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## WEST DEVON STANDARDS COMMITTEE - TUESDAY, 25TH OCTOBER, 2011

Agenda, Reports and Minutes for the meeting

### **Agenda No    Item**

1.    **Agenda Letter** (Pages 1 - 2)
2.    **Reports**  
      Reports to Standards:
  - a)    Item 5 - Update on Standards Complaints (Pages 3 - 6)
  - b)    Item 6 - Revision of the Contract Procedure Rules (Pages 7 - 44)
3.    **Minutes** (Pages 45 - 46)

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### PART ONE - OPEN COMMITTEE

Page No.

1. **Apologies for Absence**
2. **Declarations of Interest**  
Members are reminded to declare any personal or prejudicial interests they may have in any agenda items. 1
3. **Items Requiring Urgent Attention**  
To consider items which, in the opinion of the Chairman, should be considered by the Meeting as matters of urgency (if any).
4. **Confirmation of Minutes**  
Regular Meeting – 12 July 2011 (attached) 3
5. **Update on Standards Complaints**  
Report of the Deputy Monitoring Officer 7
6. **Revision of the Contract Procedure Rules**  
Report of the Monitoring Officer, Section 151 Officer & Chief Internal Auditor 10

### PART TWO -ITEMS WHICH MAY BE TAKEN IN THE ABSENCE OF THE PRESS AND PUBLIC ON THE GROUNDS THAT EXEMPT INFORMATION MAY BE DISCLOSED (if any)

The Committee is recommended to pass the following resolution:-

“**RESOLVED** that under Section 100(A)(4) of the Local Government Act 1972, the public be excluded from the Meeting for the under-mentioned item(s) of business on the grounds that exempt information may be disclosed as defined in the paragraph(s) given in brackets below from Part I of Schedule 12(A) to the Act”.

This document can be made available in large print, Braille, tape format, other languages or alternative format upon request. Please contact the Committee section on 01822 813662 or email [psmith@westdevon.gov.uk](mailto:psmith@westdevon.gov.uk)

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AGENDA  
ITEM

**5**

## WEST DEVON BOROUGH COUNCIL

AGENDA  
ITEM

**5**

<b>NAME OF COMMITTEE</b>	Standards
<b>DATE</b>	25 October 2011
<b>REPORT TITLE</b>	Update on Standards Complaints
<b>REPORT OF</b>	Deputy Monitoring Officer
<b>WARDS AFFECTED</b>	All

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**Summary of report:**

To update Members on the number of Standards complaints received over the last six months

**Financial implications:**

None

**RECOMMENDATIONS:**

To note the status of ongoing complaints made to the Standards Committee in relation to the Code of Conduct from 1 April 2011 to 30 September 2011

**Officer contact:**

Catherine Bowen, Deputy Monitoring Officer, 01822 813666 or email [cbowen@westdevon.gov.uk](mailto:cbowen@westdevon.gov.uk)

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**1. BACKGROUND**

- 1.1 Best Practice states that the Standards Committee should receive regular updates on the status and outcomes of ongoing complaints and these are set out in the table attached at Appendix A.

## 2. LEGAL IMPLICATIONS

- 2.1 The powers for dealing with standards complaints are set out in the Local Government Act 2000, the Standards Committee (England) Regulations 2008, and the Standards Committee (Further Provisions) (England) Regulations 2009.
- 2.2 To update the Standards Committee on current complaints made regarding the code of conduct.

## 3. FINANCIAL IMPLICATIONS

- 3.1 There are no financial implications to this report.

## 4. RISK MANAGEMENT

- 4.1 The risk management implications are:

<b>Opportunities</b>	<b>Benefits</b>
To apprise the Standards Committee on the status of ongoing complaints	Awareness of the number of complaints and whether borough or parish related
<b>Issues/Obstacles/Threats</b>	<b>Control measures/mitigation</b>
Standards Committee not aware of the complaints received, status or outcome of those complaints	Monitoring and awareness of complaints received under the Code

## 5. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	Towards Excellence
<b>Considerations of equality and human rights:</b>	N/a
<b>Biodiversity considerations:</b>	N/a
<b>Sustainability considerations:</b>	N/a
<b>Crime and disorder implications:</b>	N/a
<b>Appendices attached:</b>	Appendix A - table of complaints

**Table of complaints 1 – April – 30 September 2011**

**Standards Committee 25 October 2011 (Appendix A)**

<b>Date</b>	<b>Complaint reference</b>	<b>Authority</b>	<b>Date assessed and Assessment Decision</b>	<b>Review</b>	<b>Hearing</b>
13.06.11	WD03 070611	WDBC	21 July 2011 <b>Refer to MO for investigation</b>		
15.07.11	WD04 200711	Town/Parish	18 August 2011 <b>Refer to MO for investigation</b>		
21.07.11	WD05 210711	Town/Parish	18 August 2011 <b>Refer to MO for investigation</b>		
21.07.11	WD06 210711	Town/Parish	18 August 2011 <b>No further action</b>		
17.08.11	WD07 180811	Town/Parish	22 September 2011 <b>Refer to MO for investigation</b>		
28.09.11	WD09 120911	Town/Parish	20 October 2011		

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AGENDA  
ITEM

6

## WEST DEVON BOROUGH COUNCIL

AGENDA  
ITEM

6

<b>NAME OF COMMITTEE</b>	Standards
<b>DATE</b>	25 October 2011
<b>REPORT TITLE</b>	Revision of the Contract Procedure Rules
<b>Report of</b>	Monitoring Officer S.151 Officer Chief Internal Auditor
<b>WARDS AFFECTED</b>	All/Corporate

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### Summary of report:

The purpose of this report is to allow the Standards Committee to carry out an overview of the revised Contract Procedure Rules to enable them to recommend adoption of the document, the amended financial limits and the rules surrounding exemptions to the Council. The updated Contract Procedure Rules appear at Appendix A.

The internal management changes, shared service agenda, the need for a standardised suite of procurement documents identified in the Council's 2010/11 Annual Governance Statement and the introduction of the Bribery Act 2010 from 1 July 2011, have meant an update is necessary.

### Financial implications:

None, within existing budgets.

### RECOMMENDATION:

That the Standards Committee reviews the updated version of the Council's Contract Procedure Rules (Appendix A) and recommend that Council approves the document and the revised exemption process, and agrees its inclusion in the Council's Constitution.

### Officer contact:

Allan Goodman, Chief Internal Auditor [allan.goodman@southhams.gov.uk](mailto:allan.goodman@southhams.gov.uk)

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## **1. BACKGROUND**

- 1.1 The Council's Contract Procedure Rules form part of the Constitution. The internal management changes, shared service agenda, the need for a standardised suite of procurement documents identified in the Council's 2010/11 Annual Governance Statement and the introduction of the Bribery Act 2010 from 1 July 2011, have meant an update is necessary.
- 1.2 The Internal Audit Managers of South Hams/West Devon (SHDC/WDBC) and Teignbridge District Councils (TDC) and the Shared Corporate Procurement Officer (SHDC/TDC) have previously worked together to deliver a set of Contract Procedure Rules for those Councils that integrates with other key procurement documents and is based on the related CIPFA guidance.

## **2. THE REVISED CONTRACT PROCEDURE RULES**

### **Update for September 2011**

- 2.1 The Compliance Review of the Code of Corporate Governance (April 2011), and the Annual Governance Statement expressed concern about the impact of the management review and shared services on the Council's governance framework.
- 2.2 In response, the June 2011 West Devon and South Hams Joint Steering Group approved a project plan to review the Shared Services Governance Arrangements which included certain key financial arrangements. This included producing one set of Council Procedure Rules for adoption by both Councils.
- 2.3 The Chief Internal Auditor for both South Hams (SHDC) and West Devon Councils (WDBC), the shared Corporate Procurement Officer (SHDC/TDC), the shared Legal team, the Head of Assets and Property Services Manager have, therefore, reviewed the Contract Procedure Rules, adopting the South Hams/CIPFA model to reflect:
  - Shared services (aligning of arrangements as far as can be done);
  - Management review;
  - The Bribery Act 2010; and
  - Equivalent financial values within the Rules.

