

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO COUNCIL

25 June 2008

1. PERFORMANCE PLAN

Submitted by: Policy and Performance Manager

Portfolio: Customer Service and Transformation

Ward(s) affected: All

Purpose of the Report

To consider and approve the draft Performance Plan for 2008/09.

Recommendations

(a) That the Council approve the draft performance Plan 2008/09, subject to any changes agreed at the meeting.

(b) That the Chief Executive, in consultation with the Leader of the Council be authorised to make any further amendments necessary.

Reasons

The Authority has a statutory duty to publish Best Value Performance Indicators by 30 June.

1. Background

1.1 The Authority is required to publish Best Value Performance Indicators by 30 June 2008.

1.2 The Performance Plan (a copy of the Plan will be circulated to all Members prior to the meeting) shows performance and outcomes for 2007/08 and plans for the period to March 2011. The draft Plan will be considered by Cabinet at its meeting on 18 June and any comments from that meeting will be reported verbally.

2. Issues

The Government has previously required all Councils to produce an annual Best Value Performance Plan. From last year, authorities categorised as excellent or good could submit their annual Corporate Plan rather than a Performance Plan. However, other authorities still had to produce a Performance plan including:

- (a) a brief summary of strategic objectives and priorities for improvement reflecting the corporate planning process and community strategy,
- (b) arrangements for addressing improvement priorities,
- (c) details of performance including outturn and 3 year targets for all BVPIs and
- (d) a brief statement on compliance with the Code of Practice on Workforce Matters

The Best Value Performance Indicator (BVPI) regime comes to an end this year with the final collection of the 2007-8 information. A number of indicators which were previously BVPI are being replaced by National Indicators, while others will no longer be collected.

The draft 2008/09 Performance Plan is based on the themes in our 3 year Corporate Plan.

3. **Options Considered**

- 3.1 The statutory requirement is to produce Performance Information. The Plan proposed for this year retains the four agreed priorities and includes the commentary and future plans that explain the data and make it meaningful.

4. **Proposal**

- 4.1 Since the Authority now has a Corporate Plan with identified measures and targets, the proposed document includes all performance data that is statutorily needed, and gives a short term, detailed view of the Corporate Plan.

5. **Reasons for Preferred Solution**

- 5.1 Arranging the Performance Plan around the priorities, measures, and targets identified in the Corporate Plan provides continuity and structure.

6. **Outcomes Linked to Corporate Priorities**

The shorter term means of achieving the Council's aim of excellence and the four priorities are identified in the Performance Plan.

7. **Legal and Statutory Implications**

The Authority has a statutory duty to approve and publish Performance Information by 30 June this year (Local Government Act 1999).

8. **Equality Impact Assessment**

There are no differential equality impact issues identified from this proposal.

9. **Financial and Resource Implications**

There will be a cost associated with printing and distribution of the plan, to be met from within existing budgets.

10. **Major Risks**

If the Authority fails to provide performance data required, this may have adverse implications for future external inspections and would be a breach of the legislation.

11. **Key Decision Information**

The plans contained in the Performance Plan benefit all wards.

12. **List of Appendices**

Draft Performance Plan (to be circulated later).

2. **COUNCILS STANDING ORDERS IN RELATION TO CONTRACTS**

Submitted by: Procurement Officer

Portfolio: Resources and Efficiency/ Customer Services & Transformation

Ward(s) affected: All

Purpose of the Report

To consider and recommend for approval by Council the revisions made to the Council's Standing Orders in Relation to Contracts.

Recommendation

To review, consider and approve the revisions made to the authorities Standing Orders in Relation to Contracts.

Reasons

Following internal re-structuring and the creation of a Customer Services Section the receipt of tenders as part of the Council's procurement processes, will no longer be undertaken by the Democratic Services Manager. This work will now be undertaken by the Customer Services Manager.

The procurement values above which the European Union Laws apply were reviewed and amended in January 2008, resulting in outdated information being reported as part of the Councils 'Standing Orders in Relation to Contracts'.

1. **Background**

- 1.1 Following the authorities decision to create a 'Customer Services' section a review of Section 17 of the authorities Standing Orders in Relation to Contracts was undertaken with the Democratic Services Manager. It was apparent during the review that some of the tasks previously undertaken by the Democratic Services Manager were now best delivered by the Customer Services Manager who has the responsibility for the reception staff within the authority.
- 1.2 Procurement values above which the European Union Laws apply are reviewed on a two yearly basis and if necessary amended. The most recent review was undertaken in January 2008, resulting in new threshold values being established and introduced.

2. **Issues**

- 2.1 In reviewing and revising section 17 of the Councils 'Standing Orders in Relation to Contracts' your officers have recognised the need to ensure that the receipt of tenders as part of procurement processes, procedures, principles, and protocols are best placed to be delivered by the Customer Service Department within the Council.
- 2.2 EU threshold figures reported as part of the Council's existing 'Standing Orders in Relation to Contracts' are now out of date.

3. **Options Considered**

- 3.1 To do nothing and to continue to allow the Democratic Services Manager to be responsible for the receipt and monitoring of the tenders as part of the procurement process in section 17 of the 'Standing Orders in Relation to Contracts' would result in the Council's reception staff having to report to an alternate manager in the delivery of this service, which may lead to conflicting priorities emerging. Allowing the Customer Services Manger to control this process would result in a seamless transition eliminating the possibilities of conflicts in tasks.
- 3.2 To leave the EU threshold values un-changed in the Councils 'Standing Orders in Relation to Contracts' would lead to ambiguity, as updated threshold values have been circulated to managers and officers throughout the authority.

4. **Proposal**

- 4.1 That Members review the modifications identified and *italicised in blue type* of Councils 'Standing Orders in Relation to Contracts' (Appendix 'A' – cream paper).
- 4.2 That Members approve the modifications made.

5. **Reasons for Preferred Solution**

- 5.1 To maintain a consistent approach and deliver continuity in the receipt and monitoring of tenders delivered to the authority as part of its procurement processes.
- 5.2 To ensure the possibilities of conflicting priorities for staff involved in the receipt and monitoring of tenders are eliminated.
- 5.3 To ensure that the most up to date EU procurement threshold values are reported.

6. **Outcomes Linked to Corporate Priorities**

- 6.1 The modifications made to the Standing Orders in Relation to Contracts supports in the main, the Council priority to transform our Council to achieve excellence. It also contributes to the priority 'Creating a Borough of Opportunity,' in terms of providing information to potential suppliers on how to do business with the Council and engaging with the voluntary sector for services.

7. **Legal and Statutory Implications**

- 7.1 There are no new legal or statutory implications.

8. **Equality Impact Assessment**

- 8.1 All major procurement shall recognise the impact on the social, economic and environmental wellbeing within the Borough. We will strive to offer equality and diversity in all our procurement transactions.

9. **Financial and Resource Implications**

- 9.1 At this stage there are none.

10. **Major Risks**

10.1 Areas of high risk can be summarised as follows:

- Failure to address the possibilities of inappropriate behaviour as part of the tendering process.
- Failure to address the possibilities of fraud and corruption
- Failure to deliver a fair and consistent approach to tendering resulting in reputational damage and challenges.
- Failure to meet legislative requirements.
- Failure to provide efficient staff with skills, knowledge and capacity to support the delivery of appropriate procurement options.
- Business needs are ambiguous and not communicated.
- Council is unable to adapt processes, procedures, policies, and protocols to support business needs/ markets and opportunities or benefits are missed.

11. **Key Decision Information**

11.1 The revised Procurement Strategy which incorporates the need for ongoing reviews of the Councils 'Standing Orders in Relation to Contracts' is mentioned in the Forward Plan.

12. **Earlier Cabinet/Committee Resolutions**

12.1 No earlier Cabinet/Committee Resolutions apply.

13. **List of Appendices**

13.1 Appendix 'A' (cream paper) – Standing Orders in Relation to Contracts

14. **Background Papers**

- 14.1 National Procurement Strategy for Local Government
- 14.2 IDeA Procurement Fitness Programme Report
- 14.3 'Transforming government procurement' (January 2007)
- 14.4 Borough of Newcastle-under-Lyme Corporate Plan 2007-8 to 2011-12
- 14.5 NULBC Procurement Strategy & Action Plan 2007 – 2010

3. **DRAFT STATEMENT OF ACCOUNTS 2007/08**

Submitted by: Finance Manager

Portfolio: Resources and Efficiency

Ward(s) affected: All

Purpose of the Report

To submit the Statement of Accounts for 2007/08 for approval by the Council and to obtain approval to the financing of capital expenditure incurred in 2007/08.

Recommendations

- (a) That the Statement of Accounts for 2007/08 be approved by the Council and signed by the Mayor or other person presiding at the Council meeting.
- (b) That the financing of capital expenditure incurred during 2007/08, as set out in the appendix to the report be approved.

Reasons

It is a statutory requirement, contained in the Accounts and Audit Regulations 2003 and the Accounts and Audit (Amendment) (England) Regulations 2006, that the Council produces a Statement of Accounts detailing its financial transactions for the year and its position at the year end and that this Statement be approved by a meeting of the Council and that it be signed as having been approved by the person presiding over the meeting. It is also a requirement that the financing of capital expenditure incurred in the year be approved.

1. Background

- 1.1 It is a statutory requirement, contained in the Accounts and Audit Regulations 2003 and the Accounts and Audit (Amendment) (England) Regulations 2006, that the Council produces a Statement of Accounts detailing its financial transactions for the year and its position at the year end and that this Statement be approved by a meeting of the Council and that it be signed as having been approved by the person presiding over the meeting. It is also a requirement that the financing of capital expenditure incurred in the year be approved.

2. Issues

- 2.1 The Statement of Accounts will be considered by the Audit and Risk Committee at its meeting on 24 June 2008. The members of that Committee will be able to scrutinise the Statement and question officers responsible for its production concerning any matters upon which they require an explanation. Following this scrutiny, the Council will be informed of any matters which the Committee wishes to draw to your attention.
- 2.2 A detailed report upon the Statement of Accounts, including an appendix setting out the financing of capital expenditure, is presently being compiled and will be forwarded to you before your meeting.

4. APPOINTMENT OF CHAIR AND VICE CHAIR OF THE STANDARDS COMMITTEE

Submitted by: Paul Clisby

Ward(s) affected: All

Purpose of the Report

To appoint the Chair and Vice Chair of the Standards Committee.

Recommendation

That the Council appoint Independent Members as Chair and Vice Chair.

Reasons

To comply with the statutory requirements and to increase public confidence in the Council's ethical processes.

1. **Background**

Under the new Regulations the Council's Standards Committee is responsible for promoting and maintaining high standards of conduct for Members and helping Members to follow the Code of Conduct. The Committee's specific functions are:

- To give advice on the adoption of a local code
- To monitor the effectiveness of the code
- To train or arrange training
- To assess and review complaints about Members
- To conduct hearings to determine if a complaint should be upheld and any sanction applied
- To grant dispensations to Members with prejudicial interests
- To grant exemptions for politically restricted posts.

