates. Appendix A sets out the financial thresholds for virements and who can take the Decision to vire.
- A.41 The Leader and Cabinet Members take in-year decisions on reallocating resources in order to deliver the Budget Policy Framework within the financial limits set by the County Council, acting on advice from the Chief Finance Officer.
- A.42 In addition, in accordance with the financial thresholds set out in Appendix A, Cabinet Members agree in-year virements that are above the delegated limits of SLT, and in line with the currently approved Policy Framework. Cabinet Members must notify the Chief Finance Officer of all proposed virements which exceed those limits, and he or she will report these initially to SLT for consideration, and onwards to the Cabinet for determination / confirmation.
- A.43 There is a presumption that virements in excess of the permitted limits will be confirmed where the effect of the proposal is to maintain the level of service outputs which are in line with the approved Policy Framework.



*Treatment of year-end balances*

- A.44 The Chief Finance Officer will recommend procedures for agreeing carry forwards of under and over-spending on budget headings at year-end. The Cabinet will agree individual carry forward requests carrying forward under and over-spending on budget headings at the year-end, acting on the Chief Finance Officer's advice.
- A.45 SLT, and, if appropriate, the relevant Scrutiny Committee monitor the impact of the year-end variations on the level of service outputs which had been planned for both the relevant and subsequent year(s).

*Accounting policies*

- A.46 The Chief Finance Officer selects appropriate accounting policies and ensures that they are applied consistently.

*Accounting records and returns*

- A.47 The Chief Finance Officer determines the accounting procedures to be followed and accounting records to be maintained within the authority.

*The annual Statement of Accounts*

- A.48 The Chief Finance Officer ensures that the annual Statement of Accounts is prepared in accordance with CIPFA's Code of Practice on Local Authority Accounting in the United Kingdom other legal requirements and best accounting practice, for approval by the Audit Committee.

## **4 FINANCIAL REGULATION B:**

### **FINANCIAL PLANNING**

#### **Introduction**

- B.1 The County Council is responsible for approving the following as proposed by the Cabinet:
- the Policy Framework;
  - the Medium Term Financial Plan, including the Annual Revenue Budget and Capital Investment Programme;

#### **Policy Framework**

- B.2 The County Council's agreed policy objectives will inform the overall Policy Framework and service plans. The Policy Framework is defined in Part 1, Section 1 of the Constitution.
- B.3 The County Council approves procedures for agreeing variations to approved budgets, plans and strategies which form the Policy Framework.
- B.4 The County Council sets the level at which the Leader and Cabinet Members may re-allocate budget funds within the current year's Medium Term Financial Plan, including the Revenue Budget and the Capital Investment Programme. The Leader and Cabinet Members take in-year decisions on resources and priorities in order to deliver the Budget and Policy Framework within the financial limits set by the County Council.

#### *- Preparation of the Policy Framework:*

- B.5 The Chief Executive, in consultation with SLT Officers, ensures that the Policy Framework is prepared for approval by the County Council and that it is consistently applied.

#### **Budgeting**

#### *- Budget format:*

- B.6 The County Council determines the policies, format and content of the Medium Term Financial Plan (MTFP) including the annual Revenue Budget and Capital Investment Programme.

#### *- Budget preparation:*

- B.7 The Chief Finance Officer ensures that a Medium Term Financial Plan including the annual Revenue Budget and Capital Investment Programme covering a 3-year period, or as may otherwise be determined, is prepared and updated on an annual basis for consideration initially by SLT then the respective Scrutiny Committees, the Leader and Cabinet Members, before submission for approval to the County Council by the Cabinet. The County Council may agree the budget, amend the budget or ask the Leader to reconsider it or to re-examine areas of detail within the overall budget set.

- B.8 SLT Officers are responsible for ensuring that their elements of the Medium Term Financial Plan reflect agreed service performance plans and their proposals for change, and are available for submission to SLT and the Leader / Cabinet members within the timetable set. SLT Officers must also provide information to the Leader/Cabinet where, in their opinion, the service plan does not meet statutory or central government requirements.
- B.9 Proposals on the annual Revenue Budget submitted by the Cabinet to the Council should include details of the allocation of resources to different services and projects, the options for alternative taxation levels, the nature and level of contingency funds and reserves and the requirement to set the Prudential Code limits in particular the statutory borrowing limit under the Local Government Act 2003.
- B.10 The Leader, in consultation with the Chief Finance Officer, issues guidance to SLT on service cash limits and the general content of the annual Revenue Budget as soon as possible following its approval by the County Council.

