



Committee: AUDIT COMMITTEE
Date: WEDNESDAY, 23 JANUARY 2013
Venue: MORECAMBE TOWN HALL - MTH
Time: 6.00 P.M.

A G E N D A

1. **Apologies for Absence**

2. **Minutes**

Minutes of meeting held on 19 September 2012 (previously circulated).

3. **Items of Urgent Business authorised by the Chairman**

4. **Declarations of Interest**

To receive declarations by Members of interests in respect of items on this Agenda.

Members are reminded that, in accordance with the Localism Act 2011, they are required to declare any disclosable pecuniary interests which have not already been declared in the Council's Register of Interests. (It is a criminal offence not to declare a disclosable pecuniary interest either in the Register or at the meeting.)

Whilst not a legal requirement, in accordance with Council Procedure Rule 10 and in the interests of clarity and transparency, Members should declare any disclosable pecuniary interests, which they have already declared in the Register, at this point in the meeting.

In accordance with Part B, Section 2 of the Code of Conduct, Members are required to declare the existence and nature of any other interests as defined in paragraphs 8(1) or 9(2) of the Code of Conduct.

5. **Annual Audit Letter** (Pages 1 - 7)

Report of KPMG

6. **Internal Audit Monitoring Report** (Pages 8 - 15)

Report of Internal Audit Manager

7. **Contract Procedure Rules** (Pages 16 - 65)

Report of Head of Resources

ADMINISTRATIVE ARRANGEMENTS

(i) Membership

Councillors Malcolm Thomas (Chairman), Peter Williamson (Vice-Chairman), Jon Barry, Geoff Knight, Richard Newman-Thompson, Ian Pattison and Vikki Price

(ii) Substitute Membership

Councillors Roger Dennison, Tim Hamilton-Cox, Geoff Marsland, Sylvia Rogerson, Susan Sykes and David Whitaker

(iii) Queries regarding this Agenda

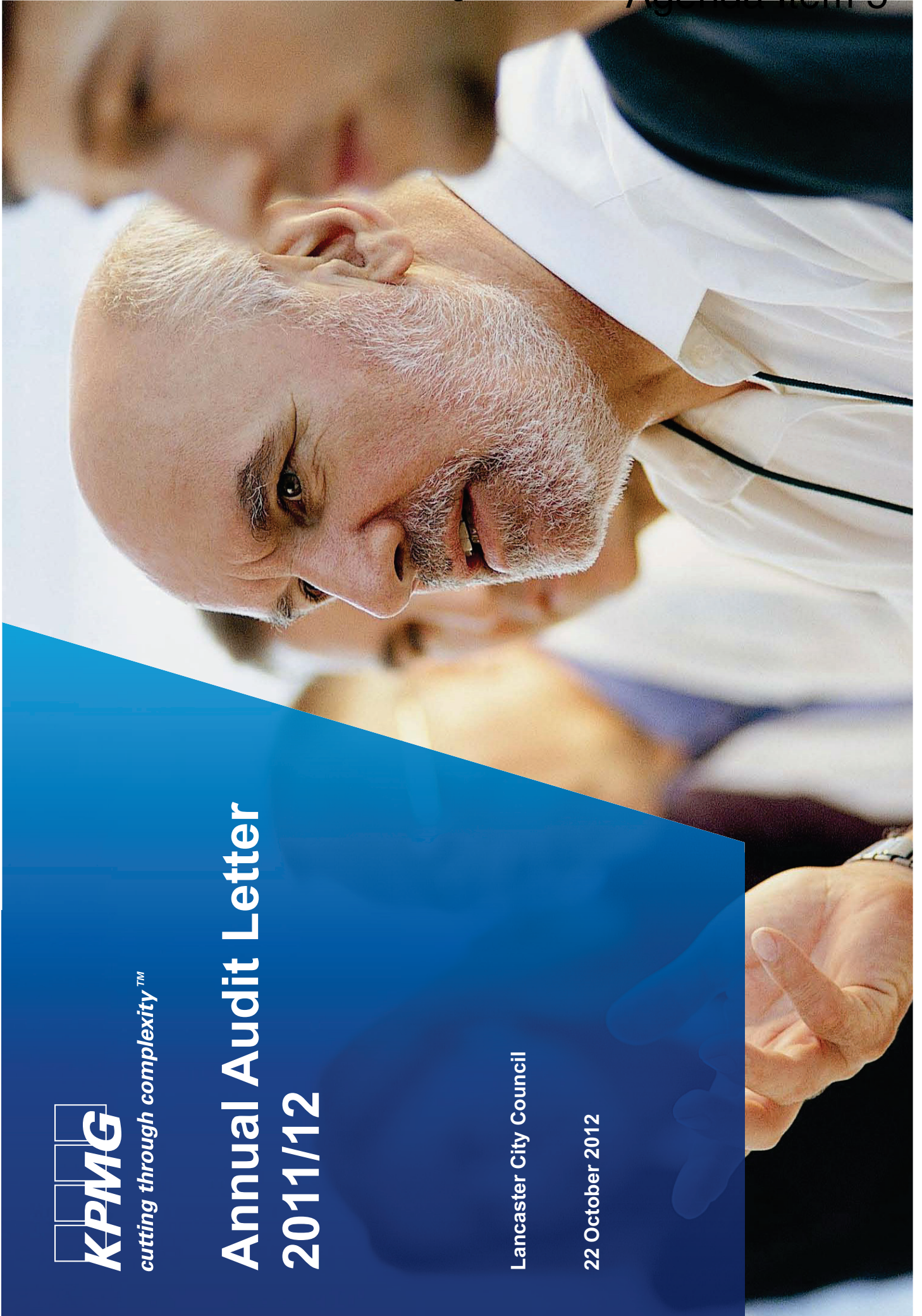
Please contact Jane Glenton, Democratic Services - telephone (01524) 582068, or email jglenton@lancaster.gov.uk.

(iv) Changes to Membership, substitutions or apologies

Please contact Members' Secretary – telephone (01524) 582170, or email memberservices@lancaster.gov.uk.

MARK CULLINAN,
CHIEF EXECUTIVE,
TOWN HALL,
DALTON SQUARE,
LANCASTER, LA1 1PJ

Published on Tuesday, 15 January 2013.



cutting through complexity™

Annual Audit Letter 2011/12

Lancaster City Council

22 October 2012

The contacts at KPMG in connection with this report are:

Steve Clark

Director

KPMG LLP

Tel: 0113 231 3148

stephen.clark@kpmg.co.uk

Richard Lee

Manager

KPMG LLP

Tel: 0161 246 4661

richard.lee@kpmg.co.uk

Marian Eyre-Walker

Assistant Manager

KPMG LLP

Tel: 0161 246 4085

marian.eyre-walker@kpmg.co.uk

Page

Report sections

- Headlines

2

Appendices

1. Summary of reports issued

4

2. Audit fees

5

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. The Audit Commission has issued a document entitled *Statement of Responsibilities of Auditors and Audited Bodies*. This summarises where the responsibilities of auditors begin and end and what is expected from the audited body. We draw your attention to this document which is available on the Audit Commission's website at www.auditcommission.gov.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.

If you have any concerns or are dissatisfied with any part of KPMG's work, in the first instance you should contact Stephen Clark, the appointed engagement lead to the Authority, who will try to resolve your complaint. If you are dissatisfied with your response please contact Trevor Rees on 0161 246 4000, or by email to trevor.rees@kpmg.co.uk, who is the national contact partner for all of KPMG's work with the Audit Commission. After this, if you are still dissatisfied with how your complaint has been handled you can access the Audit Commission's complaints procedure. Put your complaint in writing to the Complaints Unit Manager, Audit Commission, Westward House, Lime Kiln Close, Stoke Gifford, Bristol, BS34 8SR or by email to complaints@audit-commission.gov.uk. Their telephone number is 0844 798 3131, telephone (minicom) 020 7630 0421.

This report summarises the key findings from our 2011/12 audit of Lancaster City Council (the Authority).

Although this letter is addressed to the Members of the Authority, it is also intended to communicate these issues to key external stakeholders, including members of the public.

Our audit covers the audit of the Authority's 2011/12 financial statements and the 2011/12 VFM conclusion.

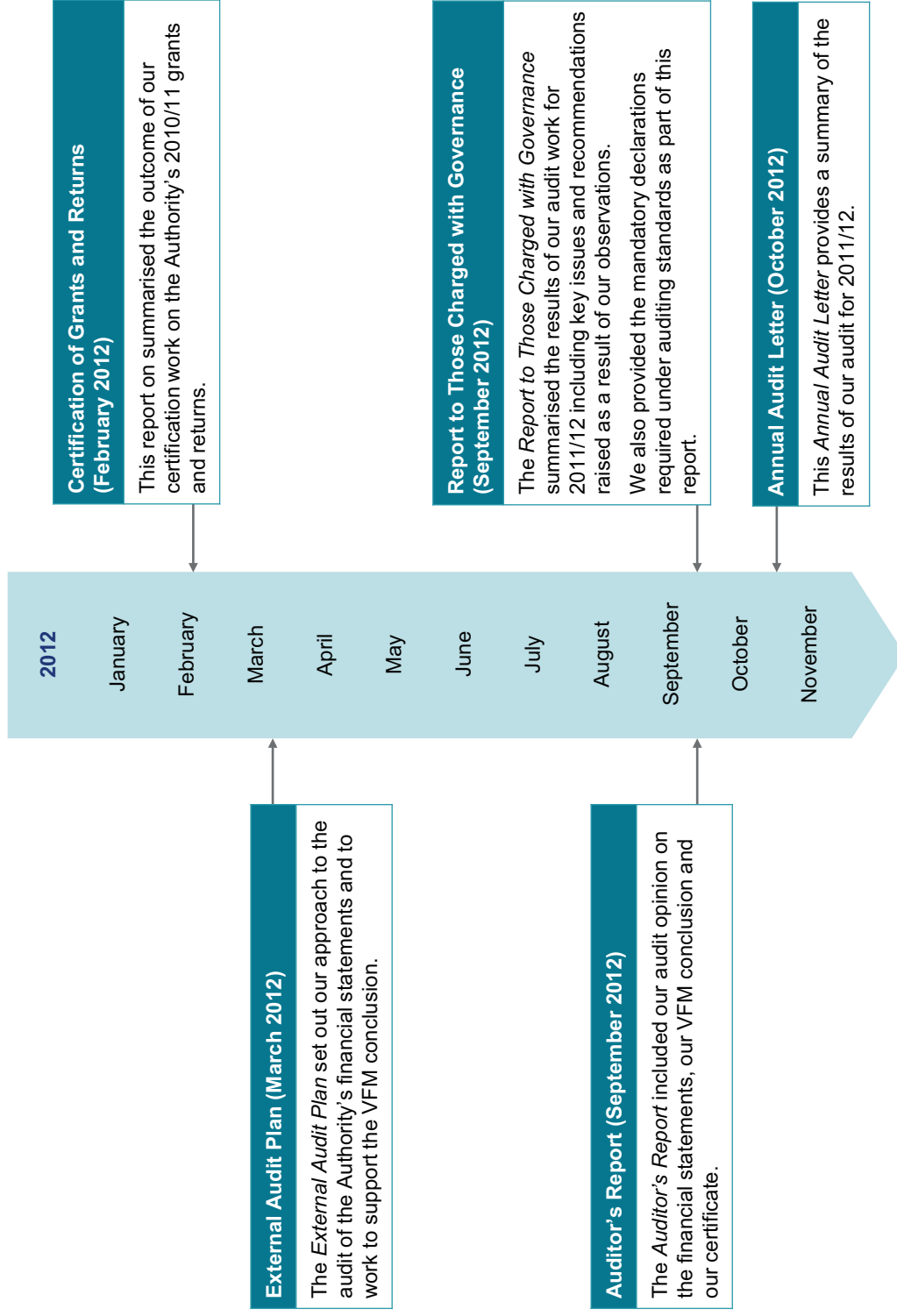
<p>VFM risk areas</p>	<p>We identified a number of significant risks to our VFM conclusion and considered the arrangements you have put in place to mitigate these.</p> <p>Our work identified the following:</p> <ul style="list-style-type: none"> ■ Management have been planning for changes in the economic environment, which means that a balanced budget was set for 2012/13. ■ Systems have been put in place to ensure that financial plans are monitored and where issues are arising, actions are taken to ensure the financial position is not adversely affected. <p>Overall we are satisfied that the Authority is dealing with the current financial pressures in an effective manner.</p>
<p>VFM conclusion</p>	<p>We issued an unqualified value for money ('VFM') conclusion for 2011/12 on 25 September 2012.</p> <p>This means we are satisfied that you have proper arrangements for securing financial resilience and challenging how you secure economy, efficiency and effectiveness.</p> <p>To arrive at our conclusion we looked at your financial governance, financial planning and financial control processes, as well as how you are prioritising resources and improving efficiency and productivity.</p>
<p>Financial statements audit</p>	<p>We identified a three significant audit risks and reported these to the Audit Committee in our Audit Plan. Officers have demonstrated that these risks have been mitigated and:</p> <ul style="list-style-type: none"> ■ the Authority has appropriate savings plans in place to manage the impact of funding cuts; ■ changes to the Code of Practice were applied to the financial statements in 2011/12; and ■ the Authority has considered the future of the Lancaster Market and the impact on value for money and the financial statements in 2011/12. <p>Our audit has not identified any significant audit adjustments, however a number of presentational changes were made to the notes to the financial statements which were agreed with management and changed in the final version of the Financial Statements.</p> <p>The quality of the accounts and the supporting working papers has been maintained at a high standard in 2011/12. Officers dealt efficiently with audit queries and the audit process was completed within the planned timescales.</p>
<p>Audit opinion</p>	<p>We issued an unqualified opinion on your financial statements on 25 September 2012. This means that we believe the financial statements give a true and fair view of the financial position of the Authority and of its expenditure and income for the year.</p>