The Standards Committee is made up of Councillors, Parish Council representatives and independent members. Independent members are not Councillors or officers or relatives or associates of Councillors or officers but people who have replied to our advertisement and been appointed. Currently the Council has three independent members, Mr. D.J. Burns, Mr. D.J. Wood and Mr. Y. Mir. Mr. Mir is a new member, Mr. Burns and Mr. Wood have been members for a number of years.

2. **Issues**

It is now a legal requirement that the Chair of the Standards Committee must be an independent member. It is important for the Chair to be independent because of the key role they play. By being independent the Chair can ensure that the Committee's business is conducted in such a way that no-one can question its integrity. It would also be sensible to choose an Independent Vice Chair in the event that the Chair is unable to attend.

4. **Proposal**

That the Council appoints two of the independent members to be the Chair and Vice Chair respectively of the Standards Committee in accordance with legal requirements.

7. **Legal and Statutory Implications**

The Council is under a statutory duty to act.

8. **Equality Impact Assessment**

No differential impact has been identified.

9. **Financial and Resource Implications**

The Council's annual allowance scheme applies.

10. **Major Risks**

That the Council fails to comply with its statutory duty and its reputation for probity is compromised.

NEWCASTLE-UNDER-LYME BOROUGH COUNCIL

REPORT OF THE EXECUTIVE MANAGEMENT TEAM TO COUNCIL

25 June 2008

3. DRAFT STATEMENT OF ACCOUNTS 2007/08

Submitted by: Finance Manager

Portfolio: Resources and Efficiency

Ward(s) affected: All

Purpose of the Report

To submit the Statement of Accounts for 2007/08 for approval by the Council and to obtain approval to the financing of capital expenditure incurred in 2007/08.

A copy of the Statement of Accounts has been sent to all Members of the Council under separate cover.

Recommendations

(a) That the Statement of Accounts for 2007/08 be approved by the Council and signed by the Mayor or other person presiding at the Council meeting.

(b) That the financing of capital expenditure incurred during 2007/08, as set out in the annex to the report be approved.

Reasons

It is a statutory requirement, contained in the Accounts and Audit Regulations 2003 and the Accounts and Audit (Amendment) (England) Regulations 2006, that the Council produces a Statement of Accounts detailing its financial transactions for the year and its position at the year end and that this Statement be approved by a meeting of the Council or any Committee to which it is delegated and that it be signed as having been approved by the person presiding over the meeting. It is also a requirement that the financing of capital expenditure incurred in the year be approved.

1. Background

1.1 The Accounts and Audit Regulations govern the way in which a local authority should present its financial affairs. These require that a local authority must produce a Statement of Accounts for each financial year detailing its financial transactions for the year and its position at the year end and that this Statement be approved by a meeting of the Council or any Committee to which it is delegated and that it be signed as having been approved by the person presiding over the meeting. It is also a requirement that the financing of capital expenditure incurred in the year be approved. The Statement is produced in a standardised form in line with CIPFA (the Chartered Institute of Public Finance and Accountancy) guidelines.

- 1.2 The annual statutory audit is scheduled to commence on 28 July 2008 during which the external auditor is required to ascertain that the accounts present fairly the financial position of the Borough Council and to ensure that they have been produced in accordance with all relevant codes of practice. Should any amendments be required, the regulations provide that details should be reported as soon as practicable after the conclusion of the audit.
- 1.3 There is also a requirement in the CIPFA Accounting Code of Practice on Local Authority Accounting for a Statement of Internal Control (SIC) to be incorporated into the Statement. This now takes the form of an Annual Governance Statement, which will be considered by the Audit and Risk Committee on 24 June 2008.

2. **Scrutiny by the Audit and Risk Committee**

- 2.1 The Statement of Accounts will be considered by the Audit and Risk Committee at its meeting on 24 June 2008. Because this meeting will be held the evening before your meeting the comments of the Audit and Risk Committee cannot be circulated to you in advance for your consideration. However, it is intended to prepare a note of the comments made by the Committee, to be circulated at your meeting. It will also be possible to give a verbal report to your meeting so that Members have the necessary information.

3. **The General Fund Budget**

- 3.1 The General Fund is the main account of the Council and relates to all of those services which are funded by the Council Tax, Business Rates and the Government's Revenue Support Grant. A summary of the outturn compared to budget is shown in Annex B. Given the profile and interest in the level of Council Tax when it is set, the General Fund is the main focus of this report.
- 3.2 The budget for the General Fund for 2007/08 was originally set in February 2007 and amounted to a net total of £16,676,000.
- 3.3 In setting the budget at this level it was assumed that it would be necessary to support the budget through the utilisation of £1,533,510 from the Council's reserves as follows:
 - £749,510 Revenue Reserves
 - £784,000 LABGI Reserve
- 3.4 As the financial year of 2007/08 progressed, it became apparent that a number of favourable variances compared with the original budget had arisen. The total impact upon the 2007/08 budget was estimated to be in the region of £500,000. Monitoring statements throughout the year confirmed this sum with the eventual outturn being a favourable variance of £756,736.

4. **The General Fund Outturn**

- 4.1 As mentioned above, the out-turn in respect of the Revenue Account was £756,736 better than the original estimate. The main reasons for this favourable outcome have received detailed comment throughout the year in regular budget monitoring reports to Members and are not repeated in detail. However, it is worth drawing particular attention to the significant contribution which increased investment income of some £550,000 has made to the positive outcome. This has resulted from the adoption of a proactive investment management stance and the underlying increases in rates of interest obtainable as the year progressed.

- 4.2 As Members will be aware, the Council's plans to develop sports facilities in the form of the Sports Village project have not come to fruition, leaving some preliminary expenses which have been incurred or to which the Council is committed which cannot be charged to capital account, as originally intended. Accordingly these costs have been charged to the Revenue Account in 2007/08. The amount of the charge is £312,349. This reduces the above mentioned variance to a final figure of £444,387.
- 4.3 The result of the overall positive variance is that an amount of £444,387 has been transferred to the Budget Support Fund.
- 4.4 As can be seen in Note 22 to the Accounts, the balance on the Budget Support Fund now stands at £1,985,879, an increase of £612,377 from the 1 April 2007 balance. This increase comprises the £444,787 resulting from the positive budget variance plus £167,590 transferred to the Fund in respect of underspendings against the 2007/08 budget to permit planned expenditure to be incurred in 2008/09 (i.e. the budget has been moved forward into 2007/08).
- 4.5 A summary of the outturn, in a similar format to the budget monitoring reports received by Members during 2007/08, is shown at Annex B. Significant reasons for variances are commented on at the right hand side of the table.
- 4.6 Broadly speaking, the most significant factors giving rise to the overall variance of £756,736 (excluding the Sports Village costs) were:

	£'000s	£,000s
• Increased Investment Income	-	554
• Other Increased Income		
Sports Centre Fitness Suites	- 109	
Commercial Property Rents	- 87	
Recycling Credits	- 63	
Planning Fees	- 58	
	—	- 317
• Streetscene Service costs variance		- 05
• Additional Interest Attributable to Renew Reserve		+ 114
• Contributions to Bad Debts Provision		+ 100
		—
		- 752
		—

5. **The Collection Fund**

- 5.1 The Collection Fund is a separate account which contains the financial details which refer to the collection of Council Tax, Business Rates and the former Community Charge.
- 5.2 The purpose of this account is to illustrate how much of the above income has been collected and to see how this compares to the amounts of the levies that have been made for the Borough Council, the County Council, the Police Authority and the Fire Authority.
- 5.3 This is a somewhat technical account but the key issue is to see if the account is in surplus or deficit and to what extent. In collecting income the Borough Council has to make an assessment of how much will ultimately be collected. The Collection Fund had an accumulated deficit of £651,919 as at 31 March 2008. This will be deducted from the amounts that will be collected in 2008/09 and will be used in calculating how much Council Tax will be levied in 2009/10.

5.4 As can be seen the Fund has moved into a deficit situation. This arises from an increase in the provision made for bad or doubtful debts of £100,000, combined with an increase in the amount of exemptions and reductions to the sum collectable for Council Tax. The increased exemptions and reductions reflect properties remaining vacant for longer due to the economic downturn.

6. **The Balance Sheet**

6.1 The Borough Council's Balance Sheet is shown separately in the Statement of Accounts. The Balance Sheet of any local authority differs somewhat from those in the private sector and contains items with which many people would not be too familiar such as the Revaluation Reserve or the Capital Adjustment Account – it should be noted that these two accounts are technical accounts which do not confer any “cash” status.

6.2 The main features of the Balance Sheet are as follows

- There are Net Fixed Assets of £45,160,494 which mainly represent the land and property holdings of the Borough Council. Note 15 to the Statement of Accounts shows an analysis of these assets, together with a summary of movements during 2007/08.
- Long Term investments amounted to £16,448,827 - these are mainly placed with banks and building societies for periods of over one year.
- Short Term investments amounted to £24,200,000 - these are generally for up to 12 months and are again placed with building societies and banks.
- The amounts owed to the Borough Council by its debtors (net of bad debts provisions) amount to £11,699,892 whilst the amounts it owes to its creditors are £8,995,658. Further analysis of these amounts is shown in Note 27 to the Statement of Accounts.
- There are capital receipts in hand totalling £23,335,081 - these mainly relate to the sale of its council housing stock.
- The Borough Council has reserves totalling £14,394,354. The main items are:
 - The Budget Support Fund (£1,985,879)
 - The Contingency Reserve Fund (£1,885,840)
 - The Organisational Development Fund (£674,591)
 - The Insurance Fund (£1,310,392)
 - The Special Projects Fund (£877,912)
 - The New Initiatives Fund (£800,392)
 - The ICT Development Fund (£1,521,506)
 - The Renewal and Repairs Fund (£572,466)
 - The LSVT (Large Scale Voluntary Transfer – Housing) Fund (£2,130,796)
 - LABGI Reserve (£1,000,318)
 - RENEW Reserve (£473,697)
 - Equipment Replacement Fund (£448,017)

7. **LABGI Grant Repayment**

7.1 Members will be aware that the Council has been overpaid in respect of Local Authority Business Growth Incentive (LABGI) grant. There is a known liability to make repayments of

grant received up to 31 March 2008, amounting to £970,000, by the end of April 2010, of which £370,000 is to be paid in 2008/09. Accordingly, £970,000 has been transferred to creditors, via the Income and Expenditure Account. The repayments will be met from the LABGI Reserve (£370,000) and the Contingency Reserve (£600,000) and the effect of treating the repayment of grant as a creditor is to reduce the balance on these reserves at 31 March 2008 by the respective amounts.

8. **Overall Conclusions**

- 8.1 The purpose of this report has been to bring Members up to date with the Borough Council's Statement of Accounts for 2007/08. Comments have been made on the key issues in order to help Members to understand the overall position.
- 8.2 The figures contained in this report are subject to audit. The next step is for the Statement to be audited with any amendments being reported back in due course.

