

# South Hams Audit Committee



<b>Title:</b>	<b>Agenda</b>
<b>Date:</b>	<b>Thursday, 23rd March, 2017</b>
<b>Time:</b>	<b>2.00 pm</b>
<b>Venue:</b>	<b>Cary Room - Follaton House</b>
<b>Full Members:</b>	<p style="text-align: center;"><b>Chairman</b> Cllr Wingate</p> <p style="text-align: center;"><b>Vice Chairman</b> Cllr Pennington</p> <p><i>Members:</i> Cllr Bramble Cllr Pearce Cllr Brazil</p>
<b>Interests – Declaration and Restriction on Participation:</b>	Members are reminded of their responsibility to declare any disclosable pecuniary interest not entered in the Authority's register or local non pecuniary interest which they have in any item of business on the agenda (subject to the exception for sensitive information) and to leave the meeting prior to discussion and voting on an item in which they have a disclosable pecuniary interest.
<b>Committee administrator:</b>	Member.Services@swdevon.gov.uk

<b>1. Minutes</b>	<b>1 - 6</b>
To approve as a correct record and authorise the Chairman to sign the minutes of the Audit Committee held on 12 January 2017;	
<b>2. Urgent Business</b>	
Brought forward at the discretion of the Chairman;	
<b>3. Division of Agenda</b>	
To consider whether the discussion of any item of business is likely to lead to the disclosure of exempt information;	
<b>4. Declarations of Interest</b>	
Members are invited to declare any personal or disclosable pecuniary interests they may have, including the nature and extent of such interests, in any items to be considered at this meeting;	
<b>5. KPMG Annual Grant Certification Letter</b>	<b>7 - 10</b>
<b>6. KPMG External Audit Plan</b>	<b>11 - 30</b>
<b>7. 2017/18 Internal Audit Plan</b>	<b>31 - 40</b>
<b>8. Annual Review of the Council Constitution</b>	<b>41 - 98</b>
<b>9. Risk Register Review</b>	<b>99 - 110</b>

**N.B.** Legal and financial officers will not, as a general rule, be present throughout all meetings, but will be on standby if required. Members are requested to advise Member Services in advance of the meeting if they require any information of a legal or financial nature.



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**MINUTES OF A MEETING OF THE AUDIT COMMITTEE  
HELD AT FOLLATON HOUSE, TOTNES ON THURSDAY 12 JANUARY 2017**

<b>Members in attendance</b>			
* Denotes attendance			
∅ Denotes apology for absence			
*	Cllr I Bramble	∅	Cllr J T Pennington (Vice-Chairman)
*	Cllr J Brazil	*	Cllr K R H Wingate (Chairman)
*	Cllr J A Pearce		

<b>Members also in attendance:</b>
Cllrs J Birch, J P Green, M J Hicks, T R Holway, R J Tucker, R J Vint and S A E Wright

Item No	Minute Ref No below refers	Officers and Visitors in attendance
All Items		Group Manager – Support Services and Customer First; Section 151 Officer; Devon Internal Audit Partnership Manager; KPMG Director and Senior Specialist – Democratic Services
5	A.25/16	Group Manager – Commercial Services; Group Manager – Business Development; Support Services Specialist Manager and Monitoring Officer

**A.23/16 MINUTES**

The minutes of the meeting held on 22 September 2016 were confirmed as a correct record and signed by the Chairman.

**A.24/16 DECLARATIONS OF INTEREST**

Members and officers were invited to declare any interests in the items of business to be considered during the course of the meeting, but none were made.

**A.25/16 LOCAL AUTHORITY CONTROLLED COMPANY RISK AND GOVERNANCE**

The Committee considered a report that provided it with an overview of the current position for the Local Authority Controlled Company (LACC) project in respect of risk and governance.

In discussion, reference was made to:-

- (a) the considerations of the LACC Joint Steering Group (JSG). The Committee noted that the JSG would be making its final recommendations on whether or not a LACC should be set up by the Council and West Devon Borough Council at its meeting on Monday, 16 January 2017.

The Committee proceeded to ask that its concerns in relation to the following matters be taken into account during the JSG deliberations on 16 January 2017:

- pension implications. In stressing the importance of not under estimating the pension implications, Members raised a number of related concerns including:
    - o the potential recruitment difficulties arising from new employees being on a different scheme;
    - o a different scheme also being a disincentive to university graduates. In expanding upon the point, a Member cited a recent study that had concluded that current pension schemes were a major factor in graduates deciding to take up employment opportunities in the public sector; and
    - o the inability for the Council, in the event that a LACC was unsuccessful, to be able to bring its services back in-house due to the increased pension costs;
  - Reserved Matters. A Member felt that there was an omission in the current Reserved Matters whereby, as currently drafted, there would be a lack of ability or control for the Council to hold the LACC to account over a poor performing service. As a consequence, the Leader gave an undertaking to the Committee that this matter and the proposed extent of the powers delegated to a Joint Shareholder Committee would be carefully considered before the JSG made its final recommendations;
  - the lack of a detailed Business Plan. The Committee was strong in its views that the JSG was not in a position to make any recommendations to approve the establishment of a LACC without the production (and consideration) of a detailed Business Plan that included evidence based financial projections;
  - the impact of any potential additional partners joining the LACC at a later date and any future changes to the local government structure in the county; and
  - the inclusion on the Risk Register of a clear and defined exit strategy;
- (b) state aid implications. In the event of an unforeseen cost pressure arising from a service area, Members were advised that the relationship between the Council and the LACC would be very similar to the current arrangements with external contractors;
- (c) the Teckal exemption arrangements. Officers confirmed that the exact details relating to the Teckal exemption proposals would be included in the report presented to the JSG;

- (d) the timing of this meeting. Some Members felt it to be regrettable that this Committee meeting was taking place prior to the JSG making its final recommendations;
- (e) the role of the Internal Audit service. In the event of a recommendation being made for a LACC to be established, the Committee requested that further consideration be given to whether or not Internal Audit officers should be employed by the LACC or the Council;
- (f) the degree of risk. Some Members were of the view that the extent of the risks involved in establishing a LACC were so great that they were unwilling to support the concept.

It was then:

### **RESOLVED**

That the progress of the Joint Steering Group in respect of Risk and Governance matters (as identified in the presented agenda report) be noted.

A.26/16

### **KPMG REPORT – ANNUAL AUDIT LETTER AND CLOSURE OF THE AUDIT LETTER**

The Committee received the Council's Annual Audit Letter that summarised the key findings arising from the work that KPMG had carried out at the Council for the year ended 31 March 2016.

In discussion, reference was made to:-

- (a) the definition of 'Value For Money' (VFM). A Member queried with the External Auditor the issuing of an unqualified VFM conclusion when considering that the Council had to find additional monies for extra transitional resources during the year. In reply, the External Auditor in attendance advised that there was a common misunderstanding around the definition of VFM in this respect. For clarity, the External Auditors were not responsible for ensuring the delivery of VFM, but were focusing on ensuring that the Council had adequate arrangements in place to ensure the control of expenditure was appropriate;
- (b) cost allocations between the Council and West Devon Borough Council. When questioned, the External Auditor advised that it was recognised that there was a significant audit risk related to cost sharing between the two Councils. As a consequence, this had been a key area of focus for the External Auditors. As the debate continued, the Committee formally requested receipt of an annual report for its consideration that outlined the methodology and mechanisms that were being used to calculate the cost allocations between the two Councils.

It was then:

**RESOLVED**

1. That the content of the Annual Audit Letter and the Closure of the Audit Letter (as circulated in the presented agenda) be noted; and
2. That the Committee be in receipt of an annual report that outlined the methodology and mechanisms that were being used to calculate the cost allocations between the Council and West Devon Borough Council.

A.27/16

**APPOINTMENT OF AN EXTERNAL AUDITOR**

Members gave consideration to a report that sought a recommendation from the Committee to the Council regarding the arrangements for the future appointment of external auditors.

In discussion, the following points were raised:-

- (a) The Committee was advised that the vast majority of local authorities in Devon were opting into the appointing person arrangements made by the Public Sector Audit Arrangements (PSAA). Whilst accepting that the alternative option would enable the Council to have greater control and influence, it was also acknowledged that it would be far more expensive and resource intensive;
- (b) In respect of the hope that the Council would obtain a more competitive fee for its External Auditor, it was noted that, on average across the United Kingdom since 2013, external audit fees had dropped by 55%.

It was then:

**RECOMMENDED**

That the Council be **RECOMMENDED** to opt into the appointing person arrangements made by the Public Sector Audit Arrangements (PSAA) for the appointment of external auditors.

A.28/16

**UPDATE ON PROGRESS ON THE 2016/17 INTERNAL AUDIT PLAN**

A report was considered that informed Members of the principal activities and findings of the Council's Internal Audit team for 2016/17 to 1 December 2016 by:

- providing a summary of the main issues raised by completed individual audits; and
- showing the progress made by Internal Audit against the 2016/17



annual internal audit plan, as approved by the Committee on 24 March 2016 (Minute A.38/15 refers).

In discussion, reference was made to:-

- (a) additional temporary resource. The Committee was informed that, at no cost to the Council, an additional temporary resource would be supporting the Internal Audit Service in the next few weeks to deliver three specific pieces of work on the 2016/17 Internal Audit Plan;
- (b) an audit opinion whereby 'improvements are required'. In such instances, it was noted that Internal Audit officers would discuss their findings with both operational and senior managers, who would be required to provide a response and an action plan. Furthermore, it would be a requirement for the action plan to include the name of an officer who would be responsible for improvements and a target date for implementation.

When questioned further, Members noted that any fundamental weaknesses that were found during an audit would be immediately reported to the Council's Senior Leadership Team, with the Audit Committee retaining the ability to call senior officers to account at a future meeting;

- (c) the stores (stock control and security) audit. For clarity, it was confirmed that the initial audit in this respect had now been revisited and improvements had since been made to improve the security at the depots;
- (d) the Development Control audits. Officers confirmed that these audits were to commence imminently and it was anticipated that the findings would be reported to the Audit Committee meeting in June 2017.

It was then:

**RESOLVED**

That the progress made against the 2016/17 internal audit plan, and any key issues arising, be noted.

(Meeting commenced at 10.00 am and finished at 11.25 am)

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Chairman

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## **Private & confidential**

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Our ref SHDC/15-16/GrantLett

Contact

28 February 2017

Dear Lisa

## **South Hams District Council - Certification of claims and returns - annual report 2015/16**

Public Sector Audit Appointments requires its external auditors to prepare an annual report on the claims and returns certified for each audited body. This letter is our annual report for the certification work we have undertaken for 2015/16.

In 2015/16 we carried out certification work on only one claim/return, the Housing Benefit Subsidy claim. The certified value of the claim was £22.2 million, and we completed our work and certified the claim without qualification on 11 January 2017.

## **Matters arising**

Our certification work on Housing Subsidy Benefit claim included:

- agreeing standard rates, such as for allowances and benefit incomes, to the DWP Circular communicating the value of each rate for the year;
- sample testing of benefit claims to confirm that the entitlement had been correctly calculated and was supported by appropriate evidence;
- undertaking an analytical review of the claim form considering year-on-year variances and key ratios;
- confirming that the subsidy claim had been prepared using the correct benefits system version; and
- completing testing in relation to modified schemes payments, uncashed cheques and verifying the accurate completion of the claim form.

Our work identified that the headline cells for both Rent Allowances and Non-HRA Rent Rebates did not agree to the relevant reconciliation cells. This was a result of manual adjustments made as part of the reconciliation process not being reflected in all relevant cells. This claim was amended as a result of this, with the total value of the claim increasing by £464. As this was a minor, clerical, error in the preparation to the return we have made no recommendations to the Council to improve its claim's completion process.

**Certification work fees**

Public Sector Audit Appointments set an indicative fee for our certification work in 2015/16 of £7,670. Our actual fee was the same as the indicative fee, and this compares to the 2014/15 fee for this claim of £9,770.

Yours sincerely



Darren Gilbert  
Engagement Lead

This report is addressed to the Council and has been prepared for the sole use of the Council. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website ([www.psaa.co.uk](http://www.psaa.co.uk)).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to [andrew.sayers@kpmg.co.uk](mailto:andrew.sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing [generalenquiries@psaa.co.uk](mailto:generalenquiries@psaa.co.uk), by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

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# External Audit Plan 2016/2017

South Hams District Council

14 March 2017



# The Local Government Landscape



Page 12



## Financial Statement Audit



The main changes to the Code of Practice on Local Authority Accounting in 2016/17 relate to the format of the Comprehensive Income & Expenditure Statement (see page 6) and introduction of a new primary statement (the Expenditure and Funding Analysis) which will result in a significant change to the presentation of the primary financial statements. There are no significant changes to the underlying accounting framework that the Authority needs to comply with.

### Materiality

Materiality for planning purposes has been based on last year's expenditure and set at **£1,400,000**.

We are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance and this has been set at **£70,000**.

### Significant risks

Those risks requiring specific audit attention and procedures to address the likelihood of a material financial statement error have been identified as:

- Significant changes in the pension liability due to LGPS Triennial Valuation;
- Business Rates Provisions; and
- Allocation of shared cost (considered as part of our work over management override of controls).

### Other areas of audit focus

Those risks with less likelihood of giving rise to a material error but which are nevertheless worthy of audit understanding have been identified as:

- Changes in CIPFA Code of Practice; and
- Change in accounting policy relating to accruals deminimis threshold.

See pages 3 to 8 for more details.



## Value for Money Arrangements work



Our risk assessment regarding your arrangements to secure value for money have identified the following VFM significant risks:

- Delivery of savings plans; and
- T18 Transformation Programme.

See pages 9 to 13 for more details.

## Logistics



Our team is:

- Darren Gilbert – Director;
- Adam Bunting – Manager; and
- Monica Tirados – Assistant manager.

More details are on **page 16**.

Our work will be completed in four phases from January to September 2017 and our key deliverables are this Audit Plan and a Report to those charged with Governance as outlined on **page 15**.

Our fee for the audit is £43,404 (£43,404 2015/2016) see **page 14**.

# Introduction

## Background and Statutory responsibilities

This document supplements our Audit Fee Letter 2016/17 presented to you in April 2016, which also sets out details of our appointment by Public Sector Audit Appointments Ltd (PSAA).

Our statutory responsibilities and powers are set out in the Local Audit and Accountability Act 2014 and the National Audit Office's Code of Audit Practice.

Our audit has two key objectives, requiring us to audit/review and report on your:

- *Financial statements (including the Annual Governance Statement)*: Providing an opinion on your accounts; and
- *Use of resources*: Concluding on the arrangements in place for securing economy, efficiency and effectiveness in your use of resources (the value for money conclusion).

The audit planning process and risk assessment is an on-going process and the assessment and fees in this plan will be kept under review and updated if necessary.

## Acknowledgements

We would like to take this opportunity to thank officers and Members for their continuing help and co-operation throughout our audit work.

## Financial Statements Audit

Our financial statements audit work follows a four stage audit process which is identified below. Appendix 1 provides more detail on the activities that this includes. This report concentrates on the Financial Statements Audit Planning stage of the Financial Statements Audit.



## Value for Money Arrangements Work

Our Value for Money (VFM) Arrangements Work follows a five stage process which is identified below. Page 9 provides more detail on the activities that this includes. This report concentrates on explaining the VFM approach for the 2016/17 [and the findings of our VFM risk assessment].







## Financial Statements Audit Planning

Our planning work takes place during January to February 2017. This involves the following key aspects:

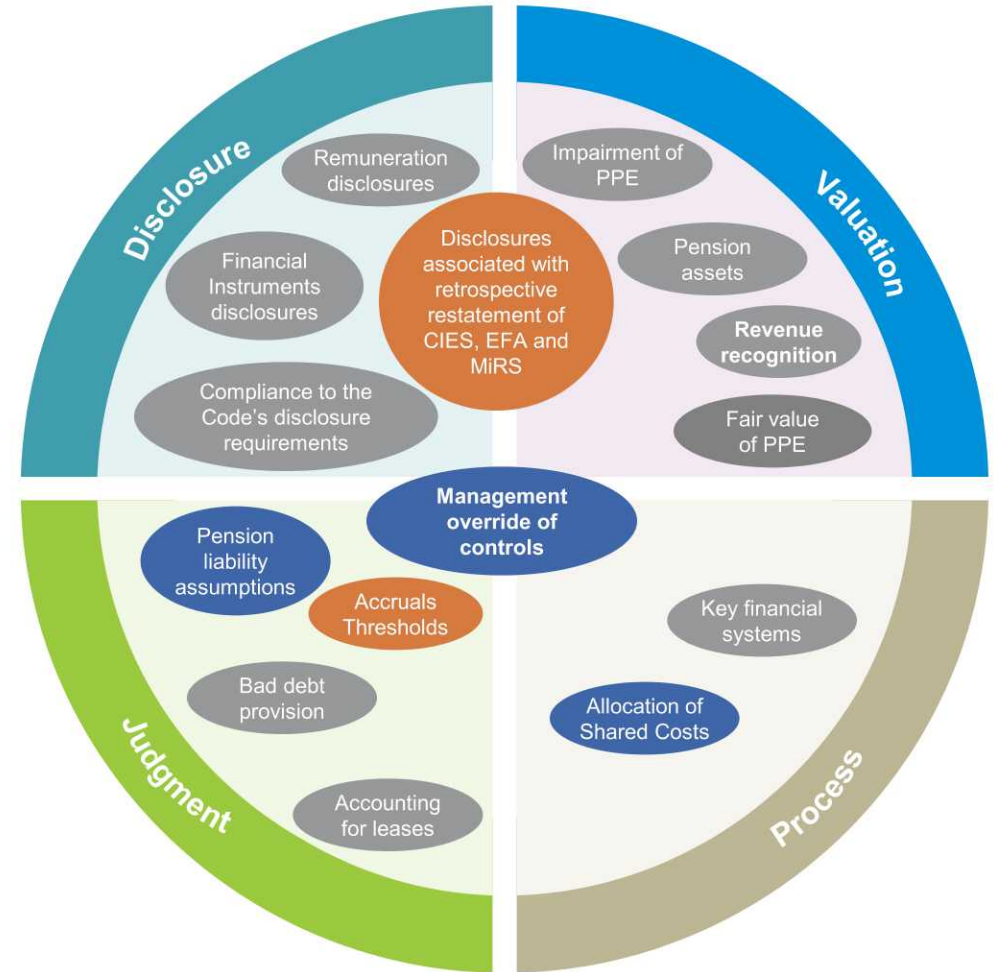
- Risk assessment;
- Determining our materiality level; and
- Issuing this audit plan to communicate our audit strategy.