All the issues in this letter have been previously reported. The detailed findings are contained in the reports we have listed in Appendix 1.

Annual Governance Statement	We reviewed your <i>Annual Governance Statement</i> and concluded that it was consistent with our understanding.
Whole of Government Accounts	We reviewed the consolidation pack which the Authority prepared to support the production of Whole of Government Accounts by HM Treasury. We reported that the Authority's pack was consistent with the audited financial statements.
High priority recommendations	No high priority recommendations were identified as a result of our 2011/12 work. Lower priority recommendations have been reported, as appropriate, in our other reports, which are listed in Appendix 1. A number of recommendations remain outstanding from 2010/11. We will formally follow up these recommendations as part of our 2012/13 work.
Certificate	We issued our certificate on 25 September 2012. The certificate confirms that we have concluded the audit for 2011/12 in accordance with the requirements of the <i>Audit Commission Act 1998</i> and the Audit Commission's <i>Code of Audit Practice</i> .
Audit fee	Our core audit fee 2011/12 was £128,500, excluding VAT. This is in line with our planned core audit fee reported to you in our Audit Plan. Additional fees have been incurred in relation to our review of the future accounting treatment of Lancaster Market (£20,000) and in relation to responding to electors who have raised questions about the 2011/12 accounts (£3,000). Further detail is contained in Appendix 2.

Appendix 1: Summary of reports issued

This appendix summarises the reports we issued since our last *Annual Audit Letter*.



This appendix provides information on our final fees for 2011/12.

To make sure that there is openness between us and your Audit Committee about the extent of our fee relationship with you, we have summarised below the outturn against the 2011/12 planned external audit fee.

External audit

Our final fee for the 2011/12 audit of the Authority was £151,250 excluding VAT. This is made up of our core audit fee (£128,500), a review of the accounting in relation to Lancaster Market (£20,000) and responding to local government electors (£3,000). Our core audit fee represents a reduction of 5 percent on the comparative fee for 2010/11.

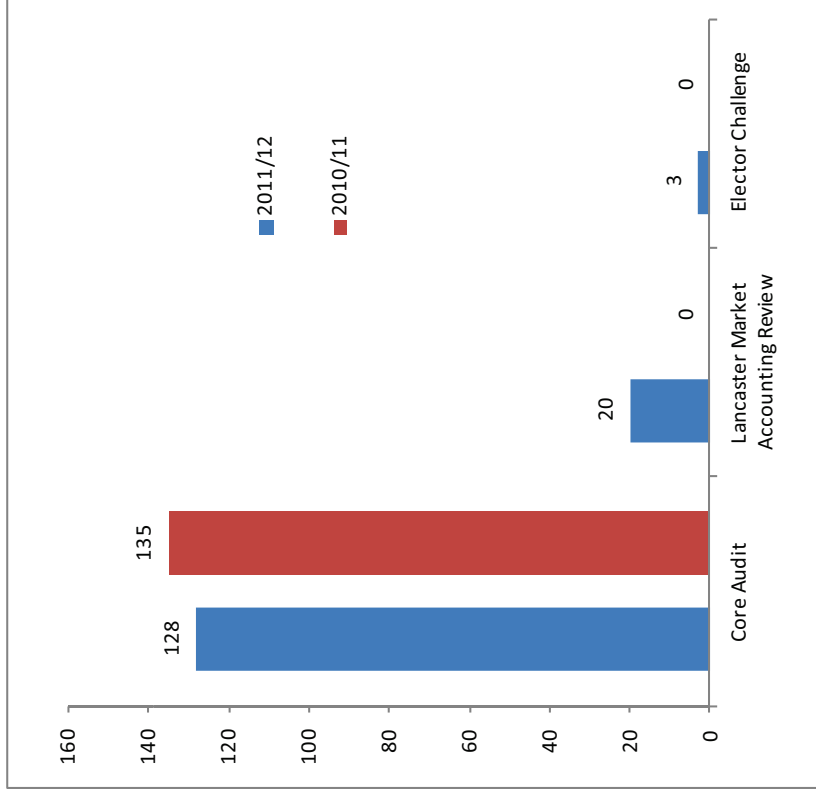
There is no variance between our final fee for the core audit and our planned fee.

Our external audit work was performed to discharge our responsibilities under the Audit Commission's *Code of Audit Practice*.

Certification of grants and returns

Our grants work is still ongoing and the fee will be confirmed through our report on the *Certification of Grants and Returns 2011/12* which we are due to issue in January 2013.

External audit fees 2011/12 (£'000)





cutting through complexity™

© 2012 KPMG LLP, a UK public limited liability partnership, is a subsidiary of KPMG Europe LLP and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative, a Swiss entity. All rights reserved.

The KPMG name, logo and 'cutting through complexity' are registered trademarks or trademarks of KPMG International Cooperative (KPMG International).

AUDIT COMMITTEE**Internal Audit Monitoring Report
23rd January 2013****Report of Internal Audit Manager****PURPOSE OF REPORT**

To advise Members of the latest monitoring position regarding the 2012/13 Internal Audit Plan, seek Members' approval for a change to planned resource allocations, and advise Members of the results of recent audits.

This report is public

RECOMMENDATIONS

- (1) That the current monitoring position is noted.
- (2) That the proposed changes to the 2012/13 internal audit plan, as set out in the table in paragraph 1.2 are approved.
- (3) That the results of recent audits (sections 2-4 of the report) are noted.

1.0 Audit Plan Monitoring to 17th December 2012

- 1.1 The 2012/13 Internal Audit Plan was approved by the Audit Committee at its meeting on 18th April 2012 and updated at its meeting on 19th September 2012. This report is based on the monitoring position up to 17th December 2012 and a detailed monitoring report as at that date is attached as Appendix A. In summary, the position as that date was as shown in the following table.

1.2 Summary of monitoring position at 17 December 2012

Area of work	Resources (audit days)					
	Actuals to 17/12/12	Remain-ing	Comm-itted	Current Plan	Variance	Proposed Plan
Assurance Work						
Core Financial Systems	101	10	111	60	-51	111
Revenues & Benefits Shared Services	21	43	64	85	21	64
Core Management Arrangements	16	13	29	95	66	40
Risk Based Assurance Audits	117	0	117	125	8	150
Follow-Up Reviews	44	11	55	55	0	55
Sub-Total, Assurance	299	77	376	420	44	420
Consultancy Work						
Support Work	63	16	79	60	-19	79
Ad-Hoc Advice	54	11	65	65	0	65
Sub-Total, Consultancy	117	27	144	125	-19	144
Other Work						
Other Duties (Non-Audit)	18	3	21	15	-6	21
Audit Management	34	15	49	55	6	49
Sub-Total, Other Work	52	18	70	70	0	70
Contingencies						
Investigations	12	0	12	30	18	30
General Contingency	0	0	0	40	40	21
Sub-Total, Contingencies	10	0	10	70	60	51
Total	480	120	600	685	85	685

- 1.3 The monitoring position takes account of ongoing and planned work commitments. The summary shows that overall, current commitments total 600 days compared with the current plan of 685 days, giving an uncommitted resource of 85 days. This includes the general contingency of 40 days and a balance of 18 days set as contingency for investigation work.
- 1.4 Within the main programme of Assurance Work, additional time has been taken on audits of core financial systems, this being mainly in the areas of Purchasing Ordering and Creditor Payment Processes in Environmental Services and in Income Management. At the time of writing both audits were coming to a conclusion and reports were due to be issued early in the New Year. This section of the plan is now estimated to require 111 days this year, exceeding the current approval of 60 days.
- 1.5 It will be possible to meet this variance by reallocating resources from within other sections of Assurance Work, as set out in the table above. This is aimed to provide scope for additional audits to be scheduled within Core Management Arrangements and the Risk Based Assurance sections during the final quarter of the year.

- 1.6 Elsewhere in the plan, the most significant variance is in the time allocated to “Support Work”. The budget for this work was increased at the last meeting of the Committee from 30 to 60 days (met by reducing the allocation to Assurance Work). The projected out-turn for the year is now 79 days (a variance of 19 days). This reflects the work (now complete) associated with the Complaints Officer Working Group resulting in the recent adoption of a new Customer Complaints policy. Other significant areas have been the review of Financial Regulations and Contract Procedure Rules (ongoing) and the emerging work associated with Information Security and the Public Services Network.
- 1.7 To meet the anticipated overspend on the Support Work element of the plan it is proposed to allocate 19 days from the General Contingency of 40 days.
- 1.8 Otherwise, the current position with the plan does not show any particular pressures developing. The remaining balances within the General Contingency (21 days) and Investigations (18 days) will provide further scope to meet emerging demands or permit additional audits to be scheduled.
- 1.9 The Committee is asked to approve these changes.

2.0 Results of Internal Audit Work to 21st December 2012

- 2.1 This report covers audit work and reports issued since the Results of Audit Work were last reported to Committee on 19th September 2012. Summary reports are issued to Members for consideration and are also posted on the Council’s Intranet.
- 2.2 The list below gives the assurance opinion issued for areas audited since the last meeting.

Audit Title		Report Date	Assurance Level	
New Audit Reports				
12/0855	Septic Tanks	24/10/12	Limited	
12/0847	AONB	26/10/12	Substantial	
12/0860	Markets	30/10/12	Limited	
12/0856	Information Security and Use of Emails	21/12/12	Minimal	
Follow up Reviews				
11/0828	Business Continuity	20/08/12	Substantial	
11/0831	Williamson Park	04/09/12	Substantial	
11/0842	Purchase Ordering and Creditor Payments 2011/12	24/09/12	Substantial	
12/0851	Disabled Facilities Grants	26/10/12	Substantial	
11/0829	Housing Rents 2011/12	16/11/12	Substantial	
11/0837	Complaints	27/11/12	Limited	

3.0 Matters Arising from Audit Reviews

- 3.1 The key conclusions and action points in relation to those reports where a “Limited” or “Minimal” assurance opinion has been given are:

3.2 12/0855 Septic Tanks (Limited)

- Arrangements are to be developed to improve management of the contract for septic tank maintenance, including improved performance monitoring of the contractor.
- Invoicing arrangements are to be reviewed and revised with a view to maximising the chances of collection, and reducing customer complaints.
- Outstanding debts are to be reviewed to establish the next course of action with a view to maximising recovery.
- Improved arrangements to ensure effective communication with householders are to be developed.
- A mechanism is to be developed to highlight instances where the transfer of ownership of a shared use of a tank results in it no longer serving any Council properties.