9.1 **List of Appendices**

Annex A - Financing of Capital Expenditure

Annex B - Summary of Outturn

Capital Expenditure Financing 2007/08

	General Fund H.I.P. £	General Fund Other £	Total £
<u>Capital Expenditure</u>			
Expenditure during 2007/08	1,769,089	4,376,385	6,145,474
	<hr/>		
Total to be Financed	1,769,089	4,376,385	6,145,474
	<hr/>		
<u>Financing of Expenditure</u>			
Capital Receipts	179,522	3,041,731	3,221,253
Government Grant - Housing Subsidies	315,000	-	315,000
Regional Housing Board Grant	1,274,567	-	1,274,567
LPSA Grant	-	37,531	37,531
Contributions from Other Bodies	-	909,760	909,760
Revenue Contributions - Special Projects Fund	-	387,363	387,363
	<hr/>		
Total Financing	1,769,089	4,376,385	6,145,474
	<hr/>		

Note:

- H.I.P. = Housing Investment Programme (i.e. Housing Capital Programme).
- LPSA Grant = Local Public Service Agreement Grant

SUMMARY OF OUTTURN 2007-08

ANNEX B

Service Head	Original Budget for Year	Actual Outturn	Variance for Year	Adjustment for Technical Factors	Revised Variance for Year	Significant Reasons for Variances
	£'000s	£'000s	£'000s	£'000s	£'000s	
Services						
Administration	21,151	20,069	(1,082)	(602)	(480)	Employees -£143k; Depot rental income/NNDR/Utilities -£76k; Streetscene non-employee costs variance -£120k;
Central Services	4,920	4,398	(522)	(419)	(103)	Unused Depot space charged to Non-Distributed Costs -£93k
Cultural Services	5,260	6,709	1,449	1,179	270	fitness suite income -£109k; contributions rejoin use centres +£68k; Sports Village costs +£312k; contribution to bad debts provision +£30k; football development income -£20k
Environmental Services	7,341	6,941	(400)	(301)	(99)	Recycling Credits -£63k; Licencing increased income -£38k
Planning	1,377	1,663	286	375	(89)	increased commercial property rental income -£87k; contribution to bad debts provision +£50k; legal fees expenditure +£60k; increased planning fees income -£58k; contributions to external bodies -£30k
Transport	1,285	1,093	(192)	(71)	(121)	Emergency Callout system costs -£30k; Car Parks: employee costs -£46, equipment repair -£15 and NNDR -£11;
Housing	2,535	1,450	(1,085)	(1,028)	(57)	Housing Benefits excess income over expenditure -£79k
						-
Administration Recharges to Services	(21,151)	(20,069)	1,082	602	480	
Net Cost of Services	22,718	22,254	(464)	(265)	(199)	
Other						
Pension Liabilities Account	3	47	44		44	Revised figures received from scheme actuary
Interest Payments	55	56	1		1	
Interest and Investment Income	(2,042)	(2,596)	(554)		(554)	Increased interest rates and proactive investment management policy
General Government Grants	-	(138)	(138)		(138)	LPSA grant and additional LABGI grant
Repayment of LABGI Grant	-	970	970	970	-	Wrong amount of grant paid to Council by Government
	(1,984)	(1,661)	323	970	(647)	
Contributions To and From Reserves						
Revenue Reserves	(1,438)	(1,039)	399	(107)	506	Additional £114k interest attributable to RENEW Reserve, otherwise reflects variances in expenditure and income in relation to services
Budget Support Fund	-	444	444	-	444	final surplus achieved on the revenue account
Capital Reserves	(2,270)	(3,421)	(1,151)	(1,084)	(67)	
Pension Reserve	(350)	99	449	486	(37)	Revised figures received from scheme actuary
	(4,058)	(3,917)	141	(705)	846	
Amount To Be Met from Grants and Locally Funding	16,676	16,676	-	-	-	
Revenue Support Grant	(1,476)	(1,476)	-	-	-	
Business Rates Pool	(8,794)	(8,794)	-	-	-	
Council Tax	(6,387)	(6,387)	-	-	-	
Collection Fund Deficit	(19)	(19)	-	-	-	
	(16,676)	(16,676)	-	-	-	

Notes:

Adjustments for Technical Factors comprise:

Capital Accounting (depreciation, impairment, amortisation)

Pensions adjustments (as required by FRS17)

Expenditure shortfalls on budgets met from reserves, e.g. renewals and repairs

Vacancy Factor re employee costs

LABGI Grant repayment not included in original budget for grants or reserves appropriations

**PART III STANDING ORDERS IN
RELATION TO CONTRACTS**

DRAFT

***REVISED COPY FOR REVIEW & APPROVAL BY
COUNCIL ON
25TH JUNE 2008***

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Date	Responsible officer
March 2000	Head of Legal and Democratic Services and Financial Services Manager (Audit and Control)
March 2005	Head of Legal and Democratic Services and Financial Services Manager (Audit and Control)
October 2007	Corporate Improvement Manager Legal Services Manager

KEY TO TEXT

Black: previous standing orders

Blue italics: suggested additions

A SCOPE OF STANDING ORDERS AS TO CONTRACTS

1. Basic principles

- (a) Purchasing and disposal procedures must:
 - (i) Achieve best value for public money spent;
 - (ii) Be consistent with the highest standards of integrity;
 - (iii) Ensure fairness in allocating public contracts;
 - (iv) Comply with all legal requirements;
 - (v) Ensure that non-commercial considerations do not influence any contracting decision;
 - (vi) Support the Council's corporate and departmental aims and policies; and
 - (vii) Comply with the Council's methodology for best value and competition.
- (b) These Standing Orders form part of the Constitution of the Council and must be followed every time the Council enters into a contract for work, goods, materials or services. The Council includes the Cabinet, Committees, sub-Committees, working groups, Executive Directors and Officers acting on its behalf. Everyone should be aware of the contents of the constitution, as areas of procurement activity will require prior notification as set out in the constitution. These include the forward plan for key decisions and delegated decisions.
- (c) Further instructions relating to conduct of the Council's financial affairs are included in the Council's Financial Regulations.

Standing Orders should be read in conjunction with this document so that, taken together, they create a complete code of financial control.

- (d) Every contract made on behalf of the Council shall comply with:
 - (i) **All relevant statutory provisions;**
 - (ii) **European Union Law;**
 - (iii) These Standing Orders and any supplemental Contract Guidelines;
 - (iv) The Council's Financial Regulations; and
 - (v) The Council's strategic objectives and policies.

Where there is any inconsistency between EU law and UK law, EU law will prevail. Any uncertainty as to the application of the law must be referred to the Legal Services Manager.

NB: there are detailed provisions in respect of Public Procurement which will apply to most contracts and must be complied with (see Appendices C and D).

- (e) Where the proposed Contract is one to which the Council will be a party in common with other local or public authorities as part of a consortium or similar arrangements, the Legal Services Manager may, in consultation with the Leader of the Cabinet, agree that these Standing Orders shall not be applicable to that Contract, if satisfied:
 - (i) That it is in the best interest of the Council and
 - (ii) That the tendering and contract procedures of one of the other authorities should be followed.
- (f) Where tendering procedures are specified as part of grant regimes, for example RENEW, those procedures shall take precedence over these Standing Orders only where they are more extensive.

- (g) It shall be a condition of any Contract between the Council and anyone who is not an officer of the Council, but who is authorised to carry out any of the Council's contract functions, that they comply with these Standing Orders and the Financial Regulations of the Council as if they were an officer of the Council.
- (h) Where any action in these Standing Orders is reserved to the Cabinet this may be undertaken only by the Cabinet as a whole in accordance with the Council's Constitution, providing that such action is in accordance with the procedures and rules that the Council or the Cabinet itself shall make, unless the Monitoring Officer approves otherwise.
- (i) Wherever Executive Directors titles are shown in these Standing Orders, their nominees may undertake the responsibilities listed during their principals absence provided they have written authority to do so. This shall not be the case where Statute Law, a resolution of the Council, or a decision of the Cabinet requires otherwise.
- (j) These Standing Orders do not apply to: -
 - (i) Contracts of employment;
 - (ii) Contracts relating to interests in land;
 - (iii) The engagement of Counsel; or
 - (iv) Contracts relating to Treasury Management entered into by the Executive Director – Resources & Support Services in pursuance of the powers delegated to him under the Scheme of Delegation.
- (k) These Standing Orders shall be made available on the Council's Intranet.
- (l) The Council will review these Standing Orders annually. The financial limits specified in the EU Directive are presently reviewed by the EU every two years.
- (m) At all times during the procurement officers and members of the Council shall consider and implement the principles of non-discrimination, equal treatment and transparency.

2 **EXEMPTIONS**

- (a) In exceptional circumstances, or where an innovative approach to a particular contract is being proposed compliance with specific paragraphs of these Standing Orders may be waived, provided that this does not contravene any statutory or EU procedures. This shall only be done by: -
 - (i) A resolution of the Council or Cabinet where the exemption is justified due to special circumstances; or
 - (ii) The Chief Executive or the Legal Services Manager, after consultation with a member of the Cabinet, in a case of urgency; or by
 - (iii) A decision of the Cabinet after considering a report from the appropriate Executive Director justifying to their satisfaction that there would be no genuine competition in the supply of particular goods or services, or that the most economic option is not the best value for money.

In respect of points (i), (ii), and (iii) above each resolution shall contain the relevant Standing Order number which has been waived in the circumstances.

(b) Exceptional circumstances justifying exemptions from the Requirement to Invite Tenders

Where there is no legal requirement to do so and provided that a record in accordance with Standing Order 2(a) is included in the minutes of the appropriate Committee, it shall not be obligatory on the Council, the Cabinet or any Committee or officer authorised to do so to invite tenders for the supply of goods, materials, or for the carrying out of works or services:

- (i) in respect of which effective competition is prevented by Government control; or
 - (ii) the goods or services to be purchased are offered to the Council at a price substantially less than the lowest price at which the Executive Director would reasonably expect by the invitation of tenders ordinarily to be able to purchase the said goods or services; or
 - (iii) The goods to be purchased or sold can in the best interests of the Council be obtained at a public auction, fair or market conducted in accordance with generally accepted principles; or
 - (iv) which are proprietary, patented or specialised goods or materials; or
 - (v) which are obtainable only from a limited number of persons or bodies; or
 - (vi) where for any other reasons there would be no genuine competition; or
 - (vii) which the Committee concerned may deem it expedient to purchase provided that, in such cases, when practicable, a reasonable number of contractors shall be invited to submit quotations; or
 - (viii) where the work to be executed or the goods and materials to be supplied constitute an extension of an existing contract (such an extension to be approved by the Cabinet); or
 - (ix) where the contract is for the execution of work or services or the supply of goods and materials certified by the Executive Director concerned as being required so urgently *and unforeseen* as not to permit the invitation of tenders; or
 - (x) where failure to act at once will result in the Council failing to utilise grants or other credits, which must be used within a given time by a given date.
- (c) Standing Orders 2(b) shall not apply to or restrict the Chief Executive's powers to act under the Council's Emergency Plan.
- (d) Where items whose value exceeds £15,000 are to be purchased from a public auction, the request for consent shall specify the highest value, which is to be bid for the article.
- (e) The Legal Services Manager must keep a record of all exemptions.