## Risk assessment

Professional standards require us to consider two standard risks for all organisations. We are not elaborating on these standard risks in this plan but consider them as a matter of course in our audit and will include any findings arising from our work in our ISA 260 Report.

- **Management override of controls** – Management is typically in a powerful position to perpetrate fraud owing to its ability to manipulate accounting records and prepare fraudulent financial statements by overriding controls that otherwise appear to be operating effectively. Our audit methodology incorporates the risk of management override as a default significant risk. In line with our methodology, we carry out appropriate controls testing and substantive procedures, including over journal entries, accounting estimates and significant transactions that are outside the normal course of business, or are otherwise unusual. We will also undertake specific work in relation to the way in which costs shared with West Devon Borough Council are apportioned between the two councils.
- **Fraudulent revenue recognition** – We do not consider this to be a significant risk for local authorities as there are limited incentives and opportunities to manipulate the way income is recognised. We therefore rebut this risk and do not incorporate specific work into our audit plan in this area over and above our standard fraud procedures.

The diagram opposite identifies, significant risks and other areas of audit focus, which we expand on overleaf. The diagram also identifies a range of other areas considered by our audit approach.



Keys: ● Significant risk ● Other area of audit focus ● Example other areas considered by our approach



## Significant Audit Risks

Those risks requiring specific audit attention and procedures to address the likelihood of a material financial statement error.

### Risk : Significant changes in the pension liability due to LGPS Triennial Valuation

During the year, the Local Government Pension Scheme for Devon County (the Pension Fund) has undergone a triennial valuation with an effective date of 31 March 2016 in line with the Local Government Pension Scheme (Administration) Regulations 2013. The Authority's share of pensions assets and liabilities is determined in detail, and a large volume of data is provided to the actuary in order to carry out this triennial valuation.

The pension liability numbers to be included in the financial statements for 2016/17 will be based on the output of the triennial valuation rolled forward to 31 March 2017. For 2017/18 and 2018/19 the actuary will then roll forward the valuation for accounting purposes based on more limited data.

There is a risk that the data provided to the actuary for the valuation exercise is inaccurate and that these inaccuracies affect the actuarial figures in the accounts. Most of the data is provided to the actuary by Devon County Council, which administers the Pension Fund.

**Approach :** As part of our audit, we will agree any data provided by the Authority to the actuary, back to the relevant systems and reports from which it was derived, in addition to checking the accuracy of this data.

We will also liaise with Grant Thornton who are the auditors of the Pension Fund, where this data was provided by the Pension Fund on the Authority's behalf to check the completeness and accuracy such data.

### Risk : Allocation of Shared Costs

The Authority operates on a shared service basis with its neighbour, West Devon Borough Council. As a result of this arrangement, costs are initially borne by each council individually and then an exercise is undertaken in order to ensure that these are shared on an appropriate and consistent basis. This is essential to ensuring that the Authority recognises its full costs and to prevent cross subsidy between the two councils. In order to operate effectively, the allocation of costs must be undertaken on an appropriate basis which reflects the nature of the underlying activities and the way in which resources are consumed.

**Approach :** Building upon our work undertaken during the 2015/16 audit, we will review the way in which shared costs have been allocated to the Authority and ensure that:

1. The basis of allocation is appropriate and reflects the nature of the activities involved;
2. The allocation basis, and any changes from prior year, has been approved appropriately by management and is subject to appropriate review; and
3. The allocation has been appropriately calculated and the resulting costs recognised.



## Significant Audit Risks (cont.)

### **Risk : Business Rates Appeals**

As a result of the localisation of non-domestic rates, the Authority has assumed responsibility in relation to payments arising from valuation appeals. There is currently a potentially significant appeal awaiting conclusion in relation to a property located within the Authority's boundaries. Whilst the exact outcome is still to be determined, there is a risk that the Authority will be liable to significant back payment to 1 April 2010 as well as ongoing reductions to annual non-domestic rates income. As a result the Authority's NNDR3 return for 2015/16 included a significant increase of £26.7 million in the appeals provision. Whilst this would be shared with Central Government, Devon County Council and Devon & Somerset Fire & Rescue through the Collection Fund, the impact on the Authority would still be material as the Council receives 40% of non-domestic rates income and costs, resulting in the Authority being liable for £10.7 million of the total appeal.

**Approach :** During 2015/16 we considered the provision which the Authority has included in its financial statements in relation to business rates appeals. As a result of this we confirmed that whilst the provision was highly cautious it was not inappropriate under the applicable accounting standards given the continued uncertainty over the final outcome of the related appeal made to the other local authority.

We will revisit this matter during our audit work in order to assess whether any further progress has been made and the impact that this has upon the level of provision held.





## Other areas of audit focus

Those risks with less likelihood of giving rise to a material error but which are nevertheless worthy of audit understanding.

### Area of Focus : Changes in the CIPFA Code of Practice

During past years, CIPFA has been working with stakeholders to develop better accountability through the financial statements as part of its 'telling the whole story' project. The key objective of this project was to make Local Government accounts more understandable and transparent to the reader in terms of how the Councils are funded and how they use the funding to serve the local population. Outcome of this project resulted in two main changes in respect of the 2016-17 Local Government Accounting Code (Code) as follows:

- Allowing local authorities to report on the same basis as they are organised by removing the requirement for the Service Reporting Code of Practice (SeRCOP) to be applied to the Comprehensive Income and Expenditure Statement (CIES); and
- Introducing an Expenditure and Funding Analysis (EFA) which provides a direct reconciliation between the way local authorities are funded and prepare their budget and the CIES. This analysis is supported by a streamlined Movement in Reserves Statement (MIRS) and replaces the current segmental reporting note.

As a result of these changes, retrospective restatement of CIES (cost of services), EFA and MiRS is required from 1 April 2016 in the Statement of Accounts.

New disclosure requirements and restatement of accounts require compliance with relevant guidance and correct application of applicable Accounting Standards.

Though less likely to give rise to a material error in the financial statements, this is an important material disclosure change in this year's accounts, worthy of audit understanding.

**Approach** : As part of our audit we will;

- Assess how the Authority has actioned the revised disclosure requirements for the CIES, MiRS and the new EFA statement as required by the Code; and
- Check the restated numbers and associated disclosures for accuracy, correct presentation and compliance with applicable Accounting Standards and Code guidance

### Area of Focus : Change in accounting policy relating to accruals deminimis threshold

During 2015/16 the Authority amended its policy in relation to the recognition of revenue accruals to increase the deminimis threshold from £1,000 to £2,500. A further revision is planned for 2016/17 which will see the threshold increase to £5,000. These changes have been made as part of the overall review of closedown arrangements by the Finance Community of Practice in order to identify the changes that are needed to support faster close of the accounts given the change to statutory deadlines for 2017/18 onwards.

**Approach** : We have considered the impact that such a change would have had had it been applied to the 2015/16 financial statements and are satisfied that the new threshold would not result in a significant change. As part of our audit work we will further consider the change in accruals levels between 2015/16 and 2016/17 and confirm that the policy change has been accounted for appropriately. We will quantify the impact of this policy change and report this to the Committee.



## Materiality

We are required to plan our audit to determine with reasonable confidence whether or not the financial statements are free from material misstatement. An omission or misstatement is regarded as material if it would reasonably influence the user of financial statements. This therefore involves an assessment of the qualitative and quantitative nature of omissions and misstatements.

Generally, we would not consider differences in opinion in respect of areas of judgement to represent 'misstatements' unless the application of that judgement results in a financial amount falling outside of a range which we consider to be acceptable.

Materiality for planning purposes has been set at £1,400,000 which equates to 1.9 percent of gross expenditure.

We design our procedures to detect errors in specific accounts at a lower level of precision.

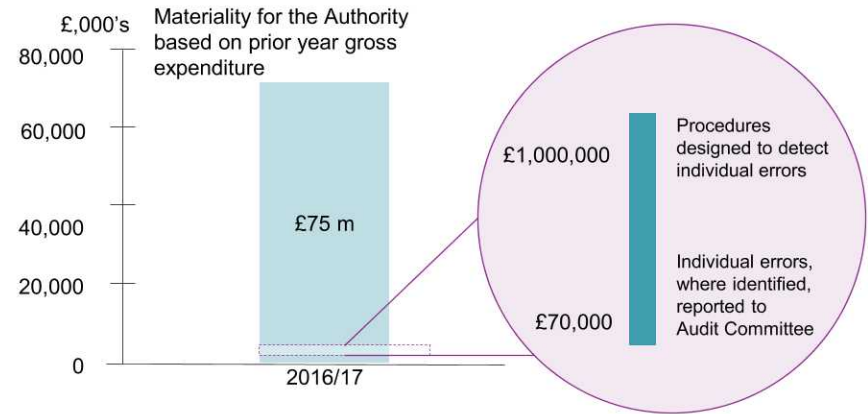
## Reporting to the Audit Committee

Whilst our audit procedures are designed to identify misstatements which are material to our opinion on the financial statements as a whole, we nevertheless report to the Audit Committee any unadjusted misstatements of lesser amounts to the extent that these are identified by our audit work.

Under ISA 260(UK&I) 'Communication with those charged with governance', we are obliged to report uncorrected omissions or misstatements other than those which are 'clearly trivial' to those charged with governance. ISA 260 (UK&I) defines 'clearly trivial' as matters that are clearly inconsequential, whether taken individually or in aggregate and whether judged by any quantitative or qualitative criteria.

In the context of the Authority, we propose that an individual difference could normally be considered to be clearly trivial if it is less than £70,000.

If management have corrected material misstatements identified during the course of the audit, we will consider whether those corrections should be communicated to the Audit Committee to assist it in fulfilling its governance responsibilities.





### Background to approach to VFM work

The Local Audit and Accountability Act 2014 requires auditors of local government bodies to be satisfied that the authority 'has made proper arrangements for securing economy, efficiency and effectiveness in its use of resources'.

This is supported by the Code of Audit Practice, published by the NAO in April 2015, which requires auditors to 'take into account their knowledge of the relevant local sector as a whole, and the audited body specifically, to identify any risks that, in the auditor's judgement, have the potential to cause the auditor to reach an inappropriate conclusion on the audited body's arrangements.'

The VFM approach is fundamentally unchanged from that adopted in 2015/2016 and the process is shown in the diagram below. The diagram overleaf shows the details of the criteria for our VFM work.







## Overall criterion

In all significant respects, the audited body had proper arrangements to ensure it took properly informed decisions and deployed resources to achieve planned and sustainable outcomes for taxpayers and local people.

### Informed decision making

#### Proper arrangements:

- Acting in the public interest, through demonstrating and applying the principles and values of sound governance.
- Understanding and using appropriate and reliable financial and performance information to support informed decision making and performance management.
- Reliable and timely financial reporting that supports the delivery of strategic priorities.
- Managing risks effectively and maintaining a sound system of internal control.

### Sustainable resource deployment

#### Proper arrangements:

- Planning finances effectively to support the sustainable delivery of strategic priorities and maintain statutory functions.
- Managing and utilising assets to support the delivery of strategic priorities.
- Planning, organising and developing the workforce effectively to deliver strategic priorities.

### Working with partners and third parties

#### Proper arrangements:

- Working with third parties effectively to deliver strategic priorities.
- Commissioning services effectively to support the delivery of strategic priorities.
- Procuring supplies and services effectively to support the delivery of strategic priorities.

# Value for money arrangements work (cont.)



VFM audit stage	Audit approach
<p>VFM audit risk assessment</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">Page 22</p>	<p>We consider the relevance and significance of the potential business risks faced by all local authorities, and other risks that apply specifically to the Authority. These are the significant operational and financial risks in achieving statutory functions and objectives, which are relevant to auditors' responsibilities under the <i>Code of Audit Practice</i>.</p> <p>In doing so we consider:</p> <ul style="list-style-type: none"> <li>■ The Authority's own assessment of the risks it faces, and its arrangements to manage and address its risks;</li> <li>■ Information from the Public Sector Auditor Appointments Limited VFM profile tool;</li> <li>■ Evidence gained from previous audit work, including the response to that work; and</li> <li>■ The work of other inspectorates and review agencies.</li> </ul>
<p>Linkages with financial statements and other audit work</p>	<p>There is a degree of overlap between the work we do as part of the VFM audit and our financial statements audit. For example, our financial statements audit includes an assessment and testing of the Authority's organisational control environment, including the Authority's financial management and governance arrangements, many aspects of which are relevant to our VFM audit responsibilities.</p> <p>We have always sought to avoid duplication of audit effort by integrating our financial statements and VFM work, and this will continue. We will therefore draw upon relevant aspects of our financial statements audit work to inform the VFM audit.</p>
<p>Identification of significant risks</p>	<p>The Code identifies a matter as significant '<i>if, in the auditor's professional view, it is reasonable to conclude that the matter would be of interest to the audited body or the wider public. Significance has both qualitative and quantitative aspects.</i>'</p> <p>If we identify significant VFM risks, then we will highlight the risk to the Authority and consider the most appropriate audit response in each case, including:</p> <ul style="list-style-type: none"> <li>■ Considering the results of work by the Authority, inspectorates and other review agencies; and</li> <li>■ Carrying out local risk-based work to form a view on the adequacy of the Authority's arrangements for securing economy, efficiency and effectiveness in its use of resources.</li> </ul>

# Value for money arrangements work (cont.)



VFM audit stage	Audit approach
<p>Assessment of work by other review agencies</p> <p>and</p> <p>Delivery of local risk based work</p>	<p>Depending on the nature of the significant VFM risk identified, we may be able to draw on the work of other inspectorates, review agencies and other relevant bodies to provide us with the necessary evidence to reach our conclusion on the risk.</p> <p>If such evidence is not available, we will instead need to consider what additional work we will be required to undertake to satisfy ourselves that we have reasonable evidence to support the conclusion that we will draw. Such work may include:</p> <ul style="list-style-type: none"> <li>■ Meeting with senior managers across the Authority;</li> <li>■ Review of minutes and internal reports;</li> <li>■ Examination of financial models for reasonableness, using our own experience and benchmarking data from within and without the sector.</li> </ul>
<p>Concluding on VFM arrangements</p>	<p>At the conclusion of the VFM audit we will consider the results of the work undertaken and assess the assurance obtained against each of the VFM themes regarding the adequacy of the Authority's arrangements for securing economy, efficiency and effectiveness in the use of resources.</p> <p>If any issues are identified that may be significant to this assessment, and in particular if there are issues that indicate we may need to consider qualifying our VFM conclusion, we will discuss these with management as soon as possible. Such issues will also be considered more widely as part of KPMG's quality control processes, to help ensure the consistency of auditors' decisions.</p>
<p>Reporting</p>	<p>On the following page, we report the results of our initial risk assessment.</p> <p>We will update our assessment throughout the year should any additional issues present themselves and report against these in our ISA260.</p> <p>We will report on the results of the VFM audit through our ISA 260 Report. This will summarise any specific matters arising, and the basis for our overall conclusion.</p> <p>The key output from the work will be the VFM conclusion (i.e. our opinion on the Authority's arrangements for securing VFM), which forms part of our audit report.</p>

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## Significant VFM Risks

Those risks requiring specific audit attention and procedures to address the likelihood that proper arrangements are not in place to deliver value for money.

### Risk : Delivery of Savings Plans

The Authority has identified the need to make savings of £1.3m in 2016/17. The current forecast shows that the Authority will deliver an overspend of approximately £27,000.

The Authority's budget for 2017/18 includes savings of £0.9m. Subsequent years show further funding gaps however, resulting in a total net budget gap of £0.6m for the period 2018/19 to 2021/22. Further significant savings will be required in 2018/19 onwards to address future reductions to local authority funding alongside service cost and demand pressures. The need for savings will continue to have a significant impact on the Authority's financial resilience.

**Approach :** As part of our additional risk based work, we will review the controls the Authority has in place to ensure financial resilience, specifically that the Medium Term Financial Plan has duly taken into consideration factors such as funding reductions, salary and general inflation, demand pressures, restructuring costs and sensitivity analysis given the degree of variability in the above factors.

### Risk : T18 Transformation Programme

As part of its response to the central government funding reductions, and in order to improve the efficiency of its operations, the Authority has initiated a major transformation programme ("T18"). This programme resulted in significant changes to the way in which services are delivered and back office functions undertaken. As part of the transformation programme, all staff roles and responsibilities have been redefined and a more unified model has been developed whereby staff act as key points of contact for service users and work across services rather than operating as separate teams.

The establishment of this new working model has resulted in significant one-off investment costs, both in terms of redundancy costs and those relating to the establishment of new processes and delivery structures. In addition, the allocation of temporary resources was required during 2015/16 and into the current year as a result of delays in IT systems being implemented to support new delivery models. Such costs will be exceeded by the ongoing recurrent annual savings that will be achieved by way of the programme.

**Approach :** We will review the way in which the Authority has monitored the costs and savings arising from the T18 transformation programme. We will also consider the way in which the progress of the programme has been reported to Members to enable performance to be monitored.

In relation to this work, we will consider the findings of the work undertaken by internal audit as well as place reliance upon our own accounts audit work in relation to redundancy costs.

In addition, we are aware that the Council's plans to establish a Local Authority Controlled Company are now not proceeding. We will maintain a watching brief in relation to the development of alternative plans for the future structure of the Council's operations and the delivery of services.

## Whole of government accounts (WGA)

We are required to review your WGA consolidation and undertake the work specified under the approach that is agreed with HM Treasury and the National Audit Office. Deadlines for production of the pack and the specified approach for 2016/17 have not yet been confirmed.