3.3 12/0860 Markets (Limited)

- Rules, licensing arrangements and income management arrangements across the three markets need to be aligned as far as possible.
- Debt management arrangements in respect of the Festival Market have improved since transferring to Exchequer Services. Debts are actively pursued and action taken in the event of non-payment is considered appropriate and has proved effective.
- Responsibilities for invoicing and debt management at the Festival Market provide a good separation of duties but there is a need to ensure that amounts due are received and properly accounted for.
- Action is needed to clear arrears at the Charter Market.
- Records held in respect of each market need to be reviewed and improved to ensure relevant documents are retained and the audit trail is complete.
- Managers need to consider whether any action is necessary to address the risks associated with one officer determining and collecting rents due from casual traders.

3.4 12/0856 Information Security and Use of Emails (Minimal)

- The Authority's arrangements for information security are likely to come under greater external scrutiny thus increasing the urgency to put proper arrangements in place to address current non-compliance.
- Information security/data protection training is not currently supported by a clear and strong policy framework or culture.
- The impact of personal and inappropriate emails on the council's systems and security should be considered so that they can be appropriately addressed.
- Users need to be made aware of the security issues relating to transferring the council's information to PCs outside the council's network (e.g. emailing work home) with a view to the alternative arrangements available being adopted.
- The Council's key data should be classified, thus providing clear direction to users on how the data should be handled and transmitted.
- Users need guidance on heading emails and should be made aware of the implications of inappropriate headings (e.g. those disclosing personal information).

- Guidance is needed on the security of email traffic, the appropriateness of transfer arrangements for different types of data and the use of secure facilities.
- Levels of accountability need to be clear and those with specific responsibilities (e.g. data owners) need to be identified and properly trained so that they understand their role and responsibilities and can help promote a culture of compliance.
- A programme of work addressing the above issues is being taken forward initially by an Officer Task and Finish Group, reporting to Management Team. See paragraph 4.3 below.

3.5 11/0837 Complaints (Limited)

- The Complaints Officer Working Group has carried out a comprehensive review of the complaints process and has developed a revised corporate policy and supporting guidance.
- The new Customer Comments, Compliments, and Complaints Policy and Guidance on Handling Complaints has been approved by Cabinet.
- Systems to manage complaints data are to be reviewed and revised with a view to ensuring consistency and completeness, and to facilitate effective reporting.
- Budget and Performance Panel Members are to receive regular reports on complaints to assist in monitoring performance.

4.0 Update on Previous Assurance Opinions

4.1 Information Management and Security

4.2 The assurance opinion from an audit report issued in September 2010 remained at "Limited" through to the follow-up report which was issued in November 2011. This audit produced an action plan consisting of 33 actions, progress with which has been monitored by the Information Management Group.

4.3 The findings and action plan from the recent audit of Information Security and Emails (reported above) have now superseded the outstanding points from the earlier audit. Following consideration by the Information Management Group and Management Team of these findings, a Task and Finish Group has been established. The Group's remit is to establish a programme of work which aims not only to raise standards within the Council, but also to secure the Council's membership of the Government's national Public Services Network (PSN). The deadline for the Council's submission for the PSN is mid-May 2013.

4.4 Payroll and HR System

4.5 Members will recall that a number of previous audits highlighted issues regarding the lack of integration between HR records and the payroll system, and that the Council had recently purchased a replacement system.

4.6 The new system, known as "ResourceLink Aurora" is in the process of implementation, with the payroll elements being the initial focus. Parallel runs of payroll alongside the existing system have been made in November and December, resulting in plans for the new system to be used "live" for paying salaries in January 2013. The payment of salaries will be accompanied by the introduction of "self-service" on-line payslips for employees and elected Members, whilst separate arrangements will be made for those without on-line access.

4.7 The travel and expenses module of the new system is scheduled to be rolled-out in April 2013.

4.8 The HR Service is preparing for individuals to update their own personal information once the system is available online and is working towards implementation of the HR elements of the system (including on-line forms, leave recording and sickness absence management) in the New Year. The plan for the majority of this part of the implementation is for a live date of 1st April 2013.

5.0 Details of Consultation

5.1 Management Team continues to be consulted in developing the plan.

6.0 Options and Options Analysis (including risk assessment)

6.1 The options available to the Committee are either to endorse the proposed changes to the plan or to propose an alternative course of action.

7.0 Conclusion

7.1 There are no unmanageable pressures within the audit plan at present. Some realignment of plan allocations is required to reflect additional time spent on Core Financial Systems and Support Work issues. The programme of audits for the rest of the year continues to be developed in consultation with senior management.

<p>CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)</p> <p>Not applicable</p>	
<p>FINANCIAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>SECTION 151 OFFICER'S COMMENTS</p> <p>The Section 151 Officer has been consulted and has no further comments</p>	
<p>LEGAL IMPLICATIONS</p> <p>None directly arising from this report</p>	
<p>MONITORING OFFICER'S COMMENTS</p> <p>The Monitoring Officer has been consulted and has no further comments</p>	
<p>BACKGROUND PAPERS</p> <p>Internal Audit Plan 2012/13</p>	<p>Contact Officer: Derek Whiteway Telephone: 01524 582028 E-mail: dwhiteway@lancaster.gov.uk Ref: aud/comm/audit/130123IAMon</p>

Internal Audit Annual Plan 2012/13 - Update at 17 December 2012

Appendix A

Work Allocations		Actuals to 17/12/12	Remaining	Committed	Approved Plan (19/09/12)	Variance	Status at 17/12/12
Job No	Title						
1. ASSURANCE WORK							
LCC Core Financial Systems							
11/0829	Transactional Applications - Housing Rents	4	0	4			✓
11/0833	Asset Management	3	0	3			✓
11/0842	Purchase Ordering and Creditor Payments 2011/12	17	0	17			⚠
12/0838	Payroll/HR Systems Replacement	8	2	10			⚠
12/0857	Purchase Ordering and Creditor Payment Process within Environmental Services	25	3	28			⚠
12/0859	Income Management	29	2	31			⚠
12/0861	Debt Management - Council Housing	15	3	18			✓
Sub-total - Core Financial Systems		101	10	111	60	-51	
Revenues Shared Service - Financial Systems							
11/0835	Council Tax 2011/12 (Preston)	4	0	4			✓
11/0839	Housing and Council Tax Benefit 2011/12 (Preston)	2	0	2			✓
12/0862	Housing & Council Tax Benefits 2012/13 (Lancaster)	0	8	8			⚠
12/0863	Housing & Council Tax Benefits 2012/13 (Preston)	0	8	8			⚠
12/0864	NDR 2012/13 (Lancaster)	6	6	12			⚠
12/0865	NDR 2012/13 (Preston)	3	7	10			⚠
12/0866	Council Tax 2012/13 (Lancaster)	3	7	10			⚠
12/0867	Council Tax 2012/13 (Preston)	3	7	10			⚠
Sub-total - Revenues Shared Services		21	43	64	85	21	
Core Management Arrangements							
12/0846	National Fraud Initiative 2012/13	13	4	17			⚠
12/0868	Risk Management	3	9	12			⚠
Sub-total - Core Management Arrangements		16	13	29	95	66	
Risk Based Assurance Work Programme							
11/0837	Complaints	6	0	6			✓
11/0844	Festival Market - Income Management Arrangements	2	0	2			✓
12/0847	AONB	22	0	22			✓
12/0850	Corporate Whistleblowing Arrangements	25	0	25			✓
12/0851	Disabled Facilities Grant (DFG)	8	0	8			✓
12/0855	Septic Tanks	24	0	24			✓
12/0856	Information Security and the Use of Emails	20	0	20			✓
12/0860	Markets	10	0	10			✓
Sub-total - Risk Based Assurance Work		117	0	117	125	8	
Follow-Up Reviews		44	11	55	55	0	∞
SUB-TOTAL - ASSURANCE WORK		299	77	376	420	44	

Internal Audit Annual Plan 2012/13 - Update at 17 December 2012

Appendix A

Work Allocations		Actuals to 17/12/12	Remaining	Committed	Approved Plan (19/09/12)	Variance	Status at 17/12/12
Job No	Title						
2. CONSULTANCY WORK							
Support Work (projects and other)							
12/0509	RIPA Monitoring and Central Register	2	1	3			∞
12/0807	Information Management Group	4	1	5			∞
12/0820	Financial Regulations and Contract Procedure Rules Review	8	3	11			⚠
12/0845	LDCVS	3	0	3			✓
12/0848	Governance Annual Review & Statement 2011/12	7	0	7			✓
12/0849	Complaints Officer Working Group	26	0	26			✓
12/0869	SCIC Support Work	7	1	8			⚠
12/0870	Information Security and PSN Code of Connection	6	10	16			⚠
Sub-total - Support Work		63	16	79	60	-19	
Ad-Hoc Advice		54	11	65	65	0	∞
SUB-TOTAL - CONSULTANCY WORK		117	27	144	125	-19	
3. OTHER							
12/0392	Deputy s151 Officer Duties	18	3	21			∞
SUB-TOTAL - OTHER		18	3	21	15	-6	
4. AUDIT MANAGEMENT							
12/0172	Committee Work	6	4	10			∞
12/0189	Audit Planning & Monitoring	28	9	37			∞
SUB-TOTAL - AUDIT MANAGEMENT		34	13	47	55	8	
5. CONTINGENCIES							
Investigations		12	0	12	30	18	
General Contingency		0	0	0	40	40	
SUB-TOTAL - CONTINGENCIES		12	0	12	70	58	
TOTALS		480	120	600	685	85	

Key: ✓ Completed ⚠ In Progress ⚠ Not Yet Started ∞ Continuous or Multi-Year Activity
 CFwd Carried Forward to 2013/14 Plan ✗ Abandoned

AUDIT COMMITTEE**Contract Procedure Rules
23rd January 2013****Report of Head of Resources****PURPOSE OF REPORT**

To seek Members' approval for a revised set of corporate Contract Procedure Rules.

This report is public

RECOMMENDATIONS

(1) That the draft Contract Procedure Rules are approved.

(2) Background

1.1 The Audit Committee's Terms of Reference include "To consider and approve amendments to the Council's Financial Regulations and Contract Procedure Rules (§ 8.16).

1.2 The Council's current Contract Procedure Rules were adopted in February 2005 and were last updated in May 2010. Since their introduction, there have been many changes both to the structure and operational management of the Council and to the environment in which it conducts its procurement activities. A fundamental review and revision of the Rules has therefore become due.

2.0 Review

2.1 Efficient and effective procurement and contract management arrangements play an important role across the full range of the Council's activities and are necessary to enable achievement of the Council's Vision and Priorities, as set out in the Corporate Plan. The significance of these arrangements are particularly reflected in the "Key Themes" included in the Corporate Plan as underpinning the priorities, that is to say;

- Working together in partnership;
- Managing the Council's resources;
- Environmental sustainability.

2.2 In promoting these themes, the over-riding concern in setting these Rules is that they promote and enable the achievement of Value For Money throughout the Council's procurement activities. A key objective of the review has been to develop a modern set of Contract Procedure Rules which fit the Council's procurement activities and needs and enable it to make best use of the procurement methods and arrangements available.