3 **EXECUTIVE DIRECTOR RESPONSIBILITIES**

All Executive Directors shall:

- (a) Ensure that all appropriate staff have access to these Standing Orders and are kept aware of their requirements;
- (b) Create and maintain adequate systems to ensure proper control and monitoring of expenditure upon all goods, materials, services and works obtained under these Standing Orders;
- (c) Comply with all budgetary guidelines approved by the Cabinet and issued by the Executive Director – Resources & Support Services or other appropriate officer;

- (d) Retain all relevant documentation, making them available to Internal Audit, or any representative of the Council's external auditors or inspectors for the period required. Executive Directors are also responsible for the shredding and burning of confidential waste. For every individual contract above £50,000 a contracts file shall be maintained and a tender evaluation report, proportional to the type and value of the contract, is to be completed by the Executive Director;
- (e) Undertake the procurement of goods, materials, works and services in such a manner as to avoid duplication of work or effort undertaken by other Executive Directors; and,
- (f) Comply with the requirement to provide Best Value in accordance with the Local Government Act 1999 and the requirement of the Council's Procurement Policy and Principles;
- (g) Any failure to comply with any of the provisions of these Standing Orders shall be reported by the relevant Executive Director immediately to the Legal Services Manager as Monitoring Officer and to the Cabinet.

4 **COMMUNITY REPRESENTATIVES**

- (a) Each Executive Director may invite community organisations to appoint persons (who may not be members of the Council) to participate in drawing up specifications, interviewing Contractors and monitoring Contracts in accordance with the Standing Orders. The views of the Legal Services Manager shall be sought in respect of any other type of involvement.
- (b) Each Executive Director shall ensure community representatives individually give a written undertaking to treat all information confidentially throughout the tender process and life of the contract.

5 **CENTRALLY NEGOTIATED CONTRACT ARRANGEMENTS**

Where a commodity or a service to be purchased is covered by a Corporate Contract then this contract must be used, thereby negating the need for any further tender or quotation.

B **COMMON REQUIREMENTS**

6 **PRE-PROCUREMENT PROCEDURES**

- (a) Before commencing procurement, it is essential that the authorised officer has identified the need and fully assessed any options for meeting those needs. Consideration shall be given to the Council's Procurement Strategy as appropriate.
- (b) Before undertaking a procurement over £50,000 the authorised officer shall:
 - (i) Establish a business case for the procurement and defined objectives, with an estimate of the probable cost including any maintenance, ongoing costs; this demonstrates the case in a Benefits Management Card;
 - (ii) Consider all means of satisfying the need;

- (iii) Check with Democratic Services to ascertain whether there is an approved list of contractors and if so the appropriate approved list shall be used, except where the value exceeds EU thresholds;
- (iv) Choose a course of action which should represent best value for money for the Council;
- (v) Prepare a timetable of key events/stages involved in the letting of the contract.
- (vi) Consult with users of the service as appropriate about the proposed method, contract standards, and also performance and user satisfaction monitoring;
- (vii) Assess the risks associated with the purchase and how to manage them;
- (viii) Establish a written specification for the procurement requirement and ensure that tender documents are available in electronic format where necessary;
- (ix) Ensure that each invitation to tender shall identify where goods, materials and work must comply with any relevant British Standards or British Standards Code of Practice or European equivalents in force at the date of the tender or with a definite specification provided by the Council.
- (x) Ensure that the reasons for **all** actions taken under these Standing Orders are documented by the officers concerned. It is necessary to be able to justify the actions that have been taken.

And confirm that:

- (xi) There is member or delegated approval for the expenditure;
 - (xii) There is Cabinet approval for significant new proposals as required by Financial Regulations;
 - (xiii) Prior information notices, if required in accordance with EC Procedures have been sent, see Appendix C.
- (c) Enquiries of Contractors may be made before tenders are invited in order to:
- (i) Establish whether the goods, works or services that the Council wishes to purchase are available, and within what price range;
 - (ii) Prepare tender documents, price estimates and contracts and
 - (iii) Establish whether particular Contractors wish to be invited to tender.
- (d) In making enquiries:
- (i) No information shall be disclosed to one Contractor which is not then disclosed to all those of which enquiries are made, or which are subsequently invited to tender;
 - (ii) No Contractor shall be led to believe that the information they offer will necessarily lead to their being invited to tender or awarded the contract;
 - (iii) A written record, including notes of any meetings held, the responses and the names of all individuals present shall be kept by the Responsible Officer on the Contract file.

7 **E-COMMERCE AND THE INTERNET**

- (a) The Council is committed to maximise the benefits available from the introduction of e-commerce and the use of the Internet.
- (b) All references to documents and procedures for their use should be taken to allow for the use of electronic facilities instead of printed or written matter where appropriate.
- (c) Where reference is made to written evidence/ documents this includes electronic documents/ evidence.

C CONDUCTING A PURCHASE OR DISPOSAL

COMPETITION REQUIREMENTS FOR PURCHASE, DISPOSAL AND PARTNERSHIP ARRANGEMENTS

8 COMPETITION REQUIREMENTS

Low value procurement: contracts valued at £0-£3,000

- (a) For contracts whose value is estimated to be £0-£3,000, low value procurement, the appropriate Executive Director or their designated Officer may place a written or electronic order. No formal written competitive quotations are necessary, but due regard shall be had to the desirability of securing competition by verbal enquiry and written confirmation, where appropriate. File notes are to be kept to indicate and justify the action taken.

Intermediate value procurement: contracts valued at £3,000-£50,000

- (b) For contracts where the value is estimated to be between £3,000-£50,000, intermediate value procurement, for work, goods, materials or services already approved by the Council the appropriate Executive Director or their designated Officer may place a written or electronic order for the contract after obtaining competitive quotations in accordance with Financial Regulations. A verbal order may be placed in cases of urgency but must promptly be confirmed in writing. Contracts up to £50,000 must comply with Section D (Dq-Dr) of Financial Regulations.
- (c) The Cabinet or appropriate Committee may, however, determine that in particular cases tenders shall be invited.
- (d) Where there is an approved list in existence it must be used to source the firms who will be invited to quote. Details are available from Democratic Services.
- (e) Where annual contracts are renewed by the relevant Executive Director, the total duration shall not exceed four years.

High value procurement: contracts valued at £50,000 plus

- (f) Where the estimated value of a Contract is £50,000 or more at least four tenders shall be invited.
- (g) Where the risk in a specific procurement is defined as high, then that procurement shall be treated as high value procurement regardless of the value of the contract.
- (h) Any procurement that may involve a transfer of staff shall be treated as high value procurement.

Other procurement

- (i) Assets for disposal must be sent to public auction except where better value for money is likely to be obtained by inviting quotations and tenders. In the latter event, the method of disposal of surplus or obsolete stocks/ stores or assets other than land must be formally agreed with the Executive Director - Resources & Support Services. Small value items would not be expected to be publicly auctioned.

- (j) Providing services to external purchasers must be in compliance with the Local Authority Goods and Services Act. Cabinet approval must be sought for provision of services to other bodies.
- (k) Best value and partnership arrangements are subject to all UK and EU procurement legislation and must follow these standing orders. If in doubt officers must seek the formal advice of the Legal Services Manager.

9 **CONTRACT VALUES**

- (a) Where the contract is for the purchase of a single item, which is unrelated to the purchase of other items, the contract value is the price, or estimated price of that item.
- (b) Where the contract is for the purchase of a related group of items, the contract value is the total price, or estimated total price, of the group.
- (c) Where the contract is for goods to be provided by way of short-term hire, the contract value is the capitalised value of the goods to be provided. The capitalised value is obtained by multiplying the periodic payment to be made to the Hirer by the total number of payments agreed to be made under the contract.
- (d) Where the contract is continuous, the value is the amount which the Executive Director expects to be the total value of the goods or services which will be taken by the Council over the life of a four year contract.
- (e) Contract figures shall be reckoned exclusive of VAT.

10 **STANDARDS AND AWARD CRITERIA**

- (a) The Executive Director or their delegated Officer must ascertain what are the relevant British (or equivalent), European or International standards which apply to the subject matter of the contract. The Officer must include those standards that are necessary to describe the required quality. The Legal Services Manager must be formally consulted before any Officer decides to use standards other than European where they exist.
- (b) The Executive Director or their delegated Officer must define and document the award criteria that are appropriate to the purchase, before tenders are sought. Where considerations other than purchase price apply, sub criteria need to be defined and documented. These may include price, service, quality of goods, running costs, whole life-cycle costs, technical merit, previous experience, delivery date, cost effectiveness, quality, relevant environmental considerations, aesthetic and functional characteristics, safety, after sales service, technical assistance, partnering, long term relationships, and any other relevant matters.
- (c) The award criteria must not include:
 - (i) Non commercial considerations;
 - (ii) Matters which discriminate against suppliers from the European Economic Areas or signatories to the Government Procurement Agreement;
 - (iii) Matters which are anti-competitive within the meaning of the Local Government Act 1988.

- (d) Only the most economically advantageous tender shall be accepted unless the Council resolves otherwise after considering a written report by the appropriate Executive Director or other nominated person.
- (e) Acceptance of tenders over £50,000 in value (whether payable by or to the Council) must be recorded in the minutes of the Cabinet or appropriate Committee.
- (f) Where tenders have been invited by public advertisement in accordance with Standing Orders 14, 15 and 16 no tender shall be accepted unless the appropriate Executive Director is reasonably satisfied as to the technical capability and financial standing of the tenderer.
- (g) Without prejudice to any other remedy, a contractor who withdraws a tender for other than good or sufficient reason may, at the discretion of the Cabinet, be debarred from being invited to tender for further work for such period as the Cabinet may determine.
- (h) Only successful tenders are reported to Cabinet, details of all other tenders are to remain confidential and not reported to any third party except as required by statutory provisions. The market can be informed of the financial outcome of tenders without linking these to the contractors that tendered.