## Elector challenge

The Local Audit and Accountability Act 2014 gives electors certain rights. These are:

- The right to inspect the accounts;
- The right to ask the auditor questions about the accounts; and
- The right to object to the accounts.

As a result of these rights, in particular the right to object to the accounts, we may need to undertake additional work to form our decision on the elector's objection. The additional work could range from a small piece of work where we interview an officer and review evidence to form our decision, to a more detailed piece of work, where we have to interview a range of officers, review significant amounts of evidence and seek legal representations on the issues raised.

The costs incurred in responding to specific questions or objections raised by electors is not part of the fee. This work will be charged in accordance with the PSAA's fee scales.

## Our audit team

Our audit team will be led Darren Gilbert and Adam Bunting who provide continuity from last year. The on-site audit work will be led by Monica Tirados. Appendix 2 provides more details on specific roles and contact details of the team.

## Reporting and communication

Reporting is a key part of the audit process, not only in communicating the audit findings for the year, but also in ensuring the audit team are accountable to you in addressing the issues identified as part of the audit strategy. Throughout the year we will communicate with you through meetings with Finance Community of Practice Lead and the Audit Committee. Our communication outputs are included in Appendix 1.

## Independence and Objectivity

Auditors are also required to be independent and objective. Appendix 3 provides more details of our confirmation of independence and objectivity.

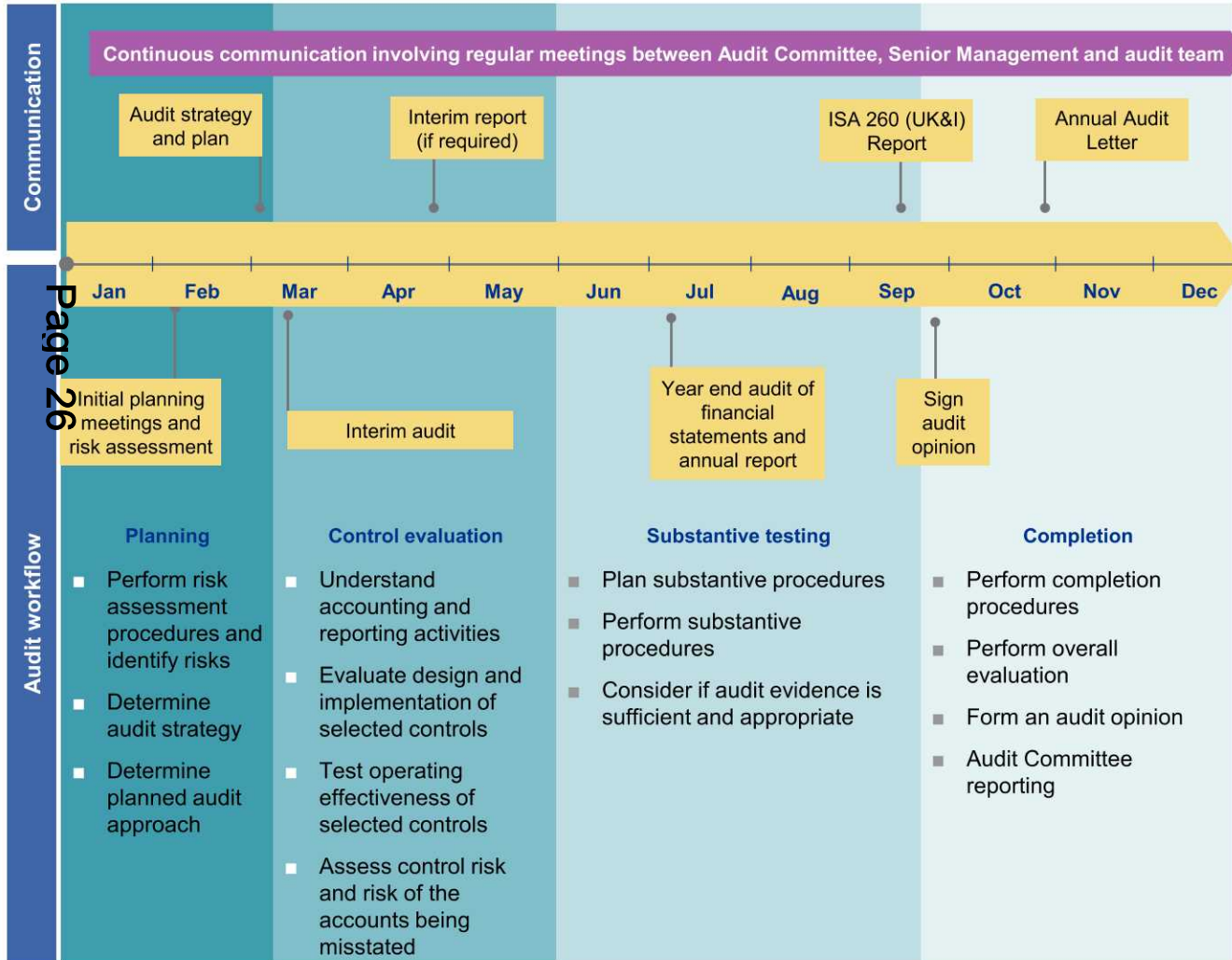
## Audit fee

*Our Audit Fee Letter 2016/2017* presented to you in April 2016 first set out our fees for the 2016/2017 audit. This letter also sets out our assumptions. We have not considered it necessary to make any changes to the agreed fees at this stage so the planned fee remains £43,404 which is the same as the prior year.

Our audit fee may be varied later, subject to agreement with PSAA, for changes in the Code, specifically this year the changes in relation to the disclosure associated with retrospective restatement of CIES, EFA and MiRS. If such a variation is agreed with PSAA, we will report that to you in the due course.



# Appendix 1: Key elements of our financial statements audit approach



## Driving more value from the audit through data and analytics

Technology is embedded throughout our audit approach to deliver a high quality audit opinion. Use of Data and Analytics (D&A) to analyse large populations of transactions in order to identify key areas for our audit focus is just one element. We strive to deliver new quality insight into your operations that enhances our and your preparedness and improves your collective 'business intelligence.' Data and Analytics allows us to:

- Obtain greater understanding of your processes, to automatically extract control configurations and to obtain higher levels assurance.
- Focus manual procedures on key areas of risk and on transactional exceptions.
- Identify data patterns and the root cause of issues to increase forward-looking insight.

We anticipate using data and analytics in our work around key areas such as accounts payable and journals. We also expect to provide insights from our analysis of these tranches of data in our reporting to add further value from our audit.

# Appendix 2: Audit team



Your audit team has been drawn from our specialist public sector assurance department. Darren and Adam were both part of the South Hams District Council audit last year. Monica is new to the team for this year.



<b>Name</b>	Darren Gilbert
<b>Position</b>	Director
	'My role is to lead our team and ensure the delivery of a high quality, valued added external audit opinion.  I will be the main point of contact for the Audit Committee and Executive Officers'

**Darren Gilbert**

Director

+44 (0)292 046 8205

darren.gilbert@kpmg.co.uk

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<b>Name</b>	Adam Bunting
<b>Position</b>	Senior Manager/Manager
	'I provide quality assurance for the audit work and specifically any technical accounting and risk areas.  I will work closely with Darren to ensure we add value.  I will liaise with the Finance Community of Practice Lead and other Executive Officers.'

**Adam Bunting**

Manager

+44 (0)117 905 4470

adam.bunting@kpmg.co.uk



<b>Name</b>	Monica Tirados
<b>Position</b>	Assistant Manager
	'I will be responsible for the on-site delivery of our work and will supervise the work of our audit assistants.'

**Monica Tirados**

Assistant Manager

+44 (0)799 056 6646

monica.tiradox@kpmg.co.uk





# Appendix 3: Independence and objectivity requirements

## Independence and objectivity

Professional standards require auditors to communicate to those charged with governance, at least annually, all relationships that may bear on the firm's independence and the objectivity of the audit engagement partner and audit staff. The standards also place requirements on auditors in relation to integrity, objectivity and independence.

The standards define 'those charged with governance' as 'those persons entrusted with the supervision, control and direction of an entity'. In your case this is the Audit Committee.

KPMG LLP is committed to being and being seen to be independent. APB Ethical Standards require us to communicate to you in writing all significant facts and matters, including those related to the provision of non-audit services and the safeguards put in place which, in our professional judgement, may reasonably be thought to bear on KPMG LLP's independence and the objectivity of the Engagement Lead and the audit team.

Further to this auditors are required by the National Audit Office's Code of Audit Practice to:

- Carry out their work with integrity, independence and objectivity;
- Be transparent and report publicly as required;
- Be professional and proportional in conducting work;
- Be mindful of the activities of inspectorates to prevent duplication;
- Take a constructive and positive approach to their work;
- Comply with data statutory and other relevant requirements relating to the security, transfer, holding, disclosure and disposal of information.

PSAA's Terms of Appointment includes several references to arrangements designed to support and reinforce the requirements relating to independence, which auditors must comply with. These are as follows:

- Auditors and senior members of their staff who are directly involved in the management, supervision or delivery of PSAA audit work should not take part in political activity.

- No member or employee of the firm should accept or hold an appointment as a member of an audited body whose auditor is, or is proposed to be, from the same firm. In addition, no member or employee of the firm should accept or hold such appointments at related bodies, such as those linked to the audited body through a strategic partnership.
- Audit staff are expected not to accept appointments as Governors at certain types of schools within the local authority.
- Auditors and their staff should not be employed in any capacity (whether paid or unpaid) by an audited body or other organisation providing services to an audited body whilst being employed by the firm.
- Auditors appointed by the PSAA should not accept engagements which involve commenting on the performance of other PSAA auditors on PSAA work without first consulting PSAA.
- Auditors are expected to comply with the Terms of Appointment policy for the Engagement Lead to be changed on a periodic basis.
- Audit suppliers are required to obtain the PSAA's written approval prior to changing any Engagement Lead in respect of each audited body.
- Certain other staff changes or appointments require positive action to be taken by Firms as set out in the Terms of Appointment.

## Confirmation statement

We confirm that as of March 2017 in our professional judgement, KPMG LLP is independent within the meaning of regulatory and professional requirements and the objectivity of the Engagement Lead and audit team is not impaired.





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This report is addressed to the Authority and has been prepared for the sole use of the Authority. We take no responsibility to any member of staff acting in their individual capacities, or to third parties. We draw your attention to the Statement of Responsibilities of auditors and audited bodies, which is available on Public Sector Audit Appointment's website ([www.psa.co.uk](http://www.psa.co.uk)).

External auditors do not act as a substitute for the audited body's own responsibility for putting in place proper arrangements to ensure that public business is conducted in accordance with the law and proper standards, and that public money is safeguarded and properly accounted for, and used economically, efficiently and effectively.

We are committed to providing you with a high quality service. If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Darren Gilbert, the engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact the national lead partner for all of KPMG's work under our contract with Public Sector Audit Appointments Limited, Andrew Sayers, by email to [Andrew.Sayers@kpmg.co.uk](mailto:Andrew.Sayers@kpmg.co.uk). After this, if you are still dissatisfied with how your complaint has been handled you can access PSAA's complaints procedure by emailing [generalenquiries@psaa.co.uk](mailto:generalenquiries@psaa.co.uk) by telephoning 020 7072 7445 or by writing to Public Sector Audit Appointments Limited, 3rd Floor, Local Government House, Smith Square, London, SW1P 3HZ.

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# Agenda Item 7

Report to: **Audit Committee**  
Date: **24 March 2016**  
Title: **2016/17 Internal Audit Plan**  
Portfolio Area: **Support Services**  
Wards Affected: **All**  
Relevant Scrutiny Committee: **Overview & Scrutiny Panel**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken:  
(e.g. referral on of recommendation or implementation of substantive decision)

Author: **Brenda Davis** Role: **Audit Manager**  
**Robert Hutchins** **Head of Partnership**

Contact: [Brenda.davis@swdevon.gov.uk](mailto:Brenda.davis@swdevon.gov.uk) **01803 861375**  
[Robert.hutchins@swdevon.gov.uk](mailto:Robert.hutchins@swdevon.gov.uk) **01392 383000**

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## Recommendations:

### It is recommended that:

- 1. The report be noted, and**
- 2. The proposed Internal Audit Plan for 2017/18 at Appendix A be approved.**

## 1. Executive summary

- 1.1 The purpose of this report is to provide Members with the opportunity to review and comment upon the proposed internal audit plan for 2017/18.
- 1.2 Whilst South Hams District Council and West Devon Borough Council operate as two unique councils, the majority of the Councils' staffing

structure is fully shared with fully integrated systems; to reflect that working arrangement, the 2017/18 audit plan is now presented as one combined plan. Where there are risks or issues that relate specifically to one council and not the other, the audit plan will be varied to include those areas of work as appropriate.

- 1.3 The report provides information on the legislative requirement for local authorities to provide an Internal Audit (IA) service in accordance with the Accounts and Audit Regulations and Public Sector Internal Audit Standards; the need for an annual risk-based IA plan to be prepared; and the methodology of identifying the audit needs for the Authority.
- 1.4 The 2017/18 audit plan sets out the proposed audit resource allocated to each audit area, although the plan needs to remain flexible to be able to respond to any changing risks and priorities of the Authority given the significant changes across the public sector.

## **2. Background**

- 2.1 All principal Local Authorities, including South Hams District Council, are subject to the Accounts and Audit (England) Regulations 2015, which state:

“A relevant authority must undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards or guidance”.

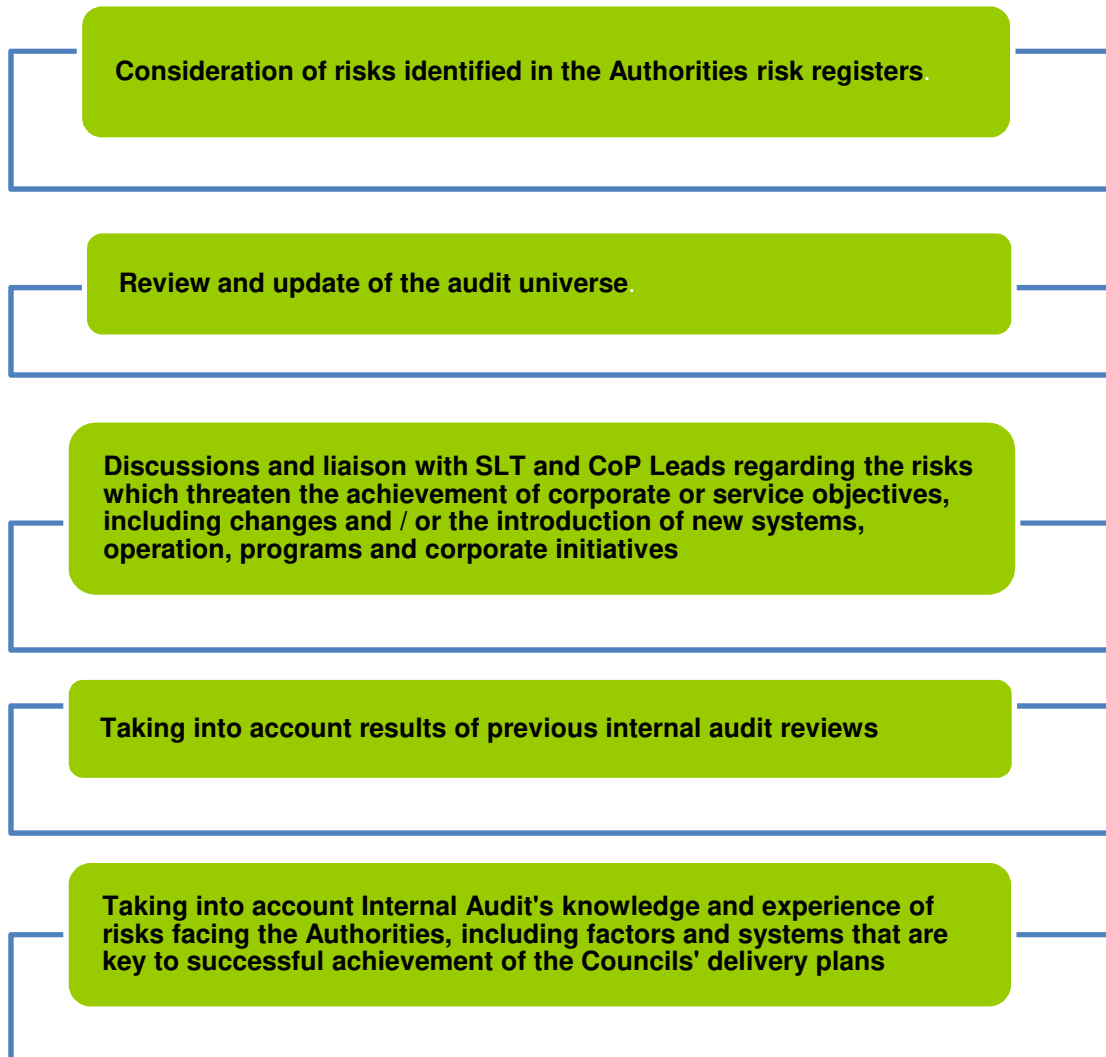
- 2.2 The Public Sector Internal Audit Standards (PSIAS) require that the Head of Internal Audit must “establish risk-based plans to determine the priorities of the internal audit activity, consistent with the organisation’s goals”. When completing these plans, the Head of Internal Audit should take account of the organisation’s risk management framework. The plan should be adjusted and reviewed, as necessary, in response to changes in the organisation’s business, risk, operations, programs, systems and controls. The plan must take account of the requirement to produce an internal audit opinion and assurance framework.
- 2.3 This audit plan has been drawn up, therefore, to enable an opinion to be provided at the end of the year in accordance with the above requirements.