3.0 Key Features

3.1 The key changes in the proposed Rules are:

a) Financial thresholds:

It is proposed to increase the threshold for high value procurements requiring a tendering procedure from £50,000 to £100,000. Intermediate value procurements from £10,000 to £100,000 will require three written competitive quotations. Details are given in section 4, on page 9 of the Rules.

b) Selection of procurement route:

Given the increased emphasis on shared service and other partnership and collaborative arrangements, extra emphasis is placed on the use of existing service delivery arrangements and internal provision wherever possible. These changes are particularly incorporated in paragraphs 2.2.2, 3.2, and sections 6, 8 and 11.

c) New and emerging procurement methods:

The rules have been updated to incorporate new and developing procurement methods and tools, including e-procurement, and corporate payment cards. Given the nature of the function and the financial pressures on public bodies, procurement routes and methods will continue to develop. It is recognised that the rules will need regular review to ensure they remain current and up-to-date and it is proposed that this is done on an annual basis.

d) Roles and responsibilities:

Throughout the document, the Rules are more explicit than previously concerning the roles and responsibilities of individuals. This is intended to make the Rules more meaningful and useful to employees in their day-to-day procurement activities. This is supported by inclusion of a detailed glossary of definitions.

3.2 The Rules are designed to establish the fundamental controls and framework for procurement and they will be accompanied by more detailed guidance in specific areas. Once the revised Rules are adopted, it is planned to deliver a programme of training and induction and to redesign and update the information and guidance provided via the Intranet.

4.0 Details of Consultation

4.1 The draft Rules have been developed through consultation with Service Heads and their senior managers.

5.0 Options and Options Analysis (including risk assessment)

5.1 Three options are identified as available to the Committee, being:

- A. to approve the proposed Contract Procedure Rules as presented;
- B. to approve the proposed Rules with changes;
- C. not to approve the proposed Rules.

Option	Advantages	Disadvantages	Risks
A. Approve the proposed Rules; and B. Approve the proposed Rules, with changes	The revised rules are modern and reflect the Council's current procurement environment/needs Provides an opportunity to raise understanding and efficiency/effectiveness of procurement activities	Resources required to implement the revised Rules. Will take time for new Rules to be fully adopted/implemented	Potential for misunderstanding and mistakes until Rules are fully adopted. (Low impact)
C Do not approve the proposed Rules	Retains the status quo – avoids resource implications of implementation	The current Rules are out of date regarding the Council's current management structure. They are also dated and incomplete as regards a number of current procurement practices / methods. Staff may not be familiar with full range of procurement methods and opportunities.	Confusion over roles and responsibilities may lead to mistakes. May be wasteful and miss out on opportunities to obtain best VFM. May affect contribution to Council Vision and Priorities (Med/High impact)

5.2 The officer preferred option is A – for the Contract Procedure Rules to be approved as proposed. Implementation of the new Rules will be covered by existing resources with the Procurement function within Resources (Financial Services). The Procurement Manager and Procurement Assistant provide the corporate resource to support Services in managing their procurement activity.

6.0 Conclusion

6.1 An update of the Council's Contract Procedure Rules is timely to ensure they remain current and in tune with modern procurement practices and continue to make an effective contribution to the Council's vision and priorities.

CONCLUSION OF IMPACT ASSESSMENT

(including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)

Not applicable

FINANCIAL IMPLICATIONS

Staff resources will be required to manage the implementation of new Contract Procedure Rules. This is essentially a role for the Procurement function within Resources (Financial Services) and can be met from existing resources with no additional cost.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

LEGAL IMPLICATIONS

None directly arising from this report

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been consulted and has no further comments.

BACKGROUND PAPERS

Contact Officer: Derek Whiteway
Telephone: 01524 582028
E-mail: dwhiteway@lancaster.gov.uk
Ref: aud/comm/audit/130123CPRs

LANCASTER CITY COUNCIL

**CONTRACT PROCEDURE RULES FOR
WORKS, GOODS AND SERVICES**

Record of Document Version Control

Date	By Whom	Reason	Version
26.01.12	NM	Tidy up	0.01
12.09.12	DCW	Review and update of the above version	0.02
13.11.12	HMCM / DCW	Further review and updates	0.03
21.11.12	HMCM / DCW	Version for consultation	0.04
13.12.12	HMCM / DCW	Updated re comments from CJR , ST and MD	0.05
27.12.12	HMCM / DCW	Updated re comments from MC	0.06
07.01.13	HMCM / DCW	Additions to section 25 re extensions, minor amendments	0.07
13.01.13	HMCM / DCW	Final consultation changes per NM	0.08

CONTENTS

INTRODUCTION	5
SCOPE AND KEY PRINCIPLES	6
1 BASIC PRINCIPLES.....	6
2 OFFICER RESPONSIBILITIES.....	6
3 RELEVANT CONTRACTS.....	8
4 FINANCIAL THRESHOLDS.....	9
5 EXCEPTIONS.....	10
6 COLLABORATIVE PROCUREMENT.....	11
7 FRAMEWORK AGREEMENTS.....	12
COMMON REQUIREMENTS	14
8 STEPS PRIOR TO PURCHASE.....	14
9 CALCULATING THE ESTIMATED CONTRACT VALUE.....	14
10 GETTING APPROVAL PRIOR TO COMMENCEMENT OF A PROCUREMENT EXERCISE.....	15
11 DECIDING ON PROCUREMENT ROUTE.....	15
12 RECORD KEEPING.....	16
13 ADVERTISING AND APPROVED LISTS.....	18
CONDUCTING PURCHASES	20
14 COMPETITION REQUIREMENTS FOR PURCHASING AND PARTNERSHIP ARRANGEMENTS.....	20
15 PRE-TENDER MARKET RESEARCH AND CONSULTATION....	21
16 STANDARDS AND AWARD CRITERIA.....	21
17 OBTAINING QUOTATIONS.....	22
18 INVITATIONS TO TENDER.....	23
19 SHORT LISTING.....	24
20 SUBMISSION, RECEIPT AND OPENING OF TENDERS.....	24
21 CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATION.....	25
22 EVALUATION OF THE CONTRACT.....	25
23 APPROVAL FOR THE AWARD OF A CONTRACT.....	26
24 DEBRIEFING OF CANDIDATES.....	27
25 VARIATION OR EXTENSION TO CONTRACTS.....	28
26 PROCUREMENT CARDS.....	28
CONTRACT AND OTHER FORMALITIES	29
27 CONTRACT DOCUMENTS.....	29

28 PREVENTION OF CORRUPTION..... 31

29 TERMINATION OF CONTRACT 32

30 FAILURE OF A CONTRACTOR..... 32

31 DECLARATION OF INTERESTS 33

CONTRACT MANAGEMENT 34

32 MANAGING CONTRACTS 34

33 RISK ASSESSMENT AND CONTINGENCY PLANNING..... 34

34 CONTRACT MONITORING, EVALUATION AND REVIEW 34

DEFINITIONS 36

INTRODUCTION

These Contract Procedure Rules are intended to promote good purchasing practice, public accountability and to deter corruption.

The Rules are mandatory for all Officers. Following them is the best defence against any allegations that purchases have been made incorrectly or fraudulently. They lay down the minimum requirements for procurement; each Contract should be considered on its own merits and more thorough procedures adopted where appropriate..

All procurement approaches, whether established and traditional or modern and innovative (for example e-procurement tools such as e-tendering) must comply with all elements of these Rules.

All values referred to in these Rules are exclusive of VAT.

Under these Rules, where there is a requirement for correspondence to be in writing, generally e-mail and fax transmissions are acceptable as well as hard copy, except where specific communication methods are specified, for example covering the return of tenders, estimates or quotations.

Any dispute regarding interpretation of these Rules shall initially be referred to the Procurement Manager for resolution.

Terms shown in italics are explained in the DEFINITIONS section.

SCOPE AND KEY PRINCIPLES

1 BASIC PRINCIPLES

- 1.1 All purchasing and supporting procedures must:
- be cost-effective and represent value for money;
 - be consistent with the highest standards of integrity;
 - ensure fairness and transparency in awarding public *Contracts*;
 - comply with all legal requirements;
 - ensure that *Non-Commercial Considerations* do not influence any *Contracting Decisions*;
 - support the Council's corporate and service aims and activities; and
 - comply with the Council's Constitution, Financial Regulations and Procurement Strategy, as well as these Regulations.

2 OFFICER RESPONSIBILITIES

2.1 Where the Contract Procedure Rules nominate an Officer of the Council, this will be deemed to mean either that individual or any formally delegated representative identified within the Council's Scheme of Delegation.

2.2 **Officers**

- 2.2.1 **Officers** responsible for purchasing must ensure that any **Agent, Consultant** or **Contractor** acting on their behalf or under their supervision also complies with:
- these Rules;
 - the *Financial Regulations*;
 - the *Officer Code of Conduct*;
 - all UK and European binding legal requirements;
 - any guidance issued by Financial or Governance Services.

2.2.2 In summary the *Officer* must:

- follow these Rules if purchasing goods or services or instructing building works;
- establish that there is a genuine need prior to embarking on any purchase;
- Check whether, in the case of works and services that are already provided directly by the Council, there is actually a need to seek to let a contract
- ensure that all necessary permissions and authorities have been obtained and that the necessary budgetary provision has been approved and is available;
- conduct an options appraisal for the purchase need where relevant;
- notify the Procurement Section in advance of all procurements over an *Estimated Contract Value* of £10,000;
- take all necessary legal, financial and professional advice;
- declare any relevant personal financial interests associated with any procurement or *Contract as per the Officer Code of Conduct*
- check on the Intranet or by consulting the Procurement Manager whether a *Corporate Contract* or *Central Purchasing Body* contract exists before seeking to let another *Contract*;
- use such a suitable *Corporate Contract* or *Central Purchasing Body* where one exists;
- maintain and keep appropriate records that are readily accessible and understandable by other parties (see rule 0);
- ensure that sufficient time (normally at least 4 weeks) is allowed for the preparation and submission of bids;
- ensure appropriate confidentiality in the conduct of tendering exercises;
- ensure that an appropriate agreement is established with the supplier/contractor (e.g. a written *Contract* and/or a Council purchase order) before the services, supply or works begin;

- identify a *Contract Manager* with responsibility for ensuring that the *Contract* delivers as intended;
- keep records of all dealings with suppliers;
- assess each *Contract* on completion to see how well it met the purchasing need and *Value for Money* requirements

2.3 Chief Officers

2.3.1 *Chief Officers* must:

- ensure that they comply with these Rules and lead by example;
- ensure that their staff comply with these Rules and take appropriate action should this not be the case, or where it is in doubt.

2.4 When any employee, either of the Council or of a service provider, may be affected by any potential transfer arrangement, *Officers* must ensure that the Transfer of Undertakings (Protection of Employment) (TUPE) issues are considered and legal advice obtained before proceeding with any procurement.

2.5 If a procurement requires the consideration of a shared service arrangement or other collaborative venture with another authority or public body, all necessary advice must be sought covering (but not limited to) legal, finance and human resource implications.

3 RELEVANT CONTRACTS

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

- the supply of goods;
- the hire, rental or lease of goods or equipment;
- the delivery of services including, but not limited to, those relating to:
 - the recruitment of staff e.g. recruitment consultants and agency staffing,
 - land and property transactions e.g. estate and land agents,
 - consultancy services more generally;
- the letting of concession contracts;

- contracts or agreements where the provider is employed on a no win/no fee basis.

3.2 *Relevant Contracts* do not include:

- delivery of works and services by an in-house provider, including, for example: construction, engineering, maintenance, professional services, etc.
- contracts of employment which make an individual a direct employee of the Council; or
- agreements regarding the acquisition, disposal or transfer of land;
- arrangements that can properly be regarded as *grants* or *Service Level Agreements*.

3.3 If there is any doubt over whether a contract is relevant or not, the Procurement Manager should be consulted initially and if doubt still remains, the matter will be determined by the Head of Governance.