*- Guidelines:*

- B.11 The Leader and Cabinet Members, following consultation with the Chief Finance Officer, are responsible for issuing to SLT guidelines on the preparation of the Medium Term Financial Plan including the annual Revenue Budget and the Capital Investment Programme. The guidelines will take account of:
- legal requirements;
  - the approved Policy Framework and service delivery targets;
  - medium term financial planning prospects;
  - available resources;
  - Members' agreed political objectives and targets
  - spending pressures;
  - service performance measures;
  - best value and other relevant Government guidelines;
  - cross-cutting issues (where relevant);
  - the findings of external inspections such as the External Audit Value for Money Assessment; and
  - impact and risk assessments.

*- Preparation of the Capital Strategy and Capital Investment Programme:*

- B.12 The Chief Finance Officer ensures that a Capital Strategy (CS) and a Capital Investment Programme (CIP) covering a 3-5-year period, or as may otherwise be determined, are prepared / updated on an annual basis for consideration initially by SLT and subsequently by the Scrutiny Committees, the Leader and Cabinet Members before their submission for approval to the County Council by the Cabinet.
- B.13 The Capital Strategy sets out the principles to be followed which demonstrate how new capital investment, together with active management of existing assets, contribute to achieving the Council's approved policies, objectives and targets. The Capital Strategy is supported by detailed asset management plans for each major area of capital investment; these plans include details of individual schemes, and

the impact of each on the planned level of service outputs / outcomes, together with the means of financing those proposals. Investment proposals are, as appropriate, summarised in the draft Capital Investment Programme.

- B.14 The County Council may agree the proposed Capital Strategy and Capital Investment Programme, amend them, or ask the Leader to reconsider areas of detail within them.
- B.15 Schemes are approved within the Capital Investment Programme on an individual basis or at a generic level for a specific activity (e.g. Local Transport Plan) and the approval relates to the total spending on the scheme, irrespective of when the payments are to be made; variations of approvals are permitted within limits set by the Council.

*- Resource allocation:*

- B.16 The Chief Finance Officer determines the process to identify on an annual basis for consideration and approval by the County Council, the resource constraints which limit the financing and are available to meet the Medium Term Financial Plan including the Annual Revenue Budget and Capital Investment Programme. The process must also identify all opportunities for optimising funding arrangements without impacting adversely on the delivery of the plans.

*- Budget monitoring and control:*

- B.17 The Chief Finance Officer provides financial information to SLT Officers to enable them to monitor and control expenditure against their revenue and capital budget allocations, as well as monitor against service performance targets.
- B.18 SLT Officers must provide the Chief Finance Officer with details of the progress on their budgets to enable him or her to report through SLT to the Cabinet Member for Resources, Cabinet and respective Scrutiny Committees on a regular basis and provide information to all Members on a quarterly basis. The report will include SLT's proposals for containing spending within their allocations, details of spending pressures in excess of those allocations, and, in respect of the Capital Investment Programme, details of the continued availability of resources to fund the programme; also, the report will seek, where appropriate, approval from the Council to any variations to the Annual Revenue Budget or the Capital Investment Programme where these changes exceed the delegation limits set by the Council, identifying the impact of those variations on the level of planned service outputs.
- B.19 Full details of responsibilities for revenue budget monitoring and control are shown in Financial Procedures A.2 – Financial Management – managing and controlling spending, and for capital B.2 – Preparation of Capital Strategies and Capital Investment Programme.

**Maintenance of reserves**

- B.20 The Chief Finance Officer advises the Leader and the County Council on the prudent level of reserves to be maintained for the authority, based on his or her professional judgement as to the overall future financial risks to the Council.