## **3. Outcomes/outputs**

- 3.1 We employ a risk based priority audit planning tool to identify those areas where audit resources can be most usefully targeted. This involves scoring a range of systems, services and functions across both South Hams District Council and West Devon Borough Council, known as the “Audit Universe” using a number of factors/criteria. The final

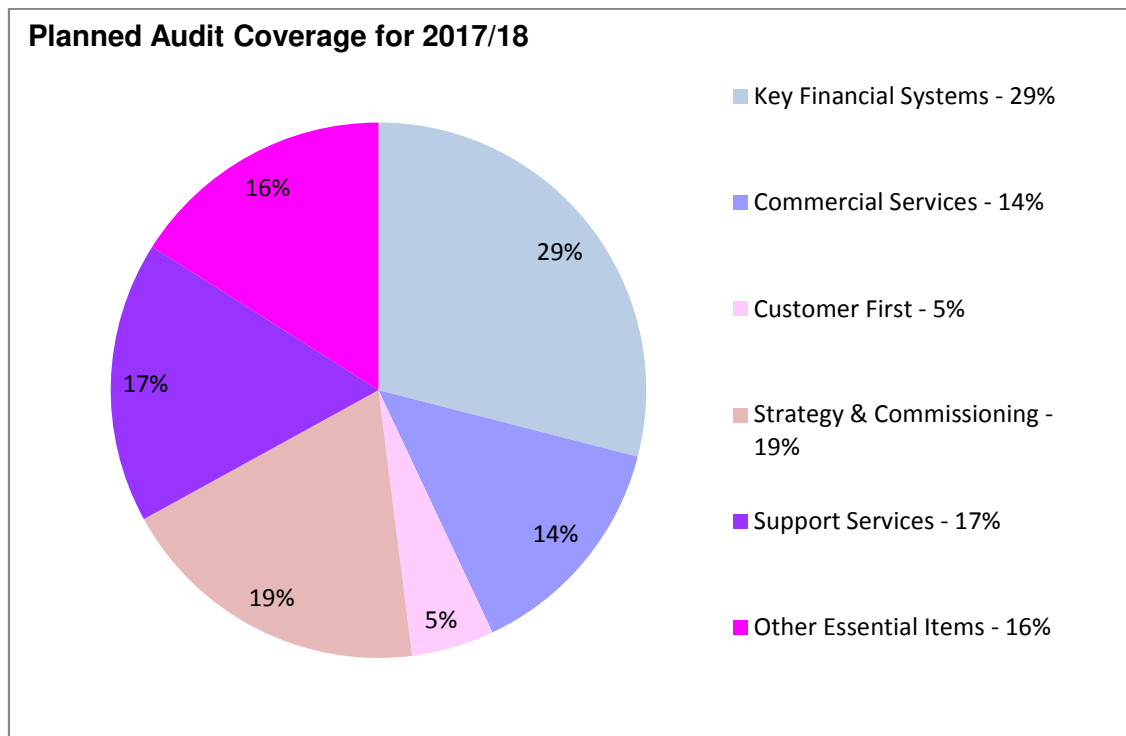
score, or risk factor for each area determines an initial schedule of priorities for audit attention, signified by High, Medium or Low.

The audit plan for 2017/18 has been created by:



3.2 The overall percentage of internal audit coverage proposed for each area of the audit plan is represented in the chart at figure 1 below. The combined planned audit coverage for 2017/18 totals 430 days, see Appendix A for the proposed detailed plan. It should be borne in mind that, in accordance with the Public Sector Internal Audit Standards, the plan needs to remain flexible to be able to respond to the changing risks and priorities of the Councils with any changes reported back to this Committee. To provide for some flexibility, the Internal Audit Plan includes a small contingency to allow for unplanned work.

**Figure 1**



3.3 Whilst the split of audit coverage appears small for Customer First, at 5%, it should be recognised that audits within other services incorporate an element of Customer First involvement. Council Tax and Housing Benefit are examples of this given the customer interaction that takes place. In addition, other functions, both within Customer First and other service areas, are covered on a rotational basis with work having been undertaken in 2016/17 on Planning Development (Enforcement), Section 106 monies, Car Parking and Street Cleaning.

#### **4. Options available and consideration of risk**

4.1 No alternative approach has been considered as the failure to develop a risk-based plan to determine the priorities of internal audit activity, which is consistent with the priorities of the organisation, would be in contravention of the Public Sector Internal Audit Standards and the Accounts and Audit Regulations 2015.

#### **5. Proposed Way Forward**

5.1 We will be flexible in our approach to ensure that the audit plan continues to reflect the changing risks and corporate priorities of the Council with the timetabling of audits agreed with management to

ensure our work is delivered at the most effective time for the organisation.

## 6. Implications

Implications	Relevant to proposals Y/N	Details and proposed measures to address
Legal/Governance	Y	<p>The Accounts and Audit Regulations 2015 issued by the Secretary of State require every local authority to undertake an effective internal audit to evaluate the effectiveness of its risk management, control and governance processes, taking into account public sector internal auditing standards.</p> <p>The work of the internal audit service assists the Council in maintaining high standards of public accountability and probity in the use of public funds. The service has a role in promoting robust service planning, performance monitoring and review throughout the organisation, together with ensuring compliance with the Council's statutory obligations.</p>
Financial	Y	There are no additional or new financial implications arising from this report. The cost of the internal audit team is in line with budget expectations.
Risk	Y	The work of the internal audit service is an intrinsic element of the Council's overall corporate governance, risk management and internal control framework.
Comprehensive Impact Assessment Implications		
Equality and Diversity	N	There are no specific equality and diversity issues arising from this report.
Safeguarding	N	There are no specific safeguarding issues arising from this report.
Community Safety, Crime and Disorder	N	There are no specific community safety, crime and disorder issues arising from this report.
Health, Safety and Wellbeing	N	There are no specific health, safety and wellbeing issues arising from this report.

Other implications	N	There are no other specific implications arising from this report.
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**Supporting Information**

**Appendices:**

There are no separate appendices to this report.

**Background Papers:**

None.

**Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes</b>
Relevant Exec Director sign off (draft)	<b>Yes</b>
Data protection issues considered	<b>Yes</b>
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	<b>N/A</b>





## Appendix A

<b>Proposed 2017/18 Combined Audit Plan for South Hams District Council and West Devon Borough Council</b>		
<b>KEY FINANCIAL SYSTEMS</b>		
Main Accounting System (inc budgetary control)	H	20
Creditor (Payments)	M	15
Debtors (Income Collection)	M	15
Payroll	H	15
Business Rates	M	15
Council Tax	H	15
Housing Benefits	M	20
Treasury Management	L	10
<b>KEY FINANCIAL SYSTEMS</b>		<b>125</b>
<b>COMMERCIAL SERVICES</b>		
Depots & Stores (S.Hams)	M	10
Salcombe Harbour (S.Hams)	H	10
Dartmouth Lower Ferry (S.Hams)	H	8
Environmental Services - Coastal Work (S.Hams)	M	8
Commercial Waste Follow-up (S.Hams)	M	4
Household Waste Follow-up (S.Hams)	M	4
Recycling Waste Follow-Up (S.Hams)	M	4
Health & Safety Follow-Up	M	3
Grounds Maintenance (Follow-up)	M	3
Markets	L	8
<b>COMMERCIAL SERVICES</b>		<b>62</b>
<b>CUSTOMER FIRST</b>		
Asset Management	M	5
Planning (Applications)	H	15
<b>CUSTOMER FIRST</b>		<b>20</b>
<b>STRATEGY &amp; COMMISSIONING</b>		
Contract Management – Leisure Contract Waste Contract (W.Devon)	M	20
Administration of Member Expenses	M	6
Partnerships & Partnership Management	M	10
Performance Management (KPI's & data quality)	M	20
LACC Lessons Learned Officers Group	M	5
Risk Management Follow-Up	M	15
Safeguarding (S11 self-assessment)	L	5
<b>STRATEGY &amp; COMMISSIONING</b>		<b>81</b>

<b>SUPPORT SERVICES</b>		
ICT Audit	H	25
Corporate Information Management (DPA/FOI Frameworks)	M	10
Business Continuity Follow-Up	H	5
Capital Expenditure & Receipts	M	15
Cash Collection	L	3
Recharging	M	10
Travel & Subsistence	M	4
<b>SUPPORT SERVICES</b>		<b>72</b>
<b>OTHER ESSENTIAL ITEMS</b>		
Audit Management including:- - Audit planning, - Monitoring & reporting, - Audit Committee		28
Annual Governance Statement		2
Exemptions from Financial Regulations		5
Grants		20
Contingency & Advice		15
<b>OTHER ESSENTIAL ITEMS</b>		<b>70</b>
<b>TOTAL AUDIT PLAN</b>		
		<b>430</b>

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Report to: **Audit Committee**  
Date: **23 March 2017**  
Title: **Review of the Council's Constitution**  
Portfolio Area: **Support Services (Cllr Wright)**  
Wards Affected: **All**

Urgent Decision: **N** Approval and clearance obtained: **N/a**

Date next steps can be taken: **Annual Meeting**

Author: **Catherine Bowen** Role: **Monitoring Officer**

Contact: [Catherine.Bowen@swdevon.gov.uk](mailto:Catherine.Bowen@swdevon.gov.uk)

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**Recommendation:**

**That the Audit Committee:**

- 1. Delegates to the Monitoring Officer any further amendments to the Contract Procedure Rules as a result of consultation with the Corporate Procurement Officer**
- 2. Recommends to Council that the amendments to the South Hams District Council Constitution (as summarised in paragraph 2 of the report and fully outlined on the website) be approved and that the revised Constitution is adopted at the Annual Meeting in May 2017**

**1. Executive summary**

- 1) The Council is legally required to formally adopt its Constitution at the Annual Meeting in May for the forthcoming municipal year.
- 2) The Audit Committee is responsible for an overview of the Constitution and for making any necessary recommendations to the Council and this report seeks to ensure that the Constitution is amended to reflect the changes that have either occurred in the Council over the previous year, or to implement any necessary changes to ensure that it is up to date, lawful and reflects the Council's current practices and priorities.

## **2. Background**

- 1) In order that the Audit Committee can make informed recommendations to the Council on the adoption of the Constitution at the Annual Meeting, the Committee is requested to review the Council's Constitution.
- 2) Changes to the Constitution are made throughout the year by the Council and through its consideration of recommendations arising from Committee minutes, and are effective from the date of approval (unless otherwise agreed by Council). Examples over the past year include:
  - Review (and changes to) the Development Management Delegation Scheme and site inspection protocol.
  - A review of the delegation of the licensing functions (December Council 2016).
  - Changes to the Delegation Scheme as a result of the reduction in the number of Group Managers and their respective areas of responsibility (February Council 2017).
- 3) In addition, the Monitoring Officer has delegated authority to make minor (or legal) amendments to the Constitution during the course of the year. For clarity, these changes are not shown as proposed amendments to the Constitution. The changes that have been made under these powers mainly relate to officer job titles and evolving areas of responsibility following the T18 implementation.
- 4) As part of the annual review, further amendments have been made and highlighted in yellow to the version of the Constitution marked 'Constitution Review 2017'. However, due to the large size of the Constitution, it has not been circulated with the agenda, but is available on request by contacting Member Services ([member.services@southhams.gov.uk](mailto:member.services@southhams.gov.uk)).
- 5) Members will note that most of the amendments made during this review are not significant as there has not been a major review of the Constitution's provisions this year. The changes are largely corrective or for clarification.
- 6) The exception to 5 above is the review of the Contract Procedure Rules which is attached separately to this report as Appendix A (summary of the changes) and Appendix B (proposed changes shown as tracked changes). Further work is continuing in aligning the Contract Procedure Rules with West Devon and Teignbridge in order to produce a better working document for the shared officers, and consistency of decision making. However, any major changes will be brought back to the Audit Committee for consideration.
- 7) It was envisaged that the Financial Procedure Rules would also be reviewed for consideration by this Committee during this financial year. However, due to the work on the Local Authority Company and other

pressures, this has not been possible. We anticipate that these Rules will be reviewed during the next financial year.

- 8) However, one change proposed now to the Finance Procedure Rules is the increase in the limit of asset disposals and acquisitions that are delegated to the Assets CoP Lead in consultation with the 151 Officer and the Portfolio Holder for Assets. These limits are currently £50,000 and it is proposed to increase the delegated authority limit to up to £300,000, with any acquisitions and disposals above those limits being referred to the Executive for decision. This proposal is currently being informally discussed with the Leader and the Portfolio Holder for Assets and a verbal update will be provided at the meeting.

### 3. Outcomes/outputs

- 1) The Council is required to have an up to date Constitution which reflects the law, its working practices together with best practice to ensure that it delivers efficient services and lawful decisions. The Constitution is a living document and changes are made throughout the year when necessary.

### 4. Options available and consideration of risk

- 1) The options are limited as the Council has a statutory duty to adopt its Constitution annually and to review that document to ensure that it is fit for purpose and reflects both statutory requirements and the Council's working practices.
- 2) If the Council does not review the Constitution there is risk that the Council may make unlawful decisions with a consequent risk of challenge.
- 3) Senior Officers have been consulted on the Constitution and any necessary amendments incorporated.

### 5. Proposed Way Forward

- 1) The Audit Committee is asked to review the Constitution and make any necessary recommendations to Council in order that the Constitution can be adopted at the Annual Meeting in May for the forthcoming year.

### 6. Implications

Implications	Relevant to proposals Y	Details and proposed measures to address
Legal/Governance	Y	The Local Government Act 2000 requires the Council to have (and to maintain) a Constitution. The Monitoring Officer must review the Constitution annually and make recommendations to the Audit Committee, who in turn must recommend its adoption to full Council. Only the Council can approve and adopt the Council's Constitution.

Financial	N	There are no direct financial implications to this report
Risk	Y	There is a risk arising from a failure to review the Constitution and approve the necessary changes because it may lead to unlawful decisions being taken by the Council.  By undertaking an annual review of the Constitution the Council mitigates this risk by ensuring that the Constitution is up to date and reflects current practice and law.
Comprehensive Impact Assessment Implications		
Equality and Diversity		None arising from this report
Safeguarding		n/a
Community Safety, Crime and Disorder		n/a
Health, Safety and Wellbeing		n/a
Other implications		n/a

### **Supporting Information**

#### **Background Papers:**

Constitution Review 2017

#### **Appendices:**

Appendix A: Summary of changes to the Contract Procedure Rules

Appendix B: Revised Contract Procedure Rules

## Changes to Contract Procedure Rules – March 2017

This update has been initiated due to minor changes to procurement practice and to bring the rules up to date with the use of electronic tools and internal processes.

<b>Contents</b>	
Updated titles and added sections 23 and 24 into contents table	
<b>Definitions</b>	
PQQ – now updated to SQ (Standard Questionnaire)	
<b>Officer Responsibilities</b>	
2.1.2	Included requirement for a business case to be approved before commencing procurement activity
<b>Exemptions to these Rules</b>	
3.1-3.5	Update to bring in line with current practice
3.6	Included the use of electronic signatures
3.15-3.18	Update to terminology
<b>Steps prior to purchase</b>	
5.3	Introduced requirement to consider Responsible Procurement Strategy and supporting policies
<b>Records</b>	
Update to best practice and in-line with procurement regulations.	
<b>Advertising, Framework Agreements</b>	
7.1	Increased the number of local suppliers who should be given the opportunity to participate in procurement activity below £50,000, where suppliers are selected for participation. This has been provided as a 'wherever possible' provision to accommodate procurement activity which may require specialist services or suppliers which are not available in the geographic boundary.
7.3.2	Removed due to updated procurement practice
7.5	The different procurement procedures available for officers to consider have been set out.
<b>Competition Requirements</b>	
8.1.1	Table: Updates for clarity and to be in line with actual processes followed
<b>Standards and Selection &amp; award criteria</b>	
10.1	Reference to Pre-Qualification Questionnaire removed as this has now been replaced with the Standard Questionnaire.
10.4	Highest price removed as this is in relation to the disposal of assets and set out in the Finance Procedure Rules
<b>Shortlisting</b>	
12.4	Update to procurement practice
<b>Submission, receipt and opening of tenders/quotations</b>	
13.2-13.3	Updated to reflect current practice
13.4	Updated to capture process through use of electronic tendering system
13.6-13.10	Updated to capture process now procurement activity conducted electronically rather than by the receipt of hard copy submissions
<b>Clarifications</b>	
14.2	Post tender negotiations at this stage are not permitted through the procurement process.
<b>Evaluation, award of contract and debriefing suppliers</b>	
15.4	Disposal removed as this is a duplication of what is set out in Finance Procedure Rules
15.6-15.8	Included requirement for internal approval to be obtained before an officer can award a contract following procurement activity above £50K.



