



## **THE RUGBY BOROUGH COUNCIL**

You are hereby summoned to attend an ORDINARY MEETING of the Rugby Borough Council, which will be held at the TOWN HALL, RUGBY, on Thursday 14 December 2017 at 7pm.

### **A G E N D A**

#### **PART 1 – PUBLIC BUSINESS**

1. Apologies for absence.
2. To approve the minutes of the meeting of Council held on 14 November 2017.
3. Declaration of Interests.  
  
To receive declarations of -  
  
(a) non-pecuniary interests as defined by the Council's Code of Conduct for Councillors;  
  
(b) pecuniary interests as defined by the Council's Code of Conduct for Councillors; and  
  
(c) notice under Section 106 Local Government Finance Act 1992 – non-payment of Community Charge or Council Tax.
4. To receive the Mayor's Announcements.
5. Questions pursuant to Standing Order 10.

6. To receive any reports of Cabinet and Committees which have met since the last meeting of the Council and to pass such resolutions and to make such orders thereon as may be necessary:

**(a) Cabinet – 4 December 2017**

- (1) Finance and Performance Monitoring 2017/18 – Quarter 2 – Corporate Resources Portfolio Holder.
- (2) Council Tax Reduction Scheme 2018/19 – Corporate Resources Portfolio Holder.
- (3) A potential Council-led lottery for Rugby – Communities and Homes Portfolio Holder.
- (4) Treasury Management Report 2017/18 - Progress Report – Corporate Resources Portfolio Holder.

7. To receive and consider the Reports of Officers.

- (a) Constitution update – report of the Executive Director and Monitoring Officer.
- (b) Appointment of Independent Persons – report of the Monitoring Officer.

8. Notice of Motion Pursuant to Standing Order 11.

“We would ask this full Council to undertake a joint feasibility study with public and private partners currently based in the town centre area to identify opportunities to collectively use their building assets in a more efficient and productive way. The study should include the Rugby Benn Hall and Town Hall, Magistrates Court, Police, Fire Service, Adult Social Care, Social Services, Children Services, Age Uk, WCAVA, CAB and CEMEX.

We believe by the collective pulling of resources we could save money, have a modern building fit for the future that will reduce overheads and provide a seamless service to our local Communities. Land that is freed up could then be used to build social housing to help bring down housing waiting lists in the Borough. This would ensure the future sustainability of our town centre businesses who would undoubtedly benefit from those living in the new homes we could build in this area.”

Proposer: Councillor Mrs O'Rourke  
Seconder: Councillor Ms Edwards

9. Correspondence.

10. Common Seal

To order the affixing of the Common Seal to the various orders, deeds and documents to be made or entered into for carrying into effect the several decisions, matters and things approved by the Council and more particularly set out in the Committees' Reports adopted at this meeting.

## **PART 2 – EXEMPT INFORMATION**

There is no business involving exempt information to be transacted.

DATED THIS 5<sup>th</sup> day of December 2017

### **Executive Director**

To: The Mayor and Members of Rugby Borough Council

### **QUESTIONS AT COUNCIL**

*A Councillor may ask a Question at the meeting by giving notice in writing of the Question to the Chief Executive no later than midday on Friday 8 December 2017. The rules relating to Questions are set out in Standing Order 10 of Part 3a of the Constitution.*

**REPORT OF CABINET**

4 December 2017

**PRESENT:**

Councillors Stokes (Chairman), Mrs Crane, Mrs Parker, Ms Robbins and Mrs Timms.

Councillors Ms Edwards, Mrs O'Rourke, Roodhouse and Sandison were also in attendance.

**1. FINANCE AND PERFORMANCE MONITORING 2017/18 – QUARTER 2**

Cabinet considered a report concerning an overview of the Council's spending and performance position for 2017/18. The report was circulated as part of the Cabinet agenda and all Members are requested to bring their copies to the meeting. A copy of the report will be attached as part of the electronic version of this agenda on the Council's website.

**Recommendation of Cabinet**

Cabinet decided to recommend to Council that –

- (1) HRA capital budget approval of £50,000 for 2017/18 for Door Security Systems be approved to be met from the Sheltered Housing earmarked reserve;
- (2) the supplementary HRA capital budget of £1,811,590 is requested for approval for 2017/18 for Housing Windows Replacement to be funded from the Major Repairs Reserve; and
- (3) performance summary and performance data included in Appendix 4 be considered and noted.

**Recommended that** – the recommendation of Cabinet be approved.

**2. COUNCIL TAX REDUCTION SCHEME 2018/19**

Cabinet considered a report concerning the Council's Council Tax Reduction Scheme for 2018/19. The report was circulated as part of the Cabinet agenda and all Members are requested to bring their copies to the meeting. A copy of the report will be attached as part of the electronic version of this agenda on the Council's website.

**Recommendation of Cabinet**

Cabinet decided to recommend to Council that the Council Tax Reduction Scheme for 2017/18 be adopted as the Council's Council Tax Reduction Scheme for 2018/19.

**Recommended that** – the recommendation of Cabinet be approved.

**3. A POTENTIAL COUNCIL-LED LOTTERY FOR RUGBY**

Cabinet considered a report concerning a potential council-led lottery for Rugby. The report was circulated as part of the Cabinet agenda and all Members are requested to bring their copies to the meeting. A copy of the report will be attached as part of the electronic version of this agenda on the Council's website.

**Recommendation of Cabinet**

Cabinet decided to recommend to Council that delegated authority be given to the Head of Communities and Homes to:

- progress with the due diligence works required to develop the business case for a Rugby Borough Council led lottery; and
- subsequently launch a Rugby Borough Council led lottery, if the business case for doing so is sufficiently robust.

**Recommended that** – the recommendation of Cabinet be approved.

**4. TREASURY MANAGEMENT REPORT 2017/18 – PROGRESS REPORT**

Cabinet considered a report concerning a potential council-led lottery for Rugby. The report was circulated as part of the Cabinet agenda and all Members are requested to bring their copies to the meeting. A copy of the report will be attached as part of the electronic version of this agenda on the Council's website.

**Recommendation of Cabinet**

Cabinet decided to recommend to Council that –

- (1) the report be noted; and
- (2) the monitoring and the review of the Treasury Management indicators be agreed.

**COUNCILLOR M STOKES  
CHAIRMAN**

**Council – 14 December 2017**

**Report of the Executive Director and the Monitoring Officer**

**Constitution update**

**1. INTRODUCTION**

The purpose of this report is to:

- update the Scheme of Delegation to Officers following the restructure of Senior Management Team in 2016 and any other relevant parts of the constitution; and
- update Contracts Standing Orders in pursuit of efficiency and value for money and to comply with recent legislation and case law.

Some cosmetics changes have been made to other parts of the Constitution.

The revised Constitution will be published on the Council's website and a hard copy will be available in the Members' Room.

**2. APPROVAL OF ACCOUNTS**

Following a change in statutory requirements, it is necessary for the Council's statutory accounts to be approved by 31 July each year, as opposed to the previous 30 September deadline.

This shift in the deadline has led to a corresponding movement forward in proposed 2018/19 Calendar for the Council's meeting to approve the accounts. Subsequently this presents a conflict in requirements to hold a Council meeting to approve the accounts in accordance with the new timetable and scheduling meetings to avoid school holidays for Warwickshire.

To resolve such a conflict an alternative option for Council to consider would be for the approval of the Council's accounts to be delegated to the Audit and Ethics Committee. Currently the Audit and Ethics Committee considers the Council's accounts in advance of the Council meeting and, following its review, subsequently recommend to Council that the accounts be approved.

Delegation of the approval to similar committees is reasonably common across local government. The table below sets out the arrangements at the other Warwickshire local authorities.