11 **INVITATION TO TENDER**

- (a) For contracts whose estimated value is expected to be greater than £50,000 for work, materials, goods or services already approved by the Council, tender procedures shall be adopted.
- (b) The invitation to tender shall state that no tender will be considered unless it is received by the date and time stipulated on the Invitation to Tender.
- (c) Contractors must be chosen by one of the following methods:
 - (i) selective tendering under Standing Orders 14 and 15; or
 - (ii) open tendering under Standing Order 16; or
 - (iii) requesting tenders on behalf of a consortium, association or similar organisation of which the Council is a member following the rules of that organisation; or
 - (iv) requesting tenders under the instructions of another authority for which the Council is acting as agent; or
 - (v) selecting a contractor from a list of contractors with a schedule of rates approved and selected by another authority for which the Council is acting as an agent.
- (d) The invitation to tender must include details of the Council's requirements for the particular contract including:
 - (i) a form of tender, tendering certificate, instructions to tenderers including a procurement timetable, financial reference requests, insurance, business continuity questionnaire, health and safety checklists and draft contract terms approved by the Legal Services Manager (all tenders should have the facility to be submitted electronically);
 - (ii) A specification that describes clearly the Council's requirements in sufficient detail to enable the submission of competitive offers. The EU rules with regard to specification shall be followed and these are set out in the EU Codes of Practice;
 - (iii) Pricing mechanism and instructions for completion and
 - (iv) Whether the Council is of the view that TUPE will apply;

- (v) A requirement for tenderers to declare that the tender content, price or any other figure or particulars concerning the tender have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - (vi) A requirement for tenderers to complete fully and sign all tender documents including a form of tender and certificates relating to canvassing and non-collusion. Where tender documentation is sent electronically, if selected, the tenderer will be required to submit the relevant signed documentation through conventional means.
 - (vii) Notification that tenders are submitted to the Council on the basis that they are compiled at the tenderer's expense.
 - (viii) The invitation to tender or quotation must state that the Council is not bound to accept any quotation or tender.
 - (ix) The method by which any arithmetical errors discovered in the submitted tenders is to be dealt with. In particular, whether the overall price prevails over the rates in the tender or vice versa.
- (e) Except under the Open Procedure, all tenderers 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.
 - (f) Where any public advertisement has not defined the award criteria, invitations to tender must state the award criteria in objective terms and where possible in descending order of importance.
 - (g) Where the invitation to tender is for the supply of goods, provision of services or for construction work under the EU Regulations then the procedures in Appendix C must be adhered to.

12

TENDERING FOLLOWING PUBLIC ADVERTISEMENT

- (a) A public advertisement stating the nature of the contract and asking for the names of contractors interested in tendering shall be placed:
 - (i) in at least one local newspaper or trade journal or electronic procurement portal; and
 - (ii) where the estimated value of the contract exceeds **£139,893** in at least two of the aforementioned circulars; The notice shall specify details of the Contract and how tender documents may be obtained or inspected.
 - (iii) where the estimated value of the contract exceeds the EU threshold (see Appendix C for present regulations and limits) in the Official Journal of the European Union. The notice shall comprise such information as is required by the appropriate EU Regulations.
- (b) A non-returnable administration charge may be made for the despatch of tender and quotation documents at the discretion of the Executive Director.
- (c) The appropriate Executive Director shall be responsible for ensuring that all persons or bodies invited to quote or tender for the supply of goods, services or works to the Council have been suitably assessed. This may be achieved in respect of proposed contracts that are expected to exceed £50,000 by selecting firms from:
 - (i) Standing lists of providers, maintained by the Council in Democratic Services and compiled following responses to a public advertisement, or

- (ii) A shortlist of contractors compiled from expressions of interest submitted in response to a public advertisement.

13 **SHORT LISTING OF TENDERERS**

- (a) The assessment process shall establish that potential suppliers have sound:
 - (i) Economic and financial standing, and
 - (ii) Technical ability and capacity to fulfil the requirements of the Council.
- (b) Any short listing must have regard to financial and technical standards relevant to the contract and may have regard to the award criteria.
- (c) Shortlisting can occur following one of three ways of tendering: selective tendering: ad hoc list or standing list and open tendering.

14 **SELECTIVE TENDERING: AD HOC LIST**

- (a) This Standing Order shall apply where the Cabinet or appropriate Committee have decided that invitations to tender for a contract are to be made to some or all contractors who have replied to a public advertisement.
- (b) The tendering procedure must follow the relevant prescribed time limits (see Appendices C). Where there is no prescribed procedure a closing date of at least fourteen days from the placing of the notice shall be given for reply.
- (c) After the closing date the prescribed number of contractors, or where there is no prescribed number at least four chosen by the Cabinet or appropriate Committee, must be invited to tender. Where less than four suitable contractors express an interest all should be asked to tender.

15 **SELECTIVE TENDERING: STANDING LIST**

- (a) This Standing Order shall apply where the Cabinet or appropriate Committee authorised to do so have decided that invitations to tender for a contract are to be limited to contractors whose names shall be included in a list compiled and maintained for that purpose.
- (b) The Democratic Services Manager shall maintain the Standing List compiled by information supplied by the Executive Directors.
- (c) An Executive Director may also add to the list with the approval of the Cabinet. This may only be done when this has been made clear on notification documents (advertisements).
- (d) The Standing List shall: -
 - (i) Contain the names of all persons or bodies who are approved, and
 - (ii) Specify the categories and values of Contract for which each Contractor has been approved.
- (e) The Standing List shall be reviewed every four years by the relevant Executive Director. Once every four years a public advertisement shall be placed inviting expressions of interest for those wishing to be placed on the standing list. A period of at least four weeks

shall be given for reply to a public advertisement as set out in Standing Order 12 above inviting contractors to be included on the Standing List. Those Contractors already on the list must be asked if they wish to remain on it. Application shall be made by the completion of an appropriate commercial/ technical and financial questionnaire.

- (f) After the closing date the appropriate Executive Director shall consider all applications for inclusion on the Standing List and shall select any application from any internal supplier if it can provide the goods or services being sought, the final list will be approved by Cabinet.
- (g) If a contractor is, in the opinion of the Cabinet, unsatisfactory or unable to meet the terms of any of his contracts he must immediately be taken off the list.
- (h) A contractor temporarily unable to meet the terms of his contract can be suspended from the list for a period of time to be determined by the Cabinet.
- (i) Any grievance on the part of an applicant for inclusion on the Standing List shall be referred to the Cabinet for a decision.
- (j) When selecting tenderers from the Standing List, at least four contractors shall be invited to tender in relation to the relevant type and value of work. If there are fewer than four eligible contractors then all those suitable must be asked to tender.
- (k) Where there are more than four eligible contractors on the list, contractors shall be selected for tendering on a rotational basis selecting the most suitable contractor for the type of work required. The Executive Director shall record on the contract file the policy for the rotation of contractors.
- (l) Technical references, insurance, business continuity questionnaire and health and safety policies shall be sought for all contractors wishing to be included on the list and refreshed annually. Financial references shall be sought prior to any invitation to tender for contracts.
- (m) Framework agreements are used where the Council wishes to contract for the provision of supplies, services or works without conducting a new procurement exercise. However, the Framework Agreement may include within its terms a requirement for a mini competition exercise between those contractors who are parties to the Framework Agreement. Any Framework Agreement shall be tendered in accordance with these Standing Orders. Where the Council has entered into a Framework Agreement through procurement then that Framework Agreement must be used. Where the Council is able to call off from existing Framework Agreements procured by other local authorities or by Central Government agencies, then the Council may benefit from using those contracts without entering into a separate procurement exercise. Legal advice should be sought as appropriate.

16

OPEN TENDERING

- (a) This Standing Order shall apply where the Council or the Cabinet authorised to do so have decided that tenders for a contract are to be obtained by open competition.
- (b) Tenders must be invited by advertising as set out under Standing Order 12.
- (c) Where there is no other requirement under legislation a period of at least fourteen days shall be given for the receipt of tenders.

- (d) All contractors replying to the notice must be sent tender documents.

17

SUBMITTING AND OPENING TENDERS

- (a) Where in pursuance of these Standing Orders invitation to tender is made, every invitation unless submitted electronically, shall:
 - (i) state that no tender will be received unless it is enclosed in a plain sealed envelope and has only the words 'Tender' and the title of the contract written on it;
 - (ii) state that the appearance of any mark, name, stamp or other way of identifying the tenderer will invalidate the tender;
 - (iii) include other such information or instructions to tenderers as the Legal Services Manager may advise and
 - (iv) state the date and time by which the tenders must be received.
- (b) Tenderers shall deliver tenders to the *Customer* Services Manager, Civic Offices, Merrial Street, Newcastle under Lyme, Staffordshire, ST5 2AG such name and address to be printed on the envelope provided for the return of the tender.
- (c) Where tender documentation is too bulky to be placed in the envelope, a plain package is to be used and the envelope provided securely affixed to it.
- (d) No officer shall disclose the names of tenderers to any staff involved in the receipt, custody or opening of tenders.
- (e) Tenders delivered by fax or other electronic means must be rejected, unless they have been sought in accordance with an electronic tendering system approved by the Executive Director - Resources & Support Services.
- (f) Requests for quotations and invitations to tender can be transmitted by electronic means provided that evidence that the transmission was successfully completed is obtained and recorded.
- (g) Where the receipt of electronic tenders has been approved and they are received, they shall be kept in a separate secure folder under the control of the *Customer* Services Manager, which is not opened until the deadline has passed for the receipt of tenders.
- (h) The electronic tender in box shall only be available for the submission of tenders up to the stated deadline date. The date and time of each tender received within the electronic tender in box will be automatically recorded electronically. A hard copy of transactions on this email account shall be produced at the opening of the tenders.
- (i) The tenders shall be kept securely in the custody of the *Customer* Services Manager until the date and time specified for their opening. During this period, tenders must be retained by a person not connected in any way with the subsequent evaluation of tenders. Receipt of each tender must be:
 - (i) Date stamped;
 - (ii) Initialled by the receiving officer; and
 - (iii) Logged immediately upon receipt in the tender record book.
 - (iv) A receipt offered if requested.*

- (j) Tenders received under Standing Orders 14, 15 and 16 shall be opened at the same time and only in the presence of:
 - (i) a Cabinet member;
 - (ii) the Democratic Services Manager or his designated officer; and
 - (iii) the Executive Director concerned or an officer designated by them.
- (k) Upon opening, a summary of the main terms of each tender must be recorded, signed and dated by those present.
- (l) An Executive Director after consultation with the Legal Services Manager may postpone for a reasonable period the closing time and date for receipt of tenders, provided that all persons from whom tenders have been invited are notified by the same method and that no tenders have been opened. Where a company has already despatched their tender, they should have the option of submitting a replacement second bid.
- (m) The Democratic Services Manager shall maintain a record of all tenders received.

18 **ACCEPTANCE OF LATE TENDERS**

- (a) No tender can be accepted if it is received after the specified time.
- (b) In all cases, both manual and electronically received, late tenders can be opened by the appropriate Executive Director solely to discover the tenderer and shall then be promptly returned to them. Details of the tender shall not be disclosed.