### **Key Changes in the September 2011 Document**

- 2.4 The Contract Procedure Rules amended for September 2011 have been drafted and are attached at Appendix A. The key changes are:

## 2.5 Financial Limits

To ensure shared service managers operate to one set of rules, there is a need for West Devon and South Hams limits to be aligned. As South Hams limits were aligned with Teignbridge District Council to be more efficient and effective for the Corporate Procurement Officer, the S.151 Officer agreed that these limits would be the most appropriate for West Devon. The following table shows the proposed new limits and the equivalent existing ones:

Proposed New Limits		Existing Limits	
Item Value (ex VAT)	Quotations/Tendering for Goods and Services	Item Value (ex VAT)	Quotations/Tendering for Goods and Services
Below £5,000	Most favourable prices and terms, having regard to the principles set out in the Council's Procurement Strategy.	Below £7, 500	A contract may be made without competitive quotations;
£5,000 to £30,000	3 quotations appropriately evidenced.	£7,500 or more but less than £12,500	A contract may be made after seeking at least two oral or written quotations and obtaining at least one;
		£12,500 or more but less than £17,500	A contract may be made after seeking at least three written quotations and obtaining at least two;
		£17,500 or more but less than £25,000	A contract may be made after seeking at least four written quotations and obtaining at least three.
Above £30,000	Tendering in line with Contract Procedure Rules: Invitation to Tender to at least four suppliers	£25,000 or more but less than £50, 000	At least three tenders shall be invited;
£30,001– £75,000			
£75,001– EU Threshold			
Above EU Threshold	EU Procedure (Seek advice from the Corporate Procurement Officer)	£250,000 or more,	At least six tenders shall be invited.
		Above European specified threshold	The number of tenders to be invited shall be as required by the appropriate European directive.
Up to EU Threshold	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required e.g. simple purchases through Devon Procurement Partnership.	No equivalent	-

Proposed New Limits		Existing Limits	
Item Value ex VAT	Quotations/Tendering for Goods and Services (Cont.)	Item Value ex VAT	Quotations/Tendering for Goods and Services
All values. Collaborative Contracts	The Corporate Procurement Officer must be consulted prior to commencing any procurement process using Collaborative Contracts. The terms and conditions applicable to any Collaborative Contract arrangement, including the requirement to undertake competition between providers, must be fully complied with.	No equivalent	-
ICT	All system developments and purchases of computer equipment or software must be approved by the Head of ICT and Customer Services, or her/his nominated deputy.	No equivalent	-

## 2.6 Exemptions

The required signatures for granting an exemption have been changed to align with the equivalent process for South Hams.

One of the main differences is introducing a tiered approval regime based on value, including using Internal Audit to challenge the exemption reason, and retrospective reporting of the number of approved exemptions to the Audit Committee;

## 2.7 Shared Services

The equivalent document was presented to the South Hams District Council Audit Committee on 28 September 2011, with as many of the arrangements aligned as possible but having regard to the different governance arrangements.

## 2.8 Capital Programme

Additional controls over management of the Capital Programme, including amended procedures for monitoring of expenditure and approval of overspends.

## 2.9 General

Various areas of improvement including reflecting the Bribery Act 2010, and documentation of the process for the signing and storage of contracts.

### 3. LEGAL IMPLICATIONS

- 3.1 It is important that the Contract Procedure Rules are reviewed regularly to make sure that they are up to date, as the procurement environment is lively.
- 3.2 Now that all services are to be shared with South Hams, and the Procurement Officer is also shared with Teignbridge, it has become critical that there are no differences between the Rules operating in each Council. With officers often under pressure, it would be too easy to make a mistake and use the wrong Rules, with potentially serious consequences in terms of procurement impropriety; liability to disappointed or successful bidders; and consequent loss of reputation and confidence. Aligning the Rules, and then training relevant officers about the changes, is a sensible precaution.
- 3.3 Neither Council will lose by alignment of the Rules as local authorities are best advised to follow guidance offered by CIPFA, as has been done in this case, and most Councils' Rules are similar. Of course, West Devon has its own set of Rules couched in its own name, as required.

### 4. FINANCIAL IMPLICATIONS

- 4.1 None, within existing budgets.

### 5. RISK MANAGEMENT

- 5.1 The risk management implications are:

<b>Opportunities</b>	<b>Benefits</b>
To provide managers with a set of comprehensive rules with the flexibility to enable them to act quickly were the need arises. Provide such flexibility, within a sound control environment, which may reduce some administrative costs while providing the similar results in value for money terms.	Opportunities for local suppliers to be used whilst having regard for the need not to favour any specific suppliers and all of the Council's procurement guidelines.
Rules may differ to those of South Hams District Council with the potential to create difficulties for service sharing.	Provide a level playing field for the purpose of potential shared services by ensuring that the key financial arrangements and limits and rules are the same.

<b>Issues/Obstacles/Threats</b>	<b>Control measures/Mitigation</b>
There is a risk that allowing greater flexibility in procurement may in some circumstances undermine the control environment and impact upon the budgetary performance.	Mitigated through improving compensating controls such as budget monitoring at a higher level.
Risk to the current business environment and potential cost the Council if Contract Procedure Rules are not followed.	The System of Internal Control and the responsibility placed upon Heads of Service to self access their controls and report any significant weaknesses in an assurance certificate, plus, continuing risk based internal audits.
The Corporate Procurement Officer may be restricted in the benefits that she/he can bring through shared procurement arrangements,	All key procurement arrangements and limits brought up to date and recommended alignment for the future benefit of any shared service agenda.

## 6. OTHER CONSIDERATIONS

<b>Corporate priorities engaged:</b>	All/Corporate
<b>Statutory powers:</b>	Section 111 Local Government Act 1972; and Accounts and Audit Regulations 2003, 2006 and 2011.
<b>Considerations of equality and human rights:</b>	No specific equality and human rights issues arising from this report.
<b>Biodiversity considerations:</b>	No specific biodiversity issues arising from this report.
<b>Sustainability considerations:</b>	No specific sustainability issues arising from this report.
<b>Crime and disorder implications:</b>	No specific crime and disorder issues arising from this report.
<b>Background papers:</b>	Constitution: Contract Procedure Rules CIPFA: Contract Procedure Rules - Guidance and Template 2006
<b>Appendices attached:</b>	Appendix A: Contract Procedure Rules 2011.

# **West Devon Borough Council**

## **Draft Contract Procedure Rules**

**October 2011**

## CONTENTS

### A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

#### SECTION 1: SCOPE OF CONTRACT PROCEDURE RULES

##### Para

1	BASIC PRINCIPLES
2	OFFICER RESPONSIBILITIES
3	EXEMPTIONS
3.11	COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS
4	RELEVANT CONTRACTS

#### SECTION 2: COMMON REQUIREMENTS

##### Para

5	STEPS PRIOR TO PURCHASE
6	RECORDS
7	ADVERTISING AND FRAMEWORK AGREEMENTS

#### SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

##### Para

8	COMPETITION REQUIREMENTS FOR PURCHASE OR DISPOSAL AND PARTNERSHIP ARRANGEMENTS
9	PRE-TENDER MARKET RESEARCH AND CONSULTATION
10	STANDARDS AND SELECTION & AWARD CRITERIA
11	INVITATIONS TO TENDER/QUOTATIONS
12	SHORTLISTING
13	SUBMISSION, RECEIPT AND OPENING OF TENDERS/QUOTATIONS
14	CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION
15	EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING SUPPLIERS

#### SECTION 4: CONTRACT AND OTHER FORMALITIES

##### Para

16	CONTRACT DOCUMENTS
17	BONDS AND PARENT COMPANY GUARANTEES
18	PREVENTION OF CORRUPTION & ANTI COMPETITIVE BEHAVIOUR
19	DECLARATION OF INTERESTS

#### SECTION 5: CONTRACT MANAGEMENT

##### Para

20	MANAGING CONTRACTS
21	RISK ASSESSMENT AND CONTINGENCY PLANNING
22	CONTRACT MONITORING, EVALUATION AND REVIEW

### DEFINITIONS APPENDIX



## A BRIEF GUIDE TO CONTRACT PROCEDURE RULES

These Contract Procedure Rules (issued in accordance with section 135 of the 1972 Local Government Act) are intended to promote good procurement practice and public accountability and deter corruption.

Adherence to consistent and comprehensive Rules helps to protect the Council against challenges that it has acted incorrectly, unlawfully or fraudulently.

Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules. They lay down minimum requirements and a more thorough procedure may be appropriate for a particular contract.

For the purposes of these Rules, where there is a requirement for communication to be in writing, this shall be deemed to include e-mail (or other e-communication systems e.g. e-tendering) fax transmissions as well as hard copy.

- Follow the Rules whenever you purchase goods or services or order building work.
- Take all necessary legal, financial and professional advice.
- Declare any personal financial interest in a contract. Corruption is a criminal offence.
- Conduct any Value for Money review and appraise the purchasing need.
- Check whether there is an existing contract in place open to the Council that you can make use of before undergoing a competitive process.
- Normally allow at least four weeks for submission of bids (not to be submitted by fax or e-mail).
- Keep bids confidential.
- Complete a written contract or Council order before the supply or works begin.
- Identify a contract manager with responsibility for ensuring the contract delivers as intended.
- Keep records of dealings with suppliers.
- Assess each contract afterwards to see how well it met the quality of delivery and *Value for Money* requirements.