4 FINANCIAL THRESHOLDS

4.1 All *Relevant Contracts* are subject to Rule 8 (Steps prior to purchase) and must be subject to competition unless there is an exception under Rule 5. The *Responsible Spending Officer* must be satisfied that the actions taken to facilitate the purchase are cost-effective and reflect the complexity and value of the purchase. The minimum competition requirements are as follows:

Up to £10,000	One oral <i>Quotation</i> confirmed in writing (a catalogue or published price or an e-mail is acceptable for the purposes of this requirement only).
Over £10,000, up to £100,000	Three written <i>Quotations</i> responding to an appropriate <i>Specification</i> .
Over £100,000 up to EU Threshold	A formal <i>Invitation to Tender</i> including a <i>Specification</i> and conditions of <i>Contract</i> to at least four <i>Candidates</i> after <i>Advertisement</i> .
EU Threshold and above	In accordance with the relevant <i>EU Procedure</i> .
No Win /No Fee	Formal procurement processes

will be carried out appropriate to the estimated fee/income, in order to determine which candidate offers the most advantageous service for the Council. It is probable that the evaluation will be carried out on a quality only basis.

- 4.2 Current *EU Thresholds* are displayed on the intranet and will be maintained by the Procurement Manager.

5 EXCEPTIONS

- 5.1 No exception can be claimed if the EU Procedures apply.
- 5.2 For procurements below the key decision threshold (as specified in Article 13 of Part 2 of the Constitution), exceptions may be approved by the relevant Service Head in agreement with the Procurement Manager. In the event of any dispute, and for procurements above the key decision threshold, exceptions shall be referred for approval by the Head of Resources and/or the Head of Governance.
- 5.3 All exceptions made and the reasons for them must be recorded and reported to Procurement in the manner determined by the Procurement Manager.
- 5.4 The Procurement Manager will ensure that every exception made on behalf of the Council is identified in Corporate Financial Monitoring Reports, specifying the reason(s) that justified the exception being made.
- 5.5 An exception to these Contract Procedure Rules may be considered where the procurement:
- (a) involves tenders or quotations which have been invited by or on behalf of any consortium, collaboration or similar body, with which the Council enters into an agreement, in accordance with any method adopted by such a body. *The Responsible Spending Officer* must formally request an exception to the contract procedure rules where the purchase is to be made using standing arrangements with another local authority, Government department, statutory undertaker or public service purchasing consortium. Provided that, where tenders or quotations are invited by an officer of the Council as lead organisation in a collaboration, the delivery, opening and acceptance of tenders shall comply with the provisions of these procedure rules, or any overriding national or European Union legislation
 - (b) is for the supply of goods, materials or equipment that are *Proprietary Articles* or are sold or supplied only at

a fixed price and no reasonably satisfactory alternative is available. However it should be noted that value added elements might be a consideration when evaluating tenders.

- (c) the work to be executed or the goods or services to be supplied are controlled by a statutory body
- (d) is an extension of an existing Contract that has been let in accordance with these Rules (or the former Contract Procedure Rules) and the total period of this and any previous extension will not together exceed 2 years.
- (e) relates to supplies, services or works which are available only from a limited number of firms or individuals (resulting in a failure to comply with the required number of requests for Tender or Quotation, in which case a reasonable number of these shall be invited to Tender or Quote) or from only one specialist firm or individual
- (f) relates to the hiring of performance artists
- (g) relates to the engagement of barristers or specialist legal or technical advisers; this type of exception will only be approved by the Head of Governance.
- (h) relates to goods, services or works which are necessary to enable a Council Service to carry out work which it has won through competitive tender to an external customer, and where the customer has nominated specific sub-contractors or items/materials. The exception may be made provided that the price payable under the proposed Contract is within the relevant budget available.
- (i) the contract is for the execution of work or the supply of goods or services certified by the appropriate Service Head to be required so urgently as to preclude normal competition requirements.

6 COLLABORATIVE PROCUREMENT

- 6.1 In order to secure *Value for Money* and fulfil its general duty of *Best Value*, the Council may enter into a variety of collaborative procurement arrangements. The Officer must consult the Procurement Manager where a purchase is to be made using collaborative procurement arrangements with another local authority, government department, statutory undertaker or Central Purchasing Body.
- 6.2 In the case of purchases from Central Purchasing Bodies, such as the Eastern Shires Purchasing Organisation (ESPO), or the Yorkshire Purchasing Organisation (YPO), or where officers propose to use consortia to renew contracts, a

Market Review should be undertaken to ensure that the consortia offer the best value to the Council. Officers must confirm that, for purchases above the EU Thresholds, the relevant Central Purchasing Body has satisfied the requirements of the EU Procedures by letting their Contracts in accordance with such procedures on behalf of the Council and other purchasing local authorities.

- 6.3 In some areas, the Council may enter into a collaborative service delivery arrangement with one or more other “partner” organisations (whether local authorities, other public bodies or private sector organisations). This currently includes arrangements such as the Revenues and Benefits Shared Service with Preston City Council and the Property Services collaborative arrangement with Lancashire County Council. In such circumstances, the Council may wish to take advantage of a partner’s procurement arrangements, expertise and agreements (e.g. frameworks).
- 6.4 Any Contracts entered into through such collaborative arrangements, where a competitive process has been followed which complies with the equivalent Rules of the partner organisation (but does not necessarily comply with these Rules) should be reported as an exception to these rules.
- 6.5 Officers should be aware that collaborative procurement arrangements are subject to all UK and EU procurement legislation. Advice must be sought from the Procurement Manager prior to participation in any collaborative exercise and if necessary the Head of Governance will be consulted.

7 FRAMEWORK AGREEMENTS

- 7.1 The Council may establish a *framework agreement* where the terms and conditions governing the contracts or orders to be awarded during a given period with regard to price and quality have been predetermined and acknowledged by both parties. A framework agreement will not, in itself, bind the council to any specific transactions or expenditure.
- 7.2 The length of a Framework Agreement shall not exceed 4 years without the agreement of Procurement.
- 7.3 A Framework Agreement may be awarded with a single supplier or a number of organisations.
- 7.4 Contracts based on Framework Agreements may be awarded either:
- By application of the terms laid down in the Framework Agreement 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 procedure laid out in § 7.5 below.

7.5 Any mini-competitions entered into must be carried out as follows:

- inviting the organisations within the Framework Agreement that are capable of executing the subject of the Contract to submit written Quotations/Tenders
- fixing a time limit which is sufficiently long to allow Quotations/Tenders for each specific Contract to be submitted;
- awarding each Contract to the tenderer who has submitted the best Quotation/Tender on the basis of the Award Criteria set out in the Framework Agreement.

COMMON REQUIREMENTS

8 STEPS PRIOR TO PURCHASE

- 8.1 The *Officer* must appraise any decision to make a purchase in a way that matches its complexity and value by:
- taking into account the requirements from any relevant consultation;
 - appraising the need for the expenditure and the priority of the purchase;
 - defining the objectives of the purchase (having first consulted users) and relating it to the achievement of the Council's Objectives as set out in the Corporate Plan;
 - assessing the risks associated with the purchase and how to manage them;
 - considering what procurement method is most likely to achieve the purchasing objective, including internal or external sourcing, partnering, collaboration or use of a purchasing consortium.

9 CALCULATING THE ESTIMATED CONTRACT VALUE

- 9.1 To meet EU procurement requirements, the *Officer* must calculate the *Estimated Contract Value* for a single purchase as follows:
- a) where the proposed *Contract* is for a one-off purchase or task, by taking the estimated price for the purchase of those items, or the completion of that task;
 - b) where the proposed *Contract* is for a fixed period, by taking the total price (excluding VAT) to be paid or which might be paid (or received if a *Concession Contract*) **during the whole period**;
 - c) where a *Contract* for the provision of services is of an uncertain duration (e.g. a "rolling" *Contract*) by multiplying the estimated monthly payment by 48;
 - d) where the contract is for the purchase of goods or materials, involving recurring transactions for the same type of item, by aggregating the value of those transactions in the coming 12 months;
 - e) for feasibility studies, the value of the scheme or *Contracts* which may be awarded as a result to the same supplier;
- 9.2 Where a commitment has been made with a supplier without a formal tendering process taking place and the expenditure

exceeds the tendering threshold as mentioned in § 4.1 then the breach should be formally reported to the Procurement Manager for inclusion in the next Corporate Financial Monitoring report.

- 9.3 An *Officer* must not enter into separate *Contracts* nor select a method of calculating the *Estimated Contract Value* in order to circumvent the application of these Rules.

10 GETTING APPROVAL PRIOR TO COMMENCEMENT OF A PROCUREMENT EXERCISE

- 10.1 The *Officer* must confirm in advance of the procurement that:
- there is recorded approval for the expenditure; and
 - if the decision to purchase is a Key Decision, all appropriate steps have been taken to comply with the requirements of Rule 10.3.
- 10.2 The *Officer* must ensure that budgetary provision is available and in place to cover the *Estimated Contract Value*.
- 10.3 If the *Estimated Contract Value* is over £100,000, or the Contract will be on a 'No Win/No Fee' basis and the contract has the potential to exceed this value, the proposal must be published in the Notice of Forthcoming Key Decisions.

11 DECIDING ON PROCUREMENT ROUTE

- 11.1 There are a number of different sourcing options that can be taken to ensure a successful procurement outcome for the Council. Officers must consider the availability and suitability of the following options:
- In-house Provider. Subject to it being confirmed and agreed that the Service in question has the capacity and capability to deliver the required works, goods or services to required standards, an in-house provider should be regarded as the first choice. The Procurement Manager is able to advise on the range of in-house services available.
 - Determine if the acquisition of the goods or service is necessary and consider if there are any opportunities to borrow what is required from another service, local authority or partner.
 - Corporate Contract – a contract may already be in place within the council which could be utilised without the need for new a tender process
 - Contract or Framework let by a Central Purchasing body – for example, Yorkshire Purchasing Organisation (YPO), Government Procurement Service (GPS), North East Purchasing Organisation (NEPO). These organisations and others have contracts and

frameworks that are available for public sector bodies to use.

- Collaboration – a number of authorities or public bodies who have a common requirement combine their spending power to achieve better value. It is common practice for one body to take the lead on such procurements; with other organisations giving advice and support where necessary.
- Partnership – this is a type of contract and is common where there is to be a long term relationship or the provision of a strategic item.
- Competitive Procurement Exercise – if the officer decides that a new competitive exercise is the best solution to fulfil the requirement then the procedures laid out in CONDUCTING PURCHASES should be followed.

12 RECORD KEEPING

- 12.1 Where the *Estimated Contract Value* is up to £100,000, the *Officer* must keep the following records, as a minimum:
- the rationale to support the purchasing decision
 - any exemptions or waivers and the reasons for them
 - the reason or reasons if the lowest price is not accepted
 - copies of any communications with the successful Contractor or unsuccessful Candidates.
 - details of all those Candidates requested to provide a Quotation; a copy of the Request for Quotation; and all Quotations received;
 - the checks carried out to confirm the financial viability (for the value of the Contract) of any potential Candidates; and
 - the reasons why those Candidates were selected to provide a Quotation; and
 - the basis on which a particular Quotation was accepted i.e. the most economically advantageous offer to the Council or the lowest price.
- 12.2 Where the *Estimated Contract Value* is over £100,000 the *Officer* must record, as a minimum:
- Copies of any approvals or consents (including Executive Member decisions)
 - Details of approved budgetary provision
 - The method used for obtaining the tenders;

- Written records of any communications with Candidates
- Authorisation to proceed with Post Tender negotiations
- Detail in full the information that has led to any Contracting Decision and the reasons for it
- Any exemption or waiver and the reasons for.
- The Award Criteria and the scoring and weightings applied.
- Tender documents sent to and received from Candidates
- Evaluation of tenders
- Clarifications and any post-tender negotiation including minutes of any meetings and all correspondence;
- The Contract Documents – ensuring that the originally signed contract is placed with Governance Services
- Post-Contract monitoring
- Written records of communications with the successful Contractor throughout the period of the Contract.