15.10	Removed due to being captured under the shortlisting section in 12.4.
15.13-15.15	Included requirement for a contract award notice to be published in line with the regulations
<b>Contract Documents</b>	
16.2.4	Removed as new contracts may be required to be signed before previous contract has expired due to mobilisation requirements or other circumstances.
16.4	Included requirement for contract register to comply with Transparency Code
<b>Prevention of Corruption and anti-competitive behaviour</b>	
18.1	Tidied up wording
18.1.3	Removed as the Council uses Standard Terms and Conditions approved by legal.
18.2	Removed as captured under new wording at 18.1.
<b>Declaration of interests</b>	
19.2	Removed due to repetition
<b>Managing Contracts</b>	
20.3	Included requirement for internal approval to be captured for the extension to contract.
<b>Risk assessment and contingency planning</b>	
21.1	Removed as requirement for business case set out previously
<b>Contract monitoring, review and benchmarking</b>	
22.1	Amended to reflect contract monitoring in line with the contract management toolkit
22.3-22.4	Removed as this is captured in the contract management toolkit
22.5	Removed as this information should be part of the lessons learned which will feed into the business case for any re-procurement activity.
22.6-22.9	Removed due to duplication as this information is set out in Finance Procedure Rules

# Part 4(6)

# Contract Procedure Rules

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## West Devon Contract Procedure Rules

### Contents

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<u>23</u>	<u>State aid</u>
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## **Definitions appendix**

<b>Term</b>	<b>Definition</b>
<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 <i>Contract</i> is to be awarded to the successful Tenderer (see further Rules 10 and 11.2e).
<b>Award Procedure</b>	Awarding a contract as specified in Rules 8, 10 and 15.
<b>Bid</b>	A <i>Supplier's</i> proposal submitted in response to the <i>Procurement Documentation</i>
<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>Concession Contracts</b>	Shall mean a public contract under which <i>Supplier/s</i> are given the (exclusive) right to exploit the works or services provided for their own gain and where the <i>Supplier's</i> income is generated solely from third parties or as a combination of revenue streams from both third parties and the Council.
<b>Constitution</b>	The <b>Constitution</b> 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 Executive / 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/Consultancy</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>Contract</b>	Is a legally binding agreement concluded in writing for consideration (whatever the nature of the consideration, whether by payment or some other form of reward) under which a contracting authority engages a person or organisation to provide goods, works or services.
<b>Contracting Decision</b>	Any of the following decisions: <ul style="list-style-type: none"> <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> <li>• any decision to extend or vary a <i>Contract</i>.</li> </ul>
<b>Contract Notice</b>	An advertisement placed in the Official Journal of the European Union, which is a legal requirement for all procurements that exceed the <i>EU Threshold</i> .
<b>Corporate Contract</b>	A Contract let by the Corporate Procurement Officer to support the Council's aim of achieving Value for Money to include Contracts let by the Council and/or Contracts or



	Framework Agreements let by other organisations to which the Council has access.
<b>Corporate Procurement Officer</b>	The Council's Procurement Officer charged with providing strategic direction and advice to secure Value for Money in the Council's procurement activities.
<b>Dynamic Purchasing System</b>	A completely electronic system of limited duration which is: (a) established by a contracting authority to purchase commonly used goods, work, works or services; and (b) open throughout its duration for the admission of economic operators which satisfy the selection criteria specified by the contracting authority; and (c) submit an indicative <i>Tender</i> to the contracting authority or person operating the system on its behalf which complies with the specification required by that contracting authority or person.
<b>Electronic Auction</b>	Is a means of seeking the <i>Supplier's</i> pricing in an electronic format in a live competitive environment, the aim of which is to achieve greater <i>Value for Money</i> than traditional tendering
<b>Executive/Committees</b>	The Council's Executive/Committees as defined in the <i>Constitution</i> .
<b>EU Procedure</b>	The procedure required by the EU where the Total Value exceeds the EU Threshold.
<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 Officer responsibilities for financial matters issued by the S.151 Officer.
<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 European Economic Area are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Liechtenstein and Singapore.
<b>Senior Officer / Executive Director</b>	The officers defined as such in the Constitution.
<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 EU Threshold values.
<b>Interests</b>	Is a connection to another person or organisation that meets any of the following criteria: (a) Ownership of shares in a Supplier or any other financial interest in a Supplier whether held by the relevant individual or by a close relative of the Individual or by any corporate entity in which the individual has an interest; and/or (b) Employment by a Supplier of the individual or a close relative of the Individual; and/or (c) Provision of services to a Supplier by the Individual or by the firm the individual is associated with, and/or (d) Connection with, whether prejudicial or otherwise, any person/s said to be affected by the outcome of a procurement process.
<b>Invitation to Tender (ITT)</b>	<i>Invitation to Tender</i> documents in the form required by these Contract Procedure Rules
<b>Key Decision</b>	Decisions that are defined as key decisions in the <i>Constitution</i>
<b>Monitoring Officer</b>	As identified in the Constitution. The Monitoring Officer or the Monitoring Officer's formally nominated deputy
<b>Nominated Suppliers</b>	Those persons specified in a main contract for the discharge of any part of that contract.
<b>Non-commercial Considerations</b>	(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>(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.</p> <p>(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 Value; or where there is a transfer of staff to which the Transfer of undertakings (Protection of Employment) Regulations 1981 (TUPE) may apply.</p> <p>Officer.</p>
<b>Officer</b>	designated by a Senior Officer 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>Pre- Qualification Standard Questionnaire (PQSQ)</b>	The <del>PQQ</del> <u>SQ</u> is a questionnaire issued to ascertain the suitability of potential suppliers to provide goods, services or works as identified in the tender advertisement / contract notice.
<b>Priority Services</b>	Those services required to be tendered as defined in the EU public procurement directives.

<b>Procurement Documentation</b>	Shall mean the documents dispatched to <i>Suppliers</i> as part of procurement process; comprised of the instructions and information to applicants, contract information, specification, pricing schedule and certificates for signature.
<b>Procurement Strategy</b>	The document setting out the Council's approach to procurement and key priorities for a specified period of time.
<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 and Procurement Tool.
<b>Quotation</b>	A quotation of price and any other relevant matter (without the formal issue of an Invitation to Tender). Definition - a formal statement of promise (submitted usually in response to a request for quotation) by a potential supplier to supply the goods or services required by a buyer (the Council), at specified prices, and within a specified period. A quotation may also contain terms of sale and payment, and warranties. Acceptance of quotation by the buyer constitutes an agreement binding on both parties.
<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>Selection Criteria</b>	The Authority's minimum requirements by which the Tenderer is to be assessed as being suitable to proceed with the <i>Tender</i> process
<b>Service Manager</b>	The Officer's immediate superior or the Officer designated by a Senior Officer to exercise the role reserved to the Service Manager by these contract procedure rules.
<b>Shortlisting</b>	The process of selecting Suppliers who are to be invited to quote or bid or to proceed to final evaluation.
<b>Standstill</b>	Shall mean the period between notification of the intention to award a <i>Contract</i> in accordance with the <i>EU Procedure</i> and the formal award of said <i>Contract</i>
<b>Supplier</b>	Any person who asks or is invited to submit a Quotation or Tender.
<b>Teckal</b>	An exception to the Public Contracts Regulations 2006 that means a <i>Contract</i> let by a public body will not be deemed to be a <i>Contract</i> for the purposes of the public procurement regime, provided that certain criteria are met

<b>Tender</b>	A Supplier's proposal submitted in response to the Invitation to Tender.
<b>Tender Register Pro Forma</b>	The log kept by the Monitoring Officer to record details of Tenders (see Rule 13.5).
<b>Total Value</b>	<p>The whole of the value or estimated value (in money or equivalent value) for a single purchase contract or disposal calculated as follows:</p> <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 including any permitted extensions.</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) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement</p> <p>(e) Where the <i>Contract</i> is to be executed over a period for goods or services and</p> <ul style="list-style-type: none"> <li>• a series of contracts; or</li> <li>• a <i>Contract</i> which under its terms is renewable</li> </ul> <p>is entered into</p> <p>(f) Where there are a number of requirements over a given period for contracts that have similar requirements or are for the same type of goods and service</p> <p>(g) for feasibility studies, the value of the scheme or contracts which may be awarded as a result</p> <p>(h) 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.</p> <p>(i) The <i>Total Value</i> of all contracts expected to be placed under a <i>Framework Agreement</i></p> <p>(j) The <i>Total Value</i> of all contracts expected to be placed under a <i>Dynamic Purchasing System</i></p> <p>(k) The <i>Total Value</i> of the requirement where more than one (1) organisation will purchase under the same <i>Contract</i></p>
<b>TUPE Transfer of Undertakings (Protection Employment) Regulations 2006</b>	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)



<b>(SI 2006 No.246)</b>	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
<b>Value for Money</b>	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.

## **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 procurement, 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 or framework agreement 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 hard copy, 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 minor and legal amendments from time to time to these Contract Procedure Rules after consultation with the Council's S.151 Officer, Internal Auditor and the Corporate Procurement Officer. Significant amendments must be agreed by the full Council.

## **1. BASIC PRINCIPLES**

All purchasing and disposal procedures and the letting of concession contracts must:

- Comply with these Contract Procedure Rules and Financial Procedure Rules (both at Part 4 of the Constitution)
- 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 Procurement Strategies
- Be followed by *Officers* of the Council in all procurement activities including circumstances where there has been any challenge by the community.

## **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 £50,000**, **establish a business case for the requirement and obtain due authorisation to proceed before undertaking any procurement activity (see Constitution for revenue and capital values when key decisions apply)**~~take a report to Executive / 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.

## **2.2 Senior Officers**

### 2.2.1 Senior Officers:

- Comply with the Basic Principles 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 Executive / Committees~~Specific Officers 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 An~~ Officer or Senior Officer may seek an **Exemption** with the approval of the officers and in consultation with 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.

3.5~~11~~ In exceptional circumstances an Exemption may be deemed necessary that is outside of the four criteria at 3.3. Any such Exemption can only be granted by the relevant member body Officers. Officers may consult members in the decision making process on receipt of a joint report of the applicant and the Corporate Procurement Officer.

## **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 or electronic signatures of:

Total Value (excl. VAT)	Exemption Authorised By
£7,500 – £50,000	<ul style="list-style-type: none"> <li>• Internal Audit</li> <li>• Monitoring Officer</li> <li>• S151 Officer</li> </ul>
£50,001 – EU threshold	<ul style="list-style-type: none"> <li>• <i>Corporate Procurement Officer (Internal Audit in his/her absence)</i></li> <li>• Monitoring Officer</li> <li>• S151 Officer</li> <li>• In consultation with the Chairman or Vice Chairman of the relevant Committee.</li> </ul>
Above EU Threshold	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 **Exemption Applications** supported by the evidence that the exemption criteria have been met, must be sent to the Monitoring Officer or Internal Audit *and the Corporate Procurement Officer*, in the first instance.

3.9 The original copy of the fully completed Exemption 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.

~~3.11 In exceptional circumstances an Exemption may be deemed necessary that is outside of the four criteria at 3.3. Any such Exemption can only be granted by the relevant member body on receipt of a joint report of the applicant and the Corporate Procurement Officer.~~

**In-House or ‘Quasi’ In-House Arrangements**

3.12 Where the Council seeks to provide goods, works or services through its own internal resources it may do so without triggering a procurement exercise (links to Financial Procedure Rules).



3.13 Where the Council seeks to provide goods, works or services by entering in to a formal arrangement with another public sector body over which it has some ownership or control it may do so without triggering a procurement exercise where it can be demonstrated that two limited conditions are met, that:

- The Council must exercise over the body to be awarded the *Contract* ‘a control which is similar to that which it exercises over its own departments’; meaning that the Council must have a power of decisive influence over both strategic objectives and significant decisions of the body awarded the *Contract*; and
- The body awarded the *Contract* carries out “the essential part” of its activities for the Council; meaning that the body must do little or no other work besides fulfilling the *Contract* on behalf of the Council.

This is known as the ‘**Teckal**’ exception.

3.14 *Officers* must proceed with caution when invoking **Teckal exception**, and advice must be sought from the *Corporate Procurement Officer*, as a number of factors are capable of eroding the exception, including:

- Any private sector funding and/or involvement in the body awarded the *Contract*, whether at the inception or during its life;
- Any market participating by the body awarded the *Contract* to include trading its goods, works or services elsewhere;
- Where joint ownership of the body awarded the *Contract* reduces the amount of control exercised by the Council.

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

3.15 The Corporate Procurement Officer must be consulted prior to commencing a procurement process using any professional buying organisation~~consortia contracts frameworks~~ e.g. Crown Commercial Services (CCS). The terms and conditions of contract applicable to any ~~consortia arrangement~~professional buying organisation, including the requirement to undertake competition between providers, must be fully complied with.

3.16 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~~ professional buying organisation.

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

3.18 However, purchases above the EU Threshold must be let under the EU Procedure, unless the ~~consortium~~ professional buying organisation 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.

3.19 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**.

3.20 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 of goods (for disposal of goods and assets see the 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, legal and *Consultancy* services
- Development Agreements under certain circumstances (see Section 24 for further details)
- *Concession Contracts*

and where the *Supplier* is:

- Another public sector organisation, to include a town and/or parish council
- A third sector organisation, to include social enterprises, not-for-profit organisations or charities.

#### 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) subject to the detail provided at section 24; 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.

## **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:

- Ensuring the Social Value (Public Services) Act 2012 is complied with for all service contracts where the Total Value exceeds the EU Threshold
- 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 or Framework Agreement 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, the Council's Solicitor and/or Monitoring Officer must be sought)
- Setting out these matters in writing if the Total Value of the purchase exceeds **£7,500**.

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.

### **5.3 Responsible Procurement**

5.3.1 There shall be proportionate consideration of the Council's Responsible Procurement Strategy considering the nature, value and risk of the goods, works or services being purchased. This may include consideration of the following policies:

- Sustainability in Commissioning
- Equality and Diversity in Commissioning
- Safeguarding in Commissioning
- Ethical Sourcing Policy
- Health and Safety in Commissioning
- Social Value Policy

## **6. RECORDS**

6.1 Where the **Total Value is less than £50,000**, the following records must be kept:

- ~~Invitations to Quote~~Request for Quotation and Quotations
- A record:
  - of any Exemptions and the reasons for them
  - of the reason if the lowest price is not accepted (to accept a *Quotation* other than the lowest, the *Officer* must be satisfied that the *Tender*

represents the most economically advantageous bid and best value for money. The *Award Criteria* for this should have been set out in advance and evaluation records must be retained. See 10.4 Award Criteria).

- of any negotiations which took place along with written confirmation of final position reached
- Written (which includes electronic) records of communications with the successful contractor.
- The Contract documents and any variations or extensions (where applicable)

6.2 Where the Total Value **exceeds £50,000** the following records must be kept:

- Pre-tender market research
- Any exemption under Rule 3 together with the reasons for it
- The method for obtaining bids (see Rule 8.1)
- The *Selection Criteria*, including pass/fail and scored criteria including weightings in descending order of importance
- The *Award Criteria* including pass/fail and scored criteria including weightings in descending order of importance
- *Invitation to Tender* documents sent to and received from *Suppliers*
- Clarification and post-tender
- Negotiation or dialogue (when applicable to the procurement process followed), (to include minutes of meetings)
- Any Contracting Decision and the reasons for it
- Legal advice
- The *Contract* documents and any variations or extensions
- Post-contract ~~evaluation and~~ monitoring and benchmarking
- Communications with *Suppliers* and with the successful contractor throughout the period of the *Contract*;
- Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract* (see also Section 5 Contract Management).

6.3 Records required by this rule must be kept for **six years** after the end of the contract if made under hand and **twelve years** if made under seal.

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, DYNAMIC PURCHASING SYSTEMS AND PROCUREMENT PROCEDURES**

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

## Identifying

7.1.1 Wherever practicable *Officers* shall ensure that where the *Total Value* of the proposed *Contract* does not exceed £50,000 they shall invite a minimum of three suppliers, ~~two~~ one of whom (wherever possible) must ~~have a head office which is registered~~ be located within the Council's geographic boundaries. Officers shall be seen to alternate the Suppliers to whom quotation documentation is sent so as to ensure fair competition within the market.

7.1.2 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).

7.1.3 For proposed contracts that are expected to exceed £50,000, assessment and selection will be in conjunction with the *Corporate Procurement Officer*.

## Assessing

7.1.4 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.

7.1.5 This shall be achieved in respect of proposed contracts that are **expected to exceed £50,000** 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 electronic tendering system, which is available at [available at www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk)

7.2.3 A register of pre-qualified contractors and Consultants maintained by or on behalf of central government (e.g. Constructionline, Accredited) will 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 contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period.

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

New framework suppliers may not be added during the life of a *Framework Agreement*.

The *Total Value* of the *Framework Agreement* must be the total of all contracts that are anticipated to be awarded under the agreement and as such it is recommended that a realistic range be provided within the Contract Notice or tender advertisement.

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:
  - 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 the 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.

When a *Framework Agreement* has been selected for use only the *Suppliers* that appear on the agreement may be approached to provide the Contract. Multiple *Framework Agreements* may not be selected for use to procure one single *Contract*.

Contracts may be awarded beyond the life of a *Framework Agreement* provided that such contracts are not awarded improperly or in a way that seeks to distort competition. As an example it would serve to distort competition to award a *Contract* that significantly exceeded the life of the *Framework Agreement* where it was not common practice or expected by the market to do so.

A *Contract* procured under a *Framework Agreement* by another user may not be used by way of avoiding running a further competition, unless expressly permitted by the terms of the *Framework Agreement* or resultant call-off contract. The *Standstill* obligations need only be applied to contracts awarded against a *Framework Agreement* that will exceed the *EU Threshold*.

~~The standstill obligations need only be applied to Contracts awarded against a Framework Agreement that will exceed the EU threshold.~~

## 7.4 Dynamic Purchasing System

7.4.1 A *Dynamic Purchasing System* is similar to a *Framework Agreement* insofar as it is an arrangement of one or more contracting authorities with one or more suppliers in order to establish the terms governing the contracts awarded during a given period, the term must not exceed four years and its *Total Value* must be the total of all contracts that are anticipated to be awarded under it.

The way in which the *Dynamic Purchasing System* is different to a *Framework Agreement* is that additional *Suppliers* can be added throughout the life of the arrangement.

7.4.2 In opening up access to *Suppliers* to the *Dynamic Purchasing System* the *Officer* must:

- Offer unrestricted, direct and full access to the procurement documents by electronic means at all times throughout the life of the Dynamic Purchasing System;
- Allow new applications to be submitted throughout the life of the Dynamic Purchasing System;

- Complete the evaluation of a newly submitted application within fifteen days of its receipt;
- Admit to the Dynamic Purchasing System all new Suppliers that satisfy the Selection criteria; and
- Notify Suppliers of their admission to the Dynamic Purchasing System or rejection of their application.

7.4.3 In awarding a *Contract* under the *Dynamic Purchasing System* the *Officer* must:

- Place an advertisement against the *Dynamic Purchasing System* to notify Suppliers of the requirement to award a *Contract*. Where the Dynamic Purchasing System has been established in accordance with the EU procurement rules, i.e. where the *Total Value* exceeds the EU Threshold, this must take the form of a simplified Contract Notice;
- Evaluate any new applications in response to the advertisement prior to issuing Invitations to Tender under the Dynamic Purchasing System;

All Suppliers admitted to the Dynamic Purchasing System must be given an opportunity to respond to the Invitation to Tender;

The Contract shall be awarded to the Supplier that submits the best bid in accordance with the Award criteria set out in the original advertisement or Contract Notice.