The Monitoring Officer shall have the power to make amendments from time to time to these Contract Procedure Rules after consultation with the Council's S.151 Officer, Chief Internal Auditor and the Corporate Procurement Officer. Proposed amendments must be agreed by the full Council.

Terms in italics are defined in the Definitions Appendix.

Acknowledgement:  
CIPFA

### Contributors

Internal Audit: South Hams and West Devon Councils (Shared)  
Legal team: South Hams and West Devon Councils (Shared)  
Corporate Procurement Officer (Shared)  
S.151 Officer and Monitoring Officer  
Head of Assets and Property Services Manager  
Internal Audit: Teignbridge District Council

## SECTION 2: COMMON REQUIREMENTS

### 1. BASIC PRINCIPLES

All purchasing and disposal procedures must:

- Achieve Value for Money for public money spent
- Be consistent with the highest standards of integrity, having regard to the Council's Anti Fraud, Corruption and Bribery Policy and Strategy, and the Office of Fair Trading guidance on Anti Competitive Behaviour.
- Ensure fairness in allocating public contracts
- Comply with all legal and financial requirements
- Ensure that *Non-commercial Considerations* do not influence any Contracting Decision
- Support the Council's corporate and departmental aims and policies
- Comply with the Council's corporate Sustainable Procurement Strategy, Policy and Guidance and competition policy

### 2. OFFICER RESPONSIBILITIES

#### 2.1 Officers

2.1.1 Officers responsible for purchasing or disposal must comply with these Contract Procedure Rules, Financial Procedure Rules, the Officers' Code of Conduct and with all UK and European Union binding legal requirements. Officers must ensure that any Agents, Consultants and contractual partners acting on their behalf also comply.

2.1.2 Officers must:

- Comply with the basic principles above
- Have regard to the Council's purchasing and contract guidance
- Ensure that the appropriate approved budgetary provision is in place
- Check whether a suitable Corporate Contract exists before seeking to let another contract; where a suitable Corporate Contract exists, this must be used unless there is an auditable reason not to
- **For contracts with a *Total Value* above £75,000, take a report to the *relevant Committee* at least 6 months before the contract is due to end to consider whether it is appropriate to tender on the same basis as the existing arrangement**
- Keep the records required by Rule 6.

2.1.3 When any employee either of the authority or of a service provider may be affected by any transfer arrangement, Officers must ensure that the Transfer of Undertaking (Protection of Employment) (TUPE) issues are considered and obtain legal advice before proceeding with inviting Tenders or Quotations.

## SECTION 2: COMMON REQUIREMENTS

### 2.2 Heads of Service

2.2.1 Heads of Service must:

- Comply with the Basic Principles in 1 above
- Ensure that their staff comply with Rule 2.1
- Ensure that Exemptions are recorded under Rule 3.2 detailing the nature and value of the contract, parties to the contract, and the circumstances justifying the Exemption and send original exemption to Monitoring Officer
- Ensure that the originals of all contracts are given to the Monitoring Officer who shall maintain the Contracts Register lodge all documentation securely in the Legal safe.

## 3. EXEMPTIONS TO THESE RULES

### Principles

3.1 The Council and its Committees have power to authorise exemptions from the requirement to seek quotations or invite tenders for specific circumstances.

3.2 Where necessary because of exceptional circumstances the *Officer or Head of Service* may seek an Exemption with the approval of the officers and members set out in the table below. **The Exemption process must not be used as a method of avoiding the use of these Contract Procedure Rules.**

3.3 The circumstances where an exemption may be sought are:

- **Life or Death** – Is there a significant chance that the life or health of officers, members or the public will be put at real risk?
- **Increased Costs/Loss of Income** – Will the Council incur significant avoidable costs or lose significant income (significant shall be taken to mean material in the sense that it is either material to the project, the service or the Council)?
- **Limited Markets** – Would the Council be wasting its time obtaining quotations as supply of the product or service is demonstrably restricted to one or a few businesses? (Evidence that the market has been tested must be available)
- **Risk to Reputation** – Would the Council be criticised for failing to act promptly?

3.4 **No Exemption** can be used if the **EU Procurement Rules** apply. The latest EU procurement limits are available from either the *Corporate Procurement Officer* or *Internal Audit*.

## SECTION 2: COMMON REQUIREMENTS

### Process

3.5 Pro-formas must be used and are available on the Council's Intranet or from the Monitoring Officer or Internal Audit.

3.6 Exemptions from compliance with the Contract Procedure Rules may be granted with the original signatures of:

Total Value (excl. VAT)	Urgent or Non Urgent	Exemption Authorised By
£5,001–£50,000	Both	<i>Internal Audit Monitoring Officer S.151 Officer</i>
£50,001–EU Threshold	Urgent	<i>Internal Audit Monitoring Officer S.151 Officer in consultation with the <i>Chairman or Vice Chairman of the relevant Committee.</i></i>
£50,001–EU Threshold	Non Urgent	<i>Report to the relevant Committee by the Head of Service for a decision, supported by recommendations from S151 Officer and Monitoring Officer</i>
Above EU Threshold	N/A	No exemption permitted

3.7 *Total Value* is discussed at Paragraph 8 and the **Definitions Appendix**, which says that to obtain the estimated value of the contract, the *Officer* must calculate the *Total Value* (excluding VAT) for the period of the contract. **For example, a contract let for 5 years at an estimated £20,000 per year, excluding VAT, has a *Total Value* of £100,000. The procurement must be based on £100,000 NOT the annual amount.**

3.8 Forms supported by the evidence that the exemption criteria have been met, must be sent to the *Monitoring Officer* or *Internal Audit* in the first instance.

3.9 The original copy of the fully completed form must be sent to the *Monitoring Officer*, with a copy to *Internal Audit*.

3.10 The number of approved Exemptions will be reported to the Audit Committee by Internal Audit.

### **COLLABORATIVE & E-PROCUREMENT ARRANGEMENTS**

3.11 The Corporate Procurement Officer must be consulted prior to commencing a procurement process using any consortia contracts e.g. Government Procurement Service. The terms and conditions of contract applicable to any consortia arrangement, including the requirement to undertake competition between providers, must be fully complied with.

## SECTION 2: COMMON REQUIREMENTS

3.12 In order to secure *Value for Money*, the authority may enter into collaborative procurement arrangements. The *Officer* must consult the *Corporate Procurement Officer* where the purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium.

3.12.1 All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required.

3.12.2 However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has demonstrated that it has satisfied this requirement already by letting their contract in accordance with the EU Procedures on behalf of the authority and other consortium members.

3.12.3 Any contracts entered into through collaboration with other local authorities or other public bodies, where a competitive process has been followed that complies with the contract procedure rules of the leading organisation, will be deemed to comply with these contract procedure rules and no exemption is required. However, **advice must be sought from the *Corporate Procurement Officer***.

3.13 The use of e-procurement technology enhances the administrative process for tendering (audit trails etc.) but does not negate the requirement to comply with all elements of these contract procedure rules, particularly those relating to competition and *Value for Money*.

## 4. RELEVANT CONTRACTS

4.1 All *Relevant Contracts* must comply with these contract procedure rules. A *Relevant Contract* is any arrangement made by, or on behalf of, the authority for the carrying out of works or for the supply of goods, materials or services. These include arrangements for:

- The supply or disposal of goods (see also Financial Procedure Rules)
- The hire, rental or lease of goods or equipment
- The delivery of services, including (but not limited to) those related to:
  - the recruitment of staff
  - financial and consultancy services.

4.2 *Relevant Contracts* **do not** include:

- Contracts of employment which make an individual a direct employee of the authority; or
- Agreements regarding the acquisition, disposal, or transfer of land and buildings (for which Financial Procedure Rules shall apply); or
- *S.151 Officer* dealing in the money market or obtaining finance for the Council; or
- Contracts made by the *Monitoring Officer* for the appointment of counsel.

## SECTION 2: COMMON REQUIREMENTS

### 5. STEPS PRIOR TO PURCHASE

5.1 The *Officer* must appraise the purchase, in a manner commensurate with its complexity and value and taking into account any *purchasing guidance*, by:

- Taking into account the requirements from any relevant *Value for Money* review and the views of the community where appropriate and in line with related Council guidance
- Appraising the need for the expenditure and its priority, including the position of any existing contract in terms of end date/required notice
- Defining the objectives of the purchase and consider whether it is appropriate to tender on the same basis as the existing arrangement (see Rule 2.1.2)
- Assessing the risks associated with the purchase and how to manage them
- Considering what procurement method is most likely to achieve the purchasing objectives, including internal or external sourcing, partnering, packaging strategy and collaborative procurement arrangements with another local authority, government department, statutory undertaker or public service purchasing consortium
- Consulting users as appropriate about the proposed procurement method, contract standards and performance and user satisfaction monitoring
- Ensuring that the appropriate terms and conditions are used to apply to the proposed contract (if other than the Council's standard terms and conditions, the advice of the *Corporate Procurement Officer* and *Monitoring Officer* must be sought)
- Setting out these matters in writing if the *Total Value* of the purchase exceeds £5,000.