12.3 Records required by rules 12.1 and 12.2 must be kept in an organised and retrievable manner to support efficient recovery by any officer that might require this information.

12.4 Records required by these rules must be kept for six years after the end of the Contract or twelve years for Contracts under seal. See Rule 27.3 for sealing requirements.

12.5 *Officers* must arrange for the original copy of all signed contracts to be lodged with Governance Services (Legal), as soon as the contract has been awarded.

13 ADVERTISING AND APPROVED LISTS

13.1 Identifying and Assessing Potential *Candidates*

13.1.1 Officers shall ensure that where proposed Contracts (irrespective of value) might be of interest to potential Candidates located in other member states of the EU, a sufficiently accessible Advertisement is published. Generally the greater the interest to potential Candidates the wider the coverage of the Advertisement should be. Advertisements may be placed in/on:

- The Council's website (mandatory for all *Contracts* of a total *Estimated Contract Value* of over £10,000)
- The Official Journal of the European Union (mandatory for all Contracts to which the EU Procedures apply).
- Portal websites specifically created for Contracts including as a minimum the Council's supplier portal.
- National journals (the cost of these adverts are sometimes prohibitive and thought should be given to the cost-effectiveness of any such advertising)

13.1.2 *Officers* are responsible for ensuring that all *Candidates* for a *Relevant Contract* are suitably assessed. The assessment process shall seek to establish that the potential *Candidates* possess:

- Sound economic and financial standing, through a financial check for contracts of over £100,000 (or lower when the supplier is new to the market or where payment is requested in advance). This assessment should be undertaken in consultation with Financial Services.
- The necessary technical ability and capacity to fulfil the specified requirements of the Council.

13.1.3 Due consideration should be given to involving/consulting other Council Services when making these assessments.

13.1.4 The assessment process referred to in § 13.1.2 above shall be fulfilled in respect of proposed *Contracts* by selecting firms appropriate to the financial thresholds set out in Rule 4 from:

- The Approved List of providers, maintained by Constructionline; or

- Shortlists prepared following an assessment of the expressions of interest in a particular Contract which have been submitted in response to a public Advertisement.

13.1.5 Public *Advertisements* issued in respect of Rule 13.1.4 above shall reflect the potential degree of interest from *Candidates* located within other member states of the EU.

13.2 **Approved Lists**

13.2.1 An Approved List may not be used for any *Contract* where any *EU Procedure* applies

13.2.2 Subject to § 13.2.1 above, an Approved List should only be used where recurrent transactions of a similar type are likely, but where such transactions need to be priced individually and cannot easily be aggregated and priced in a single tendering exercise.

13.2.3 The Procurement Manager shall be made aware of any Approved List.

13.2.4 The drawing up of an Approved List must be based on the outcome of an Advertisement inviting applications for inclusion on the List. The Advertisement must be placed to ensure wide publicity among relevant suppliers. Persons may be entered on the List between the creation of the initial list and any re-advertisement, provided that the requirements of rule 13.2.5 are met.

13.2.5 No person / Company may be entered on an Approved List until there has been adequate investigation into both their financial and technical ability.

13.2.6 Approved Lists must be re-advertised at least every four years. On re-advertisement, a copy of the Advertisement must be sent to people on the list, inviting them to reapply.

13.2.7 Any Approved List shall be maintained in an open, fair and transparent manner and shall be open to public inspection.

13.2.8 Constructionline will be deemed to be an Approved List for the purpose of these Rules.

CONDUCTING PURCHASES

14 COMPETITION REQUIREMENTS FOR PURCHASING AND PARTNERSHIP ARRANGEMENTS

14.1 Purchasing – Competition Requirements

14.1.1 Where no approved alternative procurement method is appropriate (i.e. purchasing from a *Central Purchasing Body* or from a *Corporate Contract*) then the following procedures must be followed as determined by the *Estimated Contract Value*.

Contract Type	<i>Estimated Contract Value</i>	Competition Requirements
All small/medium contracts	£0 to £10,000	One oral <i>Quotation</i> confirmed in writing
	Over £10,000 and up to £100,000	Three <i>Quotations</i> in writing, submitted under <i>sealed bid Candidates</i> – selected from an <i>Approved List</i> or by <i>Advertisement</i>
Large Contracts	Over £100,000 and up to <i>EU Threshold</i>	<i>Invitation to Tender</i> to at least four <i>Candidates</i> following <i>Advertisement</i>
	<i>EU Threshold and above</i>	<i>EU Procedure</i>

14.1.2 Where the *EU Procedure* applies the *Officer* must consult the Procurement Manager to determine the most appropriate method of conducting the purchase.

14.1.3 Where it can be demonstrated that there are insufficient suitably qualified *Candidates* to meet the competition requirements, all suitably qualified *Candidates* must be invited. This does not remove the need to advertise in the EU Journal if above the EU Threshold.

14.2 Partnership Arrangements (Partnering Contracts)

14.2.1 Partnership arrangements are subject to all UK and EU procurement legislation and must follow these Rules. If in doubt, *Officers* must seek advice from the Head of Governance and the Procurement Manager.

15 PRE-TENDER MARKET RESEARCH AND CONSULTATION

15.1 The *Officer* responsible for the purchase:

- May consult potential suppliers prior to the issue of the *Invitation to Tender* 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 *Candidate*; but
- **Must not** seek or accept technical advice about the preparation of a *Specification*, 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 *Candidates* or distort competition; and
- Should seek advice from the Procurement Manager when necessary.

16 STANDARDS AND AWARD CRITERIA

16.1 The *Officer* responsible for the purchase must require all *Candidates* to ascertain and comply with the relevant British, European or international standards that apply to the subject matter of the *Contract*.

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

- “most economically advantageous offer”, where considerations other than price, e.g. “quality” also apply, or
- “lowest price” where payment is to be made by the Council; or
- “highest price” if payment is to be received by the Council (e.g. for a disposal).

16.3 If the first criterion is used, it must be further defined by reference to sub-criteria, which may only refer to considerations relevant to the subject matter of the *Contract*. All *award criteria* must be identified to candidates, together with the value and weighting that will be applied. **Under NO**

circumstances can the criteria, value or weightings be changed once published to candidates. Award criteria may include:

- Price – including Whole Life Costing.
- service standards (including equality issues where appropriate)
- quality of goods
- operating costs
- technical merit
- previous experience of supplier
- delivery date
- cost effectiveness
- environmental considerations where directly relevant to the subject matter of the Contract
- aesthetic and functional characteristics
- safety
- after-sales services
- technical assistance
- disposal requirements and costs
- any other relevant matters.

16.4 *Award Criteria* must **not** include

- *Non-commercial considerations*
- matters which discriminate against suppliers from the *European Economic Area* or signatories to the *Government Procurement Agreement*.

17 OBTAINING QUOTATIONS

17.1 A *Request for a Quotation* must contain enough detailed information about the Council's requirements to enable a competitive price to be obtained. This will usually be in the form of a *Specification*.

17.2 The Request for a Quotation must state that the Council is not bound to accept any Quotation.

17.3 The relevant *Responsible Spending Officer* shall, in each case, keep a record as referred to in § 12.1.

17.4 All organisations invited to submit a *Quotation* 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.

- 17.5 All Requests for *Quotations* where the contract value is up to £100,000 shall be subject to the *Council's Standard Terms and Conditions* unless other terms and conditions have been approved by the relevant Head of Service or Legal Services. The terms and conditions as determined above must be included with all *Requests for Quotations* and the final *Contract* shall be subject to those terms and conditions. All Requests for *Quotations* where the contract value is over £10,000 must include a set of *Contract* conditions.

18 INVITATIONS TO TENDER

- 18.1 The *Invitation to Tender* shall state that no *Tender* will be considered unless it is received by the date and time stipulated in the *Invitation to Tender*. No *Tender* submitted in contravention of this clause shall be considered.
- 18.2 All *Invitations to Tender* shall include the following:
- a) A *Specification* that describes the Council's requirements in sufficient detail to enable the submission of competitive offers.
 - b) A requirement for Candidates to declare that the *Tender* content, price or any other figure or particulars concerning the *Tender* have not been disclosed by the Candidate to any other party (except where such a disclosure is made in confidence for a necessary purpose).
 - c) A requirement for Candidates to complete fully and sign all *Tender* documents including a form of *Tender* and certificates relating to canvassing and non-collusion.
 - d) Notification that *Tenders* are submitted to the Council on the basis that they are compiled at the Candidate's expense.
 - e) A description of the Award Procedure and a definition of the Award Criteria in objective terms and any weightings to be applied.
 - f) A notification that no *Tender* will be considered unless it is submitted in the manner described in the Guide to *Quotations* and *tenders*.
 - g) The method by which any arithmetical errors discovered in the submitted *Tenders* is to be dealt with. In particular, whether the overall price prevails over the rates in the *Tender* or vice versa.

- 18.3 All Invitations to Tender must specify the goods, services or works that are required, together with the terms and conditions of *Contract* that will apply.
- 18.4 The *Invitation to Tender* must state that the Council is not bound to accept the lowest or any Tender.
- 18.5 All *Candidates* invited to Tender 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.

19 SHORT LISTING

- 19.1 Any short listing must have regard to the financial and technical standards relevant to the *Contract* and the *Award Criteria*. Special rules apply in respect of the *EU Procedure*; in such cases advice should be sought from the Procurement Manager.
- 19.2 Where an *Approved List* is used, short listing may be done by the *Officer* in accordance with the short listing criteria drawn up when the list of *Candidates* from the *Approved List* was compiled. However, where the *EU Procedure* applies, an *Approved List* may **not** be used.

20 SUBMISSION, RECEIPT AND OPENING OF TENDERS

- 20.1 *Candidates* must be given adequate time in which to prepare and submit a proper *Tender* or *Quotation* consistent with the urgency and complexity of the requirement. It is recommended that at least 20 *Working Days* must be allowed for submission of a *Tender*. The *EU Procedure* lays down specific time periods for each stage of a tendering procedure which must be complied with.
- 20.2 All Tenders must be returned using the preferred method as detailed in the Guide to Quotations and Tenders.
- 20.3 All returned tenders must be opened at the same time when the period for submission has ended and not before the date of submission.
- 20.4 If there is an error in a *Tender* or supporting information the *Candidate* must be invited to confirm or withdraw the bid as it stands. **However**, where the error relates to the tendered total as calculated from the tendered rates and variable quantities, an amended *Tender* price may be requested to accord with the rates given by the *Candidate*.

21 CLARIFICATION PROCEDURES AND POST TENDER NEGOTIATION

- 21.1 Post tender negotiations must not be used in any *EU Procedure* except for the Negotiated Procedure.
- 21.2 The *Officer* is permitted to provide clarification of an *Invitation to Tender* to potential or actual *Candidates* so long as that clarification is provided to all *Candidates* at the same time.
- 21.3 The *Officer* may seek clarification of a Tender from one or all *Candidates* in writing or at a meeting so long as notes of that meeting are taken and agreed with all parties.
- 21.4 Where post-tender negotiations result in a fundamental change to the *Specification* or *Contract* terms the *Contract* may not be awarded but must be re-tendered. Where necessary, the *Officer* should consult the Procurement Manager as to whether changes may be construed as being fundamental.
- 21.5 The *Officer* may negotiate the terms of a Tender from one or all *Candidates* in writing or at a meeting, providing that:
- the Service Head is satisfied that the officer carrying out the negotiation has the skill and competency commensurate with the complexity and value of the contract and has authorised such action. Confirmation of authorisation is to be recorded as per Rule 12.2.
 - the Procurement Manager should be made aware of any Post Tender negotiations that are taking place
 - notes of that meeting are taken and agreed with all parties
 - the officer seeks advice and support from the Procurement Manager
 - the officer has regard and follows the Council's Code of Conduct for Employees at all times.
- 21.6 Officers may seek authorisation to carry out negotiations on contracts that are currently being delivered; this may be with regard to price or quality. Authorisation will be granted by the Service Head.