19 **CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATIONS**

- (a) Providing clarification of an Invitation to Tender to potential or actual tenderers or seeking clarification of a Tender whether in writing, electronically, on the telephone or by way of a meeting is permitted.
- (b) Post tender negotiations means negotiations with any tenderer after submission of a tender and before the award of the contract with a view to obtaining adjustments in either price or content or both. Post tender negotiations are only acceptable if the procedures as outlined in Appendix A of this document are followed.
- (c) The Legal Services Manager must be formally consulted:
 - (i) Wherever it is proposed to enter into post tender negotiation, and
 - (ii) About whether negotiation is to be with all tenderers.
- (d) Where post tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.
- (e) If negotiations are necessary after a single stage tender or after the second stage of a two stage tender, then such negotiations shall only be undertaken with the tenderer who has previously been identified as submitting the best tender. It must never be used to allow potential contractors to improve the competitiveness of their bid in relation to others.
- (f) A tender may be amended where for a particular requirement the preferred tenderer exceeds the user department's budgeted allowance and negotiation permits an assessment of the scope for savings.

- (g) A tender may be amended where the preferred tenderer agrees to reduce his tender price (without varying the specification) after negotiation because:
 - (i) the original tender was unacceptably high, or
 - (ii) the schedule covers a range of requirements, and, although lowest overall, negotiation might allow further savings to the Council.
- (h) All cases of amendment to tender prices, and the reasons for them, shall be reported to the Cabinet or relevant Committee.

20 **CONTRACT ENTERED INTO BY EXECUTIVE DIRECTORS WHERE A WRITTEN STATEMENT HAS BEEN SUBMITTED AND APPROVED BY THE COUNCIL**

- (a) The appropriate Executive Director shall have authority to purchase materials, hire vehicles or enter into contracts for any or all sub-trade work in connection with a contract being in accordance with a written statement submitted to and approved by the Council. The placing of orders for such materials, vehicle hire or the entering into of such a contract shall be in accordance with quotations obtained as required by these Standing Orders except where statutory provisions require otherwise. Further Cabinet approval will not be required but this action should be reported to Cabinet for information purposes only.

21 **EVALUATION AND AWARD OF CONTRACT**

- (a) Apart from the notification permitted by Standing Order 10(h):
 - (i) Confidentiality of quotations, tenders and the identity of tenderers must be preserved at all times;
 - (ii) Information about one tenderer's response may not be given to another tenderer.
- (b) Contracts must be evaluated and awarded in accordance with the award criteria.
- (c) The arithmetic in compliant tenders must be checked. Where the examination of a tender reveals errors or discrepancies, which would affect the tender figure(s) in an otherwise successful tender, the Executive Director shall have discretion to allow the amendment if it is in the Council's interest to do so. If not, the tenderer is to be given details of such errors and discrepancies and allowed the opportunity of confirming or withdrawing his offer. If the tenderer withdraws, the contract will be awarded to the next lowest tenderer.
- (d) For high value procurements as defined in Standing Order 8, the Executive Director shall carry out a risk assessment and business continuity review as part of the pre-qualification assessment and the evaluation process.
- (e) For each contract evaluated as high risk, the Executive Director shall form an evaluation team which shall consult the Legal Services Manager and Executive Director – Resources & Support Services and where they consider it appropriate; representatives of those officers shall be included on the evaluation team. The team should then evaluate the tenders.
- (f) Where the total value of the contract is less than £50,000, the following evidence must be kept:
 - (i) Invitations to quote and quotations received;

- (ii) A written record of any exemptions and reasons for it and of any reason if the lowest price is not accepted;
 - (iii) Written including electronic records of communications with the successful contractor.
- (g) Where the total value of the contract exceeds £50,000, the following must be recorded:
- (iv) The method for obtaining bids (under SO 14-16);
 - (v) Any contracting decision and supporting reasons;
 - (vi) Any exemption under standing order 2 together with reasons for it;
 - (vii) The award criteria;
 - (viii) Tender documents sent to and received from tenderers;
 - (ix) Pre-tender market research;
 - (x) Clarification and post tender negotiation (to include minutes of the meetings);
 - (xi) The contract documents;
 - (xii) Post contract evaluation and monitoring; and
 - (xiii) Written records, including electronic, of communications with tenderers and with the successful contractor throughout the period of the contract.
- (h) All written records required by this Standing Order must be kept for 6 years (12 years if the contract is under seal) after the final settlement of the contract. However, evidence which relates to the unsuccessful tenderers may be microfilmed or electronically scanned or stored by some other suitable method after 12 months from award of contract, provided there is no dispute about the award.
- (i) Tenderers must be notified simultaneously in writing of the results of their tender, this can be done manually or electronically,, as soon as possible after any contracting decision.
- (j) If a candidate requests in writing the reasons for a contracting decision, the officer must give the reasons in writing within 15 days of the request.
- (k) The Executive Director, if requested in writing, should debrief, in writing, all those tenderers who submitted a tender or quotation about the reasons why they were unsuccessful and the characteristics and relevant advantages of the successful tenderer, as appropriate. This should normally include:
- (i) How the award criteria were applied;
 - (ii) The prices submitted, in either case not correlated to the tenderers' names, and
 - (iii) The names of tenderers where there were three or more.
- The same information may be given to those who responded in any pre-tender selection process. No other information should be given without taking the formal advice of the Legal Services Manager.
- (l) Executive Directors may accept quotations and tenders received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these standing orders and, in respect of proposed contracts that are expected to exceed £50,000, the approval of the Cabinet has been secured.
- (m) In the event of site visits for evaluation purposes, where appropriate hospitality should be invoiced to the Council.

D CONTRACT AND OTHER FORMALITIES

22 CONTRACT DOCUMENTS

- (a) All contracts that exceed £50,000 in value and in any other case where the Legal Services Manager or the Chief Executive so decide, shall be in writing.
- (b) All contracts, irrespective of value, shall clearly specify:
 - (i) What is to be supplied;
 - (ii) Payment provisions (amount and timing); and
 - (iii) the time within which the contract is to be performed.
- (c) The Council's official order form or standard terms and conditions issued by a relevant professional body must be used where possible. Where the Office of Government Commerce has produced standard contract terms these should be used.
- (d) In addition, every contract of purchase over £50,000 must also as a minimum state clearly:
 - (i) the amount of Liquidated Damages and the basis of the calculation. The appropriate Executive Director must consult with the Legal Services Manager and Executive Director – Resources & Support Services to determine Liquidated Damages. If they are to be included, the contractor will pay Liquidated Damages, estimated by the appropriate Executive Director in consultation with the Legal Services Manager, if he fails to meet the terms of the contract. If the contract is over £50,000 and Liquidated Damages are not considered to be appropriate the Executive Director concerned shall certify so to the Legal Services Manager;
 - (ii) that if the contract is not properly carried out or the time limit is not met the Council can:
 - (1) cancel all or part of the contract;
 - (2) complete the contract;
 - (3) recover from the contractor any additional costs in completing the contract;
 - (4) take other legal action against the contractor.
 - (iii) that neither all nor part of the contract can be assigned without prior written consent.
 - (iv) that there shall be suitable third party liability insurance with a minimum cover of £5 million unless a lower figure has been agreed in advance with the Democratic Services Manager after the receipt of a completed risk assessment proforma. The appropriate Executive Director must consult with the Democratic Services Manager to assess the risk and to consider whether additional cover is needed.
 - (v) health and safety requirements;
 - (vi) business continuity requirements;
 - (vii) CDM Regulations for building and engineering works;
 - (viii) ombudsman requirements;
 - (ix) data protection requirements if relevant;
 - (x) that charter standards are to be met if relevant;
 - (xi) race relations requirements;
 - (xii) (where agents are used to let contracts) that agents must comply with the Council's standing orders in relation to contracts;
 - (xiii) a right of access to relevant documentation and records of the contractor for monitoring and audit purposes and in relation to any claims of maladministration or legal claims against the Council; and
 - (xiv) termination arrangements.
- (e) The formal advice of the Legal Services Manager shall be sought for the following contracts:

- (i) Where the total value exceeds £50,000;
- (ii) Those involving leasing arrangements;
- (iii) Those which are complex in any other way;
- (iv) Where it is proposed to use a supplier's own terms and
- (v) Where approval is sought from the Legal Services Manager to waiver any of the requirements set out in 22(d).

23 **SIGNATURE OF CONTRACTS**

- (a) Every contract that exceeds £50,000 shall be signed by the Chief Executive, Legal Services Manager or on behalf of the Council. Contracts below £50,000 can be signed by the Executive Director or their delegated officer.
- (b) All contracts must be concluded before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the Legal Services Manager. An award letter is insufficient.
- (c) The officer responsible for securing signature of the contract must ensure that the person signing for the other contracting party has authority to bind it.

24 **REGISTERS OF CONTRACTS**

- (d) The Executive Director shall keep:
 - (i) a contract register setting down details of contracts awarded in the preceding twelve months and the basis on which those contracts were awarded, together with details of those contracts above £50,000 to be awarded in the following eighteen months.
 - (ii) A payments register of all contracts in a form approved by the Executive Director – Resources & Support Services. The payments register may be maintained electronically. The Register shall for each contract, specify the name of the contractor, the works to be executed or the goods to be supplied and the contract value. The Register shall contain a record of all payments made individually and cumulatively to contractors and sub-contractors.
- (e) Approval can be sought from the Executive Director – Resources & Support Services by an Executive Director Head of Service where it is more appropriate to monitor contracts against approved expenditure budgets where applicable. Officers monitoring these budgets must ensure that the relevant statutory requirements are adhered to and that contract values do not exceed EU thresholds for competitive tendering.

25 **SEALING**

- (a) Where contracts are sealed as a deed the Common Seal of the Council shall be affixed to the contract and witnessed by the Mayor or any Member of the Council and by the Chief Executive, or the Legal Services Manager or the (Assistant Head of Legal and Democratic Services).
- (b) Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed without the authority of Cabinet or of an Executive Director acting under delegated powers. A contract must be sealed where:
 - (i) The Council wishes to enforce the contract for more than six years after its end; or

- (ii) The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services; or
- (iii) Where there is any doubt about the authority of the person signing for the other contracting party; or
- (iv) Where the total value is expected to exceed £50,000.

26

BONDS AND PARENT COMPANY GUARANTEES

- (a) For contracts over £50,000, a performance bond may be required if considered appropriate by the Legal Services Manager, the Executive Director – Resources & Support Services or other appropriate Executive Director.
- (b) For contracts over £100,000 the contractor must provide a bond from a source approved by the Legal Services Manager for completing the contract except where the Legal Services Manager in consultation with the appropriate Executive Director decides that this is not necessary, after receipt of a completed risk analysis inclusive of a business continuity questionnaire.
- (c) At the discretion of the Legal Services Manager a cash sum can be held in the place of a bond, approval for this shall be requested in writing by the Executive Director and details of which, when agreed with the Legal Services Manager, forwarded to the Executive Director (Resources & Support Services).
- (d) Where it is proposed to make stage or other payments in advance of receiving the whole of the subject matter of the contract and there is concern about the stability of the contractor, a bond shall be required regardless of the contract value.
- (e) A parent company guarantee is necessary when the contractor is a subsidiary of a parent company and:
 - (i) The total value exceeds £100,000; or
 - (ii) Award is based on evaluation of the parent company; or
 - (iii) There is some concern about the stability of the contractor.
- (f) Where a bond is required the tender documents must contain provision for this cost to be identified separately.
- (g) If the contract period covers a number of years the Head of Service shall determine after consultation with the Legal Services Manager and the Executive Director – Resources & Support Services whether or not the bond is to be calculated by reference to the total contract sum over the duration of the contract or by reference to the annual value of the contract.
- (h) As stages of the contract are completed the value of the bond can be reduced at the discretion of the Executive Director with the approval of the Legal Services Manager.