<b>Council</b>	<b>Governance Arrangements</b>
North Warwickshire Borough	Approved by Council
Nuneaton and Bedworth Borough	Approved by Council
Stratford-on Avon District	Approved by Audit and Standards Committee
Warwick District	Approved by Finance and Audit Scrutiny Committee
Warwickshire County	Approved by Council

The risk for Council to consider such a delegation is a possible perception that such action could lead to a democratic deficit, particularly in the context that the Audit and Ethics Committee is chaired by an individual appointed independently of the Council. However, this perception could be countered in that such an arrangement could offer greater transparency due to the independence of the chair.

### 3. PROPOSED CHANGES

The proposed material changes are listed below.

#### Articles of the Constitution

Part	Subject	Changes
1B 9.2 (e)	Substitute members	The introduction of named substitutes in order to increase the robustness of the Audit and Ethics Committee.
1B 9.3	Roles and purpose of the committee	New <i>role</i> added: (d) To approve the Council's Statement of Accounts

#### Terms of reference of the Council, Cabinet, the overview and scrutiny committees and regulatory committees

Part	Subject	Changes
2A 3	Responsibility for Local Choice Functions	<i>Local Choice Function</i> added: The approval of the Statement of Accounts <i>Responsible body or person</i> : Audit and Ethics Committee <i>Any restriction</i> : None <i>Statutory reference</i> : The Local Audit and Accountability Act 2014, The Accounts and Audit Regulations 2015
2A 8	Audit and Ethics Committee	<i>Function</i> added: Approval of the Council's Statement of Accounts <i>Statutory Reference</i> : Accounts and Audit Regulations 2015
2A 13.1	Licensing and Registration	<i>Function</i> added: (c) Setting of Hackney Carriage fares [S65 LG(MP)A 1976]
2A	Planning and Development Control	The following <i>functions</i> were added: (f) Power to decline to determine overlapping application (S70B TCPA 1990) (g)(iii) Limiting duration of planning permission (S91 TCPA 1990) (g)(v) Non-material changes (S96A TCPA 1990) (g)(vi) Revoke or modify planning permission (S97 TCPA 1990) (n)(iv) Enforcement control of advertisements (S224 TCPA 1990)

		<p>(n)(v) Power to remove or obliterate placards and posters (S225 TCPA 1990)</p> <p>(x)(iii) Vary or discharge conditions [S19 Planning (Listed Buildings and Conservation Areas) Act 1990]</p> <p>(x)(iv) Revoke and modify listed building consent [S23 Planning (Listed Buildings and Conservation Areas) Act 1990]</p> <p>(x)(v) Certificate of lawfulness of proposed works [S26H and S26I Planning (Listed Buildings and Conservation Areas) Act 1990]</p>
<b>2A</b>	Planning and Development Control	<p>The following <i>functions</i> were removed:</p> <p>(g) Article 8 to Article 26</p> <p>(i) Part 6 to Part 31</p> <p>Powers relating to mines and minerals permissions and conditions [S2(6) Schedule 2 Planning and Compensation Act 1991; S9(6) Schedule 13 Environment Act 1995; S6(5) Schedule 14 Environment Act 1995]</p> <p>Power to determine applications for conservation area consent [S16(1) Planning (Listed Buildings and Conservation Areas) Act 1990]</p>

### Scheme of Delegation to Officers

Part	Subject	Changes
<b>2B 2.1 (j) (i)(ii)</b>	The Executive Director is authorised to do the following:	The introduction of a new threshold level for the payment of honoraria for employees from £1,500 to £3,000 and the payment period from six months to 24 months.
<b>2B 2.3 (j)</b>	Each head of services is authorised to do the following:	The introduction of a new threshold level from £5,000 to £7,500 in accordance with the changes to Contract Standing Orders.
<b>2B 3.2.3</b>	The Head of Environmental and Public Realm is authorised to do the following:	<p>The following <i>functions</i> were added:</p> <p>(b) The power to suspend hackney carriage and private hire vehicles licenses and operator licenses, where there is a serious or imminent risk to public safety that requires immediate action.</p> <p>(c) The power to suspend and revoke driver licenses, in consultation with Chairman or Vice Chairman of the Licensing and Safety Committee, where there is a serious or imminent risk to public safety that requires immediate action.</p>

## Contracts Standing Orders (attached at Appendix)

Part	Subject	Changes
<b>3F 1.5 and 5.1</b> and other sections which refer to the financial limits	Financial limits	The introduction of a new threshold levels and the raising of the top threshold to £3,500,000.  The proposed thresholds are:  £A = £7,500 (new threshold) £B = £25,000 (unchanged) £C = £125,000 (new threshold) £D = £3,500,000 (new threshold)

## Financial Standing Orders

Part	Subject	Changes
<b>3G 4.7 (a)</b>	Key Decisions	The introduction of a new threshold level from £50,000 to £125,000.
<b>3G 8.3</b>	Internal Audit	New section added

## 4. RECOMMENDATION

The constitution be amended as detailed in the report.

## Part 3F

# Contract Standing Orders

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## 1. INTRODUCTION

1.1 The purpose of these Contract Standing Orders is to:

- ensure that the Council promotes the probity and integrity of the procurement process;
- provide employees involved in the procurement process with a framework within which to work;
- ensure fairness in allocating contracts and protect employees from allegations of corruption or collusion with suppliers and contractors;
- promote public accountability;
- ensure compliance with all legal requirements;
- achieve value for money on behalf of the Council; and
- support the Council's corporate aims and objectives in relation to procurement (see Procurement Strategy).

1.2 Contract Standing Orders must be complied with strictly. They are minimum requirements and any instances of non-compliance may result in disciplinary action being taken. A more thorough procedure may be appropriate for a particular contract such as where the EU procurement regulations apply. Please see the Procurement Toolkit or contact Procurement

1.3 Any consultant, agent or contractor acting on behalf of the Council must comply with these Contract Standing Orders and this must be a condition of their employment.

1.4 Contracts let on behalf of a consortium, association or similar body of which the Council is a member should comply with the rules of the body or lead authority.

1.5 The amounts £A to £D in these Contract Standing Orders (section 5) have the initial values given to them below:

£A = £7,500

£B = £25,000

£C = £125,000

£D = £3,500,000

1.6 All monetary values included in these Contract Standing Orders relate to the total value of the contract including extension options and shall be deemed to exclude any Value Added Tax applicable to the contract.

1.7 The Head of Corporate Resources is designated as the responsible officer in accordance with Section 151 of the Local Government Act 1972 (for the proper administration of the council's financial affairs), and the designated officer in accordance with Section 114 of the Local Government Finance Act 1988 (incurring of unlawful expenditure) is the Head of Corporate Resources in conjunction with the Monitoring Officer.

- 1.8 The Head of Corporate Resources, as Section 151 Officer, and the Monitoring Officer shall review all monetary limits annually and any amendments, if appropriate having regard to inflation and other relevant factors, shall be reported to the Executive Director.
- 1.9 Questions of interpretation of these Contract Standing Orders should be referred to the Monitoring Officer, the Head of Corporate Resources, the Legal Services Manager or Procurement.
- 1.10 References to the Head of Corporate Resources, Monitoring Officer and Legal Services Manager shall include other employees authorised to undertake duties on behalf of the Head of Corporate Resources, Monitoring Officer and the Legal Services Manager.

## **2. SCOPE**

- 2.1 These Contract Standing Orders relate to any arrangement made by, or on behalf of, the Council for the carrying out of work or for the procurement of goods, works or services. These include arrangements for:
- the supply or disposal of goods
  - hire, rental or lease of goods or equipment
  - execution of works
  - the delivery of services including those relating to the recruitment of temporary staff, land and property transactions and financial and consultancy services
  - Concessions (The Concession Contracts Regulations 2016)
- 2.2 These Contract Standing Orders do not apply to:
- the employment of permanent staff
  - agreements regarding the acquisition, disposal or transfer of land, for which Financial Regulations shall apply
  - insurance policies
  - treasury management transactions.
  - engagement of legal counsel
  - grants from the council (except where they are to buy services)
  - public-to-public cooperation and in-house contracts subject to fulfilling the test criteria in Regulation 12 of the EU Regulations
  - engaging entertainment for shows etc where the value is lower than EU Regulation threshold
- 2.3 The use of e-procurement technology and purchasing cards does not negate the requirement to comply with all elements of these Contract Standing Orders.