- B.21 The Chief Finance Officer advises the Leader and the County Council on compliance with the CIPFA Prudential Code (Local Government Act 2003 and associated regulations).
- B.22 The establishment of any earmarked reserves require the approval of the Cabinet Member for Resources in consultation with the Chief Finance Officer.
- B.23 Annually as part of the outturn reporting process, the Cabinet will consider the in-year movements of each earmarked reserve and approve future use of residual balances.

## **4 FINANCIAL REGULATION C:**

### **RISK MANAGEMENT AND CONTROL OF RESOURCES**

#### **Introduction**

- C.1 It is essential that robust, integrated systems are developed and maintained for identifying and evaluating all the County Council's significant operational risks. This should include the proactive participation of all those involved directly or associated with the planning or delivering of services.

#### **Risk management**

- C.2 The Cabinet, on the recommendation of SLT, approves the County Council's risk management strategy and policy statement and, in addition, for ensuring that proper insurance arrangements are effected where appropriate. The Audit Committee will monitor the on-going risk management activities of the County.
- C.3 The Chief Finance Officer prepares the County Council's risk management policy statement, and advises SLT Officers of their responsibilities and monitors their compliance.
- C.4 SLT Officers are responsible for complying with the risk management strategy and policy statement in respect of their service areas
- C.5 The Chief Finance Officer and/or the Monitoring Officer advises initially SLT and subsequently the Cabinet on any non-compliance by an officer with the approved risk management policy statement. He or she is also responsible for providing advice on and effecting the appropriate insurance arrangements.

#### **Internal control**

- C.6 Internal control is the system of control devised by management to help ensure the County Council's objectives are achieved in a manner which promotes economical, efficient and effective use of resources and that the County Council's assets and interests are safeguarded.
- C.7 The Chief Finance Officer advises SLT on effective systems of internal financial control. These arrangements need to ensure that all statutory and corporate requirements and other relevant statements of best practice are met. They should ensure that public funds are properly safeguarded and used economically and efficiently, and in accordance with the statutory and other authorities that govern their use.
- C.8 SLT establishes, in line with that guidance, sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness in the use of resources in the delivery of their service and the achievement of their financial performance targets.

## **Audit requirements**

- C.9 The Accounts and Audit Regulations 1996 require every local authority to maintain an adequate and effective internal audit.
- C.10 The County Council has approved that the Public Sector Audit Appointments (PSAA) has the authority for appointing external auditors to the Council. The basic duties of the external auditor are governed by section 15 of the Local Government Finance Act 1982, as amended by section 5 of the Audit Commission Act 1998, subsequent regulatory guidance and the annual direction of the National Audit Office.
- C.11 The authority may, from time to time, be subject to audit, inspection or investigation by external bodies such as HM Revenue and Customs, who have statutory rights of access.

## **Preventing Fraud and Corruption**

- C.12 The Chief Finance Officer develops and maintains an anti-fraud and anti-corruption policy, an anti-bribery policy and an anti-money laundering policy. These are subject to an annual review by the Audit Committee.

## **Assets**

- C.13 SLT Officers ensure that all financial records, physical assets and supporting documentation used in the provision of their services are properly maintained, securely held and, in respect of physical assets, suitably recorded.
- C.14 They must also ensure that sound contingency plans for the security of those assets and for the continuity of service provision in the event of a disaster or other major system failure are in place, and that those arrangements are regularly tested.

## **Treasury Management**

- C.15 The County Council has adopted CIPFA's 'Code of Practice for Treasury Management in the Public Services'.
- C.16 The Council approves the treasury management policy statement setting out the matters as detailed in Section 5 of CIPFA's 'Code of Practice for Treasury Management in the Public Services.' The draft policy statement is prepared on an annual basis by the Chief Finance Officer and proposed to the County Council by the Cabinet.
- C.17 All money in the hands of the County Council is monitored and controlled by the Chief Finance Officer acting as the officer designated for the purposes of section 151 of the Local Government Act 1972.
- C.18 The Chief Finance Officer has delegated responsibility for implementing and monitoring the treasury management policy statement. All executive decisions on borrowing, investment or financing shall be delegated to him or her, and he or she is required to act in accordance with the policy statement which has regard to CIPFA's

Code of Practice for Treasury Management in the Public Services and the Prudential Code.