5.2 The officer must also confirm that:

- There is member or delegated approval for the expenditure and the purchase accords with the approved policy framework and scheme of delegation as set out in the *Constitution*.
- In the case of expenditure on an asset (particularly property), that the asset is the Council's responsibility.

### 6. RECORDS

6.1 Where the *Total Value* is **less than £30,000**, the following records must be kept:

- Invitations to quote and Quotations
- A record:
  - of any exemptions and the reasons for them
  - of the reason if the lowest price is not accepted
- Written (which includes electronic) records of communications with the successful contractor.

## **SECTION 2: COMMON REQUIREMENTS**

6.2 Where the *Total Value* exceeds **£30,000** the following records must be kept:

- The method for obtaining bids (see Rule 8.1)
- Any *Contracting Decision* and the reasons for it
- Any exemption under Rule 3 together with the reasons for it
- The *Award Criteria* in descending order of importance
- Tender documents sent to and received from Suppliers
- Pre-tender market research
- Clarification and post-tender negotiation (to include minutes of meetings)
- Legal advice
- The contract documents
- Post-contract evaluation and monitoring
- Communications with *Suppliers* and with the successful contractor throughout the period of the contract.

6.3 Records required by this rule must be kept for six years after the end of the contract.

6.4 Documents which relate to unsuccessful *Suppliers* must be destroyed after 12 months has elapsed from the date of the award of successful contract, provided there is no dispute about the award.

## **7. ADVERTISING AND FRAMEWORK AGREEMENTS**

### **7.1 Identifying and Assessing Potential Suppliers**

#### **Identifying**

7.1.1 *Officers* shall ensure that, where proposed contracts, irrespective of their *Total Value*, might be of interest to potential *Suppliers* located in other member states of the EU, a sufficiently accessible advertisement is published. Generally, the greater the interest of the contract to potential bidders from other member states, the wider the coverage of the advertisement should be. Examples of where such advertisements may be placed include:

- The Council's website
- Portal websites specifically created for contract advertisements
- National official journals, or
- The Official Journal of the European Union (OJEU)/E Notices/Tenders Electronic Daily (TED) (even if there is no requirement within the EU Procedure).

7.1.2 For proposed contracts that are expected to exceed £30,000 but NOT £75,000, assessment and selection will be in conjunction with the Corporate Procurement Officer by, as a minimum, Invitation to Tender to at least four Suppliers although best practice in relation to advertising is encouraged.

## SECTION 2: COMMON REQUIREMENTS

### Assessing

7.1.3 Officers are responsible for ensuring that all Suppliers for a Relevant *Contract* are suitably assessed. The assessment process shall establish that the potential *Suppliers* have sound:

- Economic and financial standing
- Technical ability and capacity

to fulfil the requirements of the authority.

7.1.4 This shall be achieved in respect of proposed contracts that are expected to **exceed £75,000** by selecting firms from shortlists assessed from expressions of interest in a particular contract submitted in response to a public advertisement.

### 7.2 Approved Lists

7.2.1 **Approved Lists** will not be maintained. This is because of the cost of proper administration and the need to ensure that competition is maximised.

7.2.2 Suppliers interested in doing business with the Council must register on the Council's e-tendering system, which is available on the Council's web-site.

7.2.3 A register of pre-qualified contractors and *Consultants* maintained by or on behalf of central government (e.g. Constructionline, Accredited) will be not be deemed to be an Approved List for the purpose of these contract procedure rules and therefore can be used after having sought the advice of the Corporate Procurement Officer.

### 7.3 Framework Agreements

7.3.1 A *Framework Agreement* is an arrangement of one or more contractors with one or more suppliers in order to establish the terms governing the contracts awarded during given period.

In setting up a *Framework Agreement* the term of must not exceed four years. There must be one, three or more providers (not 2) within an agreement under EU procurement law. The Council's *Corporate Procurement Officer* must always be consulted before any action taken.

7.3.2 Contracts based on *Framework Agreements* may be awarded by either:

- Applying the terms laid down in the Framework Agreement (where such terms are sufficiently precise to cover the particular call-off) without reopening competition, or
- Where the terms laid down in the Framework Agreement are not precise enough or complete for the particular call off by holding a **mini competition** in accordance with the following procedure:



## SECTION 2: COMMON REQUIREMENTS

- inviting the organisations within the *Framework Agreement* that are capable of executing the subject of the contract to submit written *Tenders*
- fixing a time limit which is sufficiently long to allow *Tenders* for each specific contract to be submitted, taking into account factors such as the complexity of the subject of the contract
- awarding each contract to the tenderer who has submitted the best *Tender* on the basis of the *Award Criteria* set out in the specifications of the *Framework Agreement*.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### **8. COMPETITION REQUIREMENTS FOR PURCHASE OR DISPOSAL AND PARTNERSHIP ARRANGEMENTS**

To obtain the estimated value of a contract, the *Officer* must calculate the *Total Value* (excluding VAT) for the whole period of the contract. The *Total Value* calculation (in money or equivalent value) is important and the base criteria are set out in the Definitions Appendix. If any doubt exists the *Officer* should contact the *Corporate Procurement Officer*.

**For example, a contract let for 5 years at an estimated £20,000 per year, excluding VAT, has a *Total Value* of £100,000. The procurement must be based on £100,000 NOT the annual amount. See also the Definitions Appendix, *Total Value*.**

The following procedures apply where there are no other procedures which take precedence (such as agency agreements with government). If in doubt, *Officers* must seek the advice of the *Corporate Procurement Officer* or Internal Audit.

#### **8.1 Purchasing: Competition Requirements to Obtain Quotations and Tenders**

8.1.1 Where the *Total Value* for a purchase is within the values in the first column below, the *Award Procedure* in the second column must be followed. *Short listing* shall be done by the persons specified in the third column.

<b>Total Value (excl. VAT)</b>	<b>Award Procedure</b>	<b>Short listing</b>
Up to £5,000	One quotation, but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	<i>Officer</i> - See also Financial Procedure Rules
£5,001 – £30,000	Three written Quotations	<i>Officer</i> and <i>Service Manager</i>
£30,001–£75,000	Invitation to Tender to at least four suppliers	<i>Officer</i> and <i>Service Manager</i> in consultation with the <i>Corporate Procurement Officer</i> – see Rule 7.1.5
£75,001– <i>EU Threshold</i>	Invitation to Tender by advertisement/list to at least four suppliers	<i>Officer</i> and <i>Service Manager</i> in consultation with the <i>Corporate Procurement Officer</i>
Above <i>EU Threshold</i>	EU Procedure (Seek advice from the <i>Corporate Procurement Officer</i> )	<i>Officer</i> , <i>Service Manager</i> and <i>Head of Service</i> in consultation with the <i>Corporate Procurement Officer</i>

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### 8.1 Purchasing – Competition Requirements (continued)

Total Value (excl. VAT)	Award Procedure	Short listing
Up to <i>EU Threshold</i>	All purchases made via a local authority purchasing and distribution consortium are deemed to comply with these contract procedure rules and no exemption is required e.g. simple purchases through Devon Procurement Partnership.	See paragraph 3.7.
All values. Collaborative Contracts	The <i>Corporate Procurement Officer</i> must be consulted prior to commencing any procurement process using Collaborative Contracts. The terms and conditions applicable to any Collaborative Contract arrangement, including the requirement to undertake competition between providers, must be fully complied with.	See paragraphs 3.6 to 3.8
All values. ICT	All system developments and purchases of computer equipment or software must be approved by the Head of ICT & Customer Services, or her/his nominated deputy, and awarded in line with these Rules.	<i>Officer, Service Manager and Head of ICT &amp; Customer Services</i> , in consultation with the <i>Corporate Procurement Officer</i>

8.1.2 Where it can be demonstrated that there are insufficient suitably qualified *Suppliers* to meet the competition requirement, all suitably qualified *Suppliers* must be invited to quote or tender and the *Corporate Procurement Officer* informed.

8.1.3 An *Officer* must not enter into separate contracts nor select a method of calculating the *Total Value* in order to minimise the application of these contract procedure rules.