### 3. EXEMPTIONS

- 3.1 Contracts Standing Orders are intended to protect the Council and only under circumstances which are exceptional and unavoidable shall authority be given to waive them. All exemptions must be recorded in the exemptions register held by Procurement.
- 3.2 Requests for all exemptions and the reasons for accepting or rejecting the request must be made in writing (includes e-mail) to the Head of Corporate Resources. Requests shall include:
- a description of the contract
  - the nature of the exemption
  - the unavoidable circumstances that require the exemption
  - the total value of the contract
  - the implications (if any) to the Council

An exemption will only be approved if it is because of an unforeseeable emergency involving immediate risk to persons or property, disruption to council services or in the best interest of the service.

- 3.3 If an exemption to these Contract Standing Orders is necessary because of an unforeseeable emergency involving immediate risk to persons or property, disruption to council services or in the best interest of the service and is above £C (£125,000) value must be reported to Audit and Ethics Committee and an exemptions register kept by Procurement. It may be made:
- by the Chief Financial Officer and Legal Services Manager in consultation with the Monitoring Officer for contracts estimated to be valued up to £C (£125,000) or up to the EU threshold if on the Forward Plan (if the Chief Financial Officer is applying for an exemption then he/she must consult with the Executive Director);
  - in consultation with the relevant Portfolio holder for contracts estimated to exceed £C (£125,000) if no decision has been made by Cabinet/Forward Plan.
- 3.4 No exemption should be used if the EU Regulations apply unless the proposals are non-commercial and satisfy the 'Teckal' tests (EU Regulation 12).

The tests are:

- a) The service provider carries out more than 80% of its activities with its owner authorities.
- b) The owner authorities exercise the same kind of control over the service provider as they do over their own departments.
- c) There is no private sector ownership or direct capital participation of the service provider or any intention that there should be any.

Advice on the Teckal principle can be obtained from Procurement.

- 3.5 Under the principles of Value for Money (VFM), the Council should discourage requests for approval to obtain only one quotation or tender unless there is only one suitable contractor available, for example IT software upgrades/licensing. Where there is only one suitably qualified supplier then all reasonable efforts to secure value for money must be made.

### **Collaborative Procurement Arrangements and Frameworks**

- 3.6 In order to secure VFM, the Council may enter into collaborative procurement arrangements. The Head of Corporate Resources must be consulted where a purchase is to be made using collaborative purchasing arrangements with a Local Authority, government department, statutory undertaker or public service purchasing consortium. Where the council is acting as the lead authority in a consortium for the procurement of goods, works or services, these Contracts Standing Orders will be applicable.
- 3.7 All purchases made via a Local Authority consortium, such as CSW, ESPO, CCS, PFH and CBC, are deemed to comply with these Contract Standing Orders and an exemption is not required. However, purchases above the EU threshold must be let under the EU Regulations unless the consortium has satisfied this requirement already by letting their contract in accordance with the EU Regulations on behalf of the Council and other consortium members. Please contact Procurement for advice on suitable frameworks agreements.
- 3.8 Framework agreements, due to their nature, may be comprised of several suppliers, and a robust selection process should be undertaken to ensure that the most economically advantageous is selected. When the price is pre-determined and fixed, with a pre-released pricing tariff which can be referred to, a direct award may be made. In any instance where the cost (or specification) of the contract requirement is not fixed, then **all** suppliers capable of performing the contract need to be contacted with an opportunity to bid (Further Competition).
- 3.9 Access to Framework agreements will be defined by the framework owner. Some may require an access agreement authorised as per Paragraph 15.6 (copy to be forwarded to Procurement for the Central Contract Database). Others may require a contract number to be issued on purchase orders.

### **Manual Tender Request**

- 3.10 All requests for quotes (RFQs) and tenders for £B (£25,000) or higher will be required to run through the electronic process and any resulting Contract must be recorded on the Central Contract Database. If a manual process is preferred, an exemption request in line with Paragraphs 3.2 and 3.3 will be required. Reasons may include supplier capability or specialist categories.

## 4. STEPS PRIOR TO PURCHASE

4.1 Before beginning a purchase the employee responsible for it must appraise the purchase, in a manner commensurate with its complexity and value, by:

- i. referring to the Procurement Toolkit and contacting Procurement
- ii. for services above EU threshold consider how the contract might improve the economic, social and environmental wellbeing of the borough and consider if external consultation is required (Public Services (Social Value) Act 2012)
- iii. checking to ensure that Procurement does not already have a preferred supplier agreement for the product/service or if a local agreement would be suitable
- iv. completing the appropriate Procurement Checklist
- v. appraising the need for the expenditure and its priority
- vi. defining the purpose and objectives of the purchase
- vii. assessing the risks associated with the purchase and determine how to manage them adequately
- viii. considering what procurement method is most likely to achieve the objectives, including internal or external sourcing, partnering, and collaborative procurement arrangements with another Local Authority, government department, statutory undertaker or public service purchasing consortium
- ix. consulting users as appropriate about the proposed procurement method, contract standards and methods of performance and user satisfaction monitoring
- x. selecting the standard terms and conditions that are to apply to the proposed contract and, in consultation with Procurement, make any appropriate amendments to suit the needs of the particular contract
- xi. deciding if the contract can be awarded in separate Lots and if so how many Lots an economic operator can tender for (Contact Procurement for advice)
- xii. confirming that approval has been given for the expenditure and that an appropriate budget exists
- xiii. ensuring that EU Regulations have been complied with, including the sending of a Prior Information Notice (PIN) (see Section 6)
- xiv. identifying the evaluation criteria (see Paragraph 9.2)
- xv. ensuring that the purchase has been reported in the Forward Plan if it is a key decision
- xvi. drafting specification/brief/description of contract supplies or services required

## 5. FINANCIAL LIMITS

### 5.1 Minimum requirements for inviting competitive offers:

Estimated Value of the Whole Contract *	Minimum Number of Suppliers to be Invited	Minimum Advertising Requirements	Procurement Method	Process Records Required	Form of Contract Required
Less than £A (£7,500)	No minimum numbers but must demonstrate VFM	Not Mandatory - Supplier selection based on Officer Knowledge	Verbal quotation is acceptable but this must be confirmed in writing	Written note of source, name and amount for each quotation obtained	Purchase order and/or invoice
£A – £B (£7,500 to £25,000)	3 written quotations (4 if an internal quotation is included)	Not Mandatory - Supplier selection based on Officer Knowledge	Written Quotation (E-Mail is also acceptable)	Quotations obtained	Purchase order (PO) with terms and conditions and quotation attached and invoice
£B – £C (£25,000) to £125,000) or £D (£3,500,000) if Works)	3 written quotations (4 if an internal quotation is included)	Advertisement via E Tender portal/Contracts Finder if open advert	Formal sealed written quotations (consult Procurement)	Quotations obtained and clarifications register	Quotation schedule, PO with terms and conditions attached and invoice (Record on Central Contracts Register)
More than £C (£125,000) to EU threshold or more than £D (£3,500,000) if Works	3 tenders (4 if an internal tender is included)	Advertisement via E Tender Portal and Contracts Finder	Sealed tenders (consult Procurement)	Tender schedule, tenders received and clarification register	Formal sealed contract (Record on Central Contracts Register)
Above EU threshold	No fewer than 5 tenders	Advertising in OJEU and Contracts Finder	Follow EU Regulations (consult Procurement)	Complete Log of entire Procedure	Formal Sealed Contract (Record on Central Contract Database)

\* **Definition of whole contract** – all capital and revenue costs (including extension options) payable to the supplier over the life of the contract or over a five-year period if there is no end date to the contract and shall be deemed to exclude any Value Added Tax applicable to the contract.