7.4.4 The Council's *Corporate Procurement Officer* must always be consulted before any action is taken to establish a *Dynamic Purchasing System*.

## **7.5 Procurement Procedures**

### **7.5.1 Restricted Process**

- This is a two stage procedure. Stage 1 is a pre-qualification stage and is used to de-select suppliers. Stage 2 is the tender stage and is used to determine a successful supplier to whom a contract will be awarded.
- Only those suppliers selected by the council may be invited to tender. Suppliers will be selected on the basis of published pre-qualification criteria.
- If the Regulations apply, a minimum of five suppliers must be invited to tender and in all other cases a minimum of three must be invited to tender.
- This process must not be used in any procurement under the EU threshold for goods and services as a pre-qualification stage is not allowed.

### **7.5.2 Open Procedure**

- This is a one stage procedure and is used where there are a limited number of suppliers and where timescales will not allow for use of the restricted procedure.
- Any supplier expressing an interest in tendering for the contract will be able to download the ITT documents.

- A minimum requirement threshold score may be determined for the tender questionnaire and this will be published in the advert (or OJEU Contract Notice if applicable) and in the ITT documentation. Any supplier that scores below this minimum threshold is considered unsuitable and will be disqualified. There is no short listing step in the open procedure and all suppliers that score above the minimum requirement threshold must be evaluated.

### **7.5.3 Competitive Procedure with Negotiation**

- This procedure may only be used after consultation with the Corporate Procurement Officer and Legal Services. It may only be used in very limited circumstances and is rarely used by local authorities.
- Only those suppliers selected by the council are invited to tender. Suppliers shall be selected on the basis of published pre-qualification criteria. Any notice will state that a negotiated procedure is being used.
- A minimum of three suppliers should be invited to negotiate following publication of a notice.
- A minimum of two officers, at least one of whom must be the Corporate Procurement Officer, must be present at all times during the negotiations.
- At all times during the negotiations, the council will consider and implement the principles of non-discrimination, equal treatment and transparency.

### **7.5.4 Competitive Dialogue Procedure**

- The competitive dialogue procedure is for use where the open or restricted procedure will not allow the award of the contract due to the fact that it is a particularly complex procurement. It can only be used with the most economically advantageous award criteria and this must be stated in the contract notice or accompanying descriptive document. This procedure may only be used after consultation with the Corporate Procurement Officer and Legal Services.
- The council envisages the competitive dialogue procedure being used for private public partnerships where contracts are complex and the technical means and/or the legal and financial structure cannot be determined without dialogue with suppliers.
- In the case of a particularly complex contract, you may be aware of your needs but not know in advance what the best technical, and/or legal and/or financial solution is. A competitive dialogue procedure between buyers and suppliers is therefore necessary to identify the solution or solutions that best meet their needs. Such a dialogue is not allowed under the current open and restricted procedures. However, the process is time-consuming and the most expensive method of procurement.

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

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

8.1.1 The **Total Value** of a *Contract* is the whole of the value or estimated value (in money or equivalent value) for a single purchase in the following circumstances:

- (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, including any permitted extensions.
- (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 (four years).
- (d) Where a single requirement for goods or services or for the carrying out of a work or works and a number of contracts have been entered into or are to be entered into to fulfil that requirement.
- (e) Where the *Contract* for goods or services is to be carried out over a period of time:
  - as a series of contracts (which might otherwise be disaggregated); or
  - as a *Contract* which under its own terms and conditions is renewable.
- (f) The value of the scheme or contracts which may be awarded as a result of a feasibility study.
- (g) The **Total Value** of all contracts expected to be placed under a *Framework Agreement*.
- (h) The **Total Value** of all contracts expected to be placed under a *Dynamic Purchasing System*.

The **Total Value** shall be that part of the main *Contract* to be fulfilled by the *Nominated Supplier or Sub-contractor*.

In addition to the above, *Officers* need to be aware that there is a wider corporate procurement interest where there are a number of requirements over a given period for purchases that have similar characteristics or are for the same type of goods and services e.g. consultants carrying out similar activities in the same or different service areas. See also paragraph 2.1.2 on the required use of corporate contracts where they exist.

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*.

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

Total Value (excl. VAT)	<u>Award Procedure Procurement Process</u>	<u>Short listing Evaluation</u>
Up to £7,500	A minimum of one quotation, but good practice to seek most favourable prices and terms, having regard to the Council's Procurement Strategy.	<ul style="list-style-type: none"> <li>• Officer</li> <li>• (see also Financial Procedure Rules)</li> </ul>
£7,500 – £50,000	A minimum of three written Quotations	<ul style="list-style-type: none"> <li>• <del>Officer</del> <u>in consultation with the</u> Service Manager</li> </ul>
£50,001–EU Threshold	Invitation to Tender by advertisement/list	<ul style="list-style-type: none"> <li>• <del>Minimum of two</del> <u>Officers</u></li> <li>• <u>In consultation with the</u> Senior Officer <del>in consultation with</del> <u>and</u> the Corporate Procurement Officer</li> </ul>
Above EU Threshold	EU Procedure, or where this does not apply, invitation to tender by advertisement	<ul style="list-style-type: none"> <li>• <del>Minimum of two</del> <u>Officers</u></li> <li>• <del>Project lead Officer to form evaluation team appropriate to the procurement which may include but not be limited to the Officer,</del> <u>procurement, legal &amp; finance</u> Service Manager</li> <li>• <del>Senior Officer</del></li> </ul>



		<ul style="list-style-type: none"> <li>• <del>in consultation with the Corporate Procurement Officer</del></li> </ul>
<b>Up to EU Threshold</b>	<p>All purchases made via a local authority <del>purchasing and distribution</del> <u>consortium professional buying organisation</u> are deemed to comply with these Contract Procedure Rules and no waiver is required e.g. Devon Procurement Services. However, purchases above the EU Threshold must be let under the EU Procedure, unless the consortium has satisfied this requirement already.</p>	<ul style="list-style-type: none"> <li>• <u>Minimum of two Officers</u></li> <li>• <u>Project lead Officer to form evaluation team appropriate to the procurement which may include but not be limited to the Officer, procurement, legal &amp; finance</u> <del>See paragraph 3.7.</del></li> </ul>
<b>All values: Collaborative Contracts</b>	<p>The Corporate Procurement Officer must be consulted prior to commencing any procurement process using <del>Collaborative professional buying organisation Contracts Frameworks</del>. The terms and conditions applicable to any <del>Collaborative</del> Contract arrangement, including the requirement to undertake competition between providers, must be fully complied with.</p>	<ul style="list-style-type: none"> <li>• <u>Minimum of two Officers</u></li> <li>• <u>Project lead Officer to form evaluation team appropriate to the procurement which may include but not be limited to the Officer, procurement, legal &amp; finance</u> <del>See paragraphs 3.6</del></li> </ul>
<b>All values: ICT</b>	<p>All system developments and purchases of computer equipment or software must be approved by the ICT Team and awarded in line with these Rules.</p>	<ul style="list-style-type: none"> <li>• Officer</li> <li>• Business Manager</li> <li>• Senior Officer (responsible for ICT)</li> <li>• in consultation with the Corporate Procurement Officer</li> </ul>

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 ~~and or~~ Tender and the Corporate Procurement Officer informed. If it can be clearly demonstrated that less than the required quotations are available, then an Exemption form in line with paragraph 3.3 must be completed.

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 or EU Procurement 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.

8.1.5 Where the Council procures on behalf of itself and other partners (acting as lead authority, the Total Value will be the overall value of the *Contract* and not the element of cost that applies to the Council itself.

8.1.6 Where procurement is for a service to be shared between authorities, it must be stated in advance both how the costs are to be apportioned between the partners and where the ownership of any assets falls.

## **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 Construction Consultants, to include architects, engineers and surveyors, financial and management Consultants, legal advisors and Consultants and any other professional persons considered Consultants as per the definition provided shall be selected and commissions awarded in accordance with 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.

8.3.5 Officers must be aware of the Council's duty to assess the employment status of individuals and to assess whether they will be working for the Council in an "employed capacity" or "self employed". **The HM Revenue and Customs checklist** must be used in the assessment of status and if the individual could be deemed as employed, the Council's recruitment and payroll procedures must be followed (Guidance is on the Intranet which also links to Financial Procedure Rules).

#### **8.4 Assets for Disposal**

8.4.1 The disposal of assets must be made in line with the requirements of Financial Procedure Rules and the Delegation Scheme.

#### **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.

9.3 For service contracts where the Total Value will exceed the EU Threshold the Officer must give due consideration to the Social Value (Public Services) Act 2012 prior to the commencement of the procurement process.

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

10.1 The Officer must define the Selection Criteria that are related and proportionate to the subject matter of the Contract. These shall form a stage one assessment of whether a Tenderer may progress with a tender process, whether from the Pre-Qualification ~~Questionnaire (PQQ)~~ to Tender stage or from the Selection stage evaluation to the Award stage evaluation in an open Tender. The criteria to be assessed against may be chosen from the following:

- Criteria for the rejection of the Supplier; such as prior criminal convictions, evidence of corruption, bribery, fraud, bankruptcy, grave professional misconduct, tax evasion, etc. (this list is not exhaustive)
- Information as to economic and financial standing; such as banker's statements, insurances, statements of accounts, statements of turnover, etc. (this list is not exhaustive)
- Information as to technical or professional ability; such as
  - the Supplier's technical ability, taking into account in particular that economic operator's skills, efficiency, experience and reliability;
  - a list of works carried out over the past 5 years;
  - a statement of the goods sold or services provided by the supplier or the services provider in the past 3 years;
  - a statement of the resources available to complete the Contract;
  - a statement of the Supplier's technical capacity to provide the Contract;
  - environmental management measures;
  - average annual number of staff and managerial staff over the previous 3 years;
  - any samples, descriptions and photographs of the goods to be purchased or hired; and
  - certification by official quality control institutes. (this list is not exhaustive)

**The Corporate Procurement Officer must be consulted where the Total Value of the Contract is likely to exceed the EU Threshold and in any event to provide advice and guidance concerning the Crown Commercial Services Standard Questionnaire to ensure that the questions are relevant and proportionate to the subject matter of the Contract.**

10.2 Selection Criteria must not include:

- Award Criteria;
- Non-commercial Considerations (See Definitions Appendix);
- Criteria that is not related and proportionate to the subject matter of the Contract.

10.3 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, environmental and health and safety standards. The Monitoring Officer and Corporate Procurement Officer must be consulted if it is proposed to use standards other than European standards.

10.4 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 former 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. *Award Criteria* must be accompanied by the relative weightings ~~ranked in order of importance to the Council~~ in the context of the specific procurement.

10.5 Award Criteria must not include:

- Selection Criteria
- 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.
- Criteria that is not related and proportionate to the subject matter of the *Contract*.

## **11. PROCUREMENT DOCUMENTATION**

11.1 Council *Officers* must prepare their *Procurement Documentation* using the Council's standard templates, which are available on the Council's Intranet site or via the *Corporate Procurement Officer*.

11.2 The *Procurement Documentation* shall state that no *Bid* will be considered unless it is received by the date and time stipulated. No *Bid* delivered in contravention of this clause shall be considered under any circumstances.

11.3 The *Procurement Documentation* 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 Suppliers to declare that the Bid content, price or any other figure or particulars concerning the Bid have not been disclosed by the Supplier to any other party (except where such a disclosure is made in confidence for a necessary purpose).

(c) A requirement for Suppliers to complete fully and sign all Tender documents including a form of Tender and certificates relating to canvassing and non-collusion.

(d) Notification that Bids are submitted to the Council on the basis that they are compiled at the Suppliers expense.

(e) A description of the Award Procedure and a definition of the Award Criteria (including any scoring mechanism or sub criteria) accompanied by the relevant weightings~~or in objective terms and if possible in descending order of importance.~~

(f) Notification that no Bid will be considered unless it is 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 Bids is to be dealt with. In particular, whether the overall price prevails over the rates in the Tender or vice versa.

(i) Instructions to Suppliers concerning the procurement process and Procurement Documentation and information concerning the contract opportunity.

(j) The pricing schedule, schedule of rates, whole life costing schedule or other such appropriate pro-forma for gathering the Supplier's pricing.

11.4 All Suppliers invited to Bid or quote must be issued with the same information at the same time and subject to the same conditions. Any supplementary information must be given on the same basis.



11.5 All Procurement Documentation must specify the goods, service or works that are required, together with the terms and conditions of Contract that will apply (see Rule 16).

11.6 The Procurement Documentation 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 be done in accordance with the permitted *Selection Criteria*. Where the *Total Value* of the *Contract* will exceed the *EU Threshold*, the *Officer* must contact the *Corporate Procurement Officer* for advice.

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

~~12.4~~ Where the **Total Value will exceed the EU threshold** the Officer must notify all Suppliers who fail to pass the selection criteria in writing simultaneously and as soon as possible. The letters to the unsuccessful Suppliers must contain the reasons why the supplier was unsuccessful.

## **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 and Quotations above £7,500 must be submitted through the Council's approved and secure electronic tendering system.

13.3 ~~Tender Bids~~ received by fax or other electronic means (e.g. email) must be rejected. Quotations with a value below £7,500 may be accepted via e-mail.

13.4 Each ~~Tender Bid~~ must be:

- Suitably recorded through the electronic tendering system so as to subsequently verify the date and precise time it was received
- ~~Sealed under the electronic tendering system until the submission deadline has passed Adequately protected immediately on receipt to guard against amendment of its contents~~
- ~~Recorded immediately on receipt in the Tender Register Pro-Forma.~~

13.5 Tenders received after the set date and time must not be accepted and the Corporate Procurement Officer informed of late submissions. For the purposes of these rules the time will be deemed to be at the first stroke e.g. noon will be 12.00.00.

## Tender Opening

### South Hams

13.6 The Member Services department will ensure that all *Tenders* are unsealed through the electronic tendering system, verified and downloaded ~~opened~~ at the same time ~~when the period for their submission has ended. The Officer or his or her representative must be present. Tenders must be opened in the presence of an officer representing the relevant Senior Officer and a Council Member. 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 (i.e. significant issues that are unique to each Tender submission and were not stated in the Tender invitation documents such as Tender sum) 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.~~

### West Devon

~~13.8 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:~~

~~All Tenders with an **estimated value of more than £50,000** shall be opened and recorded by the Officer, relevant Senior Officer in the presence of two members from the relevant Committee~~

~~Where the Total Value is more than the EU Threshold, the Corporate Procurement Officer shall also attend.~~

~~13.9 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.~~

~~13.10 All tenders with an estimated value of less than £50,000 shall be opened and recorded by the Officer and relevant Senior Officer.~~

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

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

- In writing, via the Council's electronic tendering system
- ~~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~~ **shall not be performed**. ~~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 Senior Officer 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, & 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 Tenders and Quotations must be evaluated and awarded in accordance with the Selection and 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.

**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 use *Electronic Auctions* as means of driving additional *Value for Money* and as part of the *Award Criteria*, where this process is completed using the Council's electronic tendering portal.

Where the *Officer* wishes to use such a tool, the *Corporate Procurement Officer* must be contacted to offer assistance.

~~Electronic Auctions may also be used as a tool for seeking bids in sale transactions, such as land, where the highest possible price is sought from an applicant. (Links to 'Disposals' in Financial Procedure Rules).~~

15.5 *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*.

15.6 Where the value of a contract exceeds £50,000, a contract may only be awarded by an Officer after seeking the requisite authority to award a contract.

15.7 Where any Tender for projects under the Capital Programme exceeds the available budget to the extent set out in the Financial Procedure Rules, approval to proceed may be made by following those Rules.

15.8 In the event that the council does not wish to award a contract after evaluating a tender response the Officer should advise all suppliers in writing detailing the reason for the decision and the way forward.

15.96 Where the **Total Value is over £50,000**, the *Officer* must notify all *Suppliers* in writing 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. Where an unsuccessful *Supplier* requests debrief information the *Officer* may use their discretion in deciding whether or not to comply with the request; there is no legal obligation imperative on the *Officer* to do so although it is good practice.

15.107 ———Where the **Total Value will exceed the EU Threshold** the *Officer* must notify all *Suppliers* in writing simultaneously and as soon as possible of the intention to award the *Contract* to the successful *Supplier*; ~~unless it is known sooner in the procurement process that a *Supplier* has been unsuccessful, in which case the *Officer* must notify the *Supplier* soonest with as much of the information required at 15.8 below as possible. (See 15.9 for further details). The latter applies most particularly, but not exclusively, in the case of a Restricted Procedure whereby the *Officer* must communicate the list of shortlisted *Suppliers* to those that have not been shortlisted.~~

15.118 ———The letters to the unsuccessful *Suppliers* must contain:

- The criteria for the award of the *Contract*;
- The reasons for the decision, including the characteristics and relative advantages of the successful *Tender*, the score (if any) obtained by:
  - the *Supplier* which is to receive the notice; and
  - the *Supplier* to be awarded the *Contract*; or to become a party to a *Framework Agreement* or *Dynamic Purchasing System*,

- The name of the Supplier to be awarded the *Contract*; or to become a party to a Framework Agreement or Dynamic Purchasing System; and
- A precise statement of either—
  - when the *Standstill Period* is expected to end and, if relevant, how the timing of its ending might be affected by any and, if so what, contingencies; or
  - the date before which the Council will not enter into the *Contract* or conclude the *Framework Agreement* or *Dynamic Purchasing System*.

15.129 ———The *Officer* must provide a *Standstill Period* of at least ten working days, where the communication is made electronically (fifteen days if not) to allow unsuccessful *Suppliers* the opportunity of challenging the decision before the *Officer* awards the *Contract*. The *Standstill Period* shall end at midnight on the final day of *Standstill* and no sooner. Where the last day of the *Standstill Period* is not a working day, the *Standstill Period* is extended to midnight at the end of the next working day. 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*.

~~15.10 Where the *Supplier* has been informed of the fact that they have not been successful at an early stage in the procurement process, they must be provided within fifteen days of any request in writing from said *Supplier*, with the reasons that they were unsuccessful.~~

### **Contract Award Notice**

15.13 Where a contract has been tendered pursuant to the regulations, the council will publish a contract award notice in OJEU no later than 30 days after the date of award of the contract.