27

PREVENTION OF CORRUPTION

- (a) All officers must comply with the Employees' Handbook and the Council's Anti Fraud and Corruption Strategy. It is a criminal offence to invite or accept any gift or reward in respect of the award or performance of any contract.

- (i) Officers should be aware that the law presumes that a gift is given corruptly and it will be for the officer to prove that anything received was not received corruptly;
 - (ii) High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and to criminal prosecution under the relevant statutes.
- (b) The following clause must be put in every written Council contract:

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

- (i) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done); or
- (ii) commit an offence under the Prevention of Corruption Acts 1889-1916 or provides a fee or reward the receipt of which is an offence under section 117(2) of the Local Government Act 1972.
- (iii) 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.”

28 **NOMINATED AND NAMED SUB-CONTRACTS**

- (a) If a sub-contractor is to be nominated or named to a main contractor, quotations or tenders must be invited in accordance with the Councils’ Standing Orders and the terms of the invitation shall be compatible with the main contract. Sub-contractors must be invited in the same way as main contractors.
- (b) Standing Orders shall apply to all sub-contractors.

29 **JOINT PROCUREMENT**

Any joint procurement arrangements with other local authorities or public bodies including membership or use of Purchasing Consortia shall be approved by the appropriate Executive Director in consultation with the Legal Services Manager prior to the commencement of any procurement on behalf of the Council.

30 **PROCUREMENT BY CONSULTANTS**

Any consultant used by the Council shall be appointed in accordance with these Standing Orders. Where the Council uses consultants to act on its behalf in relation to any procurement, then the Executive Director shall ensure that the consultants carry out any procurement in accordance with these Standing Orders and using the Council’s standard terms and conditions of contract in any procurement that the consultant carries out. No consultant shall make any decision on whether to award a contract or who a contract should be awarded to. The Executive Director shall ensure that the consultant’s performance is monitored.

31 **CONTRACTUAL CLAIMS**

Claims by or against a contractor shall be considered promptly by the appropriate Executive Director, who must consult with the Executive Director – Resources & Support Services and the Legal Services Manager before any decision or recommendation relating to the claim is made.

32 **DECLARATIONS OF INTEREST**

- (a) The following shall declare any interests which may affect the Contract Process:
 - (i) All permanent and temporary employees of the Council;
 - (ii) External consultants;
 - (iii) Partners, where these are in a position to influence the decisions to award a contract and
 - (iv) Community representatives appointed under Standing Order (4).
- (b) Each Executive Director shall make arrangements for employees, consultants, related partners and community representatives appointed or agreed by him/her to make declarations on their appointment, on any change in circumstances (and annually in the case of employees), and shall take necessary action in respect of potential conflicts of interest.
- (c) Each Executive Director shall arrange for employees to record declarations in the Register kept by the Democratic Services Manager in accordance with Council Policies. Completed consultants, partners and community representatives' declarations shall be kept on the Contract File.

33 **APPOINTMENT OF CONSULTANTS**

- (a) The engagement of architects, engineers and surveyors or other professional consultants including Counsel shall be subject to completion of a formal letter, contract of appointment or brief.
- (b) Consultants shall be required to provide evidence of and maintain professional indemnity insurance to the satisfaction of the Democratic Services Manager for the periods specified in the respective agreement.
- (c) Consultants shall be selected and commissions awarded in accordance with procedures detailed within these Standing Orders and the Council's Financial Regulations and European Union Directives or the requirements of any principal for whom this Council is acting as agent. All of their records relating to the supervision of a contract shall be open to inspection by authorised Officers of the Council. All such records together with the final account shall be sent to the appropriate Executive Director at least twenty-one days before the Final Payment is issued.

34 **POST-CONTRACT MONITORING AND EVALUATION**

- (a) During the life of the contract the officer must monitor the contract in respect of:
 - (i) Performance;
 - (ii) Compliance with specification and contract;
 - (iii) Cost;

- (iv) Any Best Value requirements;
- (v) User satisfaction and
- (vi) Risk management.

(b) Where the total value of the contract exceeds £100,000 the officer must make a written report to Cabinet evaluating the extent to which the purchasing need and the contract objectives were met by the contract. This should be done normally when the contract is completed. Where the contract is to be re-let, a provisional report shall be available early enough to inform the approach to reletting of the subsequent contract.

35 **STATISTICAL RETURN**

Each year the Council shall make a statistical return to Government for onward transmission to the European Commission concerning the contracts awarded during the year under the EU rules. The Procurement Officer is responsible for this statistical return and will make the necessary arrangements for information to be collected annually. Executive Directors must comply with these arrangements.

36 **TREASURY MANAGEMENT**

For the purposes of Treasury Management, this Council adopts the principles contained in CIPFA's Code of Practice, "Treasury Management in Local Authorities", as revised in 1996.

CODE OF PRACTICE FOR NEGOTIATIONS

- 1) This Code of Practice shall apply only in conjunction with Standing Order 19 after discussion and agreement in writing of the Legal Services Manager.
- 2) It is inherent to any negotiations undertaken on behalf of the Council that the officer appointed to conduct the negotiations shall be responsible and shall be seen to be so.
- 3) Negotiations for supply contracts may take place after receipt of formal tenders or quotations prior to the award of the contract. The term 'post-tender negotiations' is used in this Code in reference to such negotiations.
- 4) Discussions with tenderers concerning clarification of the Council's requirements may be held after tenders have been dispatched but not yet returned. It is essential however that officers restrict themselves to answering any queries concerning specifications, terms and conditions etc. and under no circumstances divulge any information which would place any tenderer at an unfair advantage. Any material clarification or additional information given to a tenderer must be given to all other tenderers as soon as practicable.
- 5) It is not anticipated that post-tender negotiations will be a regular occurrence. They should be used selectively and only where there is a genuine reason to approach tenderers.

PROCEDURES TO BE ADOPTED IN ALL NEGOTIATIONS

- 1) Negotiations shall be conducted in writing as far as possible. Where telephone or face to face negotiations take place there must always be at least two officers present at all times, one of whom must be from a department independent to that leading the negotiations. Consultants, partners, members or community representatives can also be present at the negotiations where approved by the Legal Services Manager.
- 2) Unless there are good reasons, e.g. needing to verify stated performance of tendered equipment at a tenderer's premises, all negotiations shall be held on Council premises. A written record shall be kept by the relevant Executive Director of any reason for holding such negotiations away from Council premises.
- 3) All tenderers involved shall as far as possible, be interviewed on the same day with the same negotiating team of Council officers.
- 4) For the protection of individual officers, no officer shall be left alone with the tenderer's representatives at any stage of the negotiation. It is important that officers enter and leave the negotiating room together.
- 5) Unless it is not possible, all negotiations shall take place in a room other than the officer's normal work station. This is important in order to avoid tenderer's representatives having sight of any documentation concerning other tenderers' prices etc.
- 6) All negotiations must be undertaken in an open and fair manner and there must be a genuine reason for negotiating with a tenderer.

7) If applicable, officers from other service areas should be invited to participate in the negotiations. However, it is essential that only one officer leads the negotiations and the other officers adopt a discreet and democratic role. It is also essential that each negotiation is pre-planned in terms of the role of each team member, the questions to be asked and the limits of each officer's authority.

8) A written record of all negotiations held with each tenderer must be kept and this should include the following information:

Date, time and location of interview;
Names of all officers present;
Names of tenderer's representatives present;
Purpose of negotiations;
Original quotations, tenders;
Subsequent written quotations;
Points discussed;
Agreements reached;
Further action required.

The agreed outcome and any amendments to a tender or contract shall be confirmed in writing.

9) All information supplied by a tenderer shall be strictly confidential and must not under any circumstances be disclosed to competitors.

10) All tenderers will normally be interviewed only once. In exceptional cases, e.g. technical complexity, it may be necessary to recall a tenderer for a further interview. Under no circumstances are 'Dutch Auctions' to be entered into by officers.

11) Time spent on negotiations should not outweigh the likely benefits. Minor points of clarification and obvious errors should not require a meeting and can usually be resolved by telephone or e-mail. It is important that all such amendments are confirmed in writing.

12) After negotiations have been concluded, an Executive Director shall not commit to awarding a contract until the negotiated terms have been confirmed in writing and in the case of contracts in excess of £50,000 Committee approval has been obtained.

13) Whether one or more tenderers are approached will depend on the specific circumstances of each case. A written justification for the eventual selection shall be kept with the tender evaluation papers. As a general rule all tenderers who meet the specification and are sufficiently competitive, should be considered.

14) If during the course of a contract negotiation it becomes necessary to carry out alterations to a specification for whatever reason, all tenderers must be given an equal opportunity to bid for the revised specification. Usually a tender in excess of the specification required should not be considered, unless it is competitive with the other tenders received.

15) Officers must be prepared to debrief unsuccessful tenderers when requested as this is a requirement of the Local Government Act 1988, the European Community Supplies Directive EC88/295 and the European Community Works Directive 89/440/E.

16) Any major tender revisions will usually necessitate a re-tender exercise.

- 17) Officers of the Council must always endeavour to protect both themselves and the Council against any accusations of improper behaviour as a result of post tender negotiations. All officers involved in negotiations must be conversant with the hospitality regulations, and refuse all gifts, entertainments, visits and benefits.
- 18) Officers are reminded that they have a duty to advise Members on the provisions of this code, where Members are involved in the contract negotiation process.
- 19) The relevant Committee shall be informed of purchasing decisions and the conduct of negotiations in every instance.
- 20) Copies of all written records made on negotiations and as required in these Standing Orders should be retained on file.

**POWERS DELEGATED TO THE
EXECUTIVE DIRECTOR – OPERATIONAL SERVICES**

- 1) To prepare business plans for submission to the Cabinet and annual reports and returns for submission to appropriate Government Departments as required.
- 2) To price, prepare and submit all tenders and bids for contracts made in accordance with the approved Business Plan.
- 3) To undertake the purchasing and control of stores and materials.
- 4) To purchase, lease, hire and dispose of vehicles, plant, machinery and equipment after consultation with or in accordance with a procedure agreed with the Executive Director - Resources & Support Services, provided resources are available within the approved DSO budget.
- 5) Subject to Standing Orders, Financial Regulations and any conditions of contract, to engage contractors or contract labour.
- 6) To introduce and maintain appropriate payment and productivity schemes after consultation with or in accordance with a procedure agreed with the Executive Director – Resources & Support Services and H R Manager.
- 7) To conduct negotiations with the Trade Unions after consultation where appropriate with the H R Manager..
- 8) To price, prepare and submit tenders for work offered by outside bodies in accordance with the Cabinet's policy and where permitted by law.
- 9) To determine the level of staffing required to carry out the workloads of the Directorate in accordance with the Councils approved Recruitment, Selection and Induction Code of Practice to recruit hourly paid employees as necessary within the agreed establishment and to employ temporary hourly paid employees as and when necessary to comply with contractual needs and to report on these at regular intervals to the Cabinet.
- 10) To authorise submission of tenders for the Council's work and work for outside bodies up to £100,000.