**Definition of Works** – the outcome of any works such as is of itself sufficient to fulfil an economic or technical function – Part 6 Schedule 2 of the Public Contracts Regulations 2015. Contact Procurement for advice.

Procurement must be consulted if the contract is over £B (£25,000) and the contract must be recorded on the Central Contracts Database.

*From this point onwards in these Contract Standing Orders, the terms “Regulation” or “The Regulations” or “the 2015 Regulations” refer to The Public Contracts Regulations 2015 unless specified otherwise.*

- 5.2 Quotations must, as far as possible, be comparable by reference to a relevant British or equivalent internationally recognised Industry standard, or to an appropriately detailed specification.
- 5.3 Where it can be demonstrated that there are insufficient suitably qualified economic operators, suppliers or contractors to meet the competition requirement, all known suitably qualified suppliers or contractors must be invited.
- 5.4 For tenders which exceed £C (£125,000) or £D (£3,500,000) if Works, consideration should be given to retendering where two or fewer tenders are received and where prices are high and VFM cannot be demonstrated.
- 5.5 An employee must not enter into separate contracts nor select a method of calculating the total value in order to minimise the application of these Contract Standing Orders.
- 5.6 The splitting of contracts so as to avoid EU Regulations is prohibited. However, we may decide to award a contract as separate Lots as per EU Regulation 46. Contact Procurement for advice.
- 5.7 Wherever possible, consideration should be given to contract mergers and aggregation with existing preferred contracts to encourage VFM for the Council. It is essential that, if a contract already exists for the supply of the same goods, services or works, the existing contract must be used in the first instance.
- 5.8 Identify if the service can be reserved for certain qualifying organisations such as cooperatives (ref EU Regulation 77) – contact Procurement for advice.
- 5.9 Concession contracts have the same thresholds as ‘Works’. In simple terms, a contract is a ‘concession’ when the economic operator is compensated by the ability to exploit a ‘Work’ or service on behalf of the authority (i.e. Leisure Centre Operator). However, concession contracts vary from standard service and ‘Works’ contracts in that, the operator must take a risk that no income is generated and a loss could be incurred. If you believe your requirement could be a concession contract, please contact Procurement for advice.

The contracting authority provides the economic operator with the opportunity to either;

- i. Deliver and then exploit a ‘Work’, or,
- ii. provide management of an existing asset or other services required by the authority,
- iii. where consideration for delivering the contract shall result from their right to exploit the work/service or that right together with payment.

To qualify as a concession, the contract must:

- i. transfer the operating risk in exploiting the 'Work' or services to the economic operator, and
- ii. the operator must be exposed to loss due to market forces and supply and demand, and
- iii. there must be no guarantee that they can recoup the investment made, and the potential loss incurred shall not be merely nominal or negligible.

## **6. EU PUBLIC PROCUREMENT LEGISLATION AND ADVERTISING**

- 6.1 EU procurement legislation is primarily based on directives. There are four directives, the Supplies Directive, the Services Directive, the Works Directive and Concessions Directive. Each Directive provides for a threshold sum above which all procurement contracts become subject to stringent EU rules and regulations. For detailed definitions of the activities covered by each directive and the current thresholds please consult the Procurement Toolkit or Procurement.
- 6.2 Services and Works are categorised by the EU via Common Procurement Vocabulary (CPV) Codes. All Services and Works subject to EU Regulation thresholds must follow the OJEU process. However, EU Regulations 74 – 77 provide for a light touch regime on certain Services defined by CPV codes in Schedule 3. Public bodies must still observe general EC Treaty principles so it is advisable to follow the process defined for above £C (£125,000) in these Contract Standing Orders or above £D = £3,500,000 if Works.
- 6.3 At the start of each financial year each Head of Service must consider whether there is any likelihood of a particular contract exceeding the financial threshold relating to Prior Information Notices (PIN), as set out in the EU Regulations and, if so, notify Procurement. If a PIN is required, it shall be published by Procurement in the Supplement to the Official Journal of the European Union as quickly as possible after the beginning of the financial year to indicate what they plan to tender for in the forthcoming year.
- 6.4 If the EU Regulations apply the Council must comply with the following procedures:
  - No fewer than five Economic Operators shall be invited to tender in an Open or Restricted procedure.
  - The advertisement must be published in the Official Journal of the European Union (OJEU) before it is advertised in any specialised journals, on the council's e-tender portal or on any national portal. Advertising must be proportionate to the contract requirement and not give grounds for ineffectiveness. Regulation 110 requires the council to advertise opportunities on Contracts Finder within 24 hours if advertised elsewhere. If below £C (£125,000) we may invite a

minimum of three economic operators without advertising on Contracts Finder where access is by invite only (i.e. not advertised elsewhere).

- The timescale for inviting expressions of interest electronically shall be a minimum of 25 days (unless the urgency procedure is used in which case 15 days applies).
- The timescale for inviting tenders electronically shall be a minimum of 30 days (unless the urgency procedure is used).
- Please refer to Procurement for award letters and standstill process in line with the Public Contracts Regulations 2015 Part 3.
- A Standstill period is compulsory on all tenders above £C (£125,000) including Works sealed bids above £C (£125,000).
- Once the contract has been awarded Procurement shall place a contract award notice in the Official Journal of the European Union and Contracts Finder as per Regulation 108.
- By using e-tendering, timeframes are shortened and advertising requirements satisfied. Please refer to Procurement for information.
- Where a project was not registered with OJEU because it was estimated as being below the EU threshold but then subsequently breaches the EU threshold, a Voluntary Ex-Ante Transparency (VEAT) notice can be raised. Officers must seek advice of Procurement as this is not recommended due to potential scrutiny by the Commission.

- 6.5 The penalties for non-compliance with EU requirements are severe and failure to comply could expose the council to legal action by contractors possibly resulting in fines, re-tendering costs and compensation. The corporate Procurement Team should be notified of all EU tenders to ensure that the process is in line with the Public Contracts Regulations 2015.

## **7. ELIGIBILITY AND FRAMEWORK AGREEMENTS**

- 7.1 Procurement Policy Note (PPN) 8/16 sets out the revised standard Selection Questionnaire (SQ). It replaces the current standard Pre-Qualification Questionnaire (PQQ). Use of a PQQ is now prohibited. It is mandatory for a potential supplier to complete Part 1 and Part 2 of the standard Selection Questionnaire, or the ESPD template, for all procurements above EU thresholds.

The standard Selection Questionnaire has been developed to simplify the supplier selection process for businesses, in particular smaller firms, across the public sector. In developing the SQ the opportunity has been taken to make the questionnaire compliant with the European Single Procurement Document (ESPD), and amended the rules on the selection of suppliers.

Supplier selection is a key stage in public procurement where we gather information on and make assessments of the prospective bidders' credentials, before considering tenders. This includes gathering information about companies' track records, financial credentials, whether they have been involved in corruption, whether they meet various selection criteria, and so on.

- 7.2 The standard Selection Questionnaire asks potential suppliers to initially just self-declare their status against the exclusion grounds and selection questions. Usually this will only be checked for the winning supplier.

The standard Selection Questionnaire is structured in 3 separate parts:

Part 1 of the standard Selection Questionnaire covers the basic information about the supplier, such as the contact details, trade memberships, details of parent companies, group bidding and so on.

Part 2 covers a self-declaration regarding whether or not any of the exclusion grounds apply.

Part 3 covers a self-declaration regarding whether or not the company meets the selection criteria in respect of their financial standing and technical capacity.

For below EU Threshold tenders the SQ questions can be used as a guide to assess suitability of suppliers in a one stage process (ITT/Sealed Quote). For works contracts valued between the supplies and services threshold and the works threshold we may use a two stage process and make use of the PAS91 PQQ.

European Single Procurement Document (ESPD) – (EU [Regulation 59](#)) The Council shall accept an ESPD as a declaration of preliminary evidence normally required in a PQQ or SQ (EU [Regulation 65](#)). For more details, contact the Procurement Team.