- C.19 The Chief Finance Officer reports to the Cabinet not less than annually on the treasury management activities and on the exercise of his or her delegated treasury management authority.

**Staffing**

- C.20 The Chief Executive, through SLT, is responsible for exercising the overall management of staff.
- C.21 The Human Resources and Organisational Development Director determines and monitors adherence to staffing policies and procedures, and ensures that there is proper use of the evaluation, or other agreed system, for determining the remuneration of a job; further details are shown in the Personnel Handbook.
- C.22 SLT Officers control their staff numbers by:
- employing staff in accordance with the approved Policy Framework, establishment level of officers and annual Revenue Budget;
  - seeking the approval within the Medium Term Financial Plan to cover the estimated staffing levels required to support the existing and proposed levels of service provision;
  - seeking the prior approval of the Cabinet Member responsible for HR, in consultation with the Human Resources and Organisational Development Director and the Chief Finance Officer any adjustment to the staffing numbers to meet changing operational needs where the ongoing impact cannot be wholly met from within the approved budget or from within ongoing additional external income, and / or where staffing implications are significant.
  - only employing staff on a permanent basis if ongoing and sustainable funding is available.
  - matching contracts and appointments of staff that are funded by external funding sources to the guaranteed time period that such funding is available
  - complying with any further guidance issued around establishment control such as the Recruitment Protocol



## **4 FINANCIAL REGULATION D: SYSTEMS AND PROCEDURES**

### **Introduction**

- D.1 Sound systems and procedures are essential to form an effective framework of accountability and control.

### **General**

- D.2 The Chief Finance Officer is responsible for the overall operation and maintenance of the County Council's form of accounts, the accounting and related systems, and all supporting financial records. The Chief Finance Officer can enforce the use of corporate financial systems where there are financial or other benefits to be gained from doing so.
- D.3 SLT Officers ensure the proper operation of approved financial procedures within their own service area.
- D.4 SLT Officers must seek the prior approval of the Chief Finance Officer to any proposed changes to the existing financial or related systems or to the establishment of any new financial or related systems which are / will be directly under their control.
- D.5 SLT Officers must also seek the prior approval of the Chief Finance Officer, who, if he or she deem it appropriate, will consult SLT and the Cabinet, to any proposed changes to the County Council's instructions or procedural notes on financial matters which are required to meet their own specific service needs.
- D.6 SLT Officers must ensure that, where financial management arrangements are undertaken within their service areas that their staff receive appropriate financial training and operate to the professional standards set by, and detailed in guidelines issued by the Chief Finance Officer.
- D.7 SLT Officers must ensure that, where appropriate, computer and other systems are registered in accordance with Data Protection and GDPR legislation and that their staff are aware of their responsibilities under the Freedom of Information legislation.

### **Expenditure and Income**

- D.8 SLT Officers are responsible for the effective operation of a system for the control of expenditure and income within their area. Where an officer has delegated this responsibility, their records must identify who has been authorised to act on his / her behalf in respect of the placing of orders, the making of payments, or the collection of income, and the limit of their authority.
- D.9 The County Council approves procedures for the writing-off of uncollectable debts as part of its overall control framework of accountability and control. Guidance is contained within the Income Code of Practice.

### **Payments to employees, former employees and members**

- D.10 The Human Resources and Operational Development Director is responsible for making all payments for salaries and wages to all staff, for pension and other benefit payments to relevant former employees and for the payment of allowances to Members.

### **Taxation**

- D.11 The Chief Finance Officer advises SLT Officers on all taxation issues that affect the County Council, in the light of statutory requirements and relevant guidance issued by the appropriate bodies.
- D.12 The Chief Finance Officer is responsible for maintaining directly, or where he or she deems it appropriate, ensuring that SLT Officers maintain the County Council's taxation records, and for making all tax payments, receiving tax credits / refunds and for submitting tax returns by their due date as and when appropriate.