15.14 The Officer will publish the contract award notice:

- in OJEU (if required by the Regulations)
- on the council's procurement portal ([www.supplyingthesouthwest.org.uk](http://www.supplyingthesouthwest.org.uk))
- on Contracts Finder

15.15 Where the **Total Value exceeds the EU Threshold** the Officer shall draw up a written report (Regulation 84 report). Where the Contract Award Notice contains the information required above, the Council may refer to that notice

## **16. CONTRACT DOCUMENTS**

### **16.1 Relevant Contracts**

16.1.1 **All Contracts above £7,500 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 £50,000** must also state clearly as a minimum:

- Health and safety requirements (where applicable and proportionate)
- Sustainability and environmental management requirements (where applicable and proportionate)
- Social Value Act requirements (where applicable, i.e. for service *Contracts* with a *Total Value* in excess of the *EU Threshold*)
- Equality Act 2010 requirements (where applicable and proportionate)
- Any insurance requirements
- Data protection requirements, if relevant
- Charter standards to be met, if relevant
- Bribery Act 2010 requirements
- Freedom of Information Act requirements
- 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
- Any confidentiality requirements
- Tax evasion and avoidance requirements

Where Agents are used to let contracts, Agents must comply with the Council's Contract Procedure Rules.



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 £50,000**; or
- Below £30,000 **if other than the Council's standard terms and conditions** are to be used; or
- 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 £50,000**; or
- Those that are **complex** in any other way.

## 16.2 Contract Formalities

16.2.1 Agreements shall be completed as follows:

<b>Total Value</b>	<b>Method of Completion</b>	<b>By</b>
Purchase orders - up to £50,000	Electronic Order or Signature	Authorised officer (see Rule 16.2.3)
Contracts and licences up to £50,000. Council's Standard Terms and Conditions	Signature	<ul style="list-style-type: none"> <li>• Senior Officer</li> <li>• Nominated Deputy (Rule 16.2.3) or</li> <li>• Monitoring Officer</li> </ul>
Contracts and licences up to £50,000 Non Standard Terms and Conditions	Signature	<ul style="list-style-type: none"> <li>• Senior Officer, on the advice of the Monitoring Officer (Rule 16.2.3)</li> <li>• Monitoring Officer</li> </ul>
Above £50,000, or if any of para 16.1.5 applies (except ICT software).	Sealing (unless advised by the Monitoring Officer that sealing is not necessary)	Monitoring Officer (See also Rule 16.2.3 and 16.3), on the instruction of Senior Officer

ICT - 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 ICT CoP Lead
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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. The use of Letters of Intent (which are binding for the Council) should be avoided, but in exceptional circumstances they may be used with the approval of and review by the *Monitoring Officer* before issue. The same rules relating to signatures apply.

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

16.2.4 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 and recording in **Legal’s Contract Register** . **It is the responsibility of the *Officer* to ensure that this happens, only copies of contracts should be held within services.** An electronic copy must be copied to the Corporate Procurement Officer for all contracts with value over £50,000.

### 16.3 Sealing

16.3.1 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.

## South Hams

16.3.2 Where appropriate contracts are completed by each side adding their formal seal. The fixing of the Council's seal must be witnessed by a further officer on behalf of the *Monitoring Officer*.

16.3.3 Every Council sealing will be consecutively numbered, recorded and signed by the person witnessing the seal. The seal must not be affixed except in accordance with the Council's *Constitution*.

## West Devon

16.3.4 Contracts must be sealed in accordance with Council Procedure Rules and will be overseen by the Council's Solicitor or as otherwise delegated.

### **16.4 Keeping a register of contracts**

16.4.1 The Corporate Procurement Officer will allocate a contract number to each individual contract and will maintain a register of all contracts awarded.

16.4.2 The contract register will be published in accordance with the Local Transparency – A Practitioners Guide to Publishing New Contracts and Tenders Data, November 2010.

#### **What will the register record?**

16.4.3 For each contract, the register will record:

- what the contract is for;
- the total contract value;
- contract reference number;
- OJEU details (if applicable);
- The council officer name & contact details;
- the name, address & contact details of the contractor;
- the start and end dates;
- the procurement method used;
- whether the contract can be extended and how;
- Type of contract;
- Name of contract manager;
- whether a certificate was issued under the Local Government (Contracts) Act;

## **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 £50,000**, 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 bribery, as well as the Council's Anti Fraud, Corruption and Bribery Policy and Strategy. The Council's Anti-Fraud, Corruption and Bribery Policy shall be observed at all times when conducting a procurement process and subsequently in the management of the contract which is awarded.~~

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 Bribery Act 2010~~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.~~

## **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 s/he has an Interest has been or is proposed to be entered into by the Council, s/he shall immediately give written notice to the Monitoring Officer.

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

19.~~23~~ All Councillors must comply with the Members' Code of Conduct and register all contracts for goods, services or works made with the Council as required by the Rules on Disclosable Pecuniary Interests.

19.~~34~~ The Monitoring Officer shall maintain a record of all declarations of interests in contracts notified by Members and Officers.

## **20. MANAGING CONTRACTS**

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

20.2 Contract managers must follow best practice in the area of supplier relationship and contract management.

20.3 **Variations or extensions** should not be made unless this is provided for in the Invitation to Tender and the Contract itself. The Contract Manager must obtain approval to extend the contract from the Senior Officer.

The Senior Officer 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.

~~Variations or extensions~~Modification of Contracts during their term proposed by the *Officer* that are likely to be considered as 'materially different' from the original *Contract*, on the following grounds:

- When the amendment introduces conditions which, had they been part of the original procurement process, would have allowed for the admission of different *Tenders* or the acceptance of a *Tender* other than the one accepted

- When the amendment “extends the scope of the *Contract* considerably to encompass goods, works or services not initially covered”
- When the amendment changes the economic balance of the *Contract* in favour of the contractor; or
- When there is a change of main contractor, change of ownership of the main contractor, a transfer of shares in the main contractor or a change of sub-contractor where the inclusion of a sub-contractor is inherent to the decision to award the *Contract*

Variations or extensions are unlikely to be permitted on the basis that the proposed *Contract* will be fundamentally different from the old and therefore will require a re-tender ~~will be required~~.

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 Ongoing checking of the financial position of the successful contractor throughout the period of the *Contract*. The level of any review will vary depending on the type of *Contract* and contractor involved, so the advice of the S.151 Officer or Internal Audit must be sought. The Contractor’s insurance should also be checked annually through the life of the *Contract* and details passed to the Council’s insurance officer for comment.

20.6 **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.

20.7 The Contract Manager must notify the Monitoring Officer, the responsible Senior Officer, 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 Executive / 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
- Monitor the financial performance of the contractor or any parent company and alert the S.151 Officer if there is any concerns

## **22. CONTRACT MONITORING, ~~EVALUATION AND REVIEW AND BENCHMARKING~~**

### **Contracts Financed from Revenue**

~~22.1 Contracts shall be monitored in accordance with the Contract Management Toolkit for all Contracts above £50,000. 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 Leadership 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 CoP Lead for Assets and S.151 Officer with retrospective reporting through the monitoring process. Above these amounts the specific approval of the Executive / Committee should be sought prior to acceptance.~~

~~22.7 The Section 151 Officer assisted by the CoP Lead for Assets, has Mmonitoring responsibilities to receive regular reports have been set out in the Financial Procedure Rules. from Project Managers on the performance of their project; and report quarterly to the Executive / Committee on the overall progress of the Capital Programme.~~

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 - authorisation**

22.9 In monitoring expenditure on a project, the Officer/Project Manager should seek the formal approval of the Section 151 Officer, CoP Lead for Assets or Members at the earliest opportunity where the approved expenditure appearing in the capital programme is likely to be exceeded. See Financial Procedure Rules.

The following table sets out the **authorisation** required:

<del>Project Total Value excl. VAT</del>	<del>Overspend excl. VAT</del>	<del>Authorised By</del>
<del>Up to £500,000</del>	<del>£25,000 to £50,000</del>	<del> <ul style="list-style-type: none"> <li>• <del>151 Officer</del></li> <li>• <del>CoP Lead for Assets</del></li> <li>• <del>retrospective reporting to Executive / Hub Committee within the quarterly monitoring report.</del></li> </ul> </del>

Up to £500,000	Exceeds £50,000	Hub Committee
Over £500,000	10%	Hub Committee

## **23. STATE AID**

### **Definition**

23.1 State aid can be defined as any assistance offered by a public sector body in any form whatsoever that distorts or threatens to distort competition by favouring certain organisations and/or *Suppliers* or the production of certain goods. Such aid may take the form of a grant (capital injection), business tax relief, a reduction in rent or preferential finance (this is not an exhaustive list).

23.2 Where the Council wishes to administer aid in this manner careful consideration must be given prior to such a grant so as to ensure that it is compatible with EU law. Aid that is not compatible with EU law may be recovered from the beneficiary with interest.

23.3 For a grant to be considered as State Aid the following cumulative criteria must be met:

- The beneficiary receives a grant of a benefit or advantage; and
- The aid is give by a Member State or through state resources; and
- The beneficiary receives the aid on a selective basis; and
- The aid granted distorts or threatens to distort competition; and
- The aid is capable of affecting trade between Member States

Granted aid must fulfil all of these criteria in order to be deemed as a State Aid for the purposes of EU law.

23.4 Where a grant is defined as State Aid it must be notified in sufficient time to the European Commission. Aid will not be permitted to be bestowed upon the beneficiary until the Commission has reached a decision as to whether it can be deemed as compatible with EU law or not. Where Aid is incompatible the Council will not be permitted to grant it.

### **Exemptions for State Aid**

23.5 Besides seeking approval from the European Commission, State Aid can be said to be compatible with EU law and can therefore be granted legally if:

- For the most part the total de minimis Aid given to a single recipient is less than €200,000 over a 3-year fiscal period

- Aid in favour of SMEs, research, innovation, regional development, training, employment of disabled and disadvantaged workers, risk capital and environmental protection.
- Aid measures promoting female entrepreneurship, such as aid for young innovative businesses, aid for newly created small businesses in assisted regions, and measures tackling problems like difficulties in access to finance faced by female entrepreneurs.

23.6 Such Aid must still be notified to the European Commission and as a result Council *Officers* are advised to seek the advice and guidance of the *Council's Solicitor* and/or *Monitoring Officer* and *Corporate Procurement Officer* where State Aid may be said to exist on a particular project or procurement.

## **24. DEVELOPMENT AGREEMENTS - Applies South Hams Only.**

### **Definition**

- 24.1 A development agreement can be defined as an arrangement between a public sector body and a third party about the use or development of land or property, the nature of which invariably involves the transfer of land that would be otherwise be considered commercially undesirable, which becomes commercial desirable as a result of incentivisation by the public sector body.
- 24.2 Where the Council wishes to establish a development agreement that meets the definition above again careful consideration must be given prior to such an agreement being established so as to ensure that it is compatible with EU law. A development agreement that is not compatible with EU law may be said to be a public works or *Concession Contract* and may therefore be subject to the legislation on public procurement.
- 24.3 For a development agreement to be considered as not triggering the public procurement legislation some or all the following characteristics must be met:
- The proposed development (or a significant part) is to be undertaken at the initiative and autonomous intention of the developer. (This may be particularly likely if the developer already owns or has control of land to be developed);
  - The development agreement is ancillary or incidental to a transfer or lease of land or property from the Council to the developer, and is intended to protect the interests of the Council which is the lesser or otherwise retains an interest in the land or property;

- The development agreement is based on proposals put forward by the developer, rather than requirements specified by the Council, albeit that these proposals may be sought, and the “winner” chosen by the Council;
- There is no pecuniary interest passing from the Council to the developer as consideration for undertaking the development, either through direct payment or indirectly, for example by the assumption of obligations such as contributions towards project finance or guarantees against possible losses by the developer;
- The development agreement does not include specific contractually enforceable obligations on the developer to realise a work or works (even if that work or works is recognised as being the general intent of the parties to the agreement);
- The development does not consist of or contain works for the direct economic benefit of the Council. The involvement of the Council consists only in the exercise of statutory land-use planning powers.

24.4 Where a development agreement cannot be said to meet the criteria defined above a public works or *Concession Contract* must be awarded in accordance with the public procurement legislation.

# Agenda Item 9

Report to: **Audit Committee**

Date: **23<sup>rd</sup> March 2017**

Title: **Strategic Risk Assessment - Regular Update**

Portfolio Area: **Strategy & Commissioning**  
**Cllr Michael Hicks**

Wards Affected: **All**

Relevant Scrutiny Committee: **N/A**

Urgent Decision: **N** Approval and clearance obtained: **Y**

Date next steps can be taken: **n/a**

Author: **Darren Arulvasagam** Role: **Business Development Group Manager**

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## Recommendations:

1. That the Committee review the strategic risks and make recommendations to Council on any further action the Committee concludes should be considered.

## 1. Executive summary

- 1.1. In accordance with the Joint Risk Management Policy adopted by South Hams District Council on 10<sup>th</sup> May 2012, this report forms the required six monthly update to Members.
- 1.2. The report includes the current corporate strategic risk assessment and a summary of the management and mitigating actions to address the identified risks.

## 2. Background

- 2.1. The Council at its meeting on 10 May 2012 resolved to adopt the Joint Risk Management Policy.
- 2.2. The Joint Risk Management Policy requires the Senior Leadership Team (SLT) to undertake reviews of the Corporate Risk Tables on a monthly 'light touch' basis and more comprehensively on a quarterly basis.

2.3. It also stipulates that a member of the Senior Leadership Team will provide update reports to the Audit Committee on a six monthly basis. This is the responsibility of the Business Development Group Manager.

**3. Outcomes / Outputs**

- 3.1. The risks currently monitored by SLT are set out in Appendix 1.
- 3.2. The tables include a summary of mitigating and management actions undertaken or proposed, to manage the identified risks. Monitoring requires both a proactive approach to assessing potential risk, as well as carrying out retrospective reviews to improve learning from risk and embedding it across the two Councils.
- 3.3. Appended to the risk tables as Appendix 2 is the Risk Scoring Matrix which has been used to identify risk status. A risk rating is developed by assessing risk impact/severity and multiplying it by the likelihood / probability of the risk occurring. The risk score identified is the assessment based on the mitigation being successful.

**4. Options available and consideration of risk**

- 4.1. The tables are living documents and will regularly change in response to issues arising.
- 4.2. Members should note that while risk is assessed collectively within SLT, the judgements in relation to the scores are inevitably subjective and Member challenge of the officer conclusions is therefore welcomed.

**5. Proposed Way Forward**

5.1. It is suggested that the Committee’s attention is focussed on those risks with the highest score i.e. the risks with a score above 12. While Members are invited to focus on the key risks, Members are welcome to review any of the risks identified, including questioning whether the risk is appropriately scored, or whether further detail around the risk or the proposed mitigating actions is required.

**6. Implications**

Implications	Relevant to proposals	Details and proposed measures to address
Legal / Governance	Y	The Audit Committee has a role in keeping under review and recommending to Council improvements in relation to effective risk management.  There are no direct legal implications arising from the report although a strategic focus on risk management is good practice. Any specific legal implications are considered in individual risk assessments.
Financial	Y	There are no direct financial implications arising from the report, although effective corporate risk management may help protect the Council from budget variances.



Risk	Y	Members should note that while risk is assessed collectively within SLT, the judgements in relation to the scores are inevitably subjective and Member challenge of the officer conclusions is therefore welcomed.
<b>Comprehensive Impact Assessment Implications</b>		
Equality and Diversity	N	Factored into individual risk assessments where appropriate. Equalities Impact Review of the Risk Management Policy in place.
Safeguarding	N	Factored into individual risk assessments where appropriate.
Community Safety, Crime and Disorder	N	Factored into individual risk assessments where appropriate.
Health, Safety and Wellbeing	N	Factored into individual risk assessments where appropriate.
Other implications	N	N/A

### **Supporting Information**

#### **Appendices:**

Appendix 1: Corporate Risk Report

Appendix 2: Risk Scoring Matrix

#### **Background Papers:**

- Joint Risk Management Policy
- Covalent risk register

### **Approval and clearance of report**

<b>Process checklist</b>	<b>Completed</b>
Portfolio Holder briefed	<b>Yes</b>
SLT Rep briefed	<b>Yes</b>
Relevant Exec Director sign off	<b>Yes</b>
Data protection issues considered	<b>Yes</b>
If exempt information, public (part 1) report also drafted. (Cabinet/Scrutiny)	<b>N/A</b>

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#	Risk Description								After Treatment			Action / Update	
	Strategic Priority	Risk Title	Detail	(What is/are the) Uncertainties;	Likelihood	Impact	Current Rating	Risk Approach	Mitigating Action/Internal Control	Likelihood	Impact		Target Rating
1	Provision of quality services	WDBC Waste: Post 2019 options	WDBC Waste: Post 2019 (end of managed service provision) options. Choice of service delivery option needs to be made by Autumn 2017 in order to allow sufficient time for either service implementation or full EU procurement process to be carried out.	Currently there are a number of options to be worked up within a short time frame	5	4	20	Mitigate	JSG to consider options within scope of the group and ensure that this is a priority area for decision making within the early part of 2017/2018. A large amount of pre procurement work has already been done as part of the managed service work. The waste task and finish group continues to work towards future service development considering both the Devon Municipal Waste strategy and the financial impacts of the service.	3	4	12	The JSG meetings are scheduled and will consider the requirements of the service. Officers are already working on the options for consideration and have robust current industry information. The Council has a solid service to tender with strong performance which will be supported by a newly acquired fleet in 2019.
2	Provision of quality services	Data Protection	Failure to control the appropriate use of data and unauthorised access.	To manage the risk of non compliance with Cabinet Office PSN CoCo, PCI DSS, Data Protection Act, RIPA, Human Rights Act.	4	5	20	Mitigate	Information Security Policy; All employees responsible for adequacy of data security arrangements within their control. Access to electronic data is only available via council managed devices. Look out for advice from the Information Commissioners office. Compliance with relevant PSN CoCo through implementation of security changes required. All staff have been and new starters will be completing a data protection awareness course in via the Council's new eLearning tool.	2	3	6	eLearning tool rolled out as part of new performance management system during 16/17. Virtual Information Governance COP instigated & meet every two months, review new GDPR legislation which is due to come into force in 2018, also ensure adherence to existing regulations & investigate any incident that occurs. All incidents are investigated by MO and actions advised to SLT.
3	Provision of quality services	Service Performance	Any service failure or degradation of service impacts on the customer, which then impacts on all areas of the council and members	Lack of appropriate resources due to current interim vacancies; ongoing transformation programme specifically IT and process implementation is not yet complete. These two combined have affected our ability to deliver appropriately on occasion.	4	4	16	Mitigate	Getting it right the first time, getting back to people appropriately and more timely. Better channel recognition to clear responses. Keep better records. Appropriate resources in the right places.	3	4	12	Mobile solution is in test, whitespace (in cab) technology now integrated into W2 workflow processes, already bringing benefits. Land charges solution now live. Call volumes reducing. Concerto software roll-out for assets is underway.