Guidance on the use of Supplier Questionnaires/ESPD can be provided by Procurement.

### **Framework agreements (EU Regulation 33)**

- 7.3 A Framework Agreement means an agreement between one or more contracting authorities or one or more economic operators. An agreement may be entered into with one or more providers and must be awarded in accordance with the EU Regulations.
- 7.4 Contracts based on Framework Agreements may be awarded by either:
- (a) applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition; or
  - (b) where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call-off, by holding a further competition in accordance with the procedure defined in the Framework. This should include the following:

- Inviting the organisations within the Framework Agreement that are capable of executing the subject of the contract to submit written tenders.
- Fixing a time limit which is sufficiently long to allow tenders for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract.
- Awarding each contract to the tenderer who has submitted the best tender on the basis of the evaluation criteria set out in the specifications of the Framework Agreement.

## **8. RECORDS (EU Regulations 83 and 84)**

8.1 Where the total value is more than £B (£25,000) but less than £C (£125,000) the following documents must be kept (electronic records if e-tendered):

- Invitations to quote
- Quotations received
- Log of Quotations opened to include date, time, and signatures of those present
- A written record of any exemptions and the reasons for them
- Selection criteria
- If the most economically advantageous is not accepted the reasons why
- Written records of communications with the successful contractor
- Award notice posted on Contracts Finder
- All Contracts over £B (£25,000) must be recorded on the Central Contract Database, please contact Procurement for advice

8.2 Where the total value exceeds £C (£125,000), the following must be recorded:

- The method for obtaining bids and method of advertising
- Details of any exemption and the reasons for them
- Any pre-procurement discussions regarding compliance with the Public Services (Social Value) Act 2012, if above EU threshold
- The evaluation criteria in descending order of importance and any weightings used
- The evaluation results;
- A copy of the SQ (if above EU threshold or Works), the invitation to tender and a list of the contractors invited
- Tender documents received
- Details of any pre-tender market research
- Any clarification or post-tender negotiation (includes any minutes of meetings)
- Name of successful tenderer and reasons for their selection
- Details of unsuccessful tenderers and reasons why they were unsuccessful
- Details of any Financial reports or accounts

- The contract documents
- Post contract evaluation and monitoring
- Details of all approved variations
- A full reconciliation of the contract sum and the amount(s) paid taking into account any variations to the original specification;
- Communications with contractors and with the successful contractor throughout the period of the contract
- Details of any site visits
- Copy of the contract forwarded to Procurement for addition onto the Central Contracts Database
- The contract must be signed by the Legal Services Manager

NB. In the event of a challenge, all communications including emails, can be requested by a court as evidence. Therefore, it is essential that all documentation is stored securely and all communications/notes are undertaken in a professional manner.

- 8.3 All records must be kept at least three years after the final settlement of the contract, 12 years if the contract is under seal. However, tender documents which relate to unsuccessful contractors need only be kept for a period of 12 months from award of the contract, provided there is no dispute about the award. In some cases, it may be desirable to retain documents for a longer period by scanning or using some other suitable method. Where the cost of the contract is to be met in part or in whole by sources of external funding, the written records shall be retained in accordance with any directions of the external funder.

## **9. PRE-TENDER MARKET RESEARCH AND CONSULTATION (EU Regulation 40)**

- 9.1 Employees may conduct market consultation prior to the issue of the Contract Notice/Advertisement in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided that this does not prejudice any potential contractor. Informing economic operators of our plans and requirements is acceptable providing it does not distort competition.
- 9.2 An employee must not seek or accept technical advice on the preparation of an Invitation To Tender (ITT) or quotation from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential contractors or distort competition. If in doubt seek advice from Procurement.
- 9.3 Where a Contracting Authority is having difficulty defining a specification or requires an innovative solution it may decide to enter into a Competitive Dialogue or establish an Innovation Partnership with economic operators. The EU Regulations have established new processes to facilitate this (EU Regulations 29– 31) – please contact Procurement for further information.

## **10. STANDARDS AND EVALUATION CRITERIA (EU Regulation 67)**

### **Standards**

- 10.1 Employees must ascertain the relevant British or equivalent International Industry standard that applies to the contract and these must be used to properly describe the required quality. Procurement must be consulted if it is proposed to specify a proprietary brand.

### **Evaluation criteria (EU Regulation 67) (Also see 7.2 above)**

- 10.2 The evaluation criteria must be defined and documented before tenders or quotations exceeding £B (£25,000) are sought. The criteria must be designed to secure VFM for the Council. Generally, this shall be the 'most economically advantageous' where considerations other than purchase price or cost apply. If above EU thresholds and a restricted procedure (SQ) is to be used, then generally criteria used at the SQ stage cannot be used during the following Invitation to Tender (ITT) stage.
- 10.3 Considerations other than price should be included and examples of criteria are listed below:
- References
  - Insurance
  - Financial Statement
  - Professional qualifications and accreditations
  - Capacity
  - Technical ability
  - Health and Safety
  - Equalities
  - Quality assurance procedures
  - Recruitment and training
  - Jobs and skills framework considerations
  - Level of service and/or service methodology
  - Quality of goods
  - Cost effectiveness
  - Delivery requirements
  - Environmental considerations
  - Functional characteristics, such as security, safety and control features
  - After sales service
  - Technical assistance
  - Partnering
  - Long term relationships
  - Cessation of contract clause to recognise the potential of withdrawal costs in the event of cancellation
  - Where appropriate, contractors will adhere to the Council's Complaints, Customer Feedback and Monitoring Procedure

## 11. INVITATIONS TO TENDER AND QUOTATIONS OVER £B (£25,000)

11.1 The invitation to tender or quotation shall state that no tender will be considered unless it is received by the date and time stipulated in the invitation to tender. No tender or quotation delivered in contravention of this clause shall be considered.

11.2 Every invitation to tender or quotation shall include the following:

- A specification that describes the Council's requirements in sufficient detail to enable the submission of a competitive offer.
- The goods, services or works required together with the terms and conditions of contract that apply. Under EU Regulations you cannot specify the manufacturer or model of goods required but you can give a detailed description of the specific features required.
- A statement that says that the Council is not bound to accept a tender or quotation.
- A full description of the evaluation criteria, including sub-criteria.
- No guarantee of spend where discretionary works apply.
- The Confidential Reporting Code including the Whistleblowing Policy.
- A signed declaration of non-collusion.
- A statement that the successful tenderer agrees to support our compliance with the [Local Government Transparency Code 2015](#) and the [Freedom of Information Act 2000](#).
- A statement regarding payment of undisputed invoices within 30 days for contractors and their subcontractors.

11.3 If the contract is valued at £C (£125,000) or more the invitation to tender (or sealed quote for Works contracts £D (£3,500,000)) shall also include the following:

- Provision for all tenders/quotes to be received electronically in accordance with e-tender procedures approved by the Head of Corporate Resources. Faxed or e-mailed tenders shall not be considered.
- Contract and tender timeframes.
- The method by which any arithmetical errors discovered in the tender will be dealt with; in particular, whether the overall price prevails over the rates in the tender or vice versa.
- A requirement for tenderers to declare that the tender content, price or other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- A requirement for tenderers to complete fully and sign all tender documents including a Form of Undertaking and certificates relating to the Bribery Act 2010.
- Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.

- A description and definition of the evaluation criteria and weighting.
- Standard and, where appropriate, any Special Terms and Conditions.
- Any collaborative partner Councils by name.