22 EVALUATION OF THE CONTRACT

- 22.1 Apart from the de-briefing of *Candidates* referred to in Regulation 23 below, confidentiality of *Quotations*, *Tenders* and the identity of *Candidates* must be preserved at all times

and information about one *Candidate's* response must not be given to another *Candidate*.

- 22.2 If a Freedom of Information Request is received asking for information about a current tendering process, the Information Management Officer must be consulted.
- 22.3 Tenders must be evaluated in accordance with the published Evaluation/Award Criteria.
- 22.4 Where the *Contract Value* is over £100,000, the *Officer* must provide unsuccessful *Candidates* with a period of at least 10 days in which to challenge the decision before the *Officer* awards the *Contract*.
- 22.5 The *Officer* must consider the full implications, including resources, that any agreement or contract will have on other services.

23 APPROVAL FOR THE AWARD OF A CONTRACT

- 23.1 The contract award arrangements for the various categories of contract are:

Contract Type	Estimated Contract Value	Award Requirements
Small Contracts	£0 to £10,000	<ul style="list-style-type: none"> • RSO. • Officer with delegated authority from RSO.
Medium contracts	Over £10,000 up to £100,000	<ul style="list-style-type: none"> • RSO with financial authority. • Service Head.
Large Contracts	Over £100,000 up to <i>EU Threshold</i>	<ul style="list-style-type: none"> • Acceptance of tender to be granted by the Chief Executive, or in his absence, the Head of Resources or Head of Governance.
	<i>EU Threshold and above</i>	
No Win/No Fee Contracts/Agreements	Unknown	<ul style="list-style-type: none"> • Service Head, on the advice of the Procurement Manager.

- 23.2 Sufficient budgetary provision must be in place before a tender can be presented for acceptance and Financial Services (Accountancy) must provide written confirmation that this is the case. In the event that the budgetary provision is insufficient, the relevant responsible Spending

Officer must consult with the Financial Services Manager for advice on how to proceed.

- 23.3 A tender for acceptance will be presented in the first instance to the Procurement Manager who will ensure that sufficient information is appended prior to it being forwarded to the Chief Executive for acceptance. If there are any areas of doubt, the Procurement Manager will obtain comments from the Head of Resources and Head of Governance prior to forwarding the acceptance to the Chief Executive.
- 23.4 As set out in Article 13 of the Constitution, the Key Decision financial thresholds apply to the acceptance of tenders (as award of contracts) and as such, the appropriate decision-making, publication and call-in arrangements apply, as set out in the Constitution.
- 23.5 In the case of a *Concession Contract* where the tender received is less than the *Estimated Contract Value* by 15% or more, the approval of the Head of Resources must be obtained prior to submitting the tender for acceptance.

24 DEBRIEFING OF CANDIDATES

- 24.1 If the decision is challenged by an unsuccessful *Candidate* then the *Officer* shall not award the *Contract* and shall immediately seek the advice of the Head of Governance and the Procurement Manager.
- 24.2 If a *Candidate* requests reasons for a *Contracting Decision*, the *Officer* must comply with the Council's corporate response standard and in any event must give the reason in writing within 15 days of the request. *Debriefings* should be carried out in writing to reduce the risk of challenge.
- 24.3 The *Officer* may also give the *debriefing* information to *Candidates* who were not selected in a pre-tender short listing process if so requested.

25 VARIATION OR EXTENSION TO CONTRACTS

- 25.1 If a contract requires a *variation*, this deviation from the original tender specification must be recorded within the contract file, even where there is no change in contract price. All variations must be agreed and signed by the *contractor*.
- 25.2 Where the variation is significantly different to the original specification a new quotation or tender process must be carried out. A contract clause should be used in all contracts reserving the Council's right to seek alternative quotations or tenders, appoint others or use its own resources to carry out any additional works.
- 25.3 Extending the term of a contract should only be performed when the ability to extend was expressed in the tender document and it was made clear to the prospective suppliers at the tendering stage that the contract may be extended. The duration of any extensions must also be published. Under these circumstances, an extension may be granted by an officer with delegated responsibility from their Service Head for managing the contract in question.
- 25.4 Contracts which fail to provide for an extension may be allowed to extend to term should there be unforeseen delays beyond the control of the contractor and/or officer. In this instance an exception to the contract procedure rules must be requested as provided for in section 5.

26 PROCUREMENT CARDS

- 26.1 Procurement cards are used as a method of payment and do not remove or lessen the requirement to follow these contract procedure rules.
- 26.2 Procurement cards will only be issued to officers where a request has been made by the Service Head and the Procurement Manager deems it appropriate.
- 26.3 Officers to be issued with a Procurement Card must attend a formal training session delivered by the Procurement Manager and sign the Employee Agreement for the Procurement Card Holder.
- 26.4 Officers who are issued with a Procurement Card must comply with the Employee Agreement for the Procurement Card holder and the Purchasing Card User Guide.

CONTRACT AND OTHER FORMALITIES

27 CONTRACT DOCUMENTS

27.1 Contract Conditions

27.1.1 Details of the systems to be used for the ordering and paying for work, goods and services are covered in section D (Financial Systems and Procedures) of the Council's Financial Procedures.

27.1.2 For all contracts, *Officers* must ensure that all necessary financial, legal and human resources advice is sought in determining contract conditions.

27.1.3 All *Contracts* over £100,000 shall clearly specify:

- What is to be supplied (i.e. the works, materials, services, matters or things to be provided);
- What is to be paid and when;
- The time or times within which the *Contract* is to be performed/delivered;
- The provisions for the Council to terminate the *Contract*;
- That they are subject to the Council's Standard Terms and Conditions unless the Head of Governance approves an alternative.
- That the Contract is subject to the law as to the prevention of corruption (Rule 28);
- That the Contractor may not assign or sub-Contract without the Council's prior written consent
- Appropriate insurance requirements
- Appropriate health and safety requirements;
- The statutory data protection requirements;
- The Council's non-discrimination requirements;
- Appropriate environmental requirements
- The statutory Freedom of Information Act requirements;
- Audit access and monitoring requirements;
- The requirement to cooperate with internal and external (including Ombudsman) enquiries or investigations;

- 27.1.4 The advice of Financial Services must always be sought for any *Contract* involving leasing arrangements
- 27.1.5 The advice of Legal Services must always be sought for the following *Contracts*:
- Where it is proposed to use the *Candidate's* own terms and conditions;
NB. This will not apply where purchases are made online using a procurement card.
 - Those potentially involving the transfer of staff into or out of the Council or between external *Contractors* (in which case HR advice must also be sought);
- 27.1.6 The advice of the Procurement Manager must be sought for the following *Contracts*:
- Where the *Estimated Contract Value* is more than £100,000;
 - Those that are complex in any other way.

27.2 **Contract Completion**

- 27.2.1 *Contracts* shall be completed in accordance with article 14 of the Constitution.
- 27.2.2 All *Contracts* must be concluded formally in writing before the supply, service or works begin except in exceptional circumstances and then only with the written consent of the Head of Governance.
- 27.2.3 If any payment is to be made in advance of performance of the *Contract*, the relevant *Contract* must be concluded before any such payment is made.
- 27.2.4 A letter of intent shall not be used instead of a *Contract* unless in a form approved by the Head of Governance.
- 27.2.5 The *Officer* responsible for securing the signature of any *Contract* is responsible for getting written confirmation that the person signing for the other Contracting party is authorised so to do and can bind the Contracting party.

27.3 **Sealing**

- 27.3.1 Use of the Common Seal of the Council is covered by article 14.05 of the Constitution and the seal is to be affixed to those documents which, in the opinion of the Head of Governance, should be sealed.

27.3.2 Where each side adds their formal seal to complete a *Contract*, the affixing of the Council's seal must be attested by the Chief Executive or any Service Head.

27.3.3 The seal must not be affixed without proper authority.

27.3.4 The opinion of the Head of Governance regarding use of the Common Seal must be sought where:

- There is a prospect that the Council may wish to sue on the Contract more than six years after it ends or where there is no cash payment made; or
- The price paid or received under the Contract is a nominal price and does not reflect the value of the goods or services; or
- Where there is any doubt about the authority of the person signing for the other Contracting party.

27.4 **Bonds and Parent Company Guarantees**

27.4.1 A *Parent Company Guarantee* is required where the *Candidate* is a subsidiary of a parent company and:

- award is based on the evaluation of the Parent Company; or
- there is some concern about the stability of the Candidate.

27.4.2 A *Bond* is required:

- where it is proposed to make stage or other payments in advance of receiving the whole of the deliverable under the Contract and there is some concern about the stability of the Candidate. This may be necessary when awarding to a new entrant to the market.

28 **PREVENTION OF CORRUPTION**

28.1 The *Officer* must comply with the *Officer Code of Conduct* (as included in the Council's *Constitution*).

28.2 As provided for in the *Officer Code of Conduct*, the *Officer* 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.

28.3 The following clause must be put into every written Council *Contract*:

“The Council may terminate this *Contract* and recover all of 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 that this has been done); or
- (b) commits an offence under the Prevention of Corruption Acts 1889 to 1916 or Section 117(2) of the Local Government Act 1972; or
- (c) commits 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.”

29 TERMINATION OF CONTRACT

29.1 For any contract over £100,000, early termination of the contract (for whatever reason) shall be subject to the Chief Executive’s approval and the reason(s) for this action being taken is to be subsequently reported to Cabinet. Contracts of a lesser value may be terminated early by mutual agreement prior to the expiry date or in accordance with the termination provisions set out in the contract. The advice of the Head of Governance should be sought in these circumstances.

30 FAILURE OF A CONTRACTOR

30.1 When an existing *contractor* or supplier to the Council goes into receivership, liquidation or ceases trading in some other way, the officer responsible must immediately report the issue to the Procurement Manager. The Procurement Manager will then liaise with all relevant parties including but not limited to *Officers* of the Council, the administrators and the companies’ staff.

31 DECLARATION OF INTERESTS

- 31.1 Officers must comply with the requirements on declaring personal interests included in the *Officers' Code of Conduct*. Elected Members must comply with those requirements included in the Members' Code of Conduct (both as incorporated in Part 7 of the Council's *Constitution*).
- 31.2 If it comes to the knowledge of a Member or an *Officer* of the Council that a Contract in which he or she has a pecuniary interest has been or is proposed to be entered into by the Council, he or she shall immediately give written notice to the Head of Governance. Such written notice is required irrespective of whether the pecuniary interest is direct or indirect.
- 31.3 A shareholding in a body not exceeding a total nominal value of £1000 or 1% of the nominal value of the issued share capital (whichever is less) is not a pecuniary interest for the purpose of this Rule.

CONTRACT MANAGEMENT

32 MANAGING CONTRACTS

- 32.1 The relevant Head of Service must name a *Contract Manager* for all *Contracts* over £100,000. All such *Contracts* must have a named *Contract Manager* for the entirety of the *Contract*.

33 RISK ASSESSMENT AND CONTINGENCY PLANNING

- 33.1 For all *Contracts* over £100,000, the *Contract Manager* must:
- Ensure that arrangements are made to identify, assess and record any key risks associated with the procurement that could impact on the relevant service's objectives;
 - For identified risks, ensure that appropriate mitigation and/or contingency measures are documented and in place;
 - Ensure that critical support, maintenance and business continuity requirements are documented in the *Specification* in order to avoid costly *Post-Tender Negotiations*.

34 CONTRACT MONITORING, EVALUATION AND REVIEW

- 34.1 All *Contracts* where the *Estimated Contract Value* is the same as or exceeds the *EU Threshold*, or which are deemed to involve high levels of risk, are to be subject to a formal and documented quarterly review with the *Contractor*.
- 34.2 During the life of the *Contract* the *Contract Manager* must monitor the *Contractor* in respect of:
- Performance
 - Compliance with the *Contract Documents*;
 - Cost;
 - Any Value for Money requirements;
 - User satisfaction and risk management.