EU TENDERING PROCEDURES

A. CONTRACTS FOR THE SUPPLY OF GOODS

Contracts for the supply of goods must comply with the Public Supply Contracts Regulations 1995 (No. 201).

The Regulations apply to all contracts for the supply of goods to a value in excess of **£139,893***. The value of the contract is either:

- i) the aggregate value of the contract over its length or
- ii) where a contract is of indeterminate length, the value is calculated on the basis of the aggregate value over 48 months.

Contracts for goods of the same nature should be aggregated and, in particular, should not be artificially divided to avoid the need to comply with the Regulations.

Procedure

1. Prior Information Notice

Where it is expected to purchase goods which exceed **£509,317*** in value, a prior information notice can** be placed in the European Union Official Journal as soon as possible after the commencement of the financial year.

2. The Open Procedure

Where the open procedure is to be used, without the use of a select list of tenderers, a notice in the prescribed form should be placed in the European Union Official Journal inviting tenders and giving no less than 52 days from the date of despatch of the notice for the return of tenders.

Contract documents shall be provided within 6 days of receipt of a request from a prospective tenderer.

3. The Restricted Procedure

This procedure should be used where tenders are to be invited on the basis of a select list of tenderers.

- 1) A notice in the prescribed form seeking requests to participate in a tender exercise shall be published in the European Union Official Journal specifying a date for the receipt of requests to tender of not less than 37 days from the date of despatch of the notice. Following the drawing-up of a select list of tenderers, a period of no less than 40 days must be allowed between the invitation to tender and the return of tenders.

*** This figure is subject to review every 2 years.**

- 2) Not less than 5 nor more than 20 tenderers should be invited to tender. A minimum of 5 must be invited in addition to the Council's DSO.

GUIDANCE RE PRIOR INFORMATION NOTICE

*****This is a voluntary notice that is aimed at giving potential suppliers advance notice of the authorities intention to advertise a contract for the goods, services or works referred to in the PIN.***

The advantage to the purchaser in issuing a qualifying PIN is that contracting timescales may be reduced if a PIN has been issued.

A qualifying PIN is one that has been issued a minimum of 52 days and a maximum of 12 months prior to the issue of the Tender Notice.

- 3) Following the award of a contract, an award notice must be published in the prescribed form in the European Union Official Journal no later than 48 days after the award.

The Negotiated Procedure

This procedure should be used where terms of contract are negotiated with one or more selected persons.

THIS PROCEDURE MAY ONLY BE USED WHERE THERE ARE SPECIAL CIRCUMSTANCES WHICH JUSTIFY ITS USE. THESE MUST BE APPROVED BY THE HEAD OF LEGAL AND DEMOCRATIC SERVICES BEFORE THE NEGOTIATED PROCEDURE MAY BE USED.

B. CONTRACTS FOR THE PROVISION OF SERVICES

Contracts for the supply of services must comply with the Public Services Contracts Regulations 1993 (No. 3228). The categories of services which are covered by the Regulations are set out in Schedule 1 to the Regulations.

The Regulations apply to all contracts for the supply of services to a value in excess of **£139,893***. The value of the contract is either:

- i) the aggregate value of the contract over its length or
- ii) where a contract is of indeterminate length, the value is calculated on the basis of the aggregate value over 48 months.

Contracts for services of the same nature should be aggregated and, in particular, should not be artificially divided to avoid the need to comply with the Regulations.

Procedure

1. Prior Information Notice

Where it is expected to purchase services which exceed **£509,317*** in value, a prior information notice can** be placed in the European Union Official Journal as soon as possible after the commencement of the financial year.

*** This figure is subject to review every 2 years.**

2. The Open Procedure

Where the open procedure is to be used, without the use of a select list of tenderers, a notice in the prescribed form should be placed in the European Union Official Journal inviting tenders and giving no less than 52 days from the date of despatch of the notice for the return of tenders. Where a prior information notice has been published this period may be reduced to 36 days.

GUIDANCE RE PRIOR INFORMATION NOTICE

*****This is a voluntary notice that is aimed at giving potential suppliers advance notice of the authorities' intention to advertise a contract for the goods, services or works referred to in the PIN.***

The advantage to the purchaser in issuing a qualifying PIN is that contracting timescales may be reduced if a PIN has been issued.

A qualifying PIN is one that has been issued a minimum of 52 days and a maximum of 12 months prior to the issue of the Tender Notice.

Contract documents shall be provided within 6 days of receipt of a request from a prospective tenderer.

3. **The Restricted Procedure**

This procedure should be used where tenders are to be invited on the basis of a select list of tenderers.

1) A notice in the prescribed form seeking requests to participate in a tender exercise shall be published in the European Union Official Journal specifying a date for the receipt of requests to tender of not less than 37 days from the date of despatch of the notice. Following the drawing-up of a select list of tenderers, a period of not less than 40 days must be allowed between the invitation to tender and the return of tenders. Where a prior information notice has been published this period may be reduced to 26 days.

2) Not less than 5 nor more than 20 tenderers should be invited to tender. A minimum of 5 must be invited in addition to the Council's DSO.

The invitation to tender must be sent simultaneously to each contractor selected to tender.

3) Following the award of a contract, an award notice must be published in the prescribed form in the EU Journal not later than 48 days after the award.

The Negotiated Procedure

This procedure should be used where terms of contract are negotiated with one or more selected persons.

THIS PROCEDURE MAY ONLY BE USED WHERE THERE ARE SPECIAL CIRCUMSTANCES WHICH JUSTIFY ITS USE. THESE MUST BE APPROVED BY THE HEAD OF LEGAL AND DEMOCRATIC SERVICES BEFORE THE NEGOTIATED PROCEDURE MAY BE USED.

C. CONTRACTS FOR CONSTRUCTION WORK

Contracts for construction and engineering works must comply with the Public Works Contracts Regulations 1991 (No. 2680).

*** This figure is subject to review every 2 years.**

The Regulations apply to all contracts for construction and engineering work where the contract value exceeds **£3.49m***. Where work forming part of an overall construction is divided into separate contracts, the value of the contract is taken to be the aggregate sum of the value of the separate contracts.

Procedure

1. Prior Information Notice

As soon as possible after the decision approving the planning of the works, a prior information notice can be placed in the European Union Official Journal.

2. **The Open Procedure**

Where the open procedure is to be used, without the use of a select list of tenderers, a notice in the prescribed form should be placed in the European Union Official Journal inviting tenders and giving not less than 52 days from the date of despatch of the notice for the return of tenders.

Contract documents shall be provided within 6 days of receipt of a request from a prospective tenderer.

Where a prior information notice has been placed in the European Union Official Journal, the period of 52 days from the date of despatch of the notice to the return of tenders may be reduced to 36 days.

3. **The Restricted Procedure**

This procedure should be used where tenders are to be invited on the basis of a select list of tenderers.

1) A notice in the prescribed form seeking requests to participate in a tender exercise shall be published in the European Union Official Journal specifying a date for the receipt of requests to tender of not less than 37 days from the date of despatch of the notice. Following the drawing-up of a select list of tenderers, a period of not less than 40 days must be allowed between the invitation to tender and the return of tenders. Where a prior information notice has been published, this period can be reduced to 26 days for the negotiated procedure.

2) Not less than 5 nor more than 20 tenderers should be invited to tender. A minimum of 5 must be invited in addition to the Council's DSO.

The invitation to tender must be sent simultaneously to each contractor selected to tender.

3) Following the award of a contract, an award notice must be published in the prescribed form in the European Union Official Journal no later than 48 days after the award.

The Negotiated Procedure

This procedure should be used where terms of contract are negotiated with one or more selected persons.

THIS PROCEDURE MAY ONLY BE USED WHERE THERE ARE SPECIAL CIRCUMSTANCES WHICH JUSTIFY ITS USE. THESE MUST BE APPROVED BY THE HEAD OF LEGAL AND DEMOCRATIC SERVICES BEFORE THE NEGOTIATED PROCEDURE MAY BE USED.

Glossary of Defined Terms

Approved list	A list drawn up in accordance with the standing orders.
Award criteria	The criteria by which the successful quotation or tender is to be selected.
Best value	The duty on local authorities to secure continuous improvement in the way in which functions are exercised, having due regard to a combination of economy, efficiency and effectiveness as implemented by the Council.
Bond	An insurance policy. If the contractor does not do what it has promised under a contract with the Council, the Council can claim from the insurer the sum of money specified in the bond (often 10% of the contract value). A bond is intended to protect the Council against a level of cost arising from the contractor's failure.
Candidate	Any person who asks or is invited to submit a quotation or tender.
EC Procedure	The procedure required by the EC where the total value exceeds the EC threshold.
Financial Regulations	The financial regulations issued by the Executive Director – Resources & Support Services and approved by the Council.
Executive Director – Resources & Support Services	As identified in the constitution.
Legal Services Manager	As identified in the constitution.
Invitation to tender	Invitation to tender documents in the form required by standing orders.
Nominated suppliers and sub contractors	Those persons specified in a main contract for the discharge of any part of that contract.
Officer	The officer designated by the Executive Director to deal with the contract in question.
Open procedure	All candidates are invited to bid in response to advertisement.
Parent company guarantee	A contract which binds the parent of a subsidiary company as follows: If the subsidiary company fails to do what it has promised under a contract with the Council, they can require the parent company to do so instead.
Quotation	A quotation of price and any other relevant matter (without the formal issue of an invitation to tender).

Scrutiny Committee	As identified in the constitution or any sub group the Scrutiny Committee sets up.
Shortlisting	Where candidates are selected: <ul style="list-style-type: none"> • To quote or bid; or • To proceed to final evaluation.
Tender	A candidate's proposal submitted in response to an invitation to tender.
Total value	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal, whether or not it comprises several lots or stages, to be paid or received by the Council or a discrete operational unit within the Council.</p> <p>The total valued shall be calculated as follows:</p> <ol style="list-style-type: none"> (a) Where the contract is for a fixed period, by taking the total price to be paid or which might be paid during the whole of the period. (b) Where the purchase involves recurrent transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months. (c) Where the contract is for an uncertain duration, by multiplying the monthly payment by 48. (d) For feasibility studies, the value of the scheme or contracts which may be awarded as a result. (e) For nominated suppliers and sub contractors, the total value shall be the value of that part of the main contract to be fulfilled by the nominated supplier or sub contractor. (f) Where an in house service provider is involved, by taking into account redundancy and similar/ associated costs.