- 11.4 All contractors invited to tender or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.
- 11.5 Contractors must be given an adequate period in which to prepare and submit a high quality, considered quotation or tender which is consistent with the urgency of the contract requirement. The EU Regulations lay down specific time periods in Chapter 2, Section 3 – Procedures (please contact Procurement for advice). It is also best practice to comply with these time periods for all contracts that exceed £C (£125,000).
- 11.6 Electronic tendering systems must be discussed and approved by the Head of Corporate Resources and the Monitoring Officer. Electronic systems need to comply with the spirit of these Contract Standing Orders. Faxed or emailed tenders will not be accepted. In addition to the Councils e-tendering portal all tenders over £C (£125,000) will be advertised and contract award notifications posted on Contracts Finder.
- 11.7 Any shortlisting must have regard to the financial and technical standards relevant to the contract and the evaluation criteria. For example:

This may include mandatory grounds for exclusion:

- Members of the organisation's senior management team found guilty of fraud/corruption
- Non-payment of taxes

Or it may include discretionary grounds for exclusion:

- Violation of social/environmental laws
- Grave misconduct
- Anti-competitive agreements
- Persistent deficient performance of public contracts

The minimum yearly turnover that operators are required to have shall not exceed twice the estimated contract value (EU Regulation 58[9]).

## **12. RECEIPT AND OPENING OF TENDERS AND QUOTATIONS**

- 12.1 If a quotation or tender is subject to a sealed bid process, quotations or tenders received by fax or email must be rejected.
- 12.2 All tenders with an estimated value greater than £B (£25,000) received via the e-tendering portal may be opened by 2 members of Procurement or the Principal Contract Officer and a member of Procurement.

12.3 A tender opening report shall be maintained showing all of the following:

- the title of the contract
- the names of all firms submitting tenders or quotations
- the amount of each tender or quotation, where available
- the date and time of opening
- the names of those present
- verification that all documents are present

#### **Contracts in excess of £C (£125,000)**

12.4 All quotations or tenders received through the Council's authorised e- tender solution, which maintains a secure and fully-auditable process, will be opened by Procurement (minimum two officers in attendance) who will:

- produce a summary of details contained in paragraph 12.3
- download the tender responses and make them available to relevant members or officers as required for record, audit and evaluation

### **13. POST-TENDER NEGOTIATION\* FOR CONTRACTS VALUED IN EXCESS OF £C (£125,000)**

\*Where a preferred bidder has been determined, but the contract has not been formally awarded.

13.1 Providing clarification of an invitation to tender to potential contractors or seeking clarification of a tender, whether in writing or by way of a meeting, is permitted. However, discussion with tenderers after submission of a tender and before the award of a contract with a view to obtaining an adjustment to price, delivery or content (i.e. post-tender negotiations) must be the exception rather than the rule. It must not be conducted in procurements above the EU threshold where it might distort competition, particularly with regard to price.

13.2 If post-tender negotiations are necessary after a single stage tender or after the second stage of a two stage tender, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best tender and after the other contractors have been informed. This may be required if tenders are higher than previously estimated or above the available budget. Tendered rates and prices shall only be adjusted in respect of a corresponding adjustment in the scope or quantity included in tender documents. A record of the minutes of negotiation meetings shall be kept on file and the changes agreed by both parties shall be in writing.

13.3 Where post-tender negotiation results in a fundamental change to the specification or contract terms which results in an increase in price of 10 per cent or £50,000, whichever is the least, the contract must not be awarded but re-tendered.

13.4 Procurement must be formally consulted wherever it is proposed to enter into post-tender negotiations. Negotiations must be conducted by a team of at least two employees, one of whom must be the Principal Contract Officer and one who is a member of staff from a unit independent from that leading the negotiations.

#### **14. EVALUATION AND AWARD OF CONTRACT AND DEBRIEFING CONTRACTORS (EU Regulations 67, 74–76, 87 and 108)**

14.1 Apart from the debriefing required or permitted by these Contract Standing Orders, the confidentiality of quotations, tenders and the identity of contractors must be preserved at all times and the information about one contractor's response must not be given to another contractor. Sections 43 and 44 of the Freedom of Information Act 2000 refer to exemptions for confidential and commercially sensitive information.

14.2 Contracts must be evaluated and awarded in accordance with the evaluation criteria by a minimum of two employees who have the technical ability to evaluate the submission. Procurement are able to advise on the process, but shall not undertake the evaluation. During this process, employees shall ensure that submitted tender prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily. If any particularly low bids are received or if there are large discrepancies between the bids received, Procurement and the Head of Corporate Resources must be informed. Where a bid is considered to be abnormally low the process detailed in [EU Regulation 69](#) shall apply:

- Where tenders appear to be abnormally low in relation to the works, supplies or services sought, the Principal contract Officer shall (with the assistance of Procurement) ask tenderers to explain the price or costs proposed in the tender.
- The contracting authority may only reject the tender where the evidence supplied does not satisfactorily account for the low level of price or costs proposed.

14.3 Any arithmetic within the tenders must be checked. If any errors are found they should be notified to the tenderer, who should be requested to confirm or withdraw their tender. Alternatively, if the rates in the tender, rather than the overall price, were stated within the invitation to tender as being dominant, an amended tender price can be requested to accord with the rates given by the tenderer.

14.4 Where the total value of the contract exceeds £C (£125,000), all contractors must be informed in writing simultaneously via the electronic portal and as soon as possible of the intention to award the contract. Please refer to Procurement for letter templates. Unsuccessful contractors must be given at least 10 calendar days (not ending on a weekend or bank holiday) in which to challenge the decision before the contract is awarded. If the decision is

challenged by an unsuccessful contractor, then the contract will not be awarded and advice must be obtained from the Procurement.

- 14.5 Unsuccessful contractors shall normally be informed in writing through the e-tendering portal of the reason for non-selection. No information, other than the following, should be given without taking the advice of Procurement:
- how the evaluation criteria were applied and comparison with the winning tender scores
  - the reasons for the decision, including the characteristics and relative advantages of the successful tender
  - the relevant price score achieved
  - the name of the winning contractor
- 14.6 If a contractor requests in writing the reasons for a contracting decision, the contractor must be given the reasons in writing within 15 days of the request. If requested, contractors who were deselected in a pre-tender shortlisting process (SQ) may be given the information in 14.5 above.
- 14.7 The Principal Contract Officer may accept quotations or tenders provided that they have been fully evaluated and are the most economically advantageous to the Council. If the quotation or tender is not the most economically advantageous the approval of the relevant portfolio holder, or other Cabinet member, must be secured and the decision may be subsequently reported to the Cabinet and recorded in the exemptions register.
- 14.8 Officers must ensure that all contracts tendered via the e-tendering portal have a contract record created on the Central Contract Database within 48 hours of the award.

## **15. CONTRACT DOCUMENTS**

- 15.1 High level detail for all contracts valued at £C (£125,000) or above (or £B £25,000 if open advert at the point of award), must be published on the Council's [Transparency Pages](#) and Contracts Finder in accordance with The Local Government Transparency Code 2015. Details include:
- Contract Reference Number
  - Title of Agreement\*
  - Department
  - Description\*
  - Start Date\*
  - End Date\*
  - Extension Options
  - Review Date
  - Last Extension Date
  - Contract Value (Estimated Lifetime)\*
  - Supplier Name\*
  - Process Type

- Is the Supplier an SME?
- Is the Supplier a VCSE Organisation?
- VCSE Registration Number (If applicable)
- Unrecoverable VAT

\*Only items marked with an asterisk are required for Contracts Finder

15.2 All contracts shall clearly specify the following:

- The work to be done or the goods, materials or services to be supplied
- That all goods supplies and services used or supplied are to comply with any relevant standards specification or code of practice in force at the date of the tender (British Industry Standard and/or any internationally recognised equivalent)
- The price to be paid with a statement of any discounts or deductions (amount and timing)
- Any insurance requirements
- Any health and safety requirements
- Safeguarding vulnerable people requirements (if appropriate)
- Compliance with the Equalities Act 2010
- That the contractor will comply with the provisions of the EU Regulation 2016/679 (GDPR) or any re-enactment of that Regulation insofar as any personal data supplied by the council or obtained on behalf of the council is kept secure and is not disclosed to any other party except in accordance with the contract. The contract shall define the data controller and processor responsibilities sufficient to comply with the Regulation.
- The terms of the Bribery Act 2010 and standard anti-corruption clause as set out in Standing Order 17.2
- The time within which the contract is to be performed
- The provisions for the council to terminate the contract
- A mechanism for agreeing price escalation and/or cost reduction requirements

For contracts valued at less than £C (£125,000) an official purchase order form with the Council's Terms and Conditions attached, approved by the Head of Corporate Resources, must be used wherever possible.