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	Strategic Priority	Risk Title	Detail	(What is/are the) Uncertainties;	Likelihood	Impact	Current Rating	Risk Approach	Mitigating Action/Internal Control	Likelihood	Impact		Target Rating
4	Financial Sustainability	Adherence to Medium Term Financial Strategy (MTFS), due to changes in Government Policy and/or Income Streams	Failure to sustain a robust on-going medium term financial strategy with adequate reserves to meet unforeseen circumstances, due to cost pressures and missed income targets, changes in Government policy with regard to business rates and affordable housing; Potential impact on delivering the MTFS, particularly if national/regional businesses successfully appeal against business rate valuations	Reduction in Government grant, increasing demand for services and other cost pressures and increased risks associated with localised business rates and council tax support. Additionally, income from activities may not materialise or may be reduced, e.g. business rate appeals or a reduction in the commercial property market. The amount of income received can be adversely affected by a fall in collection rates due to economic downturn and other factors such as the bankruptcy/liquidation of large ratepayers or any sizeable rateable value reductions achieved by business rated properties in the area. Reclassification of waste classes by the Environment Agency could see items becoming recoverable rather than recyclable material, e.g. leaf sweeping could reduce recycling rate by about 5% in West Devon and 1% in South Hams. It is as yet unknown if and when such changes may take place. 100% local business rate retention is subject to consultation and the impact on LAs in unclear.	4	4	16	Mitigate	Robust horizon scanning to monitor changes in Government policy. SLT awareness of the risks, cautious approach to budgeting and robust systems of financial control. The Council are not intending to rely heavily on sources of income which may not be sustainable. SLT actively participate in Government consultations, MP discussions and keep aware of changes and the response by peer group, ensuring where appropriate the learning from this is incorporated into strategic plans. SLT engaged in the development of the MTFS. Latest budget reports approved by both Councils in February 2017 after member workshops in October 2016 and result of 4yr Government Finance Settlement communicated. The effects of a fall in NNDR are mitigated in WDBC by the Councils membership of the Devon wide pooling scheme, which significantly reduces the risk to income volatility. SHDC do not participate in this due to outstanding business rate appeals.	2	3	6	Less favourable settlement over NHB and decision not to implement LACC. JSG to review options for dealing with budget position and future working. Other initiatives underway to help meet forecast budget gaps, such as asset investment and community housing delivery
5	Financial Sustainability	Financial Systems & Budget Monitoring	That the financial systems and processes are robust enough to enable effective self service and budget monitoring by the budget holders.	Can the current system, use of the system and our financial processes support transforming the way we manage our budgets and financial reporting. There is a risk that any changes could jeopardise year end processes.	4	4	16	Mitigate	Temporary resource has been brought in to drive process changes and recommend changes to our set up of the financial system. We are engaging with the system provider to review our system set-up through a process known as Assessment of Current Use (AoCU)	2	3	6	A clear plan of action should be in place by end of June (post year end) so that implementation can begin over the summer and completed by end of Q2 17/18
6	Encouraging communities to thrive	Delivery of local plan (Inc. 5 Year Land Supply in South Hams)	Risk of speculative development without a 5 year land supply in South Hams, following Riverside ruling. Risk of designation in relation to Development Management & local plan across both councils.	Lack of detail / contingency around 5 year land supply until the joint local plan is completed.	4	4	16	Mitigate	Work underway to agree joint strategic working plan between Plymouth, South Hams and West Devon to ensure land supply across the three areas is sufficient. Collaboration agreement signed.	2	2	4	Next stage of consultation process about to commence; Member engagement ongoing. On course for examination Sept 2017; inspector to respond June 17 with issues to take to examination, meaning we can rely on anything not queried

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7	Provision of quality services	Business Continuity	Officers fail to develop robust processes to ensure business continuity in the event of a significant event occurring, e.g. Failure to ensure the continuous availability of critical IT systems	Following the event, how quickly will certain systems and processes be able to be back on-line	4	4	16	Mitigate	Having two HQ locations is main mitigating factor. Agile working further reduces reliance on two office buildings. Locality workers can be despatched more easily to ensure customer engagement can be maintained during any incident. Business Continuity plans have been updated - priority areas - ICT Networking - Payroll & Creditors Payments	2	2	4	Annual work programme to address critical areas. ICT strategy adopted by both Councils. Going through procurement process for new infrastructure and backup infrastructure.
8	Provision of quality services	SH Waste Round Review	Risk of reputational issue to the Council if the project fails to run to project timeframe and deliverables. Risk to identified efficiency savings if project not run on time. Failure to manage customer enquiry and feedback in a timely manner could also affect reputation.	Amount of customer contact. External factors.	4	4	16	Terminate	Project group are meeting weekly and the operational plan is supported by a communications plan. Additional staff are included in the customer contact/case management plan.	1	1	1	Part one of round review completed and no adverse issues. However, decision by members not proceed with review & impact had been reflected in 2017/18 budget planning. Member waste group is tasked with reviewing other options. This risk to removed from March 17
9	Provision of quality services	Procurement	There are a number of contracts to be let by the Council over the next 2 year period which will be in excess of the EU procurement thresholds.	These will require specialist input and project teams to ensure best value for money is achieved.	5	3	15	Mitigate	The procurement elements required should be captured and prioritised within the service planning exercise being carried out currently.	3	2	6	The service planning process is in train and SLT can ensure that this item is raised, identified and actioned as part of the work stream.
10	Provision of quality services	Emergency Response, e.g. Coastal Erosion / Storm Damage / Flooding	There is high public expectation in relation to supporting communities during coastal erosion/storm damage/flooding events, as well as engagement in longer term recovery, in particular assumptions about capital investment to restore assets. The risk relates to how best to support dispersed communities, e.g. with filling, transporting and laying sandbags as well as providing workforce on site, given limited resources and expectations during an event.	Following the event, the expectation that coastal defences and asset repairs will be urgently undertaken despite competing claims on capital resources	4	3	12	Mitigate	Continued management and officer focus on this area to ensure risk is minimised as much as possible; continued close engagement work with DCC and Environment Agency to ensure all parties are aware of each others responsibilities and capacity	4	3	12	Mild Winter 16/17 so far. Torcross / Slapton works now completed. Emergency response plan updated

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11	Financial Sustainability	T18 Benefits Not Delivered	Failure to deliver sustained benefits from the T18 Programme; Risk of new systems not being fit for purpose during transfer and then for BAU; Capacity risk once additional resources exhausted?	Poorly executed delivery could affect quality of customer service; timescales to complete routine tasks and an increase in complaints. Staff moral and reputation can be affected.	3	4	12	Mitigate	Regular SLT and member scrutiny over T18 roll-out; T18 programme being managed closely; currently within budget. Quarterly monitoring reports to Members.	2	3	6	Continued management focus on programme delivery. Considerable engagement with Civica, some compensatory payments for back filing and resourcing from Civica. SLT have looked & deployed alternatives as required. Budget has been monitored & on budget. Transition resources have been recruited to ease pressure, staff re-allocated to look at services for improvements and programme management temporary resources retained (though reduced) to ensure continuity.
12	Provision of quality services	Adherence to Council policies & processes and Government guidelines	Failure to manage/enforce s106 conditions. Ombudsman complaints could lead to finding of maladministration due to management of issues, e.g. poor record keeping; time to resolve issues or meet imposed timelines; reputational damage. Failure to meet current and changing needs of customers and to manage customer feedback. There is a risk of failure to respond to changes and to recognise external influences such as changes in government policy; Risks of losing JRs, appeals and Ombudsman rulings	T18 programme rollout saw service levels reduce but these have now recovered	3	4	12	Mitigate	Plan to commence measuring customer satisfaction during 17/18. Increased customer engagement; new complaints policy in place. Ongoing review of internal and external policies.	2	3	6	Embedding new process within organisation; Transformation Improvement board now in place. Additional resources recruited to ensure less impact on front line services. Internal audit programme in forthcoming year will help provide assurance. Regular Statutory Officers Group meet. RIPA training for key staff. Policies / Key Strategies being reviewed by CoPs with consultation where appropriate, e.g. Homelessness Strategy.
13	Financial Sustainability	Finding long term solutions to meet the budget gap	Failure to identify, develop and agree proposals to meet the identified funding gaps for the Councils up to and beyond 2020/21	A number of strategies and proposals are likely to be needed to close the predicted funding gaps. The risk is that officers do not bring forward viable, detailed, robust proposals and that Members will fail to make appropriate and timely decisions	3	4	12	Mitigate	Establish project management resource to oversee programme of proposals and ensure that projects are properly managed and kept on track. Ensure there is adequate capacity and resources available to develop robust business cases for each proposal. Ensure that Members are briefed and involved at an early stage and that work is progressed through the re-constituted Joint Steering Group.	2	2	4	SLT / ELT to review establishment to ensure sufficient project management resource. SLT to ensure they have visibility of all proposals that these are appropriately prioritised so that capacity to deliver is not impinged

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14	Provision of quality services	Contractor Failure	Failure to manage a major failure of a significant council contractor including, any significant related industrial relations issues.	Contingency plans if contractor were to fail; affect on service delivery	3	4	12	Tolerate	Good contract and people management, effective Contract Team, use of shared procurement expertise, more frequent credit checks (including parent companies), requirement for bonds where appropriate.	2	2	4	Unproven contractor won leisure procurement - this was mitigated via contract process & PQQ process. Contract monitoring is acknowledged as an area which needs strengthening across the Council. Temp procurement officer in place; work underway to find longer term solution.
15	Provision of quality services	Inadequate Staffing Resources	Failure to have sufficient staffing arrangements. Loss of staff morale, and inadequate resources for training and re-skilling in an ongoing period of change. Failure to engage staff resulting in uncertainty regarding changes in working practices and job security. Particular risk in relation to future terms and conditions. Cost and time of retraining/up-skilling staff. Unrealistic expectations in relation to staffing capacity.	Performance being reviewed to understand whether resourcing levels are correct; difficult to assess accurately as organisation continues to experience change effects and processes being embedded / roll-out of new technology and working practices	2	4	8	Mitigate	Review of staffing arrangements and GAP analysis is planned for 16/17. New performance management system being introduced linked to recruitment IMPACT behaviours; staff will continue to be set SMART objectives and be regularly appraised to give early warnings if issues. Staff forum to be reintroduced; continued SLT engagement with unions and regular staff comms sessions held. Other comms media under review and several improvements made. Staff satisfaction survey planned for 16/17.	1	4	4	T18 model is starting to have a positive affect in case management for reducing single points of failure. However, there are still areas of concern within the specialist function as resilience is lower due to reduced number of bodies. Staff forum now in place. Staff survey due to be re-run in April.
16	Provision of quality services	Political commitment	On-going political commitment to the partnership to ensure that service delivery BAU is delivered	Considerable external change with devolution and Governmental funding cuts; leading to uncertainty within the South West and beyond.	2	4	8	Mitigate	Ongoing liaison with Members to maintain shared vision. Managing interest from potential partners in terms of securing critical project timescales and taking account of organisational capacity. Raise awareness of the scale of organisational change and the impact on existing arrangements for both Members and Staff. Ensure that the new model delivers and retains separate Council identities.	1	4	4	Continued liaison with members to alleviate this risk; establishment of JSG with refreshed ToR that recognises their role in managing the relationship between the two Councils.
17	Provision of quality services	Safeguarding	Council and/ or contractors fail to adhere to meet safeguarding obligations as set out in legislation such as Children Act 2004 section 11.	Do staff, members and contractors know what is required and how to react?	2	4	8	Mitigate	Policies in place and key staff & management have received appropriate training and contact details to spot and report safeguarding issues	1	4	4	n/a

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18	Provision of quality services	Staff Morale	SHWD undertook an all staff survey during March / Early April 2016.	The results highlight that issues surrounding communications, understanding, morale and satisfaction are present across the organisation. This is likely to affect quality of service, staff retention and recruitment. Staff will need to see that the Council is actively trying to make changes as a result of the feedback and improvements need to be made to ensure service is not affected.	2	4	8	Mitigate	SLT are to work with HR to look at key areas from survey to focus on. New Staff Community team looking at a 10 point plan to deal with issues raised.	2	2	4	Action plan been prepared & actions completed / underway delivered by ELT and staff forum. Staff survey to be repeated in April to identify progress since last survey in 2016.
19	Provision of quality services	Corporate Governance	Failure to maintain effective Corporate Governance arrangements.	To maintain effective Member standards and develop new Council Constitution. To continue to raise awareness of the risk of fraud and the implications of the Bribery Act 2010. To ensure that there is on-going review and self assessment of the effectiveness of governance arrangements within the Council	2	4	8	Mitigate	Promotion of necessary policies via staff intranet. Reviewed and implemented new Council constitution. To provide necessary Annual governance self assessment review by both ELT and SLT. Audit Committee established with wider terms of reference. External reviews including the Council's external auditors. Appropriate committee monitoring. Service based risk assessments and action plans, with a particular focus on high risk service activity.	1	3	3	TBA
20	Provision of quality services	Health & Safety	Failure to manage the health, safety and welfare of the public, visitors and staff. Key consideration in relation to number of external frontline staff, including lone workers.	High impact on service delivery resulting in resources / services being unavailable for long periods	2	4	8	Mitigate	Safe working environment, policies and procedures, e.g. fire safety policy, travel at work policy. IIP, PDRs. Revised sickness absence policy, health and other wellbeing initiatives. Awareness of appropriate legislation e.g. Corporate Manslaughter Act, Equalities Act. Up-to-date corporate Health & Safety Policy/procedures	1	3	3	Virtual COP set up to ensure visibility and focus on this topic; regular reporting to SLT and proposed changes to member performance data to include H&S measures. Work underway to consider ISO accreditation & impact on services. Review in 3 months after H&S CoP embedded
21	Provision of quality services	WD Waste Procurement	Managed service solution agreement may not be in place in time.	Future cost of service may increase in both capital and revenue terms in view of aging assets during extension period. Service received during transition / notice period may deteriorate.	2	4	8	Mitigate	Detailed procurement process including specification writing which is well advanced. Wide review team of officers/members in place. Budget will be set and highlighted as part of the service review process	1	1	1	Contract for managed service due to be agreed / signed in Feb '17. Costs known and in WDBC budget for 17/18. Due to be removed at next review and replaced with new risk for ongoing solution post mgmt agreement as decision needs to be made by Sept due to procurement timetable

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22	Financial Sustainability	External Fraud	Fraud, financial impropriety or improper business practises anywhere against the organisation	Fraud could occur anywhere against the organisation; but the likely impact is limited due to existing management controls	3	2	6	Mitigate	Audit has highlighted generally ok. Management to remain vigilant; random spot checks where appropriate (e.g. expense claim forms)	3	2	6	Processes and overview stronger than in previous year; Audit now taken place, mitigating actions have been carried out & audit to be repeated in coming year.
23	Financial Sustainability	Internal Fraud	Fraud, financial impropriety or improper business practises anywhere in organisation	Fraud could occur anywhere throughout the organisation; but the likely impact is limited due to existing management controls	3	2	6	Mitigate	Audit has highlighted generally ok. Management to remain vigilant; random spot checks where appropriate (e.g. expense claim forms)	3	2	6	Processes and overview stronger than in previous year; Audit now taken place, mitigating actions have been carried out & audit to be repeated in coming year.
24	Provision of quality services	Potential for late filing of accounts	There is a requirement that closedown of 16/17 accounts be brought forward 4 weeks to end of May 2017. The risk is that resourcing within the finance COP and delayed process improvement prevents closedown by the government deadline. Impact would be that the council's accounts would be "qualified".	Whether the new timetable is achievable for the existing team.	2	3	6	Mitigate	Additional resourcing will be made available when required, structure changes already implemented. 2015/16 year end worked to restricted timetable as a trial run.	2	3	6	Requirement to bring forward deadline has been delayed to 2018 so this risk had diminished. However, resources in place to ensure filing for 16/17 accounts should not be delayed despite recent staffing changes.
25	Financial Sustainability	Inadequate asset maintenance	Failure to maintain all Council owned assets and buildings (including fleet).	To manage the health and safety risks of customers and staff and to ensure budgets are managed effectively to maintain assets to a satisfactory standard, To consider and manage the risk of redundant properties / assets.	1	5	5	Mitigate	Effective budget monitoring, sound management of assets/ buildings including a planned maintenance approach along with planned capital expenditure programme. Risk assessments and regular health and safety inspections.	1	5	5	Asset Management Review underway. This will assist with the risk assessment in respect of the maintenance of all Council assets.
26	Financial Sustainability	Implementation of LACC	Capacity impact on staff and BAU delivery; timescale of delivery may slip; Due diligence before LACC set-up may not be complete; Business case may not evidence a discernible market for the proposed company	See separate LACC Risk Register	1	1	1	Terminate	See separate LACC Risk Register	1	1	1	Joint Steering Group did not recommend to implement a LACC; therefore this risk is to be removed.

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