8.1.4 Where the *EU Procedure* is required, the *Officer* shall also consult the *Corporate Procurement Officer*, as appropriate, to determine the method of conducting the purchase. See table at Rule 8.1.

### 8.2 Collaborative and Partnership Arrangements

8.2.1 Collaborative and partnership arrangements are subject to all UK and EU procurement legislation and must follow these contract procedure rules (Rule 3). If in doubt, *Officers* must seek the advice of the *Monitoring Officer* and the *Corporate Procurement Officer*. See table at Rule 8.1.1.

### 8.3 The Appointment of Consultants to Provide Services

8.3.1 Consultant architects, engineers, surveyors and other professional **Consultants** shall be selected and commissions awarded in accordance with

## **SECTION 3: CONDUCTING PURCHASE AND DISPOSAL**

the limits and procedures detailed within these contract procedure rules and as outlined at Rule 8.1.1.

8.3.2 The engagement of a *Consultant* shall follow the agreement of a brief that adequately describes the scope of the services to be provided and shall be subject to completion of a formal letter or contract of appointment to be in the form agreed by the *Monitoring Officer*.

8.3.3 Records of consultancy appointments shall be maintained in accordance with Rule 6.

8.3.4 *Consultants* shall be required to provide evidence of, and maintain professional indemnity insurance policies to the satisfaction of the Council's Insurance Officer for the periods specified in the respective agreement.

### **8.4 Assets for Disposal**

8.4.1 Assets for disposal (other than Land and Property) must be sent to public auction except where better *Value for Money* is likely to be obtained by inviting *Quotations* and *Tenders* or other approved method. (These may be invited by advertising on the Council's internet site). In the latter event, the method of disposal of surplus or obsolete stocks/stores or assets must be formally agreed as required by *Financial Procedure Rules* and the Scheme of Delegation.

### **8.5 Contracts to Provide Services to External Purchasers**

8.5.1 The *Monitoring Officer*, *Corporate Procurement Officer* and *Financial Procedure Rules* must be consulted where contracts to work for organisations other than the authority are contemplated.

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

9.1 The *Officer* responsible for the purchase: may, prior to the issue of the *Invitation to Tender / Quotation*, consult potential suppliers in general terms about the nature, level and standard of the supply, contract packaging and other relevant matters, provided this does not prejudice any potential *Supplier*.

9.2 The *Officer* must not seek or accept technical advice on the preparation of an *Invitation to Tender* or *Quotation* from anyone who may have a commercial interest in them, if this may prejudice the equal treatment of all potential *Suppliers* or distort competition, and should seek advice from the *Monitoring Officer* and the *Corporate Procurement Officer*.

## **10. STANDARDS AND SELECTION & AWARD CRITERIA**

10.1 The *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 which are necessary properly to describe the required quality. This includes sustainability standards. The *Monitoring Officer* and *Corporate Procurement Officer* must

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

be consulted if it is proposed to use standards other than European standards.

10.2 The *Officer* must define *Award Criteria* that are appropriate to the purchase and designed to secure an outcome giving *Value for Money* for the authority. The basic criteria shall be:

- 'Most economically advantageous', where considerations in addition to price also apply.
- 'Lowest price' where payment is to be made by the authority when the *Award Criteria* is price alone; or
- 'Highest price' if payment is to be received (See *Financial Procedure Rules* on disposal of assets)

If the last criterion is adopted, it must be further defined by reference to sub-criteria which may refer only to relevant considerations. These may include price, service, quality of goods, running costs, technical merit, previous experience, delivery date, cost effectiveness, relevant environmental considerations, aesthetic and functional characteristics (including security and control features), safety, after-sales services, technical assistance and any other relevant matters.

10.3 *Award Criteria* must not include:

- *Non-commercial Considerations* (See Definitions Appendix);
- Matters which discriminate against suppliers, irrespective of size, from the *European Economic Area* or signatories to the Government Procurement Agreement.

## **11. INVITATIONS TO TENDER/QUOTATIONS**

### **Invitations to Tender**

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

11.2 All *Invitations to Tender* shall include the following:

- (a) A specification that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
- (b) A requirement for tenderers to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the tenderer to any other party (except where such a disclosure is made in confidence for a necessary purpose).
- (c) A requirement for tenderers to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

- (d) Notification that *Tenders* are submitted to the Council on the basis that they are compiled at the tenderer's expense.
- (e) A description of the *Award Procedure* and a definition of the *Award Criteria* (including any scoring mechanism or sub criteria) or in objective terms and if possible in descending order of importance.
- (f) Notification that no *Tender* will be considered unless it is:
  - o enclosed in a sealed unmarked envelope or container (electronic) which bears the word 'Tender' followed by the subject to which it relates, but no other name or mark indicating the sender; or
  - o submitted via the Council's electronic tendering system.
- (g) A stipulation that any *Tenders* submitted by fax or e-mail shall not be considered, see Rule 13.3 re electronic tendering.
- (h) 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.

11.3 All *Suppliers* 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.

### Invitations to Tender or Quotations

11.4 All Invitations to *Tender* or *Quotations* must specify the goods, service or works that are required, together with the terms and conditions of contract that will apply (see Rule 16).

11.5 The *Invitation to Tender* or *Quotation* must state that the Council is not bound to accept any *Quotation* or *Tender*, either as a whole or in part.

## **12. SHORTLISTING**

12.1 Any *Shortlisting* must have regard to the financial and technical standards relevant to the contract and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*.

12.2 Evaluation criteria must be transparent and sub-criteria specified. *Shortlisting* records must be kept and held for the period specified in the Council's Document Retention Policy and Rule 6.

12.3 The officers responsible for *Shortlisting* are specified in Rule 8.1.1.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### 13. SUBMISSION, RECEIPT AND OPENING OF TENDERS/ QUOTATIONS

- 13.1 *Suppliers* must be given an adequate period in which to prepare and submit a proper *Quotation* or *Tender*, consistent with the complexity of the contract requirement. Normally at least four weeks should be allowed for submission of *Tenders*. The *EU Procedure* lays down specific time periods (see the Council's *purchasing guidance on the Council's Intranet*).
- 13.2 All *Tenders* must be returned to the Council's Legal department or if electronically be submitted through the Council's approved and secure electronic tendering system.
- 13.3 The Council's electronic tendering system should be used where practical. However, *Tenders* received by fax or other electronic means (e.g. email) must be rejected.
- 13.4 The *Officer* must not disclose the names of *Suppliers* to any staff involved in the receipt, custody or opening of *Tenders*.
- 13.5 The Legal department shall be responsible for the safekeeping of *Tenders* until the appointed time of opening. Each *Tender* must be:
- Suitably recorded so as to subsequently verify the date and precise time it was received
  - Adequately protected immediately on receipt to guard against amendment of its contents
  - Recorded immediately on receipt in the Tender Register Pro-Forma.

#### **Tender Opening**

- 13.6 The Legal department will ensure that all *Tenders* are opened at the same time when the period for their submission has ended. A legal officer will be present for the following:
- 13.6.1 All tenders with an **estimated value of more than £75,000** shall be opened and recorded by the Officer, relevant Senior Officer in the presence of two members from the relevant Committee
- 13.6.2 All tenders with an **estimated value of less than £75,000** shall be opened and recorded by the Officer and relevant Senior Officer.
- Where the *Total Value* is more than the *EU Threshold*, the *Corporate Procurement Officer* shall also attend.
- 13.7 Upon opening, a summary of the main terms of each *Tender* must be recorded in the *Tender Register Pro-Forma*. The summary must be signed by all present. Where an electronic tendering process is used, those involved must verify the results to the screen.

## SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

### **14. CLARIFICATION PROCEDURES AND POST-TENDER NEGOTIATION**

14.1 Providing clarification to potential or actual Suppliers of an *Invitation to Tender* or *Tender* is permitted:

- In writing
- At a meeting provided that a written record is made of the meeting
- In a way that is fair, transparent and equal to all participants

14.2 Discussions with tenderers after submission of a *Tender* and before the award of a contract with a view to obtaining adjustments in price, delivery or content (i.e. post-tender negotiations) **must be the exception** rather than the rule. In particular, such discussions must not be conducted in an EU Procedure where this might distort competition, especially with regard to price. If in doubt seek professional advice from the *Corporate Procurement Officer* or *Monitoring Officer*.

14.2 If post-tender negotiations are necessary after a single-stage *Tender* or after the second stage of a two-stage *Tender*, then such negotiations shall only be undertaken with the tenderer who is identified as having submitted the best *Tender* and after all unsuccessful *Suppliers* have been informed.

*Officers* appointed by the *Head of Service* to carry out post-tender negotiations should ensure that there are recorded minutes of all negotiation meetings and that both parties agree actions in writing.