15.3 In addition contracts valued greater than £C (£125,000) must also state the following:

- That the contractor may not assign or sub-contract without prior written approval
- Ombudsman requirements
- That charter standards are to be met if relevant
- Sustainability requirements
- Confidentiality and anti-corruption (see 17.1)
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes, if relevant

- Key Performance Indicators
- That the EU Regulation 2016/679 (GDPR), Freedom of Information Act 2000 and The Local Government Transparency Code 2015 may require the Council to release information provided by contractors

15.4 The formal advice of Procurement must be sought for the following contracts:

- Where the total value exceeds £C (£125,000)
- Those involving leasing arrangements
- Where it is proposed to use a supplier's own terms and conditions
- Those which are complex in any other way or expose the Council to significant risk

15.5 All contracts over £C (£125,000) must be concluded formally in writing and signed by the Legal Services Manager before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written authority of the Executive Director or Head of service. An award letter is insufficient. All contracts over £C (£125,000) should be given a unique number allocated by Procurement who should also be supplied with a copy of the contract.

15.6 The employee responsible for obtaining the signatures on the contract must ensure that the person signing for the other contracting party has authority to bind it.

15.7 A contract must be sealed by the Council if any of the following apply:

- The Council may wish to enforce the contract more than six years after its end.
- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services.
- The total value of the contract exceeds £C (£125,000).
- For electronic contracts such as those on G Cloud please refer to Procurement who will create a signed electronic copy on the Central Contract Database and forward this to Legal for an electronic seal.

## **16. LIQUIDATED DAMAGES, BONDS AND PARENT COMPANY GUARANTEES**

16.1 A risk assessment and financial check of every contract for the purposes of determining the level of security needed, if any, must be made by the contract supervisor, and/or appropriate head of service.

16.2 For every contract where it is considered that the Council would suffer loss if the contract works, supplies or services are not provided in the time specified, the contract shall provide for the payment of liquidated damages by the contractor to reflect the anticipated loss to the Council.

- 16.3 Employees must consult with the Head of Corporate Resources to establish whether a parent company guarantee is necessary when a contractor is a subsidiary company and:
- the award is based on an evaluation of the parent company; or
  - there is some concern about the financial stability of the contractor.
- 16.4 Employees must consult with the Head of Corporate Resources to establish whether a bond is needed where:
- It is proposed to make stage payments during the life of the contract and there is some concern about the financial stability of the contractor.
  - There will be a cost to maintain service delivery if the supplier or contractor goes into liquidation.

## **17. PREVENTION OF CORRUPTION**

- 17.1 Employees must comply with the Employee Code of Conduct and the Council's policy on Gifts and Hospitality and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the employee to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a criminal offence under the Bribery Act 2010.
- 17.2 All formal written contracts must include the following:

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

- Offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the contractor does not know what has been done).
- Commit an offence under the Bribery Act 2010 or any other legislation that deals with Bribery and Corruption in force at the time the contract is let.
- Commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees.

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

## **18. DECLARATION OF INTERESTS**

- 18.1 If it comes to the attention of a member or employee of the Council that a contract in which he or she has a financial or non-financial interest has been or is proposed to be entered into by the Council, he or she must record it in

the Interests Register which is maintained by the Monitoring Officer. Where necessary the Monitoring Officer will report such declarations to the Cabinet.

- 18.2 Such written notice is required irrespective of whether the interest is direct or indirect. An indirect interest is distinct from a direct interest in as much as it is not a contract to which the member or employee is directly a party.
- 18.3 A shareholder in a body not exceeding a total nominal value of £1,000 or one per cent of the nominal value of the issued share capital, whichever is the less, is not a financial interest for the purposes of this procedure rule.
- 18.4 The Monitoring Officer shall ensure that the attention of all members is drawn to the National Code of Local Government Conduct and the local Member Code of Conduct and that all employees are aware of the Employee Code of Conduct.

## **19. CONTRACT MANAGEMENT (Section 6 EU Regulations 70–73)**

- 19.1 A Principal Contract Officer must be nominated for all contracts over £B (£25,000) The nominated person will be responsible for the planning, coordination, monitoring and controlling of the contract, and ensuring completion on time, within cost and to the required quality standards.
- 19.2 For all contracts with a value exceeding £C (£125,000) Principal Contract Officer must:
- maintain a risk register during the contract period
  - undertake appropriate risk assessments
  - for each risk identified, ensure that contingency measures are in place
  - confirm the financial stability and insurance cover of the contractor at least annually
- 19.3 During the life of the contract the following issues must be monitored:
- Performance
  - Compliance with specification and contract including insurance and financial stability
  - Cost, quality and value for money;
  - User satisfaction and risk management
  - Customer complaints
  - Data security and privacy

NB See Procurement Toolkit Step 1 - Commissioning

- 19.4 Where the total cost of any work carried out under a contract is expected to exceed the contract sum, this will be escalated in accordance with the virement limits procedure within the Financial Standing Orders, in consultation with the Chief Financial Officer.

19.5 Contract modifications may be permitted where:

- the modifications were provided for in the original procurement
- it is within the original scope and significant disruption or cost would be incurred if not modified
- they are within scope and unforeseen
- any increase does not exceed 50 per cent of the original value

Please refer to Procurement for clarification (EU Regulation 72)

## **20. EXTENSIONS OF EXISTING CONTRACTS**

20.1 Contract extensions can be awarded without an exemption being granted when all of the following apply:

- value for money can be demonstrated for the Council
- the option to extend was written into the original contract
- the extension period is less than the original contract term
- the total contract value including the extension is less than EU threshold (unless it was a result of an EU tender).
- for contracts subject to EU Regulations, the Notice and Award Notice included the option to extend

20.2 For contracts that do not meet the criteria above, an extension may only be granted following an exemption request being approved in line with the requirements in Section 3-Exemptions. Before approval is given, the following conditions must be satisfied:

- The total contract value including the extension is less than EU threshold or it will be subject to EU Regulations.
- The existing contract was let following full competition in accordance with Contract Standing Orders and a period of less than five years has elapsed since the initial contract was awarded.
- Less than 4 years have elapsed if the contract is a Framework Agreement.
- The new work is sufficiently similar in nature and extent.
- The majority of the rates for the new work are directly based on the existing contract.
- Rates for work which cannot be based directly on the existing contract can be negotiated equitably. A written report should be compiled detailing the circumstances and outcome of these negotiations.
- The likely benefit of further competition would be outweighed by the administrative cost and/or delay involved.
- The interests of the Council will not be compromised by the negotiation.

## **21. LONG-TERM RELATIONSHIPS**

- 21.1 Better value for money and improved quality of service delivery may be achieved by entering into long-term agreements with contractors, suppliers and service providers. Therefore, consideration should be given to packaging contracts in such a way that they reduce the number of times that the Council needs to seek competitive tenders. This can be achieved by amalgamating similar types of supplies and services into single contracts and then seeking competitive tenders.

## **22. PARTNERING**

- 22.1 A partnership is an agreement between the Council and one or more independent legal bodies, organisations or individuals to work collectively to achieve a common purpose with specified aims and objectives.
- 22.2 Partnering arrangements which involve a joint venture or contractual arrangement with a private sector body are subject to the provisions of these Contract Standing Orders.
- 22.3 If the partnering agreement involves another Local Authority the Contract Standing Orders of the lead authority will apply.