### **Trading Accounts and Business Units**

- D.13 The Chief Finance Officer advises on the establishment and the operation of suitable accounting records and supporting procedures for trading accounts and business units.
- D.14 The establishment of all new trading accounts and activities require the approval of the Cabinet Member for Resources in consultation with the Chief Finance Officer following consideration of an appropriate detailed business case.
- D.15 There is a requirement for all trading units to achieve full cost recovery and achieve a break-even position. If a trading unit has more than one year of deficit, there will be a full review of the business case.

## **4 FINANCIAL REGULATION E: EXTERNAL ARRANGEMENTS**

### **Introduction**

E.1 The County Council provides a distinctive leadership role for the community and is able to bring together the contributions of various participants / stakeholders by participating in various partnership / joint working arrangements; as a result, it is able to achieve the promotion or improvement of the economic, social or environmental wellbeing of its area.

### **Partnerships**

E.2 The Cabinet approves the operational framework for the County Council's participation in all strategic partnerships / joint working arrangements with other local public, private, voluntary and community sector organisations; this includes the arrangements for delegations to Officers and the detailed arrangements for the provision of both financial and physical resources by the County Council.

E.3 Similarly, Cabinet Members approve the operational framework of all other partnerships, joint working arrangements with other local public, private, voluntary and community sector organisations, which affect the service areas for which they have responsibility.

E.4 The Monitoring Officer, Chief Finance Officer and other Senior Leadership Team officers promote and maintain within all partnership / joint working arrangements the same high standards of conduct with regard to the legal, corporate governance and financial affairs which are detailed in these Financial Regulations and Financial Procedures and elsewhere, and which are applied throughout the County Council.

E.5 The Chief Finance Officer:

- advises SLT Officers on the need for, and, if appropriate, for appraising and approving the relevant risk assessment of a proposal before any commitment is made for the County Council to participate in a partnership or joint working arrangement or scheme; and
- specifies the accounting and auditing arrangements to be adopted and approves the overall corporate governance arrangements when, under the approved arrangements, the County Council is to be the lead authority.

E.6 SLT Officers are responsible for:

- ensuring that before committing the County Council's participation in a partnership or joint working arrangement or scheme, or before seeking the approval of the Cabinet or Cabinet Member to such participation, they consult with the Chief Finance Officer on the need to prepare a risk assessment of the proposal, and if appropriate, obtaining his or her approval to it;

- ensuring that the approval of the Cabinet or Cabinet Member as well as the Chief Finance Officer is obtained before any negotiations are concluded where the County Council's participation is of a material nature;
- ensuring that all agreements and arrangements, including exit arrangements, are properly documented, including details of the County Council's financial and physical commitment to the arrangements which are to be in accordance with procedures specified by the Chief Finance Officer;
- observing the County Council's standards of conduct whilst having due regard to the partnership or joint working arrangement's governance framework;
- ensuring that the body or person maintaining the accounting and auditing arrangements do so to a standard acceptable by the Chief Finance Officer in those cases where, under the approved arrangements, the County Council is not to be the lead authority, but the County Council's participation is of a material nature; and
- providing appropriate information to the Chief Finance Officer to enable him or her to include relevant details in the County Council's Statement of Accounts, and other financial statements and returns.

### **External funding**

E.7 The Chief Finance Officer is responsible for providing specific guidance to SLT Officers to enable them to account properly for funding receivable from external sources, such as grants.

### **Work for third parties**

E.8 The Chief Finance Officer is responsible for providing specific guidance to SLT Officers in respect of required contractual arrangements for the provision of services to third parties or external bodies.