14.3 Post-tender negotiation must only be conducted in accordance with the guidance issued by the *Corporate Procurement Officer* who must be consulted wherever it is proposed to enter into post-tender negotiation. Negotiations must be conducted by a team of at least two *Officers*, one of whom must be from a division independent to that leading the negotiations.

14.4 Where post-tender negotiation results in a fundamental change to the specification (or contract terms) the contract must not be awarded but re-tendered.

### **15. EVALUATION, AWARD OF CONTRACT, AND DEBRIEFING SUPPLIERS**

15.1 Apart from the debriefing required or permitted by these contract procedure rules, the confidentiality of *Quotations*, *Tenders* and the identity of *Suppliers* must be preserved at all times and information about one *Supplier's* response must not be given to another *Supplier*.

15.2 Contracts must be evaluated and awarded in accordance with the *Award Criteria*. During this process, *Officers* shall ensure that submitted *Tender* prices are compared with any pre-tender estimates and that any discrepancies are examined and resolved satisfactorily.

15.3 The arithmetic in compliant *Tenders* must be checked.



### SECTION 3: CONDUCTING PURCHASE AND DISPOSAL

If arithmetical errors are found they should be notified to the tenderer, who should be requested to confirm the price or withdraw their *Tender*.

15.4 *Officers* may accept *Quotations* and *Tenders* received in respect of proposed contracts, provided they have been sought and evaluated fully in accordance with these contract procedure rules. Awarding of contracts that are expected to exceed the approved budget sum shall be referred back to the S.151 Officer.

15.5 Where the *Total Value* is **over £30,000**, the *Officer* must notify all *Suppliers* simultaneously and as soon as possible of the intention to award the contract to the successful *Supplier*, and include the reasons why for the unsuccessful bidders.

The *Officer* must provide unsuccessful *Suppliers* with a period of at least five working days (or 10 working days for OJEU contracts) in which to challenge the decision before the *Officer* awards the contract. If the decision is challenged by an unsuccessful *Supplier* then the *Officer* shall not award the contract and shall immediately seek the advice of the *Monitoring Officer and Corporate Procurement Officer*.

15.6 The *Officer* shall notify in writing all those *Suppliers* who submitted a bid only of the following (unless authorised by the *Monitoring Officer* in association with the *Corporate Procurement Officer* or an EU contract):

- How the Award Criteria were applied
- The prices or range of prices submitted, in either case not correlated to Suppliers' names
- The names of Suppliers where there were three or more Suppliers.

15.7 **For EU contracts**, if a *Supplier* requests in writing the reasons for a Contracting Decision, the *Officer* must give the reasons in writing (describing relative advantages and disadvantages of the bid) within 15 days of the request. If requested, the *Officer* may also give the debriefing information at Rule 15.6 above to *Suppliers* who were deselected in a pre-tender *Short listing* process.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

### 16. CONTRACT DOCUMENTS

#### 16.1 Relevant Contracts

16.1.1 All Contracts above £5,000 shall be in **writing in** a form approved by the *Monitoring Officer*.

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

- What is to be supplied (i.e. the works, materials, services, matters or things to be furnished, had or done)
  - The provisions for payment (i.e. the price to be paid and when)
  - The time, or times, within which the contract is to be performed
  - The provisions for the Council to terminate the contract.

16.1.3 The Council's order form or standard terms and conditions must be used for simple purchases of goods. In any circumstances that require special terms and conditions, the advice of the Monitoring Officer and *Corporate Procurement Officer* must be sought.

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

- That the contractor may not assign or sub-contract without prior written consent
- Any insurance requirements
- Health and safety requirements
- Ombudsman requirements
- Data protection requirements, if relevant
- That charter standards are to be met if relevant
- Race relations requirements
- Disability Discrimination Act requirements
- Freedom of Information Act requirements
- Where *Agents* are used to let contracts, that Agents must comply with the Council's contract procedure rules
- A right of access to relevant documentation and records of the contractor for monitoring and audit purposes if relevant
- Prevention of Corruption and Anti Competitive Behaviour (see paragraphs 18.1 and 18.2) and
- A transparency clause that allows the Council to comply with the government's transparency agenda.

16.1.5 The formal advice of the Monitoring Officer on the form of documentation to be used must be sought for contracts where any of the following apply:

- Where the Total Value exceeds £30,000; or
- Below £30,000 if other than the Council's standard terms and conditions are to be used; or

## SECTION 4: CONTRACT AND OTHER FORMALITIES

- Those involving leasing arrangements (when the S.151 Officer should also be advised); or
- Where it is proposed to use a supplier's own terms; or
- Those involving the purchase of application software with a Total Value of more than £30,000; or
- Those that are complex in any other way.

### 16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

Total Value	Method of Completion	By
Purchase orders - up to £30,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £30,000. Council's Standard Terms and Conditions	Signature	<i>Head of Service</i> or Nominated Deputy (Rule 16.2.3) or <i>Monitoring Officer</i>
Contracts and licences up to £30,000 Non Standard Terms and Conditions	Signature	<i>Head of Service</i> , on the advice of the <i>Monitoring Officer</i> (Rule 16.2.3) or <i>Monitoring Officer</i>
£30,001 to £75,000	Sealing (unless advised by the <i>Monitoring Officer</i> that sealing is not necessary)	<i>Head of Service</i> , on the advice of the <i>Monitoring Officer</i> (Rule 16.2.3) or <i>Monitoring Officer</i>
Above £75,000 or if any of para 16.1.5 applies except ICT software.	Sealing (unless advised by the <i>Monitoring Officer</i> that sealing is not necessary)	<i>Monitoring Officer</i> (See also Rule 16.2.3 and 16.3), on the instruction of the Head of Service
<b>ICT</b> - system developments and purchases of computer equipment or software	Method of completion in line with limits above	As above, except that in all cases to be the <b>Head of ICT &amp; Customer Services</b> , and not the Head of Service.

16.2.2 All contracts must be concluded formally in writing before the supply, service or construction work begins, except in exceptional circumstances, and then only with the written consent of the *Monitoring Officer* or *S.151 Officer*.

16.2.3 The *Officer* responsible for securing a signature on the contract must ensure that the person signing for the other contracting party has authority to bind it. An award letter is insufficient.

## **SECTION 4: CONTRACT AND OTHER FORMALITIES**

16.2.4 Any new contract should not be signed until the contract it replaces is either ended or under notice.

Depending on the circumstances an officer of the Council may be subject to disciplinary action if he/she signs a contract without being specifically authorised to do so.

16.2.5 All contracts, (save straight forward purchase orders, must be given to the Monitoring Officer for secure storage. An electronic copy must be copied to the *Corporate Procurement Officer for all contracts with value over £30k.*

### **16.3 Sealing**

16.3.1 Contracts must be sealed in accordance with Council Procedure Rule 26 and will be overseen by the Council's Solicitor

16.3.3 A contract must be sealed where:

The Council may wish to enforce the contract more than six years after its end

- The price paid or received under the contract is a nominal price and does not reflect the value of the goods or services, or
- There is any doubt about the authority of the person signing for the other contracting party.

## **17. BONDS AND PARENT COMPANY GUARANTEES**

17.1 The *Officer* must consult the *S.151 Officer* about whether a *Parent Company Guarantee* is necessary when a *Supplier* is a subsidiary of a parent company and:

- The Total Value exceeds £75,000, or
- Award is based on evaluation of the parent company, or there is some concern about the stability of the Supplier.

17.2 The Officer must consult the S.151 Officer about whether a Bond is needed:

- 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 Supplier i.e. following a **formal risk assessment**, or
- Where the *Total Value* exceeds £500,000.

## **18. PREVENTION OF CORRUPTION & ANTI COMPETITIVE BEHAVIOUR**

### **18.1 Prevention of Corruption**

18.1.1 The *Officer* needs to be aware of the Bribery Act 2010, which introduces general offences of offering or receiving bribes, a specific offence of bribing a foreign public official and the new corporate offence of failing to prevent

## SECTION 4: CONTRACT AND OTHER FORMALITIES

bribery, as well as the Council's Anti Fraud, Corruption and Bribery Policy and Strategy.

18.1.2 The *Officer* must comply with the Officers' Code of Conduct and must not invite or accept any gift or reward in respect of the award or performance of any contract. It will be for the Officer to prove that anything received was not received corruptly. High standards of conduct are obligatory. Corrupt behaviour will lead to dismissal and is a crime under the statutes referred to in Rule 18.1.3 below.