The monitoring must be carried out in a way that matches the complexity and value of the *Contract*.

- 34.3 If the Contract is to be re-let, the *Contract Manager* must evaluate the extent to which the contract has met the purchasing need and the contract objectives as set out in the original project appraisal or business case. The evaluation should be available in sufficient time to inform the approach to re-letting any subsequent Contract.

DEFINITIONS

“Advertisement”	A notice giving details of the procurement published on the Council’s website; a trade journal as required; a non-mandatory notice in the Official Journal of the European Union (OJEU) if desired for below threshold <i>Contracts</i> and in OJEU if over the <i>EU Thresholds</i> ;
“Approved List”	a list of suppliers or contractors who have been through a prequalification exercise to determine if they have the suitable experience and qualification to do business with the Council. This list will be used to request quotations or tenders.
“Award Criteria”	The criteria by which the successful <i>Quotation</i> or Tender is to be selected.
“Award Procedure”	The procedure for awarding a contract as specified in Rules 14 and 16 to 24.
“Best Value”	The most advantageous balance of price, quality, and performance achieved through competitive procurement methods in accordance with stated selection criteria.
“Bond”	An insurance policy: if the <i>Contractor</i> does not do what it has promised to do under a <i>Contract</i> with the Council, the Council can claim from the insurer the sum of money specified in the <i>Bond</i> (often 10% of the <i>Contract Value</i>). A <i>Bond</i> is intended to protect the Council against costs arising from the <i>Contractor’s</i> failure.
“Candidate”	Any person or organisation who asks or is invited to submit a <i>Pre-qualification questionnaire</i> , a <i>Quotation</i> or a Tender.

“Central Purchasing Body”

Another local authority or Contracting Authority (such as ESPO, YPO or the Office of Government Commerce) which acquires supplies and/or services or awards public Contracts or concludes Framework Agreements intended for other local authorities.

“Chief Officers”

The term Chief Officers describes the collective name given to Management Team and consists of the following officers: the Chief Executive, Head of Community Engagement, Head of Environmental Services, Head of Resources, Head of Governance, Head of Health and Housing services, Head of Regeneration and Planning, Section 151 Officer and Monitoring Officer.

“Concession Contract”

A *Contract* where the payment or part of the payment for the services or works relates to the granting by the Council of the right for the *Contractor* to exploit the works or services to be carried out.

“Constitution”

The constitutional document approved by the Council which:

- (a) Allocates powers and responsibilities within the Council and between it and others;
- (b) Delegates authority to act to Members and *Officers*
- (c) Regulates the behaviour of individuals and groups through rules of procedure, codes and protocols of which these *Contract Procedure Rules* are a part.

“Contract”

An agreement with specific terms between two or more persons or entities in which there is a promise to do something in return for a consideration (usually monetary).

“Contract Documents”	Documents which are a part of the agreement between the Council and the <i>Contractor</i> . Most Contracts will define what the <i>Contract Documents</i> are.
“Contracting Decision”	Any of the following decisions: <ul style="list-style-type: none"> • Composition of an <i>Approved List</i> • Withdrawal of an <i>Invitation to Tender</i> • Who to invite to submit a <i>Quotation</i> or Tender • Shortlisting • Award of <i>Contract</i> • Any decision to terminate a <i>Contract</i>.
“Contract Manager”	The <i>Officer</i> with responsibility for ensuring that the Council obtains the benefit of the <i>Contract</i> .
“Contracts Register”	A central register of the <i>Contracts</i> entered into by the Council, which is maintained by Procurement.
“Contractor”	An organisation appointed by the Council to provide it with goods, services or works.
“Corporate Contract”	A <i>Contract</i> let by the Council that is intended for, and should be used by all Officers within the Council.
“Council’s Standard Terms and Conditions”	The Council’s Standard Terms and Conditions of Contracts for orders and low value contracts, which can be found on the Intranet.
“Debrief”	To provide unsuccessful <i>Candidates</i> with information about their performance in a completed procurement process.
“Delegations”	Any power, duty or authority delegated to an Officer by the Council, the Leader or a Committee, as set out in the <i>Constitution</i>

“Estimated Contract Value”	The value of the <i>Contract</i> estimated in accordance with the provisions of Rule 9.
“EU Procedure”	The procedure required by the European Union (EU) where the <i>Estimated Contract Value</i> exceeds the relevant <i>EU Threshold</i> .
“EU Threshold”	The <i>Contract</i> value at which the EU public procurement directives and Public Contract Rules must be applied.
“European Economic Area”	The European Economic Area (EEA) comprises the countries of the European Union (EU), plus Iceland, Liechtenstein and Norway. It was established on 1 January 1994 following an agreement between the member states of the European Free Trade Association (EFTA) and the European Community (which became the EU). It allows Iceland, Liechtenstein and Norway to participate in the EU's Internal Market without being members of the EU.
“Exception to the contract procedure rules Form”	The form to be used when registering use of an exception under Rule 5.5 of these Procedure Rules.
“Financial Regulations”	Rules relating to financial management as set out in the Council's <i>Constitution</i> .
“Forthcoming Key Decisions”	The formal published list of all <i>Key Decisions</i> that are to be considered by <i>Councillors</i> over the following four months.
“Framework Agreement”	An agreement between one or more Contracting organisations and one or more <i>Contractors</i> which establishes the terms governing Contracts to be awarded during a set period in particular with regard to price and, if appropriate, quantities.

“Government Procurement Agreement”	(GPA). The successor agreement to the General Agreement on Trade and Tariffs. The main signatories, other than those in the EU, are the USA, Canada, Japan, Israel, South Korea, Switzerland, Norway, Aruba, Hong Kong, China, Lichtenstein and Singapore.
“Grants”	A voluntary, often “one-off”, transfer of money to an organisation, usually intended to support the delivery of specific objectives or activities but without detailed conditions attached. (See also “ <i>Service Level Agreement</i> ”).
“Invitation to Tender”	The document containing the invitation to Candidates to tender for a particular <i>Contract</i> .
“Key Decision”	A decision made in the exercise of an executive function by any person (including <i>Officers</i>) or body which meets one or more of the conditions set out in Article 13.03 of Part 2 of the Council’s <i>Constitution</i> .
Market Review	Study or investigation to determine the dynamics of a business sector to determine if there is sufficient activity to successfully complete a tender exercise and achieve a satisfactory result in delivering the Councils requirements
“Nominated Suppliers and Sub-Contractors”	Those persons specified in a main <i>contract</i> who are to be engaged to supply specific materials, goods or services in discharging part of that <i>contract</i> .
“Non Commercial Considerations”	Under section 17 of the Local Government Act 1988, the following are defined as non-commercial matters which must not be referenced in contracting decisions:

- (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”);
- (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;
- (c) any involvement of the business activities or interests of *Contractors* with irrelevant fields of Government policy (an example of this would be refusing to do business with *Contractors* who have worked on military nuclear installations in opposition to the government’s defence policy in the area of nuclear armaments);
- (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”);
- (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*;

- (f) any political, industrial or sectarian affiliations or interests of *Contractors* or their *Directors*, partners or employees;
- (g) financial support or lack of financial support by *Contractors* for any institution to or from which the authority gives or withholds support;
- (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.

Exception: Workforce matters and industrial disputes, as defined in paragraphs (a) and (d) above, may now be considered in contracting decisions to the extent that this is necessary or expedient to comply with Part 1 of the Local Government Act 1999 (*Best Value*); or where there is a transfer of staff to which the Transfer of Undertakings (Protection of Employment) Rules 2006 (“*TUPE*”) may apply.

“Officer”

The *Officer* designated by the Head of Service to deal with the *Contract* in question.

“Officer Code of Conduct”

The Code of Conduct for Council officers as set out in the *Constitution*.

“Parent Company Guarantee”

A *Contract* that binds the parent of a subsidiary company to act in accordance with the provisions of the guaranteed *Contract* in the event that the subsidiary company fails to do what it has promised under the guaranteed *Contract*.

“Post Tender Negotiation”

Negotiations with a Candidate after submission of a Tender and before award of the *Contract* with a view to obtaining a change to the price, delivery or content submitted.

“Pre qualification questionnaire”

A questionnaire sent to Candidates which have expressed an interest in tendering for a Contract. Sometimes referred to as an application form.

“Procurement Strategy”

The Strategy approved by the Council setting out the Council’s approach to procurement and key priorities for the next *few years*.

“Proprietary Articles”

Goods or services that can only be sourced from one supplier. The supplier will hold the copyright and/or patent for the goods or service and will control the distribution of such.

“Quotation”

A formal statement (submitted usually in response to a request for quotation) by a potential supplier to supply goods or services required by a buyer, specifying prices and the validity of the prices for specified period. A quotation may also contain terms and conditions and any warranties.

“Relevant Contracts”

Contracts to which these Rules apply, as defined in section 3.

“Request for Quotation”

A formal written Request to a supplier or suppliers for a price for the delivery of defined services, works or supplies in accordance with the Council’s Standard Terms and Conditions.

“Responsible Spending Officer”

Officers who are accountable for the management and control of budgets. This includes incurring spend against, and monitoring and reporting on the use of those budgets.

“Revenue”

Day to day running expenses.

“Seal”

The legal term seal arises from the wax seal used throughout history for authentication (among other purposes). A seal is affixed to a contract or other legal document as validation of the Councils commitment to the agreement.

“Sealed Bid”

Documents submitted in response to an invitation to tender/quote either in a sealed envelope or electronically into a secure repository. All submissions to be opened/released at the same time and place.

“Service Level Agreement”

A form of contract between a service provider and customer/stakeholder which typically details the nature, quality and scope of the service to be provided and the nature, level and frequency of consideration (usually monetary) to be made in return.

In the local government context this generally refers to the provision of funding to a third party (e.g. charitable or voluntary sector organisation) to assist in its delivery to the public of specific services, activities or outcomes which help meet the Council’s wider social and economic objectives for the area.

See also “Grants”

“Shared Service”

The provision of a service by one part of an organisation or group where that service had previously been found in more than one part of the organization or group. The funding and resourcing of the service is shared and the providing department effectively becomes an internal service provider to its members.

“Specification”	A clear description of the requirements under the <i>Contract</i> . The amount of detail will vary according to the value and complexity of the purchase.
“Tender”	A Candidate’s proposal submitted in response to an <i>Invitation to Tender</i>
“TUPE”	Transfer of Undertakings (Protection of Employment) Rules 2006. Rules introduced to ensure the protection of employees where, for example, a business is taken over by another employer. Broadly <i>TUPE</i> ensures that the rights of the employees are transferred with the business .
“Value for Money”	A term generally used to describe an explicit commitment to ensuring the best results possible are obtained from the money spent. Use of this term reflects a concern for more transparency and accountability in spending public funds, and for obtaining the maximum benefit from the resources available.
“Variation”	A change, alteration or deletion from the original specification as tendered for by the <i>contractor</i> .
“Whole Life Costing”	Whole-Life Cost (WLC), or Life-Cycle Cost (LCC), refers to the total cost of ownership over the life of an asset. This will include the initial purchase (or lease) price, the cost of maintaining and operating an asset, the cost of any consumables and its disposal.

“Workforce Matters”

The Council cannot consider matters classed as “non-commercial” considerations as part of the procurement process. However, authorities may consider the following matters **to the extent that they are relevant to the delivery of Best Value** or for the purposes of a *TUPE* transfer:

- How employers treat their staff as regards terms and conditions of employment, arrangements for promotion, transfer or training or other opportunities afforded to their workforce.
- The conduct of suppliers or workers in industrial disputes between them.

“Working Day”

A complete day other than a Saturday, Sunday, or Bank Holiday.