## **23. TRANSFER OF UNDERTAKINGS (PROTECTION OF EMPLOYMENT) REGULATIONS 2006**

- 24.1 All tenders must indicate how the Council intends to deal with [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006](#) (TUPE) where applicable.
- 24.2 When the Council considers there to be a TUPE transfer from the Council, the advice of Procurement and Human Resources shall be sought upon the terms of any transfer of employees, including any indemnities sought from a successful tenderer.
- 24.3 All contracts shall require a successful tenderer to undertake to comply with its obligations under TUPE; in particular the contract shall apply the principles set out in Office of the Deputy Prime Minister Circular 03/2003 Annex D – Code of Practice on Workforce Matters in Local Authority Service Contracts.

## 24. GLOSSARY OF TERMS

“**The Commission**” means the European Commission.

“**Concession Contract**” means a contract governed by the Concession Contracts Regulations 2016.

“**Contracting authorities**” means the State, regional or local authorities, bodies governed by public law or associations formed by one or more such authorities or one or more such bodies governed by public law.

“**CPV**” means the Common Procurement Vocabulary as adopted by Regulation (EC) No. 2195/2002(b) as amended from time to time.

“**Economic operator**” means any [natural or legal] person or [public entity] or group of such persons [and/or entities], including any temporary association of undertakings, which offers the execution of [works and/or a work], the supply of products or the provision of services on the market.

“**EU**” means European Union.

“**Electronic Tender (portal)**” or “**e-tendering**” means an electronic method of tendering using electronic equipment for the processing (including digital compression) and storage of data which is transmitted, conveyed and received by wire, [by] radio, [by] optical means or [by] any other electromagnetic means.

“**ESPD**” means the European Single Procurement Document referred to in Regulation 59(1) conceived to reduce the need for multiple SQ’s for economic operators.

“**EU Publications Office**” means the Publications Office of the EU.

“**European standard**” means a standard adopted by a European standardisation organisation and made available to the general public.

“**Exemption**” is where a particular procurement is not covered by the Regulations or below EU threshold where authorised officers can waive these rules.

“**Framework agreement**” has the meaning given by regulation 33(2); primarily a contract with one or more operators or clients.

“**Innovation**” means the implementation of a new or significantly improved product, service or process, including but not limited to production, building or construction processes, a new marketing method, or a new organisational method in business practices, workplace organisation or external relations [inter alia] with the purpose of helping to solve societal challenges or to support [the Europe 2012 strategy] for smart, sustainable and inclusive growth.

**“International standard”** means a standard adopted by an international standardisation organisation and made available to the general public.

**“Invitation to confirm interest”** means an invitation which a contracting authority sends in order to comply with regulation 54(2).

**“Invitation to Tender (ITT)”** is the documents/process used to define our specification and evaluation criteria in a suitable way to facilitate operators to tender for the opportunity.

**“Life cycle”** means all consecutive and/or interlinked stages, including research and development to be carried out, production, trading and its conditions, transport, use and maintenance, throughout the existence of the product or the works or the provision of the service, from raw material acquisition or generation of resources to disposal, clearance and end of service or utilisation.

**“National standard”** means a standard adopted by a national standardisation organisation and made available to the general public.

**“Official Journal or OJEU”** means the Official Journal of the EU.

**“Open Advertisement”** means an opportunity that has been advertised on a National basis as opposed to where selected operators are invited.

**“Open Process”** is a single stage process where an Invitation to Tender is issued without a Selection Questionnaire.

**“Prior publication”** means prior publication of a call for competition.

**“Procurement”** means the Legal Services Manager or the Procurement Officers within the Legal Services Team at the Council or within the Shared Services Procurement Team at Nuneaton and Bedworth Borough Council.

**“Procurement document”** means any document produced or referred to by [the] contracting authority to describe or determine elements of the procurement or the procedure, including [the] contract notice, [the] prior information notice where it is used as a means of calling for competition, the technical specifications, the descriptive document, proposed conditions of contract, formats for the presentation of documents by candidates and tenderers, information on generally applicable obligations and any additional documents.

**“Public contracts”** means contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities [and having] as their object the execution of works, the supply of products or the provision of services.

**“Public Contracts Directive”** means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014(c).

**“Public service contracts”** means public contracts which have as their object the provision of services other than [those referred to in the definition of “public works contract”].

**“Public supply contracts”** means public contracts which have as their object the purchase, lease, rental or hire-purchase, with or without an option to buy, of products, whether or not the contract also includes, as an incidental matter, siting and installation operations.

**“Public works contracts”** means public contracts which have as their object one of the following:

- The execution, or both the design and execution, of works related to one of the activities listed in Schedule 2 the execution, or both the design and execution, of a work.
- The realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority exercising a decisive influence on the type or design of the work.

**“Regulations” or “Regulation”** refer to the Public Contracts Regulations 2015 (SI 2015 No 102) unless otherwise specified.

**“Restricted process”** is a two stage process using a Pre-Qualification Questionnaire to select suitable economic operators before an Invitation to Tender is issued.

**“Selection Questionnaire (SQ)”** means a method of selecting suitable operators to fulfil the Contract.

**“SME”** means an enterprise falling within the category of micro, small and medium-sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.

**“Standard”** means a technical specification, adopted by a recognised standardisation body, for repeated or continuous application, with which compliance is not compulsory, and which is an international standard, a European standard or a national standard.

**“Technical specifications”** means the matters referred to in regulation 42(2) to (7).

**“Tenderer”** means an economic operator that has submitted a tender.

**“Work”**, as a singular noun, means the outcome of building or civil engineering works taken as a whole which is sufficient in itself to fulfil an economic or technical function.

**Council – 14 December 2017**

**Report of the Monitoring Officer**

**Appointment of independent persons**

**1. Purpose of Report**

To confirm the appointment of Independent Persons as required by Section 28 of the Localism Act 2011, as set out in Appendix A of this report, for a four year term of office.

**2. Background**

The revised provisions with regard to the regulation of standards of conduct for elected and co-opted members under Part 1, Chapter 7 of the Localism Act 2011 came into effect on 1 July 2011. Section 28 of the Act requires the Council to appoint at least one Independent Person whose views will be sought when making decisions about allegations that Councillors have breached the Code of Conduct.

The Act requires that any Independent Person must not be, or have been within the past 5 years a member, co-opted member or officer of the Council or any of the Parish or Town Councils in the Councils' area; nor should they be a relative or close friend of a member, co-opted member or officer in the Councils' area. A pool of Independent Persons was last appointed in July 2013.

Since then, the role of the Independent Person was widened under the Local Authorities (Standing Orders) England (Amendment) Regulations 2015 which came into force on 11 May 2015 and changed the localised disciplinary process. In the case of proposed disciplinary action against a statutory officer (Head of Paid Service, Section 151 Officer or Monitoring Officer), the Council is required to invite the Independent Person(s) who have been appointed for the purposes of the Members Code of Conduct regime to form an independent panel and take into account any recommendation of that panel before taking a decision to appoint or dismiss.

A number of the Independent Persons appointed in 2013 have since withdrawn from the pool. The pool therefore needed to be refreshed with new appointees.

### **3. Recruitment Process**

Working together, Warwickshire County Council, Solihull Metropolitan District Council, Nuneaton and Bedworth Borough Council and Rugby Borough Council sought applications from Independent Persons and candidates were subsequently interviewed.

### **4. Financial Implications**

There are no direct costs incurred in the appointment and training / development of Independent Persons because they do not receive an allowance and training will be delivered by the Monitoring Officers of the participating authorities.

### **5. Recommendation**

The persons in Appendix A be appointed as Independent Persons for a four year term of office.

## Appendix A

### List of Independent Persons

Mr Raymond Leslie Tomkinson (re-appointed)  
Mr Robert Keith Meacham OBE (re-appointed)  
David Stone (re-appointed)  
Garth Murphy (new appointee)  
Maureen O'Sullivan (new appointee)  
Howard Darling (new appointee)  
Mumtaz Goolam (new appointee)