18.1.3 The following clause must be put in every written Council contract:  
*"The Council may terminate this contract and recover all its loss if the Contractor, its employees or anyone acting on the Contractor's behalf do any of the following things:*

- (a) offer, give or agree to give to anyone any inducement or reward in respect of this or any other Council contract (even if the Contractor does not know what has been done), or
- (b) commit an offence under the Bribery Act 2010, or
- (c) commit any fraud in connection with this or any other Council contract whether alone or in conjunction with Council members, contractors or employees. Any clause limiting the Contractor's liability shall not apply to this clause."

### 18.2 Anti Competitive Behaviour

18.2.1 In their guidance for public sector procurers, the Office of Fair Trading has highlighted practical steps to take to reduce the risks of anti-competitive behaviour, and this should be followed where it is practical to do so:

- : (a) Use non-collusion clauses, certificates of independent bids and requests;
- (b) Ensure sufficient credible bidders;
- (c) Look for suspicious bidding patterns (further guidance available);
- (d) Keep good notes of all discussions and potential bidders and systematically scrutinise them for suspicious patterns e.g. geographical prevalence of certain suppliers' areas.

18.2.2 If there is any doubt during a procurement exercise, or for further guidance, the *Officer* should contact the *Corporate Procurement Officer* or Internal Audit.

## SECTION 4: CONTRACT AND OTHER FORMALITIES

### 19. DECLARATION OF INTERESTS

19.1 If it comes to the knowledge of a member or an employee of the authority that a contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the *Monitoring Officer*.

19.2 Officer must comply with the Officers' Code of Conduct, as discussed at paragraph 18.1.2.

19.3 All Councillors must comply with Paragraph 8 of the Members' Code of Conduct and register all contracts for goods, services or works made between the Council and:

- the councillor,
- a firm in which s/he is a partner
- a company in which s/he is a remunerated director
- a member of the Councillor's family or a person with whom they have a close association, or a partnership or company employing or operated by such a person
- Any person or body who has a place of business in the South Hams District Council and in which the Councillor has a beneficial interest in a class of securities of that person or body that exceeds the nominal value of £25,000 (or one hundredth of the total issued share capital) whichever is the lower.

19.4 The *Monitoring Officer* shall maintain a record of all declarations of interests notified by members and *Officers*.

## **SECTION 5: CONTRACT MANAGEMENT**

### **20. MANAGING CONTRACTS**

20.1 **Heads of Service must appoint Contract Managers for all new contracts and for the entirety of the contract.**

20.2 Contract managers must follow the procedures set out in the Council's *purchasing guidance*.

20.3 **Variations or extensions** should not be made unless this is provided for in the invitation to tender and the contract itself. Heads of Service must contact the *Monitoring Officer and the Corporate Procurement Officer* before any variation is actioned (excludes on site variations for construction projects).

Any variations to contracts are to be in writing in the form approved by the *Monitoring Officer*, sequentially numbered and stored with the original contract.

20.4 **Payments** to contractors will only be made on certification by the designated contract manager in line with the Financial Procedure Rules.

20.5 **Liquidated and ascertained damages** must be deducted for all periods of delay in line with the terms of the contract.

If the Contract Manager does not consider that such damages should be deducted s/he must seek and follow the advice of the Monitoring Officer and 151 Officer.

20.6 The Contract Manager must notify the *Monitoring Officer*, the responsible *Head of Service*, and the *S.151 Officer* promptly on becoming aware of any significant **dispute**, or **claim for additional payment** in connection with a contract.

No liability shall be accepted without the approval of the relevant Committee in such cases.

### **21. RISK ASSESSMENT AND CONTINGENCY PLANNING**

21.1 A business case must be prepared for all procurements with a potential value over the *EU Threshold*. Provision for resources for the management of the contract, for its entirety, must be identified in the business case.

21.2 For all contracts with a value of over £75,000, Contract Managers must:

- Maintain a risk register during the contract period in accordance with the Council's Risk Management Strategy
- Undertake appropriate risk assessments and for identified risks (in consultation with the Council's Lead Officer – Risk Management and Risk Management Strategy as appropriate)
- Ensure contingency measures are in place

## SECTION 5: CONTRACT MANAGEMENT

### 22. CONTRACT MONITORING, EVALUATION AND REVIEW

#### **Contracts Financed from Revenue**

- 22.1 All contracts which have a value higher than the *EU Threshold* limits, or which are *High Risk*, are to be subject to formal review(s) by the contract manager with the contractor. The review may be conducted at a frequency that is determined by the risk value and profile of the contract.
- 22.2 As a minimum, for all contracts with a value higher than the *EU Threshold* limits, or which are *High Risk*, an annual report must be submitted to the *Senior Management Team* detailing the financial and service performance.
- 22.3 A contract review process must be applied to all contracts deemed to be *High Risk*, *High Value*, or *High Profile*. This process must be applied at key stages of major procurements.
- 22.4 During the life of the contract, the Contract Manager must monitor and take any necessary corrective action in respect of:
- Performance
  - Compliance with specification and contract
  - Cost
  - Any Value for Money requirements
  - User satisfaction and risk management.
- 22.5 When the contract is completed the Contract Manager must submit a report to the *Senior Management Team*. The report must evaluate the extent to which the purchasing need and the contract objectives (as determined in accordance with Rule 5.2) were met by the contract. Where the contract is to be re-let, a provisional report should also be available early enough to inform the approach to re-letting of the subsequent contract.

#### **Contracts Financed from the Capital Programme**

- 22.6 Procurement for approved capital projects must be made in line with these Rules. Having regard to Rule 15.4, where any tender for projects under the Capital Programme exceeds the available budget by 10% or £50,000 approval to proceed may be made by the Head of Assets and *S.151 Officer* with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Strategies and Resources Committee should be sought prior to acceptance.
- 22.7 The Head of Finance and Audit (*S.151 Officer*), assisted by the Head of Assets, has monitoring responsibilities to receive regular reports from Project Managers on the performance of their project; and report quarterly to the Strategies and Resources Committee on the overall progress of the Capital Programme.



## SECTION 5: CONTRACT MANAGEMENT

22.8 The monitoring report will outline the budget position as a whole and include, as a minimum, the financial position of each approved project.

### Project Overspends

22.9 In monitoring expenditure on a project, the *Officer*/Project Manager should seek the formal approval of the S.151 Officer, Head of Assets or Members at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded.

The following table sets out the authorisation required:

<b>Project Total Value excl. VAT</b>	<b>Overspend excl. VAT</b>	<b>Authorised By</b>
Up to £500,000	£25,000 to £50,000	S.151 Officer Head of Assets With retrospective reporting to the Strategies and Resources Committee within the quarterly monitoring report.
Up to £500,000	Exceeds £50,000	Strategies and Resources Committee
Over £500,000	10%	Strategies and Resources Committee

## DEFINITIONS APPENDIX

Term	Definition
<b>Agent</b>	A person or organisation acting on behalf of the Council or on behalf of another organisation.
<b>Award Criteria</b>	The criteria by which the successful <i>Quotation</i> or <i>Tender</i> is to be selected (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	Awarding a contract as specified in Rules 8, 10 and 15.
<b>Bond</b>	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.
<b>Code of Conduct (Members)</b>	As set out in the Constitution – part 5
<b>Code of Conduct (Officers)</b>	The code regulating conduct of Officers, available on the Council's Intranet.
<b>Committee</b>	The Council's Committees as defined in the <i>Constitution</i> .
<b>Constitution</b>	The constitutional document approved by the Council which: <ul style="list-style-type: none"> <li>• allocates powers and responsibility within the Council and between it and others</li> <li>• delegates authority to act to the officers and Committees;</li> <li>• regulates the behaviour of individuals and groups through rules of procedure, codes and protocols.</li> <li>• available on the Internet</li> </ul>
<b>Consultant</b>	Someone employed for a specific length of time to work to a defined project brief with clear outcomes to be delivered, who brings specialist skills or knowledge to the role, and where the Council has no ready access to employees with the skills, experience or capacity to undertake the work.
<b>Contracting Decision</b>	Any of the following decisions: <ul style="list-style-type: none"> <li>• composition of Approved Lists</li> <li>• withdrawal of Invitation to Tender</li> <li>• whom to invite to submit a Quotation or Tender</li> <li>• Short listing</li> <li>• award of contract</li> <li>• any decision to terminate a contract.</li> </ul>
<b>Corporate Contract</b>	A contract let by the <i>Corporate Procurement Officer</i> to support the Council's aim of achieving <i>Value for Money</i> .
<b>Corporate Procurement Officer</b>	The Council's procurement officer charged with providing strategic direction and advice to secure <i>Value for Money</i> in the Council's procurement activities.
<b>EU Procedure</b>	The procedure required by the EU where the <i>Total Value</i> exceeds the <i>EU Threshold</i> .
<b>EU Threshold</b>	The contract value at which the EU public procurement directives apply.
<b>European Economic Area</b>	The members of the European Union, and Norway, Iceland and Liechtenstein.
<b>Financial Procedure Rules</b>	The Financial Procedure Rules set out in Part 5 of the Constitution outlining <i>Officer</i> responsibilities for financial matters issued by the <i>S.151 Officer</i> .