Appendix A - List of Financial Thresholds		
<b>Revenue Virements</b>	<b>Threshold</b>	<b>Responsible Decision Maker</b>
<p>Transfers between revenue budget headings (*1) can take place provided that they do not involve new policy or policy change and do not involve an increasing commitment in future years that cannot be contained within existing approved budget allocations.</p> <p><i>Note – (*1) this relates to budget headings at a Senior Leadership Team level and above.</i></p>	<p>Up to £50,000</p> <p>Between £50,000 and £250,000</p> <p>Above £250000</p>	<p>the relevant Senior Leadership Team Officer</p> <p>the relevant Cabinet member (s) in consultation with relevant Officers and the Chief Finance Officer (unless they are purely technical or structural in nature when there would be no financial limit)</p> <p>the Cabinet Member for Resources in consultation with other relevant Cabinet Members and the Chief Finance Officer.</p> <p><i>The decision maker is required to meet any conditions on the exercise of the function set out in Article 14 – para 14.7 – of the Constitution – Cabinet Scheme of Delegation.</i></p>
<p><b>Capital Virements</b></p> <p>Resources may be vired from one capital project or heading to another (*2) provided that such transfers do not result in an overall increased commitment of capital resources and do not involve new policy or policy change:</p> <p><i>Note – (*2) this relates to individual capital projects or budget headings at Senior Leadership level and above</i></p>	<p>Up to £50,000</p> <p>Between £50,000 and £250,000</p> <p>Above £250,000</p>	<p>The relevant Senior Leadership Team Officer</p> <p>the relevant Cabinet Member in consultation with the relevant Senior Leadership Team Officer and the Chief Finance Officer (unless they are purely technical or structural in nature when there would be no financial limit)</p> <p>the Cabinet Member for Resources in consultation with other relevant Cabinet Members and the Chief Finance Officer.</p> <p><i>NB. The decision maker is required to meet any conditions on the exercise of the function set out in Article 14 – para 14.7 – of the Constitution – Cabinet Scheme of Delegation.</i></p>

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## Committee Forward Work Plan

Lead Officer: Scott Wooldridge, Strategic Manager – Governance & Risk  
Contact Details: tel (01823) 357628 or e-mail: swooldridge@somerset.gov.uk

### **1. Summary/link to the County Plan**

- 1.1. Members have asked that we review forthcoming items coming to Constitution and Standards Committee. A Forward Work Plan will be brought to each meeting for review and discussion to assist with planning business for future meetings.

### **2. Issues for consideration**

- 2.1. Members are asked to note the outline agendas for the next two committee meetings as set out in Appendix A to this report, and to comment on any further items that they would like to be scheduled at these or at future meetings.

### **3. Background**

- 3.1. This item is designed to enable good planning and scheduling of business for committee meetings in order to make the best use of the available time and resources.

### **4. Implications**

- 4.1. Any items requested not yet covered by the Forward Work Plan at Appendix A will require scheduling by officers, in conjunction with the Chair.

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## Constitution & Standards Committee Work Programme

<b><u>Future Agenda Items</u></b>	<b><u>Notes</u></b>
<b><u>1 February 2019</u></b>	
Annual review of Contract Procedure Rules and Standing Orders	To receive the annual review of the Council's Contract Procedure Rules and Standing Orders and consider any recommendations
Annual review of Financial Regulations	To receive the annual review of the Financial Regulations and consider any recommendations
<b><u>3 May 2019</u></b>	
Officer Code of Conduct	To consider and approve for inclusion within the Constitution
Annual Review of Whistleblowing Policy	To receive the annual review report of this policy and consider any recommendations
Annual review of Access to Info Regulations (including SCC Recording Protocol)	To receive an update regarding the operation of the Council's policy for publishing audio recordings on its website
Annual review of Democratic Arrangements	To receive the annual review of the Council's democratic arrangements, including receiving the review of the effective Scrutiny arrangements and consider any recommendations
Annual Review of the Council's Constitution	Report from the Monitoring Officer seeking views from the Committee regarding any proposed revisions to the Council's Constitution for consideration at Full Council AGM meeting in May 2019
Annual review of Committee's terms of reference	To review the Committee's terms of reference and consider any proposed changes to recommend to Full Council
<b><u>21 June 2019</u></b>	
DBS checks update	To receive an update regarding DBS checks for elected members in accordance with the Council's policy agreed in November 2017
Annual review of the Members Code of Conduct	To receive the annual review, an update on any national or local policy changes, and consider

and annual report on complaints against County Councillors	any recommendations. In addition, receive an annual report regarding complaints against County Councillors
Annual review of County Councillor Complaints Procedure	To receive the annual review and consider any recommendations
Annual Review of Code of Planning Practice	To receive the annual review and consider any recommendations
<b>11 October 2019</b>	
Annual review of Member and Officer Protocol	To receive the annual review and consider any recommendations