## DEFINITIONS APPENDIX

Term	Definition
<b>Framework Agreement</b>	An agreement between one or more authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged.
<b>Government Procurement Agreement</b>	The successor agreement to the General Agreement on Trade and Tariffs. The main signatories other than those in the <i>European Economic Area</i> are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
<b>Head of Service/Director</b>	The officers defined as such in the <i>Constitution</i> .
<b>High Profile</b>	A high-profile purchase is one that could have an impact on functions integral to Council service delivery should it fail or go wrong.
<b>High Risk</b>	A high-risk purchase is one which presents the potential for substantial exposure on the Council's part should it fail or go wrong.
<b>High Value</b>	A high-value purchase is where the value exceeds the <i>EU Threshold</i> values.
<b>Invitation to Tender (ITT)</b>	Invitation to tender documents in the form required by these contract procedure rules.
<b>Monitoring Officer</b>	As identified in the <i>Constitution</i> . The Monitoring Officer or the Monitoring Officer's formally nominated deputy
<b>Nominated Suppliers and Sub-Contractors</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non-commercial Considerations</b>	<p>(a) The terms and conditions of employment by contractors of their workers or the composition of, the arrangements for the promotion, transfer or training of or the other opportunities afforded to, their workforces ('workforce matters').</p> <p>(b) Whether the terms on which contractors contract with their sub-contractors constitute, in the case of contracts with individuals, contracts for the provision by them as self-employed persons of their services only.</p> <p>(c) Any involvement of the business activities or interests of contractors with irrelevant fields of government policy.</p> <p>(d) The conduct of contractors or workers in industrial disputes between them or any involvement of the business activities of contractors in industrial disputes between other persons ('industrial disputes').</p> <p>(e) The country or territory of origin of supplies to, or the location in any country or territory of the business activities or interests of, contractors.</p> <p>(f) Any political, industrial or sectarian affiliations or interests of contractors or their directors, partners or employees.</p> <p>(g) Financial support or lack of financial support by contractors for any institution to or from which the authority gives or withholds support. <i>Continues Overleaf</i>.</p>

## DEFINITIONS APPENDIX

Term	Definition
<b>Non-commercial Considerations (continued)</b>	(h) Use or non-use by contractors of technical or professional services provided by the authority under the Building Act 1984 or the Building (Scotland) Act 1959. Workforce matters and industrial disputes, as defined in paragraphs (a) and (d), cease to be non-commercial considerations to the extent necessary or expedient to comply with Best <i>Value</i> ; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 ( <i>TUPE</i> ) may apply.
<b>Officer</b>	The officer designated by the <i>Head of Service</i> to deal with the contract in question.
<b>Parent Company Guarantee</b>	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, the Council can require the parent company to do so instead.
<b>Priority Services</b>	Those services required to be tendered as defined in the EU public procurement directives.
<b>Procurement Strategy</b>	The document setting out the Council's approach to procurement and key priorities for the next few years available on the Council's Intranet.
<b>Purchasing Guidance</b>	The suite of guidance documents, together with a number of standard documents and forms, which supports the implementation of these contract procedure rules. The guidance is available on the Council's Intranet.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an <i>Invitation to Tender</i> ).
<b>Relevant Committee</b>	The committee responsible for the service under which the Contract is to be made
<b>Relevant Contract</b>	Contracts to which these contract procedure rules apply (see Rule 4).
<b>S.151 Officer</b>	The officer as may be designated S.151 Officer by the Council in line with the Constitution, including the appointed Deputy S.151 Officer.
<b>Senior Officer</b>	Members of SMT and Monitoring Officer or their authorised representatives
<b>Service Manager</b>	The <i>Officer's</i> immediate superior or the <i>Officer</i> designated by the <i>Head of Service</i> to exercise the role reserved to the Service Manager by these contract procedure rules.
<b>Shortlisting</b>	The process of selecting <i>Suppliers</i> who are to be invited to quote or bid or to proceed to final evaluation.
<b>Supplier</b>	Any person who asks or is invited to submit a <i>Quotation</i> or <i>Tender</i> .
<b>Tender</b>	A <i>Supplier's</i> proposal submitted in response to an <i>Invitation to Tender</i> .
<b>Tender Register Pro Forma</b>	The log kept by the Monitoring Officer to record details of <i>Tenders</i> (see Rule 13.5).
<b>Total Value</b>	The whole of the value or estimated value (in money or equivalent value) for a single purchase or disposal calculated as follows: <i>Continues Overleaf</i> .

## DEFINITIONS APPENDIX

Term	Definition
<b>Total Value (continued)</b>	<p>(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.</p> <p>(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.</p> <p>(c) where the contract is for an uncertain duration, by multiplying the monthly payment by 48</p> <p>(d) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(e) for <i>Nominated Suppliers and Sub-contractors</i>, the total value shall be the value of that part of the main contract to be fulfilled by the <i>Nominated Supplier or Sub-contractor</i>.</p>
<b>TUPE Transfer of Undertakings (Protection Employment) Regulations 2006 (SI 2006 No.246)</b>	<p>Subject to certain conditions, these regulations apply where responsibility for the delivery of works or services for the authority is transferred from one organisation (e.g. private contractor, local authority in-house team) to another (e.g. following a contracting out or competitive tendering process) and where the individuals involved in carrying out the work are transferred to the new employer. These regulations seek to protect the rights of employees in such transfers, enabling them to enjoy the same terms and conditions, with continuity of employment, as existed with their former employer. Broadly, TUPE regulations ensure that the rights of employees are transferred along with the business</p>
<b>Value for Money</b>	<p>Value for money is not the lowest possible price; it combines goods or services that fully meet your needs, with the level of quality required, delivery at the time you need it, and at an appropriate price.</p>

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# Agenda Item 3

At a Meeting of the **STANDARDS COMMITTEE** held in the **COUNCIL CHAMBER, KILWORTHY PARK, TAVISTOCK**, on **TUESDAY** the **25<sup>th</sup>** day of **OCTOBER 2011** at **11.40 am**

## Present

West Devon Borough Council	Mr A Leech & Mr D Whitcomb
Parish/Town Councils	Mrs W Eldridge & Mrs J Morgan
Independent	Dr R Meyrick (Vice Chairman) & Mrs V Spence (Chairman)

## Officers

Chief Internal Auditor  
Monitoring Officer  
Deputy Monitoring Officer  
Member Services Manager  
Borough Committee Secretary

### \*S 9 CONFIRMATION OF MINUTES

The Minutes of the meeting held on 12 July 2011 were agreed and signed as a true record.

### \*S 10 UPDATE ON STANDARDS COMPLAINTS

The Deputy Monitoring Officer presented a report (page 7 to the agenda) which set out the complaints which had been received for the Standards Committee's consideration between 1 April 2011 and 30 September 2011. There were a total of six complaints received during the period - four of these were subject to the results of investigations - and there was one still to be finalised from 2010/11. One complaint was against a Borough Councillor and the rest were against Parish Councillors.

It was **RESOLVED** that Members note the status of ongoing complaints made to the Standards Committee in relation to the Code of Conduct from 1 April 2011 to 30 September 2011.

### S 11 REVISION OF THE CONTRACT PROCEDURE RULES

The Chief Internal Auditor presented a report (page 10 to the agenda) which requested Members to consider the revisions made to the Contract Procedure Rules and make a recommendation to Full Council on their adoption. The internal management changes; shared service agenda; the need for a standardised suite of procurement documents identified in the Council's 2010/11 Annual Governance Statement; and the introduction of the Bribery Act 2010 from 1 July 2011 had meant an update was necessary.

The Joint Steering Group approved a project plan to review the Shared Services Governance Arrangements which included producing one set of Council Procedure Rules for adoption by both Councils. The Chief Internal Auditor, the Legal team, the Head of Assets, the Property Services Manager and the shared Corporate Procurement Officer (South Hams/Teignbridge) reviewed the Contract Procedure Rules, adopting the South Hams/CIPFA model to reflect:

- Shared services (aligning of arrangements as far as can be done);
- Management review;
- The Bribery Act 2010
- Equivalent financial values within the Rules.

The key changes related to:

- Financial Limits
- Exemptions
- Shared Services
- Capital Programme
- Bribery Act 2010
- Documentation for signing & storage of contracts

It was **RESOLVED** that Members recommend that Council approves the revised Contract Procedure Rules including the exemption process and agrees its inclusion in the Council's Constitution

(The Meeting Closed at 12